

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THERESA A. STEPHENSON,)
)
 Petitioner,)
)
 vs.) Case No. 02-1440
)
 LOURDES-NORREN MCKEEN RESIDENCE)
 FOR GERIATRIC CARE, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This matter is before the undersigned on Respondent's Motion for Summary Final Order (the Motion) filed May 17, 2002. A telephone hearing on the Motion was held on June 3, 2002, by Administrative Law Judge Florence Snyder Rivas.

APPEARANCES

For Petitioner: Theresa A. Stephenson, pro se
7459 Pinedale Drive
Boynton Beach, Florida 33462

For Respondent: Robert J. Sniffen, Esquire
Moyle, Flanigan, Katz, Kolins,
Raymond & Sheehan, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether this matter should be dismissed for lack of disputed issues of fact and law, and because Petitioner has

affirmatively stated she no longer wishes to pursue this claim.

PRELIMINARY STATEMENT

On or about February 2, 1999, Petitioner, Theresa A. Stephenson (Petitioner or Stephenson), filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR). Petitioner alleged that Respondent discriminated against her on the basis of her marital status.

On March 4, 2002, FCHR issued a "No Cause Determination" with respect to the allegations.

Petitioner timely filed a Petition for Relief from an Unlawful Employment Practice (Petition) on April 2, 2002. The Petition was transmitted to the Division of Administrative Hearings (Division or DOAH) on or about April 10, 2002.

The Division issued an Initial Order on April 12, 2002. After requesting an extension of time within which to respond to the Initial Order, and attempting to coordinate a hearing schedule with the Petitioner, Respondent filed a unilateral Response to Initial Order on May 3, 2002. On May 7, 2002, the undersigned issued a Notice of Hearing by Video Teleconference which scheduled the case for final hearing on June 13, 2002.

Also on May 7, 2002, the undersigned issued an Order of Pre-hearing Instructions, directing the parties to provide the names and addresses of the respective witnesses to be called at the final hearing. Respondent filed its Witness List on May 28, 2002. Petitioner failed to file a Witness List.

Respondent filed a Motion for Summary Final Order with eight attached exhibits on May 17, 2002. Petitioner has not filed a response to said Motion.

At the June 3, 2002, telephonic hearing, Petitioner stated that she had not filed and did not intend to file a response to the Motion, and further indicated that she did not object to an Order being entered granting Respondent's Motion.

FINDINGS OF FACT

1. Respondent is a non-profit corporation geriatric care facility.

2. Petitioner was employed by Respondent as a Certified Nursing Assistant at the time of her termination on August 21, 1998.

3. On or about February 2, 1999, Petitioner filed a Charge of Discrimination (Charge) with FCHR. Petitioner alleged that she was discriminated against on the basis of her marital status in violation of the Florida Civil Rights Act of

1992, Chapter 760, Florida Statutes (FCRA). FCHR assigned Petitioner's Charge case number 99-1079.

4. The FCHR investigated Petitioner's allegations of marital status discrimination and, on March 4, 2002, issued a "No Cause Determination." The FCHR found that "there is no reasonable cause to believe that Respondent discriminated against [Stephenson] on the basis of marital status (married)." In its investigation, FCHR concluded that:

Complainant [Stephenson] became very belligerent toward her supervisor after Complainant's husband tried to deliver a package to her while she was on duty. Complainant's husband was told that visitor's [sic] are not permitted when employees are on duty. Complainant was suspended on July 13, 1998 for one day for insubordination and for being disrespectful toward her direct supervisor. . . . Records show that Complainant acknowledged receipt of Respondent's policy regarding visitors. . . .

Respondent provided sworn affidavits from Complainant's supervisors and from the facility's Assistant Administrator, that states on August 13, 1998, Complainant refused to take a 100 year old resident to the restroom after the resident requested her assistance several times. The resident needed to be taken to the restroom frequently due to her age and the medication she was taking. Complainant told the resident that she had already taken her ten times in the past five minutes, and she is not taking her again. As a result, Complainant was terminated. Complainant did not take advantage of Respondent's grievance procedure nor

harassment policy to try to resolve any issues or problems that she may have experienced.

In regards to Complainant's allegations that she was denied severance pay, according to Respondent's policy, employee's [sic] who are involuntary discharged are not eligible to receive severance pay. Records show that Complainant acknowledged receipt of this policy.

Complainant was contacted telephonically to determine whether additional information would be offered to support her allegations.

Complainant offered no additional information to rebut Respondent's position.

5. On or about April 3, 2002, Petitioner filed her Petition with FCHR. FCHR transmitted the Petition to the Division on April 10, 2002.

6. In or about January 1999, while her Charge was pending at the FCHR, Petitioner also filed a worker's compensation claim pursuant to Chapter 440, Florida Statutes, alleging that she suffered a workplace injury on August 21, 1998, the same day she was terminated from employment.

7. While Petitioner's Charge was pending at FCHR, Petitioner mediated her worker's compensation claim. Petitioner's worker's compensation claim was settled and Petitioner received \$10,000.00, as a lump-sum settlement. Petitioner was represented by counsel at the time she settled

the claim. A Stipulation was entered into between the parties.

8. Paragraph 11 of the Stipulation states:

ALL KNOWN ACCIDENTS, INJURIES AND OCCUPATIONAL DISEASES REVEALED AND ALL PENDING CLAIMS WITHDRAWN - The Claimant once again, represents and affirms that all accidents, injuries and occupational diseases known to have occurred or sustained while employed or allegedly employed by the employer have been revealed. All pending or potential claims, and notices of denial pertaining thereto, are hereby voluntarily withdrawn, and are hereby considered dismissed with prejudice, whether previously filed or not. In consideration for the settlement herein the Employee hereby also extinguishes all causes of action or potential of causes of action, against the Employer and Carrier including but not limited to any statutory, common law, State, Federal, and administrative claims, ADA claims, and claims for any other alleged on-the-job accidents with the Employer herein.

9. In Paragraph 12 of the Stipulation, Petitioner also agreed that she would be prospectively estopped from challenging the validity of the Stipulation and documents attached thereto.

10. In Paragraph 2 of the Affidavit attached to the Stipulation, Petitioner acknowledged under oath that she understood that the \$10,000.00 lump settlement represented "full and final settlement of all past, present and future benefits of every kind and class whatsoever, including medical

treatment under Florida Statute 440 regarding any and all industrial accidents." In addition to the settlement of benefits under Chapter 440, Florida Statutes, Petitioner also acknowledged that she understood that "all other causes of action and claims against the employer and/or carrier are extinguished and forever barred."

11. The worker's compensation Judge of Compensation Claims approved the Stipulation on or about January 7, 2000.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569 and 120.57, Florida Statutes.

13. Section 760.11(7), Florida Statutes, provides as follows in relevant part:

(7) If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause and any such hearing shall be heard by an administrative law judge and not by the commission or a commissioner.

14. Petitioner's claim should be dismissed as a matter of law as well as fact. At the telephone hearing, Petitioner

acknowledged that she had signed the waiver at a time she was represented by counsel. In addition, she stated that she did not object to an order being entered granting Respondent's Motion.

15. The extent and operation of a settlement agreement releasing claims is based on the intent of the parties as expressed in the language of the agreement itself. Hardage Enterprises v. Fidesys Corp., 570 So. 2d 436, 437-38 (5th DCA 1990); Prescott v. Kreher, 123 So. 2d 721, 728 (Fla. 2d DCA 1960). Where, as here, the intent of the parties to a settlement agreement can be deduced from the language actually employed by the parties, no further construction is needed. Rather, the intent of the parties is expressed in the settlement agreement itself and is to be given effect. Gendzier v. Bilecki, 97 So. 2d 604, 608 (Fla. 1957); Hardage Enterprises, 570 So. 2d at 437.

16. Accordingly, there are no factual nor legal issues for resolution in a hearing under Section 120.569 and 120.57, Florida Statutes. This case is hereby dismissed and the final hearing scheduled for June 13, 2002, is hereby cancelled.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that FCHR enter a final order

dismissing the Petition for Relief from an Unlawful Employment Practice filed by Petitioner in this proceeding.

DONE AND ENTERED this 10th day of June, 2002, in Tallahassee, Leon County, Florida.

FLORENCE SNYDER RIVAS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of June, 2002.

COPIES FURNISHED:

Theresa A. Stephenson
7459 Pinedale Drive
Boynton Beach, Florida 33462

Robert J. Sniffen, Esquire
Moyle, Flanigan, Katz, Kolins,
Raymond & Sheehan, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
2009 Apalachee Parkway
Suite 100
Tallahassee, Florida 32301

Cecil Howard, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway
Suite 100
Tallahassee, Florida 32301

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the Agency that will issue the Final Order in this case.