

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TROY PERRY,)
)
 Petitioner,)
)
 vs.) Case No. 02-1624
)
 SPEEDWAY SUPERAMERICA, LLC,)
 d/b/a STARVIN' MARVIN,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER OF DISMISSAL

This cause came on to be heard on June 11, 2002, by telephone conference call on the Motion to Dismiss filed by Respondent before Daniel M. Kilbride, Administrative Law Judge, Division of Administrative Hearings. Upon the filing of the Motion, an Order to Show Cause was issued and directed to Petitioner. Petitioner filed a response, through counsel, to the Motion and Order; arguments of counsel were made by telephone conference call. The arguments presented in the Motion have been fully considered. The following appearances were entered:

APPEARANCES

For Petitioner: Pierre A.L. Mommers, Esquire
2351 West Eau Gallie Boulevard,
Suite One
Melbourne, Florida 32935

For Respondent: Dionne Wilson Blake, Esquire
Susan P. Norton, Esquire
Allen, Norton & Blue, P.A.
121 Majorca, Suite 300
Coral Gables, Florida 33134

STATEMENT OF THE ISSUES

Whether the Division of Administrative Hearings has jurisdiction to conduct a formal hearing under the provisions of Sections 120.569 and 120.57(1), Florida Statutes, if the Petition for Relief was not timely filed pursuant to Section 760.11(7), Florida Statutes.

Whether the Division of Administrative Hearings has jurisdiction to conduct an formal hearing under the provisions of Sections 120.569 and 120.57(1), Florida Statutes, if the Florida Commission on Human Relations fails to send a copy of the Charge of Discrimination to the Respondent within 5 days of the complaint being filed, as required by Section 760.11(1), Florida Statutes.

PRELIMINARY STATEMENT

On May 23, 2001, Petitioner filed with the Florida Commission on Human Relations (FCHR) a charge of discrimination against Respondent based on his race and color. The FCHR, at first, indicated that it could not pursue the matter because Respondent was not a public lodging or food service establishment under Section 509.902, Florida Statutes. Petitioner convinced the FCHR to change its position, and it

conducted an investigation under the Florida Civil Rights Act of 1992. During the course of the investigation, Petitioner was represented by counsel. Upon completion of its investigation, the FCHR issued its Notice of Determination: No Cause and mailed a copy to counsel for Petitioner on March 11, 2002. A copy of the Notice of Determination was served on Petitioner's counsel of record. Petitioner was advised that he must file a Petition for Relief within 35 days of the date of the Notice of Determination or his claim would be barred. Section 760.11(7), Florida Statutes. Petitioner filed a Petition for Relief with the FCHR on April 17, 2002. Petitioner requested a formal hearing under the provisions of Section 120.57(1), Florida Statutes. The FCHR referred this matter to the Division of Administrative Hearings on April 23, 2002, for a formal hearing. Respondent filed its Answer and Affirmative Defenses to the Petition for Relief on May 9, 2002. Respondent filed its Motion to Dismiss on the same date. On May 20, 2002, Petitioner filed a response to the Order to Show Cause and Respondent's motion, and the motion hearing followed. It is, therefore,

FOUND AND DETERMINED that Petitioner had until April 15, 2002, to file his petition, and the Petition was not filed until April 17, 2002. Good cause for the delay has not been shown. Therefore, the Petition for Relief is time-barred for

failure to file the Petition within 35 days of the date of determination of no reasonable cause by the Commission. Section 760.11(7), Florida Statutes (1997); Wright v. HCA Central Florida Regional Hospital, Inc., 18 FALR 1160 (1995); Joshua v. City of Gainesville, 768 So. 2d 432 (2000); cf. St. Petersburg Motor Club v. Cook, 567 So. 2d 488 (Fla. 2nd DCA 1990); see Blakely v. United States Automobile Ass'n, No. 99-1046-CIV-T-17F, 1999 WL 1053122, 4 (M.D. Fla. Oct. 4, 1999); Dawkins v. Bellsouth Telecommunications, Inc., 53 F. Supp. 2d 1356, 1360-61 (M.D. Fla. 1999).

Respondent's assertion that FCHR's delay in notifying Respondent of the filing of the original Charge of Discrimination is jurisdictional is unsupported by case law. Logan v. Zimmerman Brush Co., 102 S. Ct. 1148 (1982) and cf. Joshua v. City of Gainesville, supra. at 436.

RECOMMENDATION

Based on the foregoing facts and conclusions of law, it is

RECOMMENDED that a final order be entered dismissing with prejudice the Petition of Troy Perry in DOAH Case No. 02-1624; and FCHR Case No. 21-02229, for failure to timely file his Petition for Relief.

DONE AND ENTERED this 18th day of June, 2002, in
Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
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 18th day of June, 2002.

COPIES FURNISHED:

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

Pierre A. L. Mommers, Esquire
2351 West Eau Gallie Boulevard, Suite One
Melbourne, Florida 32935

Dionne Wilson Blake, Esquire
Susan P. Norton, Esquire
Allen, Norton & Blue, P.A.
121 Majorca, Suite 300
Coral Gables, Florida 33134

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

Troy Perry
1520 Windwood Drive, Northeast
No. 106
Palm Bay, Florida 32905

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.