

7-3-03

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED  
04 MAR 10 PM 1:17  
ADMINISTRATIVE  
HEARINGS

ALPHONSO WILLIAMS, JR.,

AT

EEOC Case No. 15DA10773

Petitioner,

FCHR Case No. 21-02976

v.

DOAH Case No. 02-2501 *SDC-CWS*

L. PUGH & ASSOCIATES,

FCHR Order No. 04-046

Respondent.

**FINAL ORDER DISMISSING PETITION FOR  
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Alphonso Williams, Jr., filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1999), alleging that Respondent L. Pugh & Associates committed an unlawful employment practice on the basis of race (African-American) by creating a racially-based hostile work environment and by retaliating against Petitioner for engaging in protected activity.

The allegations set forth in the complaint were investigated, and, on May 21, 2002, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Pensacola, Florida, on March 12, 2003, before Administrative Law Judge Diane Cleavinger.

Judge Cleavinger issued a Recommended Order of dismissal, dated July 3, 2003.

Pursuant to notice, public deliberations were held on February 13, 2004, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Petition for Relief.

### Motion to Withdraw

On February 5, 2004, Frederick J. Gant, Esq., the attorney of record for the Petitioner, filed a Motion to Withdraw indicating, “[t]he relationship between the client and the attorney has been impaired and the undersigned attorney can no longer effectively represent the client.”

The motion was considered by the Commission panel on February 13, 2004, prior to its deliberation on the Petition for Relief and Recommended Order.

Having heard the positions on the motion of Mr. Gant, Petitioner and Respondent’s counsel, Michael J. Stebbins, Esq., the motion was granted prior to the start of deliberations. We note that Petitioner indicated a desire to proceed with the deliberation hearing without representation.

### Findings of Fact

We find the Administrative Law Judge’s findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge’s findings of fact.

### Conclusions of Law

We find the Administrative Law Judge’s application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge’s conclusions of law.

### Exceptions

Respondent filed exceptions to the Administrative Law Judge’s Recommended Order in a document entitled, “Respondent’s Exception to Recommended Order.”

In that document Respondent excepts to the Administrative Law Judge’s failure to award attorney’s fees to the Respondent as the prevailing party, and requests that the Commission award Respondent “reasonable attorney’s fees and costs.”

In conclusions of law adopted by a Commission panel, it has been stated that a prevailing Respondent may be awarded attorney’s fees by the Commission, under the Florida Civil Rights Act of 1992, “if it is determined that an action was ‘frivolous, unreasonable, or without foundation,’ or ‘that the plaintiff continued to litigate after it clearly became so.’ Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421-422 (1978).” Tadlock v. Westinghouse Electric Corporation, d/b/a Bay County Energy Systems, Inc., 20 F.A.L.R. 776, at 777 (FCHR 1997), citing Wright v. City of Gainesville, 19 F.A.L.R. 1947, at 1959 (FCHR 1996). Accord, generally, Asher v. Barnett Banks, Inc., 18 F.A.L.R. 1907 (FCHR 1995).

In conclusions of law adopted by a Commission panel, this pronouncement is given explanation: "It is within the discretion of a district court to award attorney's fees to a prevailing defendant in a Title VII action upon a finding that the action was 'frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.' Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421, 98 S.Ct. 694, 700, 54 L.Ed.2d 648 (1978). The standard has been described as a 'stringent' one. Hughes v. Rowe, 449 U.S. 5, 14, 101 S.Ct. 173, 178, 66 L.Ed.2d 163 (1980). Moreover, the Supreme Court has cautioned that in applying these criteria, the district court should resist the temptation to conclude that because a plaintiff did not ultimately prevail, the action must have been unreasonable or without foundation. Christianburg Garment, 434 U.S. at 421-22, 98 S.Ct. at 700-01. Therefore, in determining whether a prevailing defendant is entitled to attorney's fees under Title VII, the district court must focus on the question of whether the case is seriously lacking in arguable merit. See Sullivan v. School Board of Pinellas County, 773 F.2d 1182, 1188 (11th Cir. 1985)." Doshi v. Systems and Electronics, Inc., f/k/a Electronics and Space Corp., 21 F.A.L.R. 188, at 199 (FCHR 1998).

In Hood v. Terminex International Company, 21 F.A.L.R. 410 (FCHR 1998), a Commission panel denied a prevailing Respondent's motion for attorney's fees and costs stating, "Based on the record before the Commission, the Petitioner's claim was not frivolous, unreasonable, or without foundation, nor are such claims made in Respondent's motion papers." Hood, at 410, 411.

In our view the record of this case does not reflect that Petitioner's case was frivolous, unreasonable or without foundation, nor do Respondent's filings requesting attorney's fees, i.e., Respondent's proposed "Findings of Fact, Conclusions of Law and Recommended Order" and "Respondent's Exceptions to the Recommended Order," make such allegations. Rather the filings simply cite that section of the Florida Civil Rights Act of 1992 giving the Commission discretion in awarding attorney's fees to prevailing parties.

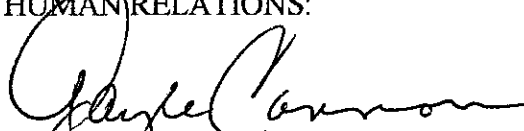
Respondent's exceptions are rejected.

#### Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 9<sup>th</sup> day of March, 2004.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Gayle Cannon,  
Panel Chairperson;  
Commissioner Keith Roberts; and  
Commissioner Mario M. Valle

Filed this 9<sup>th</sup> day of March, 2004,  
in Tallahassee, Florida.



Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, FL 32301  
(850) 488-7082

NOTICE TO COMPLAINANT / PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request EEOC to review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131.

Copies furnished to:

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Pensacola, FL 32501

L. Pugh & Associates  
c/o Michael J. Stebbins, Esq.  
Michael J. Stebbins, P.L.  
504 North Baylen Street  
Pensacola, FL 32501

Diane Cleavinger, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 9<sup>th</sup> day of March, 2004.

By: *Violet Crawford*  
Clerk of the Commission  
Florida Commission on Human Relations