

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TRUMAN JEFFERY MAYFIELD,)
)
 Petitioner,)
)
vs.) Case No. 03-3149
)
KARL'S HABERDASHERY OF FLORIDA,)
INC.,)
)
 Respondent.)

)

RECOMMENDED ORDER OF DISMISSAL

This cause came on for consideration pursuant to the Order to Show Cause entered herein on October 10, 2003. Because this Recommended Order addresses a jurisdictional issue, a "Preliminary Statement" is dispensed with, and all background information is incorporated as part of the Findings of Fact.

APPEARANCES

For Petitioner: No appearance

For Respondent: Robert G. Riegel, Jr., Esquire
Ryan R. Fuller, Esquire
Coffman, Coleman, Andrews & Grogan, P.A.
Post Office Box 40089
Jacksonville, Florida 32203

STATEMENT OF THE ISSUE

Whether the Division of Administrative Hearings has jurisdiction to hear this cause, alleging that Respondent

Employer has committed an unlawful employment practice against Petitioner.

FINDINGS OF FACT

1. Following a July 28, 2003, "Notice of Determination: No Jurisdiction," by the Florida Commission on Human Relations, Petitioner filed a Petition for Relief as more fully described below. On or about September 3, 2003, the matter was referred to the Division of Administrative Hearings.

2. It appearing on the face of the referral package that Respondent did not regularly employ 15 persons and that therefore Respondent did not qualify as an "employer" under Chapter 760, Florida Statutes, a September 12, 2003, Order was entered scheduling a telephonic hearing for October 1, 2003, and permitting the filing of any documents in support of the parties' respective positions.

3. Respondent's "Submission of Materials in Support of Dismissal of Petition and Supporting Memorandum of Law" was served by United States Mail on September 25, 2003. It contained a prayer for dismissal. Pursuant to Rule 28-106.204, Florida Administrative Code, Petitioner was entitled to respond in writing by October 6, 2003. Petitioner did not respond.

4. Respondent's "Supplemental Motion to Dismiss for Lack of Jurisdiction" was served upon Petitioner by hand-delivery, by United States Mail, and by "e-mail" on September 26, 2003. Per

Rule, Petitioner was entitled to file a written response by October 8, 2003. Petitioner did not respond.

5. A Corrected Order entered September 26, 2003, permitted the parties until October 7, 2003, to submit any documents tending to support or refute jurisdiction by the Division of Administrative Hearings over this cause. This Order also rescheduled the telephonic hearing for October 9, 2003.

6. Petitioner filed nothing in response to either the September 12, 2003, Order or the September 26, 2003, Corrected Order.

7. At the October 9, 2003, telephonic conference call, Respondent appeared through counsel. The opening of hearing was delayed five minutes, but Petitioner did not appear. Thereafter, oral argument upon all Motions proceeded without Petitioner. Petitioner still had not called in to the meet-me telephone number after 15 minutes, and the telephonic hearing was concluded.

8. In an abundance of caution, an Order to Show Cause was entered on October 10, 2003, giving Petitioner 10 days in which to show cause, in writing, filed with the Division, why this cause should not be dismissed for lack of jurisdiction. Petitioner has filed nothing.

9. Therefore, Respondent's documentation, including but not limited to: Respondent's accountants' affidavits and its

payroll journals, unemployment tax returns, and a payroll schedule, may be presumed true and accurate.

10. All the documentation supports a finding that Respondent never employed more than 14 people for any one week in the year 2001 and employed 15 or more employees for only one week (December 21-28, 2002) in the year 2002.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction to determine the issue of its jurisdiction, pursuant to Section 120.57(1) and Chapter 760, Florida Statutes.

12. The undersigned is without final order authority in this type of proceeding. Accordingly, the pending Motions have been treated as a single Motion for a Recommended Order of Dismissal.

13. Because Respondent has not employed 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, Respondent does not qualify as an "employer," as defined by Section 760.02(7), Florida Statutes. See Mousa v. Lauda Air Luftfahrt, A.G., 258 F. Supp. 2d 1329 (S.D. Fla. 2003), citing Scelta v. Delicatessen Support Services, Inc., 57 F. Supp. 2d 1327 (M.D. Fla. 1999) and Regency Towers Owners Ass'n. Inc., v. Pettigrew, 436 So. 2d. 266 (Fla. 1st DCA 1983). See also Singletary v. Photo Plus, Inc.,

DOAH Case No. 01-3846 (RO March 29, 2002; FO September 5, 2002).
Therefore, this cause should be dismissed for that reason.

14. Additionally, Petitioner's failure to respond to the October 10, 2003, Order to Show Cause by stating a reason why the Petition for Relief should not be dismissed for lack of jurisdiction based on "employer" status equates to a voluntary dismissal of the Petition for Relief, just as the Petitioner's failure to respond to an Order to Show Cause addressing a lack of jurisdiction based on untimeliness of the charge of discrimination did, in Kenny v. Florida Department of Corrections, DOAH Case No. 01-4016 (Recommended Order January 3, 2002; FCHR Case No. 02-0020: Final Order June 3, 2002). Here, as in that case, the Order to Show Cause addressed basic threshold jurisdictional issues, and this cause should be dismissed upon the same reasoning.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing this cause for lack of jurisdiction.

DONE AND ENTERED this 30th day of October, 2003, in
Tallahassee, Leon County, Florida.



ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of October, 2003.

COPIES FURNISHED:

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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.