

6-25-04

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED  
04 NOV -5 PM 12:03

HENRY L. ROBERTS,

EEOC Case No. 15DA10491

Petitioner,

FCHR Case No. 21-02169

v.

DOAH Case No. 03-4711

Dmk-clos

ARGENBRIGHT SECURITY, INC.,

FCHR Order No. 04-144

Respondent.

**ORDER REMANDING PETITION FOR  
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

This cause came before the Commission for review of the Recommended Order issued in this matter on June 25, 2004, by Administrative Law Judge Daniel M. Kilbride.

Pursuant to notice, public deliberations were held on October 28, 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 Recommended Order.

Petitioner's Exceptions to Recommended Order

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Petitioner's Exceptions to Recommended Order."

Among other things, Petitioner excepted to the statement in the Recommended Order that Petitioner did not file a Proposed Recommended Order. As an attachment to the exceptions document, Petitioner included a printout of the docket sheet for this case from the Division of Administrative Hearings (DOAH) web site. The docket sheet reflects that Petitioner e-filed his Proposed Recommended Order on May 27, 2004, the same day indicated that Respondent filed its Proposed Recommended Order.

The Uniform Rules that govern administrative hearings before Administrative Law Judges, including proceedings brought pursuant to the Florida Civil Rights Act of 1992, state, "[t]he presiding officer may permit all parties to submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the presiding officer. Unless authorized by the presiding officer, proposed orders shall be limited to 40 pages." Fla. Admin. Code R. 28-106.307.

The Administrative Procedure Act states that in proceedings before Administrative Law Judges, "All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order, and to be represented by counsel or other qualified representative." Section 120.57(1)(b), Florida Statutes (2003).

Respondent's response to Petitioner's exceptions acknowledges that Respondent was served a copy of Petitioner's Proposed Recommended Order on June 3, 2004.

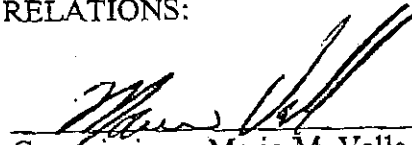
Since the Administrative Procedure Act provides the right to file a Proposed Recommended Order, and both the DOAH web site docket sheet and Respondent indicate that Petitioner filed a Proposed Recommended Order, we conclude that the statement in the Recommended Order that, "[a]s of the date of this Recommended Order, Petitioner has not filed his proposals," to be error, and conclude that the matter should be remanded to the Administrative Law Judge for consideration of Petitioner's Proposed Recommended Order and the subsequent issuance of a new Recommended Order.

Since our action in this Order will require the issuance of another Recommended Order in this matter, we find it unnecessary to rule at this time on the remaining exceptions filed by Petitioner or the findings of fact and conclusions of law contained in the Recommended Order.

Remand

The Petition for Relief and Complaint of Discrimination are REMANDED to the Administrative Law Judge for consideration of Petitioner's Proposed Recommended Order and the subsequent issuance of a new Recommended Order.

DONE AND ORDERED this 4<sup>th</sup> day of November, 2004.  
FOR THE COMMISSION ON HUMAN RELATIONS:

  
\_\_\_\_\_  
Commissioner Mario M. Valle,  
Panel Chairperson;  
Commissioner Roosevelt Paige; and  
Commissioner Aletta Shutes

Filed this 4<sup>th</sup> day of November, 2004,  
in Tallahassee, Florida.



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

Copies furnished to:

Henry L. Roberts  
c/o Wayne Johnson, Esq.  
DeCiccio, Johnson, Herzfeld & Rubin  
652 West Morse Boulevard  
Winter Park, FL 32789

Argenbright Security, Inc.  
c/o Jay P. Ferguson, Jr., Esq.  
Duane Morris, LLP  
1180 West Peachtree Street, Suite 700  
Atlanta, GA 30309

Daniel M. Kilbride, 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 4<sup>th</sup> day of NOVEMBER, 2004.

By:   
Clerk of the Commission  
Florida Commission on Human Relations