

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

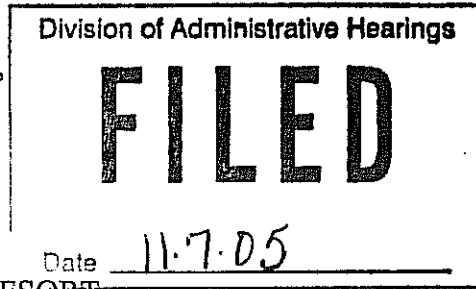
MOHAMED DALHY,

Petitioner,

v.

GRAND CYPRESS RESORT,

Respondent.



EEOC Case No. 15DA500192

FCHR Case No. 2005-00459

DOAH Case No. 05-2399

FCHR Order No. 05-121

Dsm closed

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

This matter is before the Commission for consideration of the Recommended Order, dated September 1, 2005, issued in the above-styled matter by Administrative Law Judge Daniel Manry.

Findings of Fact and Conclusions of Law

Judge Manry's order reflects that Petitioner failed to appear at the scheduled administrative hearing in the matter. Consequently, Judge Manry recommended the Commission issue a final order dismissing the matter based on Petitioner's failure to establish a prima facie case of discrimination.

We adopt the Administrative Law Judge's finding as to the nonappearance of Petitioner and conclude that Petitioner has failed to carry his burden of proof.

Exceptions

Neither party filed exceptions to the ultimate outcome of the case as set out in the Administrative Law Judge's Recommended Order.

Respondent filed exceptions to the Recommended Order, in a document entitled, "Respondent's Exceptions to Recommended Order," excepting only to two findings of fact relating to what happened at the scheduled August 12, 2005, final hearing on the matter.

The Commission's file does not contain a transcript of the August 12, 2005, proceeding on the merits before the Administrative Law Judge. With regard to findings of fact set out in Recommended Orders, the Administrative Procedure Act states, "The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law." Section 120.57(1)(l), Florida Statutes (2005). In the

absence of a transcript of the proceeding before the Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See, National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988). See, also, McAdory v. Denny's Restaurant, FCHR Order No. 05-041 (March 8, 2005).

Consequently, we conclude there is no legal basis by which the Commission could accept Respondent's exceptions. Accord, Yongmahapakorn v. Ramada at Amtel Marina, FCHR Order No. 05-065 (June 15, 2005).

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 of appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 3rd day of November, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Gilbert M. Singer

Filed this 3rd day of November, 2005,
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:

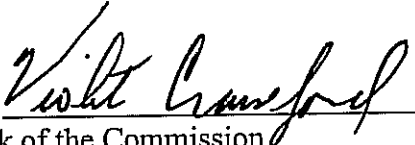
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Daniel Manry, Administrative Law Judge, DOAH

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 3rd day of November, 2005.

By: 
Clerk of the Commission
Florida Commission on Human Relations