

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CYNTHIA DIANE SMITH, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 07-4305  
 )  
 DOLLAR GENERAL, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER OF DISMISSAL

A hearing was held pursuant to notice, on January 10, 2008, in Leesburg, Florida, before the Division of Administrative Hearings by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

For Petitioner: No appearance  
  
For Respondent: Anthony J. Hall, Esquire  
Littler Mendelson, P.C.  
4767 New Broad Street  
Orlando, Florida 32814

STATEMENT OF THE ISSUE

Whether Respondent committed a violation of the Florida Civil Rights Act of 1992, as alleged in the Employment Complaint of Discrimination filed by Petitioner on February 5, 2007.

PRELIMINARY STATEMENT

Because of the procedural nature of the findings in this case, the matters normally contained in the Preliminary Statement are reflected in the Findings of fact below.

FINDINGS OF FACT

1. On February 5, 2007, Petitioner, Cynthia D. Smith, filed an Employment Complaint of Discrimination with the Florida Commission on Human Relations (FCHR). On September 6, 2007, FCHR issued a Determination: No Cause and a Notice of Determination: No Cause. Petitioner filed a Petition for Relief with FCHR on or about September 17, 2007.

2. FCHR transmitted the case to the Division of Administrative Hearings (Division) on or about September 19, 2007, for the purpose of conducting a formal administrative hearing. A Notice of Hearing and Order of Pre-Hearing Instructions were issued on October 16, 2007, setting the case for hearing on December 18, 2007, in Leesburg, Florida, where Petitioner resides.

3. Respondent filed an unopposed Motion for Continuance which was granted. An Order Granting Continuance and Re-Scheduling Hearing was issued on December 3, 2007, rescheduling the hearing for January 10, 2007, in Leesburg.

4. The undersigned traveled from Tallahassee to Leesburg, Florida, to conduct the hearing. The hearing commenced as scheduled. Respondent and its witnesses were present and ready to proceed. Petitioner was not present when the hearing commenced.

5. The undersigned recessed the hearing to give Petitioner every opportunity to arrive. The undersigned checked the reception area and the parking lot of the building where the hearing was located to see if Petitioner was anywhere in or around the building. In addition, the undersigned called her assistant in Tallahassee to determine if any pleading had been filed on the docket of the Division or any telephone call received indicating Petitioner was delayed. No such communication had been received.

6. While waiting for Petitioner to arrive, the undersigned examined the address for Petitioner on the Order Granting Continuance and Re-Scheduling Hearing. The address matched the address on all orders mailed from the Division as well as the address furnished by FCHR to the Division.

7. The hearing was reconvened approximately 35 minutes after the time the hearing was scheduled to begin. However, Petitioner did not appear and the hearing was adjourned.

8. There is nothing on the docket of the Division that indicates that the Order Granting Continuance and Re-Scheduling Hearing, or any other order, mailed to Petitioner was returned as undeliverable.<sup>1/</sup>

#### CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569, 120.57, and 760.11, Fla. Stat.

10. Petitioner bears the initial burden of proving a prima facie case of discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Since Petitioner did not avail herself of the opportunity to present a prima facie case, the hearing was closed.

#### RECOMMENDATION

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

#### RECOMMENDED:

That the Florida Commission on Human Relations enter a final order dismissing Petitioner's Employment Complaint of Discrimination.

DONE AND ENTERED this 15th day of January, 2008, in  
Tallahassee, Leon County, Florida.

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BARBARA J. STAROS  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of January, 2008.

ENDNOTE

1/ If a piece of mail is returned to the Division with any  
indication that it was not delivered as addressed, it is posted  
on the docket for that particular case.

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.