

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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ELLETON R. COLLINS,

Petitioner,

v.

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Respondent.

EEOC Case No. 15D200700637

FCHR Case No. 2007-01737

DOAH Case No. 08-1518

FCHR Order No. 08-066

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

This matter is before the Commission for consideration of the Recommended Order of Dismissal, dated July 30, 2008, issued in the above-styled matter by Administrative Law Judge Lisa Shearer Nelson.

Pursuant to notice, public deliberations were held on October 2, 2008, 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 200, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Recommended Order of Dismissal.

Findings of Fact and Conclusions of Law

Judge Nelson's order reflects that Petitioner failed to appear at the scheduled administrative hearing in the matter and that, therefore, Petitioner "has failed to meet his burden in this proceeding."

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. Accord, e.g., West v. Sembler Corporation, d/b/a Bay Walk, FCHR Order No. 07-037 (June 15, 2007), and Martinez v. KJC Enterprises, d/b/a Plantation Island Resort, FCHR Order No. 07-028 (April 20, 2007).

Exceptions

Following the issuance of the Recommended Order of Dismissal on July 30, 2008, Petitioner filed with the Division of Administrative Hearings (DOAH) a "Motion to Reconsider," on August 14, 2008.

The Commission will treat this filing as an "exceptions" document.

There is no indication on the document that it was provided to Respondent's counsel as is required by Fla. Admin. Code R. 28-106.104(4) and Fla. Admin. Code R. 28-106.110. However, the Commission published the document to the Respondent, and placed the document in the record of this case, through the issuance of a Notice of Ex Parte Communication, mailed to the parties on August 27, 2008.

Even though the document was sent to DOAH rather than the Commission, it was filed with DOAH within fifteen days after the issuance of the Recommended Order of Dismissal, and therefore is deemed timely filed. Accord, Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), Lucas v. Department of Children and Family Services, FCHR Order No. 07-023 (March 12, 2007), Harris v. Lake County School District, FCHR Order No. 06-057 (June 20, 2006), Brockman v. University of Miami-Bascom Palmer Eye Institute, FCHR Order No. 05-127 (November 21, 2005), and Welch v. Department of Children and Family Services, FCHR Order No. 05-118 (October 20, 2005).

The document indicates that Petitioner was not notified that a new judge had been assigned and that the case was going to be heard on July 24, 2008, and that in the absence of this notification Petitioner was denied his right to have his case heard. See Filing. The document does not dispute that Petitioner failed to appear at the hearing. See Filing.

The record reflects that the matter was scheduled for hearing on July 24, 2008, in an order issued on May 28, 2008, entitled, "Order Granting Continuance and Re-Scheduling Hearing." See indicated Order.

Further, in an order entitled, "Order Granting Request for Recusal of Judge in Case No. 08-1518," issued July 16, 2008, the parties are notified that a new judge would be assigned to the case. See indicated Order.

The record reflects, and Judge Nelson finds, that "The case was reassigned to [Judge Nelson] and the case proceeded to hearing as previously scheduled." See Recommended Order of Dismissal, ¶ 4.

In our view, the record contains no document to suggest that the hearing would not take place on July 24, 2008, as scheduled. See Record.

Petitioner's exceptions are rejected.

Dismissal

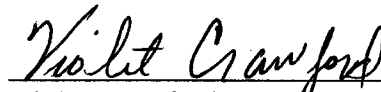
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 9th day of October, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Onelia A. Fajardo; and
Commissioner Watson Haynes, II

Filed this 9th day of October, 2008,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 200
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:

Elleton R. Collins
4768 Woodville Highway, No. 412
Tallahassee, FL 32305

Department of Business and Professional Regulation
c/o J. Yvette Pressley, Esq.
1940 North Monroe Street
Tallahassee, FL 32399-2202

Lisa Shearer Nelson, 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 9th day of October, 2008.

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