

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GAYLE WILBURN,)
)
 Petitioner,)
)
 vs.) Case No. 11-0041
)
 CITY OF PENSACOLA, DEPARTMENT)
 OF HOUSING,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER OF DISMISSAL

This cause came on for formal hearing on March 28, 2011, in Pensacola, Florida, before Diane Cleavinger, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No appearance

For Respondent: Robert E. Larkin, Esquire
Allen Norton & Blue, P.A.
906 North Monroe Street
Tallahassee, Florida 32303

STATEMENT OF THE ISSUE

The issue is whether this case should be dismissed based on Petitioner's failure to make an appearance at hearing.

PRELIMINARY STATEMENT

On or about September 28, 2010, Petitioner, Gayle Wilburn (Petitioner), filed a Petition for Relief with the Florida Commission on Human Relations (FCHR). The petition alleged that

Respondent, City of Pensacola, Department of Housing (Respondent), had committed a discriminatory housing practice and a discriminatory public accommodation practice against her. The Florida Commission on Human Relations (FCHR) investigated Petitioner's complaint. On December 14, 2010, FCHR issued a Notice of Determination of No Cause on Petitioner's complaint. Thereafter, Petitioner filed a Petition for Relief alleging that Respondent had committed a housing discriminatory practice against her.

FCHR referred the case to the Division of Administrative Hearings on January 6, 2011.

FINDINGS OF FACT

1. On January 7, 2011, the undersigned issued the Initial Order in this case.

2. Petitioner and Respondent responded to the Initial Order.

3. On February 10, 2011, the undersigned issued a Notice of Hearing, scheduling the hearing for March 28, 2011. The Notice of Hearing was not returned as undeliverable to Petitioner. Indeed, Petitioner wrote and filed several letters regarding her upcoming hearing and case in general.

4. On March 18, 2011, the hearing was convened as scheduled. After waiting 15 minutes, Petitioner did not appear at the hearing and did not contact the undersigned's office

regarding any problem with commencing the hearing as scheduled. Accordingly, no evidence to support Petitioner's allegations was introduced at the hearing. Given this lack of evidence, the Petition for Relief should be dismissed.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 760.35, Florida Statutes (2010).

6. Petitioner has the burden of proving the allegations in her petition by a preponderance of the evidence. See §§ 760.34(5) and 120.57(1)(j), Fla. Stat. (2010).

7. Petitioner failed to appear at the hearing or provide notice of her inability to attend the hearing. On the other hand, Respondent and its witnesses were prepared to go forward on the merits.

8. There is no indication that Petitioner failed to receive any orders, notices, or pleadings. There is no showing of any emergency situation that would prohibit Petitioner from at least contacting the undersigned's office to request a continuance.

9. Since Petitioner did not appear at the hearing, Petitioner has failed to meet her burden of proof to support her claim and the Petition for Relief should be dismissed.

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 the Petition for Relief.

DONE AND ENTERED this 15th day of April, 2011, in Tallahassee, Leon County, Florida.

Diane Cleavinger

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of April, 2011.

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.