

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SERENA VELAQUEZ,)
)
 Petitioner,)
)
 vs.) Case No. 11-1616
)
 LONE PALM GOLF CLUB, LLC, d/b/a)
 PUBLIX,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, on June 14, 2011, a final hearing was conducted in this case before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH), in Lakeland, Florida.

APPEARANCES

For Petitioner: W. John Gadd, Esquire
The Law Office of W. John Gadd
2727 Ulmerton Road, Suite 250
Clearwater, Florida 33762

For Respondent: Glenn Michael Rissman, Esquire
Stearns, Weaver, Miller, Weissler,
Alhadeff & Sitterman, PA
200 East Las Olas Boulevard, Suite 2100
Fort Lauderdale, Florida 33301

PRELIMINARY STATEMENT

On March 31, 2011, the Florida Commission on Human Relations (FCHR) transmitted to the Division of Administrative Hearings (DOAH), a Petition for Relief filed by Petitioner,

Serena Velaquez (Petitioner). The petition alleged that Respondent, Lone Palm Golf Club, a/k/a Publix (Respondent), had violated provisions of Florida law related to unlawful employment practices. The case was scheduled for formal hearing for June 14 and 15, 2011, and notice of the hearing was provided to all parties.

At the notice time and place for the hearing, counsel for Petitioner appeared, but Petitioner did not. After waiting approximately 30 minutes for Petitioner to appear or to contact DOAH to explain the delay in appearing, the hearing record was closed. Petitioner's counsel announced that he did not have any other witnesses to testify in the matter.

A transcript will not be filed in this cause. No documentary evidence was offered into evidence and no witnesses appeared to testify in this cause.

FINDINGS OF FACT

1. On or about September 25, 2010, Petitioner filed a Charge of Discrimination against Respondent with the FCHR.

2. Pursuant to the FCHR's procedure, an investigation of the matter was completed, that resulted in a Notice of Determination: No Cause. Essentially, the FCHR found that based upon the allegations raised by Petitioner there was no reasonable cause to believe an unlawful employment practice occurred.

3. Thereafter, Petitioner elected to file a Petition for Relief to challenge the determination, and to seek relief against Respondent for the alleged violation. The FCHR forwarded the matter to DOAH for formal proceedings.

4. DOAH issued a Notice of Hearing on April 15, 2011, that was provided to all parties at their addresses of record. It is presumed, the parties received notice of the hearing date, time, and location. In fact, counsel for both parties did appear.

5. Prior to the hearing, the parties engaged in discovery and Petitioner participated in a deposition on or about May 24, 2011. It is undisputed that Petitioner knew or should have known of the hearing date, time, and place.

CONCLUSIONS OF LAW

6. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2010).

7. Under the Florida Civil Rights Act of 1992 (the act), it is unlawful to discriminate against an employee or to retaliate against an employee on the basis of gender. More specifically, section 760.10, Florida Statutes (2010) provides, in part:

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to

discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

8. In this matter, Petitioner bears the initial burden of proof to establish a prima facie case of discrimination by a preponderance of the evidence. Generally, once a complainant establishes membership in a protected class and proof that he or she was treated differently than others not in the class, the burden of proof shifts requiring the offending party to articulate a nondiscriminatory motive or objective for the alleged discriminatory conduct. If, however, the complainant (in this case, Petitioner) fails to establish a prima facie case of discrimination, the matter ends. See, e.g., Nat'l Indus., Inc. v. Comm'n on Human Rel., 527 So. 2d 894 (Fla. 5th DCA 1988).

9. Here, Petitioner presented no evidence. In light of the Petitioner's failure to present evidence, she has failed to meet her initial burden of proof.

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 Petitioner's claim of discrimination.

DONE AND ENTERED this 30th day of June, 2011, in
Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of June, 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.