

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

ANNE BOLAND,

Petitioner,

v.

DIVISION OF EMERGENCY  
MANAGEMENT,

Respondent.

\_\_\_\_\_/

MICHAEL YOUNGER,

Petitioner,

v.

DIVISION OF EMERGENCY  
MANAGEMENT,

Respondent.

EEOC Case No. NONE

FCHR Case No. 2011-01065

DOAH Case No. 11-5198

FCHR Order No. 12-032

EEOC Case No. NONE

FCHR Case No. 2011-01066

DOAH Case No. 11-5199

FCHR Order No. 12-032

**ORDER DENYING RESPONDENT'S MOTION TO  
AWARD COSTS AND ATTORNEY'S FEES**

This matter is before the Commission for consideration of "Respondent's Motion to Award Costs and Attorney's Fees," received by the Commission on or about April 23, 2012.

Preliminary Matters

Administrative Law Judge E. Gary Early issued a "Recommended Order" of dismissal in the above-styled consolidated cases, dated January 26, 2012.

The Commission issued a "Final Order Dismissing Petitions for Relief from an Unlawful Employment Practice" in the above-styled consolidated cases, dated April 23, 2012, designated as FCHR Order No. 12-018.

Respondent filed "Respondent's Motion to Award Costs and Attorney's Fees," received by the Commission on or about April 23, 2012.

Respondent's Motion For Costs and Attorney's Fees

The Florida Civil Rights Act of 1992 states, "In any action or proceeding under this subsection, the [C]ommission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action." Section 760.11(7), Florida Statutes (2011).

In conclusions of law adopted by a Commission panel, it has been stated that a prevailing Respondent may be awarded attorney's fees by the Commission, under the Florida Civil Rights Act of 1992, "if it is determined that an action was 'frivolous, unreasonable, or without foundation,' or 'that the plaintiff continued to litigate after it clearly became so.' Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421-422 (1978)." Tadlock v. Westinghouse Electric Corporation, d/b/a Bay County Energy Systems, Inc., 20 F.A.L.R. 776, at 777 (FCHR 1997), citing Wright v. City of Gainesville, 19 F.A.L.R. 1947, at 1959 (FCHR 1996). Accord, generally, Asher v. Barnett Banks, Inc., 18 F.A.L.R. 1907 (FCHR 1995).

In conclusions of law adopted by a Commission panel, this pronouncement is given explanation: "It is within the discretion of a district court to award attorney's fees to a prevailing defendant in a Title VII action upon a finding that the action was 'frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.' Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421, 98 S.Ct. 694, 700, 54 L.Ed.2d 648 (1978). The standard has been described as a 'stringent' one. Hughes v. Rowe, 449 U.S. 5, 14, 101 S.Ct. 173, 178, 66 L.Ed.2d 163 (1980). Moreover, the Supreme Court has cautioned that in applying these criteria, the district court should resist the temptation to conclude that because a plaintiff did not ultimately prevail, the action must have been unreasonable or without foundation. Christianburg Garment, 434 U.S. at 421-22, 98 S.Ct. at 700-01. Therefore, in determining whether a prevailing defendant is entitled to attorney's fees under Title VII, the district court must focus on the question of whether the case is seriously lacking in arguable merit. See Sullivan v. School Board of Pinellas County, 773 F.2d 1182, 1188 (11th Cir. 1985)." Doshi v. Systems and Electronics, Inc., f/k/a Electronics and Space Corp., 21 F.A.L.R. 188, at 199 (FCHR 1998). Accord, Quintero v. City of Coral Gables, FCHR Order No. 07-030 (April 20, 2007), and Haynes v. Putnam County School Board, FCHR Order No. 04-162 (December 23, 2004).

The Commission has applied these same legal standards to requests for costs other than attorney's fees. See, e.g., Green v. Miami-Dade County, FCHR Order No. 09-075 (August 18, 2009), and Columbus v. Mutual of Omaha, FCHR Order No. 09-052 (June 3, 2009).

Applying the above-stated legal standards, and considering the arguments contained in Respondent's motion and the record of the case, itself, we are unable to say that the record as it exists before us reflects that "the case is seriously lacking in arguable merit," or that the action brought by Petitioner is "unreasonable or without foundation,"

particularly in light of the contents of Petitioner's Exhibit 32.

We conclude, as is our discretion (see, Section 760.11(7), Florida Statutes (2011)), the record as it exists does not reflect entitlement to attorney's fees and costs under the standards set out above. Accord, generally, Carter v. City of Pompano, FCHR Order No. 12-013 (March 27, 2012), Perry v. Embry-Riddle Aeronautical University, FCHR Order 08-020 (March 13, 2008), Quintero, supra, and Waaser v. Streit's Motorsports, FCHR Order No. 04-157 (November 30, 2004).

"Respondent's Motion to Award Costs and Attorney's Fees" is DENIED.

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

DONE AND ORDERED this 27<sup>th</sup> day of June, 2012.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Billy Whitefox Stall, Panel Chairperson;  
Commissioner Gayle Cannon; and  
Commissioner Mario M. Valle

Filed this 27<sup>th</sup> day of June, 2012,  
in Tallahassee, Florida.

\_\_\_\_\_/s/\_\_\_\_\_  
Violet Crawford, Clerk  
Commission on Human Relations  
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FCHR Order No. 12-032  
Page 4

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E. Gary Early, 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 27<sup>th</sup> day of June, 2012.

By: \_\_\_\_\_/s/\_\_\_\_\_  
Clerk of the Commission  
Florida Commission on Human Relations