

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

KOREY REDMOND,

EEOC Case No. 15D201100256

Petitioner,

FCHR Case No. 2011-00904

v.

DOAH Case No. 11-5473

THE HARTFORD FIRE INSURANCE  
COMPANY,

FCHR Order No. 12-025

Respondent.

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**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 and Order Granting Respondent Attorney's Fees and Costs, dated March 13, 2012, issued in the above-styled matter by Administrative Law Judge Thomas P. Crapps.

Findings of Fact and Conclusions of Law

Judge Crapps' Order indicates that Petitioner "deliberately and willfully refused to comply with discovery..." as set out in "Respondent's Renewed Motion to Dismiss Petition for Relief Due to Petitioner's Repeated Willful Refusal to Cooperate with Discovery," and failed to respond to the Order to Show Cause issued on February 15, 2012, requiring Petitioner to respond as to why the Petition for Relief should not be dismissed for "Petitioner's failure to comply with the discovery rules." Consequently, Judge Crapps recommended that the Commission issue an order dismissing the Petition for Relief, and retained jurisdiction to determine the amount of attorney's fees and costs to be awarded Respondent for Petitioner's discovery violations.

We note that a Commission panel has concluded that a Petitioner's failure to respond to an Order to Show Cause based on Petitioner's refusal to respond to discovery amounts to a voluntary dismissal of the Petition for Relief. See, Jackson v. Supercuts, Inc., FCHR Order No. 05-054 (May 18, 2005), and, generally, Butler v. The Pepsi Bottling Group, FCHR Order No. 06-107 (December 4, 2006); see also, Strickland v. Tempus Resorts International, Ltd., FCHR Order No. 07-009 (February 14, 2007). Further, a Commission panel has upheld an Administrative Law Judge's dismissal of a Petition for Relief for a Petitioner's failure to be deposed by a Respondent at a noticed deposition. See, Hunt v. Hudson's Furniture Showroom, Inc., FCHR Order No. 05-090 (September 2, 2005). The Administrative Procedure Act states, "The presiding officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas, and to effect discovery on the written request of any party by any means available to the courts

and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt.” Section 120.569(2)(f), Florida Statutes (2011).

We note that, generally, Commission panels have concluded that a Petitioner’s failure to respond to orders of an Administrative Law Judge amounts to a voluntary dismissal of the Petition for Relief. See, generally, Cawley v. Primrose Center, Inc., FCHR Order No. 12-009 (February 21, 2012), Roundtree, et al. v. Advenir at Stonelake, LLC, FCHR Order No. 11-069 (August 30, 2011), Biggers v. Rooms To Go, FCHR Order No. 09-045 (May 12, 2009), Shook v. Riverside National Bank, FCHR Order No. 08-029 (May 6, 2008), Clifton v. Krys, et al., FCHR Order No. 07-062 (November 7, 2007), Bordonaro v. The Green at the Heather Condominium Association, Inc., FCHR Order No. 07-010 (February 14, 2007), Butler v. The Pepsi Bottling Group, FCHR Order No. 06-107 (December 4, 2006), Castellanos v. Express Net Airlines Pilots Association, FCHR Order No. 05-061 (June 15, 2005), Mayfield v. Karl’s Haberdashery of Florida, Inc., FCHR Order No. 04-020 (March 10, 2004), and Kenny v. Florida Department of Corrections, FCHR Order No. 02-020 (June 3, 2002).

Based on the foregoing, we adopt the Administrative Law Judge’s findings regarding Petitioner’s failure to comply with discovery and failure to comply with the Order to Show Cause and adopt the Administrative Law Judge’s recommendation that the Petition for Relief be dismissed.

With regard to the recommended award of attorney’s fees and costs as a sanction for failure to comply with discovery contained in the Administrative Law Judge’s Order, we recognize the authority of the Administrative Law Judge to issue sanctions for failure to comply with discovery requests, independent of the operation of the Florida Civil Rights Act of 1992, and we conclude that the Commission does not have “final order” authority over such an award. Accord, Haynes v. Putnam County School Board, FCHR Order No. 04-162 (December 23, 2004) in which a Commission Panel stated, “[w]e note that failure to respond to discovery can be sanctioned with an award of attorney’s fees. Section 120.569(2)(f), Florida Statutes (2003). But this is within the purview of the Administrative Law Judge, pursuant to a separate action over which the Commission does not have ‘final order’ authority. See, Harris v. Children’s Home Society, FCHR Order No. 04-072 (June 25, 2004).” See also, Strickland, supra.

Consequently, should the parties take issue with the Order Awarding Respondent Attorneys’ Fees and Costs, issued by the Administrative Law Judge on April 10, 2012, that Order is appealable to an appropriate District Court of Appeal.

#### Exceptions

Neither party filed exceptions to the Administrative Law Judge’s Recommended Order of Dismissal and Order Granting Respondent Attorney’s Fees and Costs.

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 16<sup>th</sup> day of May, 2012.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;  
Commissioner Lizzette Romano; and  
Commissioner Billy Whitefox Stall

Filed this 16<sup>th</sup> day of May, 2012,  
in Tallahassee, Florida.

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/s/  
Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
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:

Korey Redmond  
1072 Eastbrook Avenue  
Deltona, FL 32738

The Hartford Fire Insurance Company  
c/o Juan C. Lopez-Campillo, Esq.  
Jackson Lewis, LLP  
390 North Orange Avenue, Suite 1285  
Orlando, FL 32801

Thomas P. Crapps, 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 16<sup>th</sup> day of May, 2012.

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