

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA A AND M UNIVERSITY)
BOARD OF TRUSTEES,)
)
 Petitioner,)
)
vs.)
)
LAURENCE TROMLY,)
)
 Respondent.)

)

Case No. 12-0183TTS

RECOMMENDED ORDER OF DISMISSAL

A hearing was held pursuant to notice, on April 10, 2012, in Tallahassee, Florida, before the Division of Administrative Hearings by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

For Petitioner: Maria A. Santoro, Esquire
George, Hartz, Lundeen, Etc.
863 East Park Avenue
Tallahassee, Florida 32301

For Respondent: No appearance

STATEMENT OF THE ISSUES

Whether Respondent's Amended Petition for Administrative Hearing should be dismissed and whether the Board of Trustees of Florida A and M University should issue a final order dismissing Respondent from employment?

PRELIMINARY STATEMENT

Because of the procedural nature of the findings in this case, the matters normally contained in the Preliminary Statement are reflected in the Findings of Fact below.

FINDINGS OF FACT

1. By letter dated November 10, 2011, Petitioner, the Florida Agricultural and Mechanical University (the University) notified Respondent, Laurence Tromly, that his employment with the University was terminated effective immediately. Respondent filed a Petition for an administrative hearing through his attorney to contest the dismissal.

2. The University transmitted the case to the Division of Administrative Hearings (Division) on or about January 17, 2012, for the purpose of conducting a formal administrative hearing. A Notice of Hearing and Order of Pre-Hearing Instructions were issued on January 26, 2012, setting the case for hearing on April 10 through 13, 2012. The Order of Pre-Hearing Instructions required the parties to meet no later than ten days prior to the date of the hearing to discuss the possibility of settlement and many pre-hearing matters, and to file a pre-hearing stipulation a week prior to the hearing or, if for any reason the pre-hearing stipulation could not be executed by all parties, to file separate proposed pre-hearing statements no later than five days before the final hearing.

3. On March 12, 2012, counsel for Respondent filed a Motion to Withdraw as Counsel. In the Motion, Respondent's attorney stated that she had made repeated attempts to contact her client by certified mail, numerous phone messages, e-mail correspondence, and regular U.S. mail. Despite these attempts to communicate with her client, she was unable to do so.

4. Pursuant to Florida Administrative Code Rules 28-106.103 and 106.204, the undersigned waited the requisite number of days to rule on the motion, giving Respondent ample opportunity to file an objection or any clarification as to why the motion should not be granted. On March 27, 2012, the undersigned entered an Order granting Motion to Withdraw as Counsel, mailing a copy to Respondent at the last known address for Respondent as reflected in his former counsel's motion.

5. On April 4, 2012, the University filed a Unilateral Pre-hearing Stipulation and Motion to Dismiss. Counsel for the University stated in the unilateral statement that she sent correspondence via e-mail and U.S. Certified Mail to Petitioner enclosing a copy of the Pre-Hearing Instructions as asserted that the parties are expected to discuss the possibility of settlement and any pre-hearing stipulations. Counsel for the University also requested Respondent to contact their office for a mutually convenient time to meet to comply with the Order of Pre-Hearing Instructions.

6. At the time of filing the Unilateral Pre-hearing Statement and Motion to Dismiss, counsel for the University had not received any response from Respondent.

7. On the morning of the scheduled hearing, the undersigned attempted to convene the hearing as scheduled. However, the court reporter had not arrived yet. Shortly after 9:30 a.m., the undersigned's assistant entered the hearing room to inform that Respondent had called and told her that he was on the interstate and that his car was broken down. This was the first communication this office received from Respondent. The undersigned informed counsel for the University, who were present in the hearing room and prepared for hearing, that the hearing would convene at 10:30 a.m., and that Respondent would be connected to the room by speakerphone. The undersigned then left the hearing room, to return at 10:30.

8. Immediately after leaving the hearing room, the undersigned instructed her assistant to call Respondent at the phone number provided to her by Respondent. Upon calling the number at approximately 9:45 a.m., she reached Respondent's voice mail and left a message for Respondent to call her. Not having received a return call from Respondent, the undersigned's assistant again called Respondent at approximately 10:25 a.m. and left another voice mail message to call her immediately.

9. The hearing commenced at 10:30 a.m. Counsel for the University renewed the Motion to Dismiss.^{1/} Counsel for the University also stated that Respondent did call her the week prior to hearing, apparently in response to her correspondence to him, and that she (the attorney for the University) stressed to Respondent the importance of complying with the Order of Pre-Hearing Instructions and of his appearance at the hearing. No request for a continuance of the hearing was ever made by Respondent.

10. Due to Respondent's repeated actions of avoidance and delay, including avoiding all communications with his attorney, failure to respond timely to the University's attorney, failure to make any attempt to comply with the Order of Pre-Hearing Instructions, failure to contact the undersigned's office prior to the date of the hearing regarding any request for a continuance, and failure to appear at the final hearing, the Motion to Dismiss was granted and the hearing adjourned.

11. Shortly after the hearing was adjourned, Respondent called the undersigned's assistant at approximately 10:50 a.m. He was informed that the hearing had adjourned and that the undersigned would enter an order.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding.

§§ 120.569 and 120.57, Fla. Stat.

13. Respondent requested an administrative hearing to contest his dismissal from employment. Respondent failed to cooperate with his attorney, placing that attorney in a position to be unable to prepare for hearing. Respondent repeatedly avoided any effort to enable his case to move forward, including failing to cooperate with counsel for the University in complying with the Order of Pre-Hearing Instructions and failing to contact the undersigned's office prior to the date and time of the hearing. No request for a continuance was ever made by Respondent. A party may not request a hearing and then do nothing to move toward its resolution.

RECOMMENDATION

Based upon the foregoing Findings of Fact and the Conclusions of Law, it is

RECOMMENDED:

That Florida A and M University Board of Trustees enter a final order dismissing Petitioner's Petition for Administrative Hearing and Dismissing Petitioner from employment.

DONE AND ENTERED this 12th day of April, 2012, in
Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of April, 2012.

ENDNOTE

^{1/} Counsel for the University also made an ore tenus motion for attorney's fees and costs. The motion was noted and may be entertained at a later time following the entry of a Final Order when a prevailing party has been determined and the statutory basis for the motion has been clarified.

COPIES FURNISHED:

Laurence Tromly
1619 Lake Ella Drive
Tallahassee, Florida 32303

Maria A. Santoro, Esquire
George, Hartz, Lundeen, Etc.
863 Lake Ella Drive
Tallahassee, Florida 32303

Avery McKnight, Esquire
Florida A&M University
300 Lee Hall
1601 Martin Luther King Jr. Boulevard
Tallahassee, Florida 32303

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.