

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BRENDALE FIELDS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 12-2613  
 )  
 HOME DEPOT, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER OF DISMISSAL

This cause came on for final hearing pursuant to notice on December 19, 2012, before Suzanne Van Wyk, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Sheldon Jerome Vann, Esquire  
Law Offices of Sheldon J. Vann  
841 Prudential Drive  
Jacksonville, Florida 32207

For Respondent: Chelsie J. Flynn, Esquire  
Ford and Harrison, LLP  
Suite 1300  
300 South Orange Avenue  
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether Respondent, Home Depot, is liable to Petitioner for unlawful discrimination in employment based on race, in

violation of the Florida Civil Rights Act of 1992, sections 760.01-760.11 and 509.092, Florida Statutes.

PRELIMINARY STATEMENT

The final hearing was originally scheduled to be held on October 5, 2012. On September 17, 2012, Petitioner's counsel filed an Unopposed Motion for Continuance which represented he was filing a notice of appearance on behalf of Petitioner and wished to discuss settlement with Respondent. The case was placed in abeyance to allow settlement discussions.

On October 22, 2012, Petitioner, through counsel, filed a Notice of Failure to Settle and requested the case be set for hearing. The case was set for hearing on December 19, 2012, after consultation with the parties as to available dates. The Order Re-Scheduling Hearing by Video Teleconference was entered on November 5, 2012, and provided to all parties. The Order clearly states "Continuances will be granted only by order of the Administrative Law Judge for good cause shown."

On December 18, 2012, at 3:54 p.m., Petitioner's counsel filed a Motion for Continuance stating as grounds "he has been unable to contact Plaintiff, Brendale Fields, until recently." The Motion was opposed by Respondent. The undersigned denied the Motion and Petitioner's counsel was notified of the denial via telephone, since the late-filing did not allow a written order to be entered prior to the scheduled hearing. Respondent

was informed that the Motion was denied when Respondent's counsel contacted the Division to determine whether the hearing would go forward.

The hearing commenced as scheduled on December 19, 2012, by video teleconference in Tallahassee and Jacksonville, Florida.

FINDINGS OF FACT

1. Petitioner did not attend the final hearing.

2. Petitioner's counsel appeared at the final hearing and moved for continuance *ore tenus*, stating that Petitioner was taking a final exam and that neither Petitioner nor her counsel was aware the exam date conflicted with the hearing date when the hearing was set.

3. Respondent, who had traveled from Orlando to attend the final hearing, opposed Petitioner's Motion.

4. Upon consideration of Petitioner's Motion, Respondent's argument against a continuance, the fact that there was no emergency, and the motion was untimely under Florida Administrative Code Rule 28-106.210 ("Except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the hearing"), as well as the circumstances outlined above, Petitioner's Motion for Continuance was DENIED.

5. Following the denial of Petitioner's Motion for Continuance, Petitioner's counsel stated that Petitioner was his

only witness. Petitioner's counsel offered no evidence into the record.

#### CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to section 120.569 and subsection 120.57(1), Florida Statutes, and Florida Administrative Code Rule 60Y-4.016(1).

7. Because Petitioner is asserting the affirmative in this administrative proceeding, she has the burden of proving her claim against Respondent. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

8. As no evidence was presented to support her claim, Petitioner failed to meet her burden.

#### RECOMMENDATION

Based upon the foregoing, and Petitioner having failed to meet her burden of proof, it is

RECOMMENDED:

That the Florida Commission on Human Relations enter an order dismissing this case.

DONE AND ENTERED this 27th day of December, 2012, in  
Tallahassee, Leon County, Florida.

*Suzanne Van Wyk*

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SUZANNE VAN WYK  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of December, 2012.

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.