

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

BRENDALE FIELDS,

EEOC Case No. 510201201172

Petitioner,

FCHR Case No. 2012-01094

v.

DOAH Case No. 12-2613

HOME DEPOT,

FCHR Order No. 13-019

Respondent.

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**FINAL ORDER DISMISSING PETITION FOR  
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Brendale Fields filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2011), alleging that Respondent Home Depot committed unlawful employment practices on the basis of Petitioner's race (Black) in the manner in which it disciplined Petitioner and by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on July 3, 2012, the Executive Director issued a determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held by video teleconference at sites in Tallahassee and Jacksonville, Florida, on December 19, 2012, before Administrative Law Judge Suzanne Van Wyk.

Judge Van Wyk issued a Recommended Order of Dismissal, dated December 27, 2012.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order of Dismissal.

Findings of Fact

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. In the absence of a transcript of the proceeding before the

Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988). Accord, Gantz, et al. v. Zion's Hope, Inc., d/b/a Holy Land Experience, FCHR Order No. 11-048 (June 6, 2011), Mack v. Agency for Persons with Disabilities, FCHR Order No. 11-026 (March 17, 2011), Hall v. Villages of West Oaks HOA, FCHR Order No. 08-007 (January 14, 2008), Beach-Gutierrez v. Bay Medical Center, FCHR Order No. 05-011 (January 19, 2005), and Waaser v. Streit's Motorsports, FCHR Order No. 04-157 (November 30, 2004).

We adopt the Administrative Law Judge's findings of fact.

#### Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

#### Exceptions

Petitioner filed exceptions to the Recommended Order of Dismissal in a document entitled, "Exceptions to Recommended Order of Dismissal." Respondent filed a response to Petitioner's exceptions in a document entitled, "Respondent's Response to Petitioner's Exceptions to the Administrative Law Judge's Recommended Order of Dismissal."

Petitioner's exceptions document takes issue with the conclusions of the Commission's investigation of the matter, and argues that it was error not to allow cross examination of Respondent's witnesses.

We note that the Recommended Order of Dismissal finds that while Petitioner's counsel appeared at the hearing, Petitioner did not appear at the hearing, and that Petitioner's counsel offered no evidence into the record. Recommended Order of Dismissal, ¶ 1, ¶ 2, ¶ 5, and ¶ 8.

With regard to the issues Petitioner raises with the Commission's investigation of the case, we note that the proceeding before the Administrative Law Judge is de novo. Section 120.57(1)(k), Florida Statutes (2012).

With regard to the argument that it was error not to allow cross examination of Respondent's witnesses, we note that it has long been held that the ultimate burden of proving that Respondent intentionally discriminated against Petitioner remains with Petitioner, and in this case Petitioner offered no evidence into the record. See, e.g., conclusions of law adopted by a Commission Panel in Spradlin v. Washington Mutual Bank d/b/a Great Western, 23 F.A.L.R. 3359, at 3365 (FCHR 2001).

Petitioner's exceptions are rejected.

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

DONE AND ORDERED this 11<sup>th</sup> day of March, 2013.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner Onelia Fajardo-Garcia; and  
Commissioner Michell Long

Filed this 11<sup>th</sup> day of March, 2013,  
in Tallahassee, Florida.

\_\_\_\_\_/s/\_\_\_\_\_  
Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, FL 32301  
(850) 488-7082

Copies furnished to:

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Home Depot  
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Ford and Harrison, LLP  
300 South Orange Avenue, Suite 1300  
Orlando, FL 32801

Suzanne Van Wyk, 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 11<sup>th</sup> day of March, 2013.

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

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

**BRENDALE FIELDS**

**PETITIONER**

**CASE NUMBER: 12-2613  
2012-01094  
510201201172**

**vs**

**THE HOME DEPOT**

**RESPONDENT**

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**EXCEPTIONS TO RECOMMENDED ORDER OF DISMISSAL**

**COMES NOW PETITIONER, BRENDALE FIELDS**, and takes exception to the Recommended Order of Dismissal as the ruling is not supported by the evidence.

Petitioner Brendale Fields filed a Charge of Discrimination dated February 6<sup>th</sup>, 2012. On June 30<sup>th</sup>, 2012, the Florida Human Rights Commission issued an Investigative Memorandum and on July 3<sup>rd</sup>, 2012 notified Petitioner of its Determination of No Cause.

Petitioner, on July 28<sup>th</sup>, 2012, filed a petition for relief with the Florida Department of Administrative Hearings which was heard on December 19<sup>th</sup>, 2012.

The Administrative Judge intends to deny the Petition and has issued a Recommended Order of Dismissal to which Petitioner takes exception as the ruling is not supported by the evidence.

Contrary to the conclusion in the Recommended Order of Dismissal, there is ample evidence in this case to support a ruling in favor of Brendale Fields, and such evidence, does not in fact, support the Administrative Judge's denial of Ms. Fields' Petition for Relief or the Florida Human Rights Commission's Determination of No Cause.

Such evidence, that was a part and parcel of the Administrative Hearing, includes the file from the Florida Human Rights Commission and the Notice of Filing Respondent's Exhibits that includes 24 Exhibits.

### **DETERMINATION NOT SUPPORTED BY THE EVIDENCE**

Petitioner alleged in her *CHARGE OF DISCRIMINATION* that as a Black Person she was treated more harshly and unfairly disciplined when after working for Home Depot from April 10<sup>th</sup>, 2007 through December 14<sup>th</sup>, 2011, she was terminated for allegedly leaving cash in a drawer on December 5<sup>th</sup>, 2011.

### **INVESTIGATIVE FINDINGS**

The Investigator, at page 2 of the Memo, stated that Home Depot alleged Brendale Fields was terminated for security and loss prevention risk when she left two \$50 bills while closing out a cash register. Ms. Fields had been employed by Home Depot for five (5) years and seven (7) months prior to being terminated by Home Depot.

In the Background Statement (pages 1 and 2 of the Memo), the facts adduced by the Investigator do not support that Brendale Fields left cash in the register on the date that led to her termination, and therefore, her termination was wrongful. i.e.

“On December 5, 2011, Complainant and Head Cashier, Enola Pittman, checked the self-checkout register 5 together and there was no money left in the drawer.”

This Statement indicates that Brendale Fields was wrongfully terminated because she did not leave any cash in the drawer which fact was witnessed by the Head Cashier, Enola Pittman.

The Investigator further states as follows: “Additionally, when Manager, Howard Williams, was checking the tube system for his report it was empty, when he checked again, he found two \$50 bills. When he asked the cashier if he ordered them, he stated that he had not, so

Williams sent the money back up which indicates Complainant sent the money up the night in question.”

This Deduction is based on an assumption as Brendale Fields was not the only person to have access to the tube, the other cashier also did, thus, it cannot be stated with certainty that Brendale Fields left any money in the tube.

Therefore, as the evidence as adduced by the Florida Human Rights Commission Investigator in actuality did not establish by a preponderance of the evidence that Brendale Fields left cash in the drawer on December 5<sup>th</sup>, 2011, the Commission’s Determination of No Cause was in error and Petitioner’s termination, wrongful. Consequently, the Florida Department of Administrative Hearings’ Recommended Order of Dismissal is also in error.

Furthermore, while Home Depot alleged that Brendale Fields had been previously reprimanded, these reprimands took place over a period of five (5) years and seven (7) months, for various unrelated reasons, and it was not shown that they were causally related to her termination on December 14<sup>th</sup>, 2011.

In fact, the only other reprimand, *for which Brendale Fields was not terminated*, was the reprimand of November 23<sup>rd</sup>, 2011 for allegedly leaving cash in the drawer in early November.

Immediately following this reprimand, on November 28<sup>th</sup>, 2011, Brendale Fields requested that she be removed as Head Cashier as it was too much stress. Instead, Home Depot created a pretextual reason to terminate Petitioner by assuming that Petitioner had left money in the drawer on December 5<sup>th</sup>, 2011, even though the Head Cashier had checked the drawer and found no cash and another person had access to the drawer other than Petitioner.

Finally, the Investigator also addressed the issue of supervisors leaving large amounts of cash, \$1500 at one time, in the registers and why Brendale Fields was not treated similarly when she allegedly left a small amount of cash in the register.

The Investigator was wrong in concluding that the Front End Supervisor, Jasmine Urena, and Brendale Field's supervisor, Gloria Perdoma, were not proper comparators, thereby assuming that it is OK for supervisors to violate security of assets by failing to follow proper procedures. Supervisors are generally required to set an example and if it is considered by Home Depot policy that it is a loss prevention risk for Petitioner to leave \$50 in a locked cash register, then it is a much bigger loss prevention risk for a Supervisor to leave \$1500 in a locked cash register. Therefore, if Brendale Field's alleged action is considered a loss prevention risk then so are the Supervisors' and Brendale Fields was treated unequally in that she was terminated, while the Supervisors, whose breach was much more egregious, were not.

#### **REFUSAL TO ALLOW CROSS EXAMINATION**

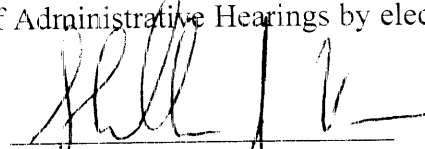
It was error for the Administrative Judge to refuse to allow Petitioner's Counsel to cross examine the Respondent's witnesses that appeared at the DOAH hearing on December 19<sup>th</sup>, 2012.

WHEREFORE, Petitioner requests that the Recommended Order of Dismissal of the Florida Division of Administrative Hearings not be adopted and an Order Granting Petitioner the Relief requested be entered.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above has been furnished to Chelsie J. Flynn, Ford & Harrison LLP, 300 S. Orange Avenue, Suite 1300, Orlando, Florida, 32801, Denise Crawford, Agency Clerk, Florida Commission on Human Relations, 2009, Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301, Cheyanne Costilla, Interim General Counsel, Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301 via United States mail and to the Division of Administrative Hearings by electronic filing this 3<sup>rd</sup> day of January, 2013.



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### ***RELEVANT EXHIBITS (RESPONDENT'S EXHIBITS FILED IN EVIDENCE)***

#### **CHARGE AND INVESTIGATION**

EXHIBIT 1	FEBRUARY 6 <sup>TH</sup> , 2011	CHARGE OF DISCRIMINATION
EXHIBIT 2	JUNE 30 <sup>TH</sup> , 2012	FCHR INVESTIGATIVE MEMO
EXHIBIT 3	JULY 28 <sup>TH</sup> , 2012	PETITION FOR RELIEF

#### **EXHIBITS WHERE NOT TERMINATED**

EXHIBIT 23	NOVEMBER 16, 2011	BRENDALE FIELD'S STATEMENT AS TO WHAT HAPPENED ON THE 3 WRITEUPS THAT SHE RECEIVED IN NOVEMBER
EXHIBIT 10	NOVEMBER 23 <sup>RD</sup> , 2011	ALLEGES CASH IN REGISTER 3 X 11/07/2011; 11/10/2011; 11/22/2011
EXHIBIT 22	NOVEMBER 28, 2011	BRENDALE FIELDS GIVES 30 DAY NOTICE THAT SHE WILL BE RESIGNING AS HEAD CASHIER

BECAUSE IT IS TOO STRESSFUL

**TERMINATION**

EXHIBIT 24	DECEMBER 5, 2011	BRENDALE FIELD'S STATEMENT THAT SHE WAS VERY CAREFUL THE NIGHT OF THE 5 <sup>TH</sup> , WHICH WAS THE NIGHT THAT CAUSED HER TO BE TERMINATED
EXHIBIT 9	DECEMBER 14, 2011	TERMINATION

**OUTDATED REPRIMANDS (NO CAUSAL RELATION)**

EXHIBIT 13	JANUARY 18, 2010	SHE CAME UP SHORT ON 12/12/2009 AND 12/16/2009 FOR TWO CHECKS \$48 AND \$150 RESPECTIVELY
EXHIBIT 14	APRIL 29, 2009	MARKED DOWN AN ITEM FOR OVER \$100 WITHOUT A MANAGER SIGNATURE
EXHIBIT 15	JULY 4, 2008	FAILED TO SIGN FOR HER TILL
EXHIBIT 16	JULY 3?, 2008	FAILED TO SIGN FOR HER TILL
EXHIBIT 17	JUNE 14, 2008	LEFT SOCK WITH MONEY FOR CHANGE REQUEST AT THE OUTSIDE GARDEN REGISTER
(EXHIBIT 19	JUNE 8, 2007	FAILED TO SIGN FOR HER TILL
EXHIBIT 20	JUNE 7, 2007	FAILED TO SIGN FOR HER TILL
EXHIBIT 21	JUNE 4, 2007	FAILED TO SIGN FOR HER TILL) <sup>1</sup>

**NON MONETARY INFRACTIONS**

EXHIBIT 11	FEBRUARY 5, 2011	Measuring molding improperly
EXHIBIT 12	FEBRUARY 5, 2010	PERFORMANCE IMPROVEMENT PLAN

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<sup>1</sup> THESE VIOLATIONS WERE ALL WRITTEN UP ON THE SAME DAY JUNE 13, 2007

(plan to improve performance but states she is progressing as required with no incidents to date)

EXHIBIT 18

JULY 10, 2007

WHEN CUSTOMER PURCHASED 6  
GALLONS OF PAINT, BRENDALE  
SCANNED ONE CAN, SIX TIMES