

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BELINDA TRAYLER,

Petitioner,

vs.

Case No. 13-4131

WALT DISNEY PARKS AND RESORTS
U.S., INC., A FLORIDA
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER OF DISMISSAL

This case came before Lynne A. Quimby-Pennock, an Administrative Law Judge of the Division of Administrative Hearings (Division), for consideration of Respondent's Renewed Motion to Dismiss that was filed on November 13, 2013.

APPEARANCES

For Petitioner: Belinda Trayler, pro se
1064 South Hoagland Boulevard
Kissimmee, Florida 34741

For Respondent: Glennys Ortega Rubin, Esquire
Shutts and Bowen LLP
Suite 1000
300 South Orange Avenue
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether Petitioner, Belinda Trayler, complied with the requirements of Florida Administrative Code Rule 28-106.201 in her request for hearing.

PRELIMINARY STATEMENT

On September 23, 2013, the Florida Commission on Human Relations (FCHR) issued a Notice of Determination: No Cause, in response to a complaint Petitioner, Belinda Trayler, filed against Disney World/Walt Disney.^{1/} On October 10, 2013, Petitioner executed an FCHR Petition for Hearing form (Petition), checking the statement that "This is a Petition for Relief from (check the applicable one): Unlawful Employment Practice."^{2/}

On October 21, 2013, FCHR transmitted Petitioner's Petition for Relief^{3/} to the Division. The matter was assigned to the undersigned.

Based on filings that are explained in more detail below, it has been concluded by the undersigned that this case should be dismissed without a final hearing.

FINDINGS OF FACT

1. On or about March 30, 2013, Petitioner filed an employment complaint of discrimination with FCHR, alleging that Disney World/Walt Disney had discriminated against her on the basis of sex and religion.

2. On September 13, 2013, FCHR entered a Notice of Determination: No Cause (Notice), concluding that there was no reasonable cause to believe that an unlawful employment practice had been committed against Petitioner.

3. In the Notice Petitioner was informed of the following:

A Petition for Relief form is enclosed with Complainant's notice. It may be beneficial for Complainant to seek legal counsel prior to filing the petition.

4. In her October Petition, Petitioner provided her name, the FCHR case number, her address and phone number, a check mark indicating "Respondent has violated the Florida Civil Rights Act of 1992, as Amended," the date the form was signed, and her signature. Petitioner did not supply: Respondent's name, address, or telephone number; the "specifically described" manner in which Respondent violated the Florida Civil Rights Act of 1992; the disputed issues of material fact, if any; or the ultimate facts alleged and entitlement to relief.

5. On November 1, 2013, Respondent filed a Motion to Dismiss (Motion). The Motion set forth that Petitioner had

. . . failed to supply in her petition both a statement of all disputed issues of material fact and a concise statement of the ultimate facts alleged, including the specific facts that she contends warrant reversal or modification of the September 23, 2013 [sic] No Cause determination by the Florida Commission on Human Relations (FCHR).

6. On November 5, 2013, an Order to Show Cause was entered by the undersigned. Therein Petitioner was afforded until 5:00 p.m., November 18, 2013, to file a written statement setting forth the facts surrounding her claim of discrimination. Petitioner was told to include the information required by

Florida Administrative Code Rule 28-106.201. Additionally, Petitioner was advised that a failure to file a written statement by the deadline "or a failure to set forth facts which, if proven at the hearing would show discrimination, may result in the entry of a recommended order of dismissal."

7. On November 12, 2013, Petitioner filed the following:^{4/}

I Belinda Trayler, am in response to justify the cause for this petition. That I was Harassed, and Abused ,also about my religious background from fellow employers. I was fired without a just cause. The days I was out were due to my legal grandson emotion. I have the legal guardianship from the courts which I will bring with me also to court. He has adhd, bipolar, anger issues.

Disney did not accept these paper words. As the results of all this we are currently on welfare and living day by day. I came down in 2006 for my internship. An they asked me to stay so I remained here. I am a 53 year old single woman trying to raised to kids. An for a 53 year old woman jobs are not easy to obtain.^[5/]

8. On November 13, 2013, Respondent's Renewed Motion to Dismiss was filed. Respondent set forth as its basis for dismissal that Petitioner's response fails to comply with rule 28-106.201 and the requirements of the FCHR's Petition for Relief.

9. Petitioner's November 12, 2013, response fails to provide the following: rule 28-106.201(2)(d), a statement of all disputed issues of material fact; rule 28-106.201(2)(e), a

concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; rule 28-106.201(2) (f), an explanation of how the alleged facts relate to the specific rules or statutes [alleged to be violated]; and rule 28-106.201(2) (g), a statement of the relief sought, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction of the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), Fla. Stat. (2013).

11. Petitioner has the burden to state "the ultimate facts, to identify the facts that are in dispute, and to allege the facts that warrant, in the petitioner's opinion, reversal." Brookwood Extended Care Ctr. of Homestead, L.L.P. v. AHCA, 870 So. 2d 834, 840 (Fla. 3d DCA 2003). Petitioner was afforded the opportunity to provide the requisite information to enable Respondent to know the specific allegations of discrimination. Petitioner did not do so.

12. The hearing scheduled for January 3, 2014, is canceled.

RECOMMENDATION

Based on foregoing Findings of Fact and Conclusions of Law, it is recommended that a final order be entered by the Florida Commission on Human Relations dismissing the Petition for Relief.

DONE AND ENTERED this 26th day of November, 2013, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of November, 2013.

ENDNOTES

^{1/} On October 28, 2013, Respondent, Walt Disney Parks and Resorts U.S., Inc., notified the Division that Petitioner was not employed by Walt Disney World/Disney World Wide Services. Petitioner has not disputed this, and the correct Respondent is listed in the style of the case.

^{2/} FCHR has a form that persons who disagree with the no cause determination may use in order to dispute that determination.

^{3/} In addition to the Petition, the following documents were included with the transmission: the employment complaint of discrimination; the Notice of Determination: No Cause; and the Determination: No Cause.

^{4/} Respondent's counsel obtained a copy of the document on November 12, 2013. However, the document did not contain a certificate of service evidencing such service. A Notice of Ex-parte Communication was issued on November 14, 2013.

^{5/} There are numerous grammatical and typographical errors throughout these two paragraphs.

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.