

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

RAYMOND BOWLEG,

Petitioner,

v.

LNR PROPERTY,

Respondent.

EEOC Case No. NONE

FCHR Case No. 2013-01301

DOAH Case No. 14-1668

FCHR Order No. 14-032

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

This matter is before the Commission for consideration of the Order Closing File and Denying Request for Attorney's Fees and Costs, dated June 27, 2014, issued in the above-styled matter by Administrative Law Judge Robert E. Meale.

Findings of Fact and Conclusions of Law

Judge Meale's Order dismisses the case because of Petitioner's failure to attend his noticed deposition. Respondent had filed "Respondent's Motion to Dismiss Petition for Petitioner's Failure to Attend Properly-Noticed Deposition," to which Petitioner had not responded.

The Administrative Procedure Act states, "The presiding officer has the power...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 (2013).

The applicable administrative rule states, "The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt." Fla. Admin. Code R. 28-106.206.

The Florida Rules of Civil Procedure specifically provide for sanctions in instances in which a party fails to attend their own deposition. See, Fla. R. Civ. P. 1.380(d). The sanctions possible for a party's failure to attend their own deposition include "...dismissing the action or proceeding, or any part of it..." Fla. R. Civ. P. 1.380(b)(2)(C).

We note that a Commission panel has upheld an Administrative Law Judge's dismissal of a Petition for Relief for a Petitioner's refusal 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); accord, generally, Redmond v. The Hartford Fire Insurance Company, FCHR Order No. 12-025 (May 16, 2012).

Based on the foregoing, we note the Administrative Law Judge's finding regarding Petitioner's failure to comply with discovery and the sanction of dismissal imposed by the Administrative Law Judge, and conclude the Petition for Relief should be dismissed.

With regard to the Order's denial of Respondent's request for attorney's fees and costs associated with the deposition that Petitioner did not attend, 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)." Accord, Redmond, supra.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Order Closing File and Denying Request for 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 10 day of September, 2014.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Onelia Fajardo-Garcia; and
Commissioner Tony Jenkins

Filed this 10 day of September, 2014,
in Tallahassee, Florida.

Cheyenne Castilla
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Robert E. Meale, 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 10 day of September, 2014.

By: Cheyenne Castilla
Clerk of the Commission TB
Florida Commission on Human Relations