

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAUL NOEL,

Petitioner,

vs.

Case No. 15-1179

C AND S WHOLESALE SERVICES,
INC.,

Respondent.

RECOMMENDED ORDER OF DISMISSAL

This case came before the undersigned for consideration of Respondent's Notice of Petitioner's Failure to Comply with Order and Motion for Sanctions (Motion) filed on May 6, 2015. Petitioner has not filed a response to the Motion.

By way of background, on February 23, 2015, Petitioner filed with the Florida Commission on Human Relations (FCHR) a Petition for Relief, alleging that Respondent subjected him to a hostile work environment and discriminated against him on the basis of his race. The matter was set for final hearing on May 6, 2015.

On April 7, 2015, Respondent noticed Petitioner for a videotaped deposition on April 21, 2015. Petitioner failed to appear for the deposition, without providing adequate notice or making alternative arrangements. Respondent then filed a motion to compel him to appear for a deposition and to reschedule the hearing to a later date. Because there was insufficient time to await a response before the hearing, by Order dated April 23, 2015, the final hearing was canceled, the motion to compel was granted, and Petitioner was directed to appear at a deposition on May 6, 2015. This was the date on which the final hearing had been scheduled, and presumably one on which Petitioner would be available. The Order further provided that if Petitioner failed to appear at the deposition, the case would be referred back to the FCHR with a recommendation that the Petition for Relief be dismissed, with prejudice. Respondent then noticed a second videotaped deposition for May 6, 2015.

With the Motion, Respondent has attached a certificate of non-appearance from the court reporter. The certificate states that Petitioner failed to appear at his deposition on May 6, 2015. Again, there is no evidence that he provided adequate notice to counsel prior to his non-attendance or made alternative arrangements. (In fact, he has not filed any papers since the case was referred to DOAH.) Accordingly, Petitioner has failed to comply with the Order.

Commission panels have consistently concluded that a charging party's failure to respond or otherwise comply with an order of an Administrative Law Judge amounts to a voluntary dismissal of the petition for relief. See, e.g., Trayler v. Walt Disney Parks & Resorts U.S., Inc., Case No. 13-4131 (Fla. DOAH Nov. 26, 2013; FCHR Feb. 19, 2014), and cases cited therein. Accordingly, disposition of the case in this manner is appropriate. It is, therefore,

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief, with prejudice. Respondent's request for other sanctions in the form of attorney's fees and costs should be denied.

DONE AND ORDERED this 19th day of May, 2015, in Tallahassee, Leon County, Florida.



D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of May, 2015.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order of Dismissal. Any exceptions to this Recommended Order of Dismissal should be filed with the agency that will render a final order in this matter.