

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MARY ANN DE MATAS,

EEOC Case No. 15D201400601

Petitioner,

FCHR Case No. 2014-01148

v.

DOAH Case No. 15-1892

H AND R BLOCK ENTERPRISES,

FCHR Order No. 15-074

Respondent.

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

Preliminary Matters

Petitioner Mary Ann De Matas filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2013), alleging that Respondent H and R Block Enterprises committed unlawful employment practices on the bases of Petitioner's sex (female), race (African American) and color (not specified in complaint) by subjecting Petitioner to sexual harassment and by otherwise harassing Petitioner. In addition, the complaint of discrimination alleges that Petitioner was terminated on the basis of unlawful retaliation.

The allegations set forth in the complaint were investigated, and, on March 12, 2015, 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 Gainesville and Tallahassee, Florida, on June 23, 2015, and in Gainesville, Florida, on June 24, 2015, before Administrative Law Judge E. Gary Early.

Judge Early issued a Recommended Order of dismissal, dated October 12, 2015.

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

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

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 Administrative Law Judge's Recommended Order with the Commission on October 30, 2015.

"Respondent's Motion to Strike Petitioner's Notice of Right to Submit Exceptions," was filed with the Commission on November 9, 2015.

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2015); see, also, Taylor v. Universal Studios, FCHR Order No. 14-007 (March 26, 2014), McNeil v. HealthPort Technologies, FCHR Order No. 12-026 (June 27, 2012) and Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

While some exhibits are referenced, a review of Petitioner's exceptions document suggests that it does not comply with this statutory provision.

It can be said, generally, that Petitioner excepts to the Administrative Law Judge's finding that no unlawful employment practice occurred in this matter and to credibility determinations of the Administrative Law Judge.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005), Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011) and Taylor, *supra*.

In addition, it has been stated, "The ultimate question of the existence of discrimination is a question of fact." Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1209 (Fla. 1st DCA 1991). Accord, Coley v. Bay County

Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010), Eaves, supra, and Taylor, supra.

Further, the Administrative Procedure Act states, “The agency shall allow each party 15 days in which to submit written exceptions to the recommended order.” Section 120.57(1)(k), Florida Statutes (2015). The Recommended Order, itself, advises the parties, “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.” See Recommended Order, page 43. Finally, the Florida Administrative Code section dealing with the filing of exceptions to Recommended Orders states, “No additional time shall be added to the time limits for filing exceptions or responses to exceptions when service has been made by mail.” Fla. Admin. Code R. 28-106.217(4).

The date of the Recommended Order is October 12, 2015, and, as indicated above, Petitioner’s exceptions were received by the Commission on October 30, 2015, 18 days after the date of the Recommended Order.

Petitioner’s exceptions are untimely. See Chun v. Dillard’s, FCHR Order No. 14-029 (August 21, 2014) and Johnson v. Apalachee Mental Health, FCHR Order No. 12-028 (June 27, 2012). Accord, Drayton v. Lowe’s Home Centers, Inc., FCHR Order No. 12-015 (April 23, 2012) and Barbagallo v. Ocean Park Condominium Association, FCHR Order No. 11-060 (July 13, 2011).

Petitioner’s exceptions are rejected.

Dismissal

This Order disposes of all motions pending before the Commission.

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 16 day of December, 2015.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner J. Jeff Graber

Filed this 16 day of December, 2015,
in Tallahassee, Florida.

Jammy Barton
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E. Gary Early, 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 16 day of December, 2015.

By: Jammy Barton
Clerk of the Commission
Florida Commission on Human Relations