

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

CASSANDRA D. ACEVEDO GAGGI,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2015-00029

v.

DOAH Case No. 15-2010

JC PENNEY HEADQUARTERS,

FCHR Order No. 15-076

Respondent.

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

Preliminary Matters

Petitioner Cassandra D. Acevedo Gaggi 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 JC Penney Headquarters committed an unlawful employment practice on the basis of Petitioner's sex (female / pregnancy) by terminating Petitioner from employment.

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 in Panama City, Florida, on July 2, 2015, before Administrative Law Judge Diane Cleavinger.

Judge Cleavinger issued a Recommended Order of dismissal, dated October 21, 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 note that we find the content of Recommended Order, ¶ 12, to be a conclusion of law, rather than a finding of fact.

With this comment, 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.

The Administrative Law Judge concluded that the complaint in this matter was not timely-filed (i.e., that it was not filed within 365 days of the alleged discriminatory act), and that therefore the Petition for Relief should be dismissed. Recommended Order, ¶ 12 and ¶ 32.

However, the Administrative Law Judge also decided the case on the merits, finding that no unlawful employment practice occurred in this matter. Recommended Order, ¶ 13 and ¶ 31.

In similar situations, where the Administrative Law Judge found the complaint to be untimely but also found against the Petitioner on the merits of the case, Commission Panels have concluded that it was unnecessary for the Panel to either accept or reject the conclusion of law that the complaint of discrimination was untimely. See, Seiden v. Wexford Health Sources, Inc., FCHR Order No. 07-024 (March 27, 2007), Cartwright v. Florida Department of Revenue, FCHR Order No. 07-018 (March 16, 2007), Bagley v. City of Tampa, Florida, FCHR Order No. 06-101 (November 13, 2006), and Roche v. J. C. Penney Company, Inc., FCHR Order No. 06-078 (September 18, 2006).

Similarly, we conclude that, because of the decision on the merits against the Petitioner, it is unnecessary to either accept or reject the conclusion of law that the complaint of discrimination was untimely.

With these comments, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

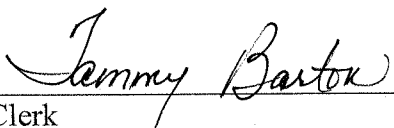
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 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.


Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Cassandra D. Acevedo Gaggi
c/o Robert L. Thirston, II, Esq.
Thirston Law Office
Post Office Box 19617
Panama City Beach, FL 32417

JC Penney Headquarters
c/o Derek B. Lipscombe, Esq.
JC Penney Corporation
6501 Legacy Drive, Mail Station 1111
Plano, TX 75024

Diane Cleavinger, 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: Tammy Barton
Clerk of the Commission
Florida Commission on Human Relations

SCRIPT – December 16, 2015 telephonic meeting

Meeting Introduction

Commissioner Steele: Let's go on the record. I am Rebecca Steele, Vice Chair of the Florida Commission on Human Relations. It is **10 a.m.** Eastern Time on December 16, 2015. This is a meeting of a Commission Panel of the Florida Commission on Human Relations called to vote on the disposition of cases currently before the Commission for decision.

This proceeding is being recorded by a court reporter. Court reporter, are you present and able to proceed? **YES**

Serving with me are Commissioners Derick Daniel and J. Jeff Graber. At this time I would like to make sure that Commissioners Daniel and Graber are on the line. Commissioners are you present and able to participate? **YES**

Also, with us, today, is Jim Mallue, FCHR Senior Attorney, and legal advisor to this Commission Panel. Mr. Mallue, are you on the line? **YES**

Proceedings and Voting

Commissioner Steele: We will now vote on the Commission's disposition of the cases before us:

1. Cattanach v. Florida Department of Elder Affairs, DOAH 14-6130, FCHR 2014-00567

Do you direct that the order drafted by Commission counsel (FCHR Order No. 15-072), reflecting counsel's recommendation to the Commission Panel for the disposition of the case, be issued (Yes or No)?

Comm. Steele Y; Comm. Daniel Y; Comm. Graber Y.

2. McDaniel v. Forward Air, Inc., DOAH 15-0956, FCHR 2014-01257

Do you direct that the order drafted by Commission counsel (FCHR Order No. 15-073), reflecting counsel's recommendation to the Commission Panel for the disposition of the case, be issued (Yes or No)?

Comm. Steele Y; Comm. Daniel Y; Comm. Graber Y.

3. De Matas v. H and R Block Enterprises, DOAH 15-1892, FCHR 2014-01148

Do you direct that the order drafted by Commission counsel (FCHR Order No. 15-074), reflecting counsel's recommendation to the Commission Panel for the disposition of the case, be issued (Yes or No)?

Comm. Steele Y; Comm. Daniel Y; Comm. Graber Y.

4. Orr v. Ameri-Scapes Landscape Management, Inc., DOAH 15-1177, FCHR 2014-01401

Do you direct that the order drafted by Commission counsel (FCHR Order No. 15-075), reflecting counsel's recommendation to the Commission Panel for the disposition of the case, be issued (Yes or No)?

Comm. Steele Y; Comm. Daniel Y; Comm. Graber Y.

5. Gaggi v. JC Penney Headquarters, DOAH 15-2010, FCHR 2015-00029

Do you direct that the order drafted by Commission counsel (FCHR Order No. 15-076), reflecting counsel's recommendation to the Commission Panel for the disposition of the case, be issued (Yes or No)?

Comm. Steele Y; Comm. Daniel Y; Comm. Graber Y.

Commissioner Steele: An order will issue for each case reflecting the vote of the Commission Panel. These proceedings are now concluded. **10:06 A.M.**

END

Minutes – December 16, 2015

Attendance:

1. Jim Mallue - FCHR
2. Commissioner Steele
3. Ms. De Matas
4. Tammy Barton – FCHR
5. Commissioner Daniel
6. Jamie Ito – Office of Attorney General
7. Court Reporter
8. Commissioner Graber
9. Dean Fukes – Rep for Ameriscapes
10. Ms. Malone –
11. Mr. Glasser
12. John Buchanan

Began – 10:00 A.M.

Concluded – 10:06 A.M.