

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

BOBBY JACOME,

EEOC Case No. 15D201500053

Petitioner,

FCHR Case No. 2014-01293

v.

DOAH Case No. 15-3264

VICTORIA'S SECRET, LLC,

FCHR Order No. 15-066

Respondent.

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**ORDER REMANDING CASE TO ADMINISTRATIVE LAW JUDGE  
FOR FURTHER PROCEEDINGS ON PETITION FOR RELIEF**

This matter is before the Commission for consideration of the Order Dismissing Case and Closing File, dated August 20, 2015, issued in the above-styled case by Administrative Law Judge Diane Cleavinger.

Findings of Fact and Conclusions of Law

Judge Cleavinger's order dismisses the case and closes the file of the Division of Administrative Hearings. Based on shortcomings in the Petition for Relief, Judge Cleavinger had earlier issued an order to show cause directing Petitioner to "state facts outlining the date, time, and acts or actions by the employer that were allegedly discriminatory on the basis of sex or retaliation based on sex." The order before the Commission states that Petitioner's response to the order to show cause "again fails to state a cause of action for discrimination based on sex or retaliation," and, therefore, dismisses the case.

We agree that Petitioner's response to the order to show cause fails to contain allegations supporting a claim of unlawful retaliation in that the response fails to identify a "protected activity" for which any alleged retaliation occurred.

However, while inartfully drafted, we conclude Petitioner's response to the order to show cause contains information upon which a claim of sex discrimination could be based. The second to the last paragraph of page 2 of Petitioner's response to the order to show cause suggests the participation of one of Respondent's managers and other employees in the taunting of Petitioner based on Petitioner's sexual orientation. The Commission has concluded that a claim based on a Complainant's failure to conform to stereotyped expectations of how a person of Complainant's sex should look and behave is actionable as sex discrimination under the Florida Civil Rights Act of 1992. See, e.g., Fishbaugh v. Brevard County Sheriff's Department, FCHR Order No. 04-103 (August 20, 2004).

Based on the foregoing, we conclude that the matter should be remanded to the Administrative Law Judge for further proceedings on the Petition for Relief.

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge's Order Dismissing Case and Closing File.

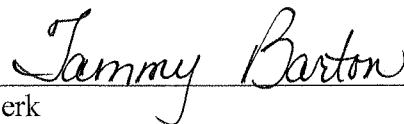
Remand

The matter is REMANDED to the Administrative Law Judge for further proceedings on the Petition for Relief consistent with this Order.

DONE AND ORDERED this 14 day of October, 2015.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner Tony Jenkins; and  
Commissioner Sandra Turner

Filed this 14 day of October, 2015,  
in Tallahassee, Florida.



Clerk  
Commission on Human Relations  
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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 14 day of October, 2015.

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