

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

DOROTHY SCOTT,

EEOC Case No. 15D201500425

Petitioner,

FCHR Case No. 2015-00821

v.

DOAH Case No. 15-4432

SUNSHINE AUTO MART,

FCHR Order No. 16-001

Respondent.

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

Preliminary Matters

Petitioner Dorothy Scott filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2014), alleging that Respondent Sunshine Auto Mart committed an unlawful employment practice on the basis of Petitioner's disability by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on July 6, 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 Winter Haven, Florida, on October 9, 2015, before Administrative Law Judge Lynne A. Quimby-Pennock.

Judge Quimby-Pennock issued a Recommended Order of dismissal, dated November 4, 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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. In the absence of a transcript of the proceeding before the Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988). Accord, Coleman v.

Daytona Beach, Ocean Center Parking Garage, FCHR Order No. 14-034 (September 10, 2014), Gantz, et al. v. Zion's Hope, Inc., d/b/a Holy Land Experience, FCHR Order No. 11-048 (June 6, 2011), and Hall v. Villages of West Oaks HOA, FCHR Order No. 08-007 (January 14, 2008).

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 note that whether a Respondent has the requisite number of employees to be governed by the Florida Civil Rights Act of 1992 is not a jurisdictional issue, but rather is an element of Petitioner's claim for relief, which, in the instant case, the Administrative Law Judge appears to conclude that Petitioner failed to prove, as set out in Recommended Order, ¶ 4 and ¶ 8. See Benton v. Cauffield and Associates, FCHR Order No. 15-036 (June 10, 2015); see, also Prince v. Blanton Plumbing / Douglas Blanton, FCHR Order No. 13-007 (February 6, 2013), citing Kaplan v. Lappin and the Palm Beach Pops, Inc., 2010 U.S. Dist. LEXIS 73004 (S.D. Fla. 2010) and Hill v. Goga Bap Corporation, d/b/a Subway Store No. 13268, FCHR Order No. 13-023 (March 11, 2013).

With this comment, 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 21 day of January, 2016.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Michael Keller, Panel Chairperson;
Commissioner Gilbert M. Singer; and
Commissioner Sandra Turner

Filed this 21 day of January, 2016,
in Tallahassee, Florida.

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

Copies furnished to:

Dorothy Scott
c/o Shawn Jiles, Esq.
Jiles Law, P.A.
Post Office Box 1847
Winter Haven, FL 33882

Sunshine Auto Mart
c/o Ralph H. Schofield, Jr., Esq.
Clark, Campbell, Lancaster & Munson, P.A.
500 S. Florida Ave., Suite 800
Lakeland, FL 33801

Lynne A. Quimby-Pennock, 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 21 day of January, 2016.

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