

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHERYL DELONG,

Petitioner,

vs.

Case No. 15-5952

GLOBAL TPA,

Respondent.

_____ /

RECOMMENDED ORDER OF DISMISSAL

On December 22, 2015, Global TPA (Respondent) filed a Motion to Dismiss with Prejudice (Motion) and relevant exhibits. As grounds for the Motion, the Respondent alleges that the Petitioner has refused to participate in discovery and failed to appear for a duly noticed deposition. No response to the Motion has been filed by Cheryl DeLong (Petitioner). The time for response has passed. See Florida Administrative Code Rules 28-106.103 and 28-106.204.

Florida Administrative Code Rule 28-106.206 provides that discovery in this case may proceed "through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure." The cited rule permits imposition of the sanctions contained in the Florida Rules of Civil Procedure, except contempt, for any failure to make discovery.

Florida Rules of Civil Procedure Rule 1.380(d) authorizes the imposition of sanctions set forth in Rules 1.380(b)(2)(A), (B) and (C) for the failure of a party to appear at a duly noticed deposition. Florida Rules of Civil Procedure Rule 1.380(b)(2)(C) specifically provides for the dismissal of an action to sanction a party's refusal to permit discovery to proceed or failure to appear at a duly noticed deposition.

Review of the Motion and exhibits establishes sufficient grounds to warrant dismissal of the Petition for Relief filed in this case.

The Motion also seeks an award of attorney's fees and costs pursuant to Florida Rules of Civil Procedure Rule 1.380(d), which, in relevant part, states that "the court shall require the party failing to act to pay the reasonable expenses caused by the failure, which may include attorneys' fees, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust." At this stage of the proceedings, dismissal of the case is the appropriate sanction for the Petitioner's failure to cooperate in discovery, and an additional penalty beyond dismissal is not warranted.

Based on the foregoing, it is hereby ORDERED that:

1. The Respondent's Motion to Dismiss is GRANTED.

Jurisdiction is relinquished to the Florida Commission on Human

Relations for entry of a final order dismissing the Petition for Relief filed by the Petitioner in this case.

2. The Respondent's request for an award of attorneys' fees and costs is DENIED.

DONE AND ENTERED this 6th day of January, 2016, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of January, 2016.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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.