

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

CHERYL DELONG,

Petitioner,

v.

GLOBAL TPA,

Respondent.

EEOC Case No. 15D201500470

FCHR Case No. 2015-00961

DOAH Case No. 15-5952

FCHR Order No. 16-012

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

This matter is before the Commission for consideration of the Recommended Order of Dismissal, dated January 6, 2016, issued in the above-styled matter by Administrative Law Judge William F. Quattlebaum.

Findings of Fact and Conclusions of Law

Judge Quattlebaum's Order dismisses the case because of Petitioner's failure to attend her noticed deposition. Respondent had filed "Respondent's Motion to Dismiss with Prejudice," based on Petitioner's failure to appear at her noticed deposition and failure to respond to written discovery. Petitioner had not responded to the motion.

The Administrative Law Judge has the authority to dismiss an action as a sanction for a Petitioner's failure to attend his or her noticed deposition. See, Noel v. C and S Wholesale Services, Inc., FCHR Order No. 15-044 (July 31, 2015).

The Administrative Procedure Act states, "The presiding officer has the power...to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure, including the imposition of sanctions, except contempt." Section 120.569(2)(f), Florida Statutes (2015).

The applicable administrative rule states, "The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt." Fla. Admin. Code R. 28-106.206.

The Florida Rules of Civil Procedure specifically provide for sanctions in instances in which a party fails to attend their own deposition. See, Fla. R. Civ. P. 1.380(d). The sanctions possible for a party's failure to attend their own deposition include "...dismissing the action or proceeding, or any part of it..." Fla. R. Civ. P. 1.380(b)(2)(C).

We note that a Commission panel has upheld an Administrative Law Judge's dismissal of a Petition for Relief for a Petitioner's refusal to be deposed by a Respondent at a noticed

deposition. See, Hunt v. Hudson's Furniture Showroom, Inc., FCHR Order No. 05-090 (September 2, 2005); accord, generally, Bowleg v. LNR Property, FCHR Order No. 14-032 (September 10, 2014) and Redmond v. The Hartford Fire Insurance Company, FCHR Order No. 12-025 (May 16, 2012).

Based on the foregoing, we note the Administrative Law Judge's finding regarding Petitioner's failure to appear at her noticed deposition and the sanction of dismissal imposed by the Administrative Law Judge, and conclude the Petition for Relief should be dismissed.

With regard to the Order's denial of Respondent's request for attorney's fees and costs associated with the deposition that Petitioner did not attend and with Petitioner's failure to respond to written discovery, we recognize the authority of the Administrative Law Judge to issue sanctions for failure to comply with discovery requests, independent of the operation of the Florida Civil Rights Act of 1992, and we conclude that the Commission does not have "final order" authority over such an award. Accord, Haynes v. Putnam County School Board, FCHR Order No. 04-162 (December 23, 2004) in which a Commission Panel stated, "[w]e note that failure to respond to discovery can be sanctioned with an award of attorney's fees. Section 120.569(2)(f), Florida Statutes (2003). But this is within the purview of the Administrative Law Judge, pursuant to a separate action over which the Commission does not have 'final order' authority. See, Harris v. Children's Home Society, FCHR Order No. 04-072 (June 25, 2004)." Accord, Bowleg, *supra*, and Redmond, *supra*.

Exceptions

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

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 of appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 17 day of March, 2016.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Michael Keller, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner Donna Elam

Filed this 17 day of March, 2016,
in Tallahassee, Florida.

Jammy Barton
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William F. Quattlebaum, 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 17 day of March, 2016.

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