

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

EULA HUBERT,

EEOC Case No. 15D201500390

Petitioner,

FCHR Case No. 2015-00683

v.

DOAH Case No. 15-6034

NEWK'S EATERY,

FCHR Order No. 16-010

Respondent.

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

This matter is before the Commission for consideration of the Order Closing File and Relinquishing Jurisdiction, dated January 5, 2016, issued in the above-styled matter by Administrative Law Judge R. Bruce McKibben.

Findings of Fact and Conclusions of Law

Judge McKibben's order reflects that Petitioner failed to comply with an order of the Administrative Law Judge. Specifically, on December 16, 2015, Judge McKibben issued an Order Granting Continuance directing the parties to advise Judge McKibben no later than December 28, 2015, as to the status of the matter, the length of time required for a final hearing, and several mutually agreeable dates for re-scheduling the hearing. Judge McKibben's order states that Respondent timely responded stating that it had been unable to communicate with Petitioner. Judge McKibben's order further states, "Petitioner has not, as of the date of this [o]rder, responded. The Order Granting continuance noted that failure to timely respond would be taken as evidence that the parties had amicably resolved the matter." Judge McKibben's order relinquishes jurisdiction to the Commission.

We note that, generally, Commission panels have concluded that a Petitioner's failure to respond to orders of an Administrative Law Judge amounts to a voluntary dismissal of the Petition for Relief. Watkins v. Michaels Arts and Crafts, FCHR Order No. 15-063 (October 14, 2015). See, also, generally, Noel v. C and S Wholesale Services, Inc., FCHR Order No. 15-044 (July 31, 2015), Morgan v. Skin Cancer Associates, FCHR Order No. 15-035 (June 10, 2015), Herard v. MasTec, Inc., FCHR Order No. 13-034 (May 1, 2013), Cawley v. Primrose Center, Inc., FCHR Order No. 12-009 (February 21, 2012), Roundtree, et al. v. Advenir at Stonelake, LLC, FCHR Order No. 11-069 (August 30, 2011), Biggers v. Rooms To Go, FCHR Order No. 09-045 (May 12, 2009), Shook v. Riverside National Bank, FCHR Order No. 08-029

(May 6, 2008), Clifton v. Kryz, et al., FCHR Order No. 07-062 (November 7, 2007), Bordonaro v. The Green at the Heather Condominium Association, Inc., FCHR Order No. 07-010 (February 14, 2007), Butler v. The Pepsi Bottling Group, FCHR Order No. 06-107 (December 4, 2006), Castellanos v. Express Net Airlines Pilots Association, FCHR Order No. 05-061 (June 15, 2005), Mayfield v. Karl's Haberdashery of Florida, Inc., FCHR Order No. 04-020 (March 10, 2004), and Kenny v. Florida Department of Corrections, FCHR Order No. 02-020 (June 3, 2002).

Based on the foregoing, we conclude that the Petition for Relief should be dismissed.

Exceptions

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

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 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.

Tammy Barton
Clerk
Commission on Human Relations
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R. Bruce McKibben, 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: Jimmy Barton
Clerk of the Commission
Florida Commission on Human Relations