

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

SCARLETT D. EVANS,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2015-01130

v.

DOAH Case No. 16-0097

MOMMA G'S, INC.,

FCHR Order No. 17-012

Respondent.

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**FINAL ORDER AWARDING AFFIRMATIVE RELIEF  
FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

This matter is before the Commission for consideration of the Order of Dismissal, dated November 16, 2016, issued in the above-styled matter by Administrative Law Judge Garnett W. Chisenhall.

Findings of Fact and Conclusions of Law

On August 4, 2016, the Commission issued an order finding that an unlawful employment practice had occurred in this case, and remanding the case to the Administrative Law Judge for the issuance of a Recommended Order regarding the amounts of back pay, attorney's fees and costs owed Petitioner. The Commission's order also ordered Respondent to cease and desist from discriminating further "in the manner in which it has been found to have unlawfully discriminated against Petitioner," and "to reinstate Petitioner to her position with all seniority and benefits as if she had not been terminated." See, "Interlocutory Order Awarding Affirmative Relief from an Unlawful Employment Practice and Remanding Case to Administrative Law Judge for Issuance of Recommended Order Regarding Amounts of Back Pay, Attorney's Fees and Costs Owed Petitioner," FCHR Order No. 16-041 (August 4, 2016).

Judge Chisenhall's Order of Dismissal reflects that Petitioner failed to comply with an order of the Administrative Law Judge. Specifically, on October 17, 2016, following the above-referenced remand from the Commission, Judge Chisenhall issued an Initial Order directing Petitioner, by November 7, 2016, to file a petition, supported by affidavits, as to the amount of back pay lost by Petitioner and the amounts of attorney's fees and costs incurred by Petitioner. As of November 15, 2016, Petitioner had not filed a petition nor requested an extension of time to file a petition. Based on this, Judge Chisenhall's Order of Dismissal dismisses the case, closes the file of the Division of Administrative Hearings and 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. See, generally, Varona v. Marshall Apartments, LLC, FCHR Order No. 15-062 (October 14, 2015), 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. Krys, 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).

Given the posture of the case, we conclude that Petitioner has voluntarily declined to petition for the amount of back pay lost and the amounts of attorney's fees and costs incurred. We do not view the failure to respond to the Initial Order as a forfeiture of the other relief awarded in FCHR Order No. 16-041.

#### Exceptions

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

#### Affirmative Relief

While we have concluded that Petitioner has voluntarily declined to petition for the amount of back pay lost and the amounts of attorney's fees and costs incurred, we note that Respondent has already been ORDERED by FCHR Order No. 16-041 to provide the following affirmative relief:

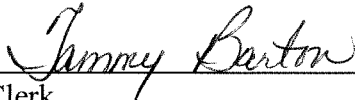
- (1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner; and
- (2) to reinstate Petitioner to her position with all seniority and benefits as if she had not been terminated.

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 9 day of February, 2017.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;  
Commissioner Donna Elam; and  
Commissioner Jay Pichard

Filed this 9 day of February, 2017,  
in Tallahassee, Florida.

  
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Clerk  
Commission on Human Relations  
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Garnett W. Chisenhall, 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 9 day of February, 2017.

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