

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MARIE LOUISE HENRY,

EEOC Case No. 15D201500576

Petitioner,

FCHR Case No. 2015-01146

v.

DOAH Case No. 16-0981

THE FLORIDA BAR,

FCHR Order No. 16-036

Respondent.

**ORDER REMANDING COMPLAINT OF DISCRIMINATION
TO COMMISSION'S OFFICE OF EMPLOYMENT INVESTIGATIONS
FOR INVESTIGATION**

This matter is before the Commission for consideration of the Order Closing File and Relinquishing Jurisdiction, dated April 1, 2016, issued in the above-styled matter by Administrative Law Judge Linzie F. Bogan.

Preliminary Matters

Petitioner Marie Louise Henry 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 The Florida Bar committed an unlawful employment practice on the bases of Petitioner's race (Black), sex (female), age (DOB: 11-20-59), and disability, and on the basis of retaliation, by suspending Petitioner's license to practice law.

The allegations set forth in the complaint were investigated, and, on January 13, 2016, the Executive Director issued a "Determination: No Jurisdiction," finding that Section 760.10(5), Florida Statutes, did not apply to Petitioner because Petitioner had already obtained a license to practice law and there was no apparent other basis for jurisdiction to rest with the Commission.

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.

The matter was assigned to Administrative Law Judge Linzie F. Bogan.

Judge Bogan issued an Order Closing File and Relinquishing Jurisdiction, dated April 1, 2016, indicating that there was no existence of a dispute of material fact as to matters related to whether the Commission has jurisdiction to consider Petitioner's claims of unlawful discrimination.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Order Closing File and Relinquishing Jurisdiction.

Findings of Fact and Conclusions of Law

The Order Closing File and Relinquishing Jurisdiction states, “In the determination notice, the only reference made by FCHR to any factual issue is the statement that ‘[i]t is undisputed that Respondent disciplined Complainant, in her capacity as a licensed attorney, by suspending her license . . . [and that there is no] apparent basis for jurisdiction to rest within FCHR.’” The Order Closing File and Relinquishing Jurisdiction also states, “Petitioner makes myriad legal arguments in her Petition for Relief. None of the arguments, however, suggest the existence of a dispute of material fact as to matters related to whether FCHR has jurisdiction to consider Petitioner’s claims of unlawful discrimination. This determination is bolstered by Petitioner’s assertion in her Petition for Relief wherein she states that she is ‘entitled to jurisdiction as a matter of law.’”

Art. V, § 15, Fla. Const., states, “Attorneys; admission and discipline.-The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.”

The Florida Civil Rights Act of 1992 states, “Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential, become a member or an associate of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any *person* to discriminate against any other person seeking such license, certification, or other credential, seeking to become a member or associate of such club, association or other organization, or seeking to take or pass such examination, because of such other person’s race, color, religion, sex, national origin, age, handicap, or marital status [emphasis added].” Section 760.10(5), Florida Statutes (2014) – note that pregnancy was added as a protected basis in the 2015 Statutes.

The Florida Civil Rights Act of 1992 defines “person” by stating, “‘Person’ includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or unincorporated organization; any other legal or commercial entity; the state; or any *governmental entity* or agency [emphasis added].” Section 760.02(6), Florida Statutes (2014).

While the Commission’s determination notice suggests that Section 760.10(5), Florida Statutes, does not apply to this case because Petitioner is not seeking a license, seeking to become a Bar member, or seeking to take or pass an examination, Petitioner’s Petition for Relief points out “...the suspension of my license placed the Bar in [the] capacity of deciding if I regain my license.”

We conclude that Respondent is a “governmental entity” subject to the Florida Civil Rights Act of 1992, and therefore subject to the jurisdiction of the Commission, and that the provisions cited above prohibit Respondent from disciplining the license of an attorney in a discriminatory manner. Regarding the issue of whether Respondent is a “governmental entity”, see Mason v. Fla. Bar, 208 F.3d 952 (11th Cir. 2000), in which the Court refers to The Florida Bar’s regulation of commercial speech in the context of lawyer advertising as “state restrictions” and as “the government’s interests...”

Exceptions

Petitioner sent a letter the Commission’s Executive Director, received by the Commission on April 7, 2016. The Commission is treating the letter as an “exception” to the Administrative Law Judge’s Order Closing File and Relinquishing Jurisdiction.

There is no indication on the letter that it was provided to Respondent as is required by Fla. Admin. Code R. 28-106.104(4) and Fla. Admin. Code R. 28-106.110. However, the Commission published the document to the Respondent, and placed the document in the record of this case through the issuance of a notice of ex parte communication, mailed to the parties on April 18, 2016. The notice of ex parte communication also informed the parties that the letter would be treated as an “exceptions” document.

Generally, the letter excepts to the Commission’s conclusion that it did not have jurisdiction to investigate the complaint of discrimination.

For reasons set out in the Findings of Fact and Conclusions of Law section of this Order, the Commission will now assume jurisdiction to investigate the allegations of discrimination contained in the complaint filed in this matter.

Remand

The complaint of discrimination is hereby REMANDED to the Commission’s Office of Employment Investigations for further investigation of the allegations of discrimination contained therein. Accord, generally, DeLeo v. Properties of the Villages, Inc., FCHR Order No. 09-093 (October 1, 2009).

DONE AND ORDERED this 23 day of June, 2016.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Tony Jenkins; and
Commissioner Jay Pichard

Filed this 23 day of June, 2016,
in Tallahassee, Florida.

Tammy Barton
Clerk
Commission on Human Relations
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Linzie F. Bogan, 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 23 day of June, 2016.

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