

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MARIE JEANLIUS,

EEOC Case No. 15D201600132

Petitioner,

FCHR Case No. 2016-00292

v.

DOAH Case No. 16-3697

NAPLES GRANDE BEACH RESORT,

FCHR Order No. 17-023

Respondent.

**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 18, 2017, issued in the above-styled matter by Administrative Law Judge John D. C. Newton, II.

Findings of Fact and Conclusions of Law

Judge Newton's Recommended Order of Dismissal prohibits Petitioner from entering evidence in this proceeding as a sanction for failing to comply with orders compelling discovery and recommends the Commission issue a final order dismissing the Petition for Relief as a sanction for failure to comply with orders compelling discovery and because Petitioner cannot prove her claim as a result of the sanction prohibiting her from entering evidence.

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 (2016).

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 comply with discovery. See, Fla. R. Civ. P. 1.380. The sanctions possible for a party's failure to comply with discovery include "...dismissing the action or proceeding, or any part of it..." Fla. R. Civ. P. 1.380(b)(2)(C).

Based on the foregoing, we note the Administrative Law Judge's finding regarding Petitioner's failure to comply with discovery and the sanction of dismissal imposed by the Administrative Law Judge, and conclude the Petition for Relief should be dismissed. Accord, Miller v. Wal-Mart Supercenter, FCHR Order No. 16-015 (April 7, 2016).

Exceptions

Petitioner filed exceptions to the Recommended Order of Dismissal with the Division of Administrative Hearings, on or about February 2, 2017. The exceptions document, entitled, "Petitioner Rights to Submit Exceptions," does not contain a certificate of service indicating that it was served on the Respondent. Nevertheless, we will assume Respondent received Petitioner's exceptions document since the document was filed on the e-filing system of the Division of Administrative Hearings.

The document appears to take issue with the Administrative Law Judge's finding that Petitioner failed to comply with orders of the Administrative Law Judge, and with the sanction imposed by the Administrative Law Judge for Petitioner's failure to comply with discovery.

The implementation of a sanction for failure to comply with discovery is an action within the authority of the Administrative Law Judge and is not reviewable by the Commission. See, DeLong v. Global TPA, FCHR Order No. 16-012 (March 17, 2016), and Noel v. C and S Wholesale Services, Inc., FCHR Order No. 15-044 (July 31, 2015). Accord, Miller, supra.

Petitioner's exceptions are rejected.

Dismissal

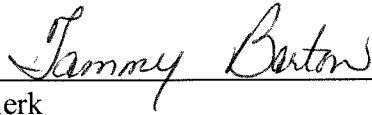
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 30 day of March, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Jay Pichard; and
Commissioner Sandra Turner

Filed this 30 day of March, 2017,
in Tallahassee, Florida.



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John D. C. Newton, II, 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 30 day of March, 2017.

By: 

Clerk of the Commission
Florida Commission on Human Relations