

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

LAWRENCE N. BROWN, III,

EEOC Case No. 15D201600418

Petitioner,

FCHR Case No. 2016-00601

v.

DOAH Case No. 16-5002

KMART-SEARS HOLDING CORP.,

FCHR Order No. 17-070

Respondent.

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

Preliminary Matters

Petitioner Lawrence N. Brown, III, filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2015), alleging that Respondent Kmart-Sears Holding Corp. committed unlawful employment practices against Petitioner on the bases of Petitioner's race (African American) and religion (Christian) and on the basis of unlawful retaliation.

The allegations set forth in the complaint were investigated, and, on July 18, 2016, the Executive Director issued a determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

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.

An evidentiary hearing was held by video teleconference at sites in Lauderdale Lakes and Tallahassee, Florida, on February 1 and 10, 2017, before Administrative Law Judge Cathy M. Sellers.

Judge Sellers issued a Recommended Order of dismissal, dated June 14, 2017.

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

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order, received by the Commission on or about June 28, 2017.

There is no indication on the exceptions document 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.

Rather, the exceptions document contains the following statement: "Warning the following contains: Confidential legal information to be distributed to appropriate supervisor within the agency only. This should not be given to, discussed with or otherwise disseminated to opposing counsel. (Law firm Seyfarth / Shaw, Kmart-Sears, Dave Leach, Tom Reynolds, Law firm Orrick Herrington or anyone else outside EEOC or FCOHR)".

While this document is a public record, the Commission did not issue a Notice of Ex Parte Communication publishing the document to Respondent because of Petitioner's above-stated directive.

All parties to a proceeding have the right to file a response to any exceptions to a Recommended Order issued in the proceeding. Fla. Admin. Code R. 28-106.217(3).

Because Petitioner's above-stated directive deprives the Respondent of the ability to respond to Petitioner's exceptions, Petitioner's exceptions are stricken.

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 ____ day of _____, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner Latanya Peterson

Filed this 23 day of August, 2017,
in Tallahassee, Florida.


Clerk
Commission on Human Relations
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Copies furnished to:

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Cathy M. Sellers, 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 August, 2017.

By: 
Clerk of the Commission
Florida Commission on Human Relations