

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MARY ANN PETTY,

EEOC Case No. 15D201600395

Petitioner,

FCHR Case No. 2016-00898

v.

DOAH Case No. 16-6146

WALTON COUNTY SHERIFF'S
DEPARTMENT,

FCHR Order No. 18-005

Respondent.

FINAL ORDER DISMISSING
“RESPONDENT’S MOTION FOR SANCTIONS”

This matter is before the Commission for consideration of “Respondent’s Motion for Sanctions” directed to the Commission. The Commission issued a “Final Order Dismissing Petition for Relief from an Unlawful Employment Practice,” establishing the prevailing party in the case, on November 2, 2017.

Motion for Sanctions

“Respondent’s Motion for Sanctions” seeks an award of attorney’s fees and costs associated with the defense of Petitioner’s claims, pursuant to Sections 57.105, 120.569(2)(e), 120.595(1) and 760.11(7), Florida Statutes.

Petitioner filed no response to “Respondent’s Motion for Sanctions.”

Section 57.105

Awards pursuant to Section 57.105, Florida Statutes, are within the purview of the Administrative Law Judge and not the Commission, and the Commission does not have final order authority over an Administrative Law Judge’s decision whether to issue an award pursuant to this statutory section. See, Williams v. First Commerce Credit Union, FCHR Order No. 17-082 (November 2, 2017) and Otto v. Duval County Public Schools, FCHR Order No. 13-021 (March 11, 2013).

Noting that the Administrative Law Judge, in the Order Closing File and Relinquishing Jurisdiction issued in this matter, declined to reserve jurisdiction for an award under this statutory section, Respondent’s request for an award pursuant to this statutory section is DENIED.

Section 120.569(2)(e)

Awards pursuant to Section 120.569(2)(e), Florida Statutes, are within the purview of the Administrative Law Judge and not the Commission, and the Commission does not have final order authority over an Administrative Law Judge's decision whether to issue an award pursuant to this statutory section.

We note that this statutory section states that if a pleading, motion or other paper is filed for an improper purpose "...the presiding officer shall impose upon the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee." Section 120.569(2)(e), Florida Statutes (2017).

We conclude that the "presiding officer" with the authority to impose the indicated sanction is the Administrative Law Judge, not the Commission. See, Mitchell, et al. v. BB King's Blues Club, FCHR Order No. 14-024 (July 30, 2014), interpreting Section 120.569(2)(f), Florida Statutes, which gives the "presiding officer" the authority to impose discovery sanctions, and in which the Commission concluded it did not have "final order" authority over such sanctions imposed by the Administrative Law Judge.

Respondent's request for an award pursuant to this statutory section is DENIED.

Section 120.595(1)

Awards pursuant to Section 120.595(1), Florida Statutes, are within the purview of the Administrative Law Judge and not the Commission, and the Commission does not have final order authority over an Administrative Law Judge's decision whether to issue an award pursuant to this statutory section. See, Citrullo v. National Beverage, Inc., FCHR Order No. 17-074 (September 14, 2017) and Otto, supra.

Noting that the Administrative Law Judge, in the Order Closing File and Relinquishing Jurisdiction issued in this matter, declined to reserve jurisdiction for an award under this statutory section, Respondent's request for an award pursuant to this statutory section is DENIED.

Section 760.11(7)

The Florida Civil Rights Act of 1992 states, "In any action or proceeding under this subsection, the [C]ommission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action." Section 760.11(7), Florida Statutes (2017).

In conclusions of law adopted by a Commission panel, it has been stated that a prevailing Respondent may be awarded attorney's fees by the Commission, under the Florida Civil Rights

Act of 1992, “if it is determined that an action was ‘frivolous, unreasonable, or without foundation,’ or ‘that the plaintiff continued to litigate after it clearly became so.’ Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421-422 (1978).” Tadlock v. Westinghouse Electric Corporation, d/b/a Bay County Energy Systems, Inc., 20 F.A.L.R. 776, at 777 (FCHR 1997), citing Wright v. City of Gainesville, 19 F.A.L.R. 1947, at 1959 (FCHR 1996). Accord, generally, Asher v. Barnett Banks, Inc., 18 F.A.L.R. 1907 (FCHR 1995).

In conclusions of law adopted by a Commission panel, this pronouncement is given explanation: “It is within the discretion of a district court to award attorney’s fees to a prevailing defendant in a Title VII action upon a finding that the action was ‘frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.’ Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421, 98 S.Ct. 694, 700, 54 L.Ed.2d 648 (1978). The standard has been described as a ‘stringent’ one. Hughes v. Rowe, 449 U.S. 5, 14, 101 S.Ct. 173, 178, 66 L.Ed.2d 163 (1980). Moreover, the Supreme Court has cautioned that in applying these criteria, the district court should resist the temptation to conclude that because a plaintiff did not ultimately prevail, the action must have been unreasonable or without foundation. Christianburg Garment, 434 U.S. at 421-22, 98 S.Ct. at 700-01. Therefore, in determining whether a prevailing defendant is entitled to attorney’s fees under Title VII, the district court must focus on the question of whether the case is seriously lacking in arguable merit. See Sullivan v. School Board of Pinellas County, 773 F.2d 1182, 1188 (11th Cir. 1985).” Doshi v. Systems and Electronics, Inc., f/k/a Electronics and Space Corp., 21 F.A.L.R. 188, at 199 (FCHR 1998). Accord, Quintero v. City of Coral Gables, FCHR Order No. 07-030 (April 20, 2007), and Haynes v. Putnam County School Board, FCHR Order No. 04-162 (December 23, 2004).

The Commission has applied these same legal standards to requests for costs other than attorney’s fees. See, e.g., Green v. Miami-Dade County, FCHR Order No. 09-075 (August 18, 2009), and Columbus v. Mutual of Omaha, FCHR Order No. 09-052 (June 3, 2009).

With regard to an award pursuant to Section 760.11(7), Florida Statutes, applying the above-stated legal standards, considering the arguments contained in Respondent’s motion, and recognizing that the case was dismissed prior to the conduct of a formal administrative hearing, we are unwilling to say that the record as it exists reflects entitlement of Respondent to an award of attorney’s fees and costs. See, Citrullo, *supra*.

Rather, we conclude, as is our discretion (see, Section 760.11(7), Florida Statutes (2017)), the record as it exists does not reflect entitlement to attorney’s fees and costs under the standards set out above. Accord, generally, Floyd-Trinowski v. Northeast Florida Health Services, FCHR Order No. 13-018 (March 11, 2013), Boland, et al. v. Division of Emergency Management, FCHR Order No. 12-032 (June 27, 2012), Carter v. City of Pompano, FCHR Order No. 12-013 (March 27, 2012), Perry v. Embry-Riddle Aeronautical University, FCHR Order 08-020 (March 13, 2008), Quintero, *supra*, and Waaser v. Streit’s Motorsports, FCHR Order No. 04-157 (November 30, 2004).

Respondent’s request for an award pursuant to this statutory section is DENIED.

Dismissal


“Respondent’s Motion for Sanctions” is 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 11 day of January, 2018.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Latanya Peterson; and
Commissioner Gilbert M. Singer

Filed this 11 day of January, 2018,
in Tallahassee, Florida.



Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Mary Ann Petty
c/o Robert L. Thirston, II, Esq.
Thirston Law Office
Post Office Box 19617
Panama City Beach, FL 32417

Walton County Sheriff's Department
c/o Jason Eric Vail, Esq.
c/o Avery D. McKnight, Esq.
Allen Norton & Blue, P.A.
906 North Monroe Street
Tallahassee, FL 32303

Lawrence P. Stevenson, 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 11 day of January, 2018.

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