

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

ANA-MARIA ENCIU,

EEOC Case No. 15D201700426

Petitioner,

FCHR Case No. 2017-00691

v.

DOAH Case No. 17-3862

DEPARTMENT OF CHILDREN AND  
FAMILIES,

FCHR Order No. 18-003

Respondent.

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

Preliminary Matters

Petitioner Ana-Maria Enciu filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent Department of Children and Families committed unlawful employment practices on the bases of Petitioner's national origin (Romanian) and race (Caucasian), and on the basis of retaliation, by denying Petitioner promotion, by denying Petitioner special assignment cases, by harassing and unfairly disciplining Petitioner, and by constructively discharging Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on June 14, 2017, 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 Pensacola and Tallahassee, Florida, on September 13, 2017, before Administrative Law Judge Suzanne Van Wyk.

Judge Van Wyk issued a Recommended Order of dismissal, dated October 17, 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 note that in determining that Petitioner failed to establish a prima facie case of discrimination the Administrative Law Judge found and concluded that the Performance Corrective Action Plan issued to Petitioner did not amount to an "adverse employment action," even though it warns, "Noncompliance may result in: Disciplinary action up to and including dismissal may be initiated." Recommended Order, ¶ 30, ¶ 94 through ¶ 97, and Petitioner's Exhibit 6.

We will not disturb this conclusion of the Administrative Law Judge given the further conclusions that, even if a prima facie case of discrimination had been established, Respondent articulated a legitimate nondiscriminatory reason for issuing the Performance Corrective Action Plan, and there was no showing that this reason was a pretext for discrimination. Recommended Order, ¶ 99.

However, we note that the Commission has concluded that directives like the Performance Corrective Action Plan referenced in this case can be "adverse employment actions." See McNeil v. HealthPort Technologies, FCHR Order No. 12-026 (June 27, 2012), and cases cited therein, indicating that verbal reprimands, written reprimands, verbal counselings, written warnings and negative performance appraisals can amount to "adverse employment actions." See, also, Monkhouse v. Davita Healthcare Partners, Inc., FCHR Order No. 17-057 (August 3, 2017) and Robinson v. Gulf Coast Health Care, FCHR Order No. 15-009 (March 12, 2015).

With this comment, we adopt the Administrative Law Judge's conclusions of law.

#### Exceptions

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

#### Dismissal

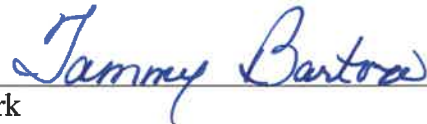
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 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  
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Copies furnished to:

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Suzanne Van Wyk, 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: Jimmy Barton  
Clerk of the Commission  
Florida Commission on Human Relations