

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ASHA J. LOGAN,

EEOC Case No. 15D01700327

Petitioner,

FCHR Case No. 2017-00432

v.

DOAH Case No. 17-5005

BROW ART 23 CORDOVA MALL,

FCHR Order No. 21-009

Respondent.

**FINAL ORDER AWARDING AFFIRMATIVE RELIEF
FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

This matter is before the Commission for consideration of the “Order Closing File and Relinquishing Jurisdiction” issued by Administrative Law Judge Yolanda Y. Green on November 5, 2020, for the above-styled matter.

Findings of Fact and Conclusions of Law

Petitioner Asha J. Logan 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, Brow Art 23 Cordova Mall, committed an unlawful employment practice on the basis of Petitioner’s race by subjecting her to workplace harassment and effectively terminating her from employment.

The allegations set forth in the complaint were investigated, and, on August 11, 2017, the Executive Director issued a determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

On September 13, 2017, 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 ordered by Administrative Law Judge Yolanda Y. Green, for November 25, 2017. However, on November 23, 2017, both parties filed a Motion to Continue the hearing and the hearing was rescheduled until January 16, 2018.

An evidentiary hearing was held on January 16, 2018, as scheduled, by teleconference in Pensacola and Tallahassee, Florida, before Judge Green. However, during the hearing, it was determined that a witness would not be available by phone and the case was recessed until February 2, 2018.

A final evidentiary hearing was held by teleconference until completion on February 2, 2018, as scheduled.

Judge Green issued a Recommended Order, dated May 23, 2018, recommending that the Commission find that an unlawful employment practice occurred and recommending affirmative relief.

On August 2, 2018, the Commission issued an Interlocutory Order Awarding Affirmative Relief from an Unlawful Employment Practice and Remanding Case to Administrative Law Judge for Issuance of Recommended Order Regarding Amounts of Attorney's Fees and Costs Owed Petitioner. See FCHR Order No. 18-038.

On August 6, 2018, the Division of Administrative Hearings re-opened the case.

On August 24, 2018, a telephonic status conference was held.

On August 27, 2018, Judge Green issued an Order Placing Case in Abeyance requiring a status report from the parties advising of the status of the case, the length of time required for the final hearing, and several mutually-agreeable dates for scheduling the final hearing, by September 24, 2018. The order advised that failure to timely advise would result in the conclusion that the issue was resolved, and the file would be closed.

On September 20, 2018, Petitioner filed an Affidavit for Attorney's fees. However, it did not include a mutually agreed upon status report filed by both parties.

Accordingly, on November 2, 2018, Judge Green issued an Order Closing File and Relinquishing Jurisdiction.

On January 17, 2019, the Commission issued an "Order Requiring Status Update" ordering a status update from both parties because the status of the case was unclear. See FCHR Order No. 19-005.

On February 6, 2019, the Petitioner filed the "Petitioner's Status Report," which stated that the claim had not been resolved, but that the Respondent had declared Chapter 11 Bankruptcy and was currently in bankruptcy proceedings.

On March 13, 2019, the Respondent filed the "Response to Petitioner's Status Report" confirming that the Respondent declared Chapter 11 Bankruptcy and attaching the "Notice of Chapter 11 Bankruptcy Case" with a request to stay any action on this case until the bankruptcy claim was resolved.

On April 23, 2019, the Commission issued an "Interlocutory Order Placing Case in Abeyance and Requiring Status Update from Respondent" placing on Respondent the responsibility of updating the Commission on the status of the underlying bankruptcy petition by July 23, 2019. If no status report was received from Respondent by that time, the assumption would be made that the bankruptcy stay had been lifted and the case would be transmitted back to the Division of Administrative Hearings for further proceedings on attorney's fees and costs. The Commission would not pursue this information from the Respondent, or otherwise check on the status of the bankruptcy claim. See FCHR Order No. 19-030.

On September 26, 2019, the case was transferred back to the Division of Administrative Hearings for further proceedings on attorney's fees and costs because Respondent did not provide a status update as required.

On October 23, 2019, a telephonic status update was conducted by Judge Green and the case was placed in abeyance pending the status of the bankruptcy proceedings. The parties were to advise Judge Green of the status of the bankruptcy by January 24, 2020.

On January 22, 2020, Petitioner filed a status update saying there had been no change in the bankruptcy proceedings.

On May 22, 2020, Petitioner filed “Petitioner’s Status Report” stating that a final hearing would not be necessary because Petitioner’s Counsel and the Bankruptcy Trustee’s Counsel had reached a settlement agreement on the issue of attorney’s costs and fees. Petitioner would file a voluntary notice of dismissal when the proceeds had been paid out.

On May 22, 2020, Judge Green issued an “Order Continuing Case in Abeyance” requiring a status update by the parties no later than July 21, 2020.

On July 21, 2020, Petitioner filed a status report confirming that a final hearing would not be necessary because a settlement was reached, and that she would file a voluntary notice of dismissal when the proceeds had been paid out.

On July 22, 2020, Judge Green issued an Order placing the case in abeyance and requiring a status update from the parties no later than October 22, 2020.

On October 22, 2020, Judge Green held a telephonic status hearing and requested that Petitioner submit a copy of the settlement agreement reached between Petitioner’s Counsel and the Bankruptcy Trustee’s Counsel.

On October 23, 2020, Petitioner filed a status report confirming that a final hearing would not be necessary because a settlement was reached, and that she would file a voluntary notice of dismissal when the proceeds had been paid out, but did not provide a copy of the settlement agreement as requested.

On November 5, 2020, Judge Green issued the “Order Closing File and Relinquishing Jurisdiction” because Petitioner had stated on three status reports that a settlement had been reached regarding attorney’s fees and costs, but did not provide a copy of the settlement agreement as requested by Judge Green at the status hearing on October 22, 2020.

We agree that a copy of the settlement agreement is not necessary in order to conclude the proceedings on this matter. Petitioner made it clear that the issue of attorney’s costs and fees had been voluntarily settled between Petitioner and the Respondent’s Bankruptcy Trustee. We do not view the settlement on attorney’s fees and costs as a forfeiture of the other relief awarded in FCHR Order No.18-038.

Exceptions

Neither party has filed exceptions to the Administrative Law Judge’s Order Closing File and Relinquishing Jurisdiction.

Affirmative Relief

While we have concluded that the parties have reached a settlement agreement regarding the amount of attorney's fees and costs in this matter, as indicated in Judge Green's Order Closing File and Relinquishing Jurisdiction issued on November 5, 2020, we note that Respondent has already been ORDERED by FCHR Order No. 18-038 to provide the following affirmative relief:

1. to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner;
2. to reinstate Petitioner to a similar position as if she had not been terminated, as recommended by the Administrative Law Judge;
3. to pay Petitioner back-pay and lost wages in the amount of \$39,825, with no offset for unemployment compensation received;
4. to pay the Petitioner interest in the amount of \$3,317.86.

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 7 day of January, 2021.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario Garza, Panel Chairperson;
Commissioner Darrick McGhee; and
Commissioner Jay Pichard

Filed this 7 day of January, 2021,
in Tallahassee, Florida

Tammy S. Barton
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Yolanda Y. Green, Administrative Law Judge, DOAH

Sarah Stewart, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 7 day of January, 2021.

By: Jimmy S. Barton
Clerk of the Commission
Florida Commission on Human Relations