

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ANDREA M. TAYLOR,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2017-00660

v.

DOAH Case No. 17-6235

FLORIDA STATE UNIVERSITY,

FCHR Order No. 18-022

Respondent.

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

Preliminary Matters

Petitioner Andrea M. Taylor 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 Florida State University committed unlawful employment practices on the bases of Petitioner's race, national origin, sex, color, marital status, and on the basis of unlawful retaliation, including subjecting Petitioner to workplace violence, charging Petitioner with additional duties, giving Petitioner a negative evaluation, denying Petitioner compensatory and vacation time, demoting Petitioner, and ultimately constructively discharging Petitioner.

The allegations set forth in the complaint were investigated, and, on October 10, 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.

Prior to an evidentiary hearing being held, Administrative Law Judge Cathy M. Sellers issued a Recommended Order of Dismissal, dated March 5, 2018.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order of Dismissal. (We note that the date of the filing of the charge of discrimination is incorrectly stated in the Statement of the Issue section of the Recommended Order of Dismissal, but this has no impact on the Recommended Order of Dismissal given that the date is correctly stated in Findings of Fact, ¶ 1, of the Recommended Order of Dismissal.)

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 an exception to the Administrative Law Judge's Recommended Order of Dismissal, in documents received by the Commission on or about March 20, 2018.

There is no indication in the documents that they were provided to Respondent as is required by Fla. Admin. Code R. 28-106.104(4) and Fla. Admin. Code R. 28-106.110. However, the Commission published the documents to the Respondent, and placed the documents in the record of this case through the issuance of a notice of ex parte communication, emailed to the parties on March 26, 2018.

Petitioner excepts to the dismissal of the complaint as untimely, suggesting that the late-filing of the complaint was excused by the doctrine of "equitable estoppel."

"[The doctrine of equitable estoppel] is applicable in all cases where one, by word, act or conduct, willfully caused another to believe in the existence of a certain state of things, and thereby induces him to act on this belief injuriously to himself, or to alter his own previous condition to his injury...Equitable estoppel presupposes a legal shortcoming in a party's case that is directly attributable to the opposing party's misconduct. The doctrine bars the wrongdoer from asserting that shortcoming and profiting from his or her own misconduct. Equitable estoppel thus functions as a shield, not a sword, and operates against the wrongdoer, not the victim." Brockman v. University of Miami-Bascom Palmer Eye Institute, conclusions of law set out in Recommended Order of Dismissal, ¶ 31, for DOAH case 05-0928, dated May 12, 2005, adopted by the Commission in FCHR Order No. 06-025 (March 16, 2006).

In our view, the email relied upon by Petitioner to invoke "equitable estoppel," attached both to Petitioner's exceptions document and the Petition for Relief, does not present evidence supporting a finding that Respondent was responsible for Petitioner's missing the deadline for filing her charge and that therefore Respondent should be barred by the doctrine of equitable estoppel from contesting the charge's timeliness. Accord, generally, Brockman, supra.

Petitioner's exception is 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 to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 17 day of May, 2018.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

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

Filed this 17 day of May, 2018,
in Tallahassee, Florida.


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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 17 day of May, 2018.

By: 
Clerk of the Commission
Florida Commission on Human Relations