

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MARK BALLANTYNE,

EEOC Case No. 15D201800325

Petitioner,

FCHR Case No. 2018-03704

v.

DOAH Case No. 18-5103

PUBLIX SUPER MARKETS, INC.,

FCHR Order No. 19-039

Respondent.

**ORDER REMANDING CASE TO ADMINISTRATIVE LAW JUDGE
FOR FURTHER PROCEEDINGS ON PETITION FOR RELIEF**

This matter is before the Commission for consideration of the Order Closing File and Relinquishing Jurisdiction, dated March 5, 2019, issued in the above-styled matter by Administrative Law Judge Robert J. Telfer III.

Findings of Fact and Conclusions of Law

Judge Telfer's Order reflects that Petitioner filed a "Notice of Voluntary Dismissal Without Prejudice of Petitioner's Petition for Relief." Judge Telfer's Order states, "Jurisdiction is relinquished to the Florida Commission on Human Relations."

The voluntary dismissal without prejudice is not consistent with the Commission's rules. Fla. Admin. Code R. 60Y-5.008(7) states, "Voluntary Dismissal. A Petition for Relief may be dismissed by the Petitioner without order of the administrative law judge, Panel of Commissioners or Commission (i) by serving, or during hearing by stating on the record, a notice of dismissal at any time before the issuance of a recommended order or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. *The dismissal operates with prejudice with respect to Petitioner's Chapter 760, F.S., administrative remedies and constitutes final agency action.* [emphasis added]."

It is clear from the Order currently before the Commission, and from Petitioner's "Notice of Voluntary Dismissal Without Prejudice of Petitioner's Petition for Relief," that Petitioner is requesting that the case be dismissed without prejudice. It is clear from the Commission's rule, cited above, that any voluntary dismissal of the Petition for Relief at this point in the proceeding operates "with prejudice" with respect to Petitioner's Chapter 760, F.S., administrative remedies and constitutes final agency action.

Since Petitioner specifically requested dismissal of the case "without prejudice," and since such a dismissal is not available to Petitioner, we conclude the matter should be remanded to the Administrative Law Judge for further proceedings on the Petition for Relief.

Exceptions

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

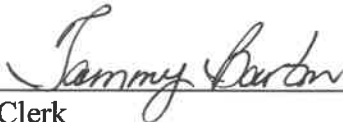
Remand

The Petition for Relief and Complaint of Discrimination are REMANDED to the Administrative Law Judge for further proceedings on the Petition for Relief, as indicated above.

DONE AND ORDERED this 28 day of May, 2019.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Rebecca Steele

Filed this 28 day of May, 2019,
in Tallahassee, Florida.



Clerk
Commission on Human Relations
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Robert J. Telfer III, Administrative Law Judge, DOAH

Stanley Gorsica, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 28 day of May, 2019.

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