

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

SELWYN TITUS,

Petitioner,

FCHR Case No. 2019-16475

v.

DOAH Case No. 19-5536

MIAMI DADE COUNTY,

FCHR Order No. 21-071

Respondent.

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

Preliminary Matters

Selwyn Titus, Petitioner, filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2018), alleging that Miami Dade County, Respondent, committed discrimination against him on the basis of race, national origin, religion, disability, and retaliation.

The allegations set forth in the complaint were investigated, and, on September 13, 2019, 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. The case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held on January 16, 2020, via video conference, before Administrative Law Judge Robert L. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated March 13, 2020.

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 that the Administrative Law Judge's findings of fact are supported by competent and substantial evidence. We adopt the Administrative Law Judge's findings of facts.

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.

Accordingly, 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.

Respondent's Amended Motion for Attorneys Fees

Respondent filed an Amended Motion for Attorneys Fees. The Administrative Law Judge recommended the Commission determine the appropriate disposition of said motion.

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 (2021).

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). "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).

In the present case, the Administrative Law Judge found that “at the evidentiary hearing, [Petitioner] took the position that he should have been hired or promoted to the 2017 [position] because he was the ‘most qualified.’ This was the core and substance of his argument throughout the hearing and arguments made by him thereafter.” The Administrative Law Judge also found that “[Petitioner] . . . argued that the fact that he had been interviewed for the 2016 position ‘proved’ that Respondent must have discriminated against him when he was not promoted in 2017.” Although he ultimately found the arguments to be unavailing and unpersuasive, the Administrative Law Judge did state, “It is understandable that such arguments would be made by any individual unhappy with the selection of another person for a position he desired and coveted.”

We conclude, as is our discretion (see, Section 760.11(7), Florida Statutes (2021)), 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 Motion for Attorneys Fees is DENIED.

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 18 day of November, 2021.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Darrick McGhee, Panel Chairperson;
Commissioner Mario Garza; and
Commissioner Larry Hart

Filed this 18 day of November, 2021,
in Tallahassee, Florida.



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Robert L. Kilbride, Administrative Law Judge, DOAH

John Scotese, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above
listed addressees this 18 day of November, 2021.

By: 
Clerk of the Commission
Florida Commission on Human Relations