

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

RAUL FERNANDEZ,

EEOC Case No. 15D201900649

Petitioner,

FCHR Case No. 2019-19252

v.

DOAH Case No. 20-0314

MERCEDES-BENZ OF FT. LAUDERDALE,

FCHR Order No. 22-009

Respondent.

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

Preliminary Matters

Raul Fernandez, 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 Mercedes-Benz of Ft. Lauderdale, Respondent, committed unlawful employment practices on the bases of Petitioner's race and retaliation.

The allegations set forth in the complaint were investigated, and, on December 19, 2019, the Executive Director issued a "Determination: No Reasonable Cause".

On January 22, 2020, 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.

On July 14, 2020, a final hearing was conducted, via Zoom video conference, before Administrative Law Judge Darren A. Schwartz.

Judge Schwartz issued a Recommended Order of Dismissal, dated July 14, 2020, recommending dismissal of the Petitioner's Petition for Relief.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order of Dismissal.

It should be noted that the Administrative Law Judge's Recommended Order of Dismissal states Petitioner alleged unlawful employment practices on the additional bases of national origin and color. However, a review of the complaint reveals that the Petitioner only alleged unlawful employment practices based on race and retaliation. The above-described error does not affect the Commission's acceptance of the Administrative Law Judge's findings of fact nor does the error affect the Commission's acceptance of the Administrative Law Judge's conclusions as stated in the Administrative Law Judge's Recommended Order of Dismissal.

Findings of Fact and Conclusions of Law

Judge Schwartz's order reflects that Petitioner failed to appear at the scheduled administrative hearing in the case. Petitioner was not represented by counsel.

Commission panels have concluded that when a Petitioner fails to appear at the scheduled administrative hearing in their case, they fail to meet their burden of proof, and the Petition for Relief should be dismissed. See, e.g., Sushkova v. Marco Destin, Inc., FCHR Order No. 17-083 (November 2, 2017), Santana v. Charter Communications, Inc., FCHR Order No. 17-067 (August 23, 2017), Jacome v. Victoria's Secret, LLC, FCHR Order No. 16-030 (June 9, 2016), Wade v. District School Board of Putnam County, FCHR Order No. 15-008 (February 12, 2015), Demons v. Emerald Grande, LLC, FCHR Order No. 14-033 (September 10, 2014), Bullard v. Lowry Group Properties, Inc., et al., FCHR Order No. 13-011 (February 26, 2013), Goldenberg v. Department of Corrections, FCHR Order No. 12-051 (September 17, 2012), Dotson v. Department of Financial Services, FCHR Order No. 11-034 (April 13, 2011), Patterson v. Panama City Housing Authority, FCHR Order No. 11-001 (January 13, 2011), Crump v. The Majestic Tower at Bal Harbour, FCHR Order No. 10-072 (September 21, 2010), Bermudez v. Lake County Housing Authority, FCHR Order No. 10-041 (April 27, 2010), Cowden v. Difiglio, et al., FCHR Order No. 09-115 (December 14, 2009), Scott v. Two Men and a Truck, FCHR Order No. 09-009 (January 27, 2009), Enzor v. Sandco, Inc., FCHR Order No. 08-048 (July 29, 2008), Rodriguez v. Center Point Health and Rehab, FCHR Order No. 08-001 (January 14, 2008), West v. Sembler Corporation, d/b/a Bay Walk, FCHR Order No. 07-037 (June 15, 2007), Martinez v. KJC Enterprises, d/b/a Plantation Island Resort, FCHR Order No. 07-028 (April 20, 2007), Chaney, et al. v. Robert Buckner & Associates, FCHR Order No. 06-092 (November 13, 2006), and Prek v. Workforce Central Florida, FCHR Order No. 06-079 (September 18, 2006).

We adopt the Administrative Law Judge's finding as to the nonappearance of Petitioner and conclude that Petitioner has failed to carry his burden of proof.

Exceptions

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

Dismissal

The Petition for Relief and Employment Discrimination Complaint 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 24 day of February, 2022.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Darrick McGhee, Panel Chairperson;

Commissioner Kenyetta Moyé, and

Commissioner Vivian Myrtetus

Filed this 24 day of February, 2022, in Tallahassee, Florida.

Tammy Barton
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Darren A. Schwartz, 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 24 day of February, 2022.

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