

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

KATHY L. MCKETHAN,

Petitioner,

FCHR No. 202023293

v.

DOAH No. 20-4258

WINTER PARK IMPORTS,
D/B/A LEXUS OF ORLANDO,

FCHR Order No. 22-003

Respondent.

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

This matter is before the Commission panel designated below for consideration of the Recommended Order of Dismissal, dated October 28, 2020, issued in the above-styled matter by Administrative Law Judge Jodi-Ann V. Livingstone.

Preliminary Matters

On January 15, 2020, Petitioner, Kathy L. McKethan, filed an employment discrimination complaint pursuant to the Florida Civil Rights Act of 1992 (FCRA), Sections 760.01 - 760.11, Florida Statutes (2019), alleging that Respondent, Winter Park Imports, D/B/A Lexus of Orlando, committed discrimination against her on the bases of age and disability, and retaliated against her.

On August 14, 2020, the Commission notified Petitioner that it was issuing a Notice of Rights and that pursuant to statute, Petitioner was entitled to either: (1) bring a civil action against the person named in the complaint in any court of competent jurisdiction within one year of the date of the notice; or (2) request an administrative hearing with the Division of Administrative Hearings (DOAH) under sections 120.569 and 120.57, Florida Statutes, by filing a Petition for Relief (Petition) within 35 days of the date of the notice.

On September 18, 2020, Petitioner timely filed a Petition Requesting an Administrative Hearing, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

After the judge issued a preliminary scheduling Order, Respondent filed a Motion to Dismiss for lack of jurisdiction on September 28, 2020, attaching a Dispute Resolution Agreement previously signed by the parties and a General Release signed and executed by Petitioner on January 16, 2019.

Judge Livingstone treated Respondent's filing as raising a threshold question of jurisdiction over the matter and, accordingly, issued an October 8, 2020 Order to Show Cause to Petitioner as to why her claims were not barred by the General Release and why her FCRA claims did not have to be mediated and/or arbitrated. After considering Petitioner's response, Judge Livingstone issued

a Recommended Order of Dismissal, on October 28, 2020, which would result in a dismissal of the 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.

Findings of Fact

In the Recommended Order of Dismissal, Judge Livingstone found that a hearing was not necessary under the facts of the case. Therefore, with no transcript, the Recommended Order is the only evidence for the Commission to consider. See National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, 897-898 (Fla. 5th DCA 1988); accord Coleman v. Daytona Beach, Ocean Center Parking Garage, FCHR Order No. 14-034 (September 10, 2014); Gantz, et al. v. Zion's Hope, Inc., d/b/a Holy Land Experience, FCHR Order No. 11-048 (June 6, 2011); Hall v. Villages of West Oaks HOA, FCHR Order No. 08-007 (January 14, 2008).

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

Judge Livingstone noted that because Petitioner released all claims under the FCRA (Florida Civil Rights Act), that agreement deprives the Commission of jurisdiction. Likewise, she found that the Commission has no jurisdiction to determine the validity of a settlement agreement. With no jurisdiction, Judge Livingstone found it unnecessary to address the merits of the discrimination claim.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order. Petitioner's exceptions were incorrectly filed with the Division of Administrative Hearings and not the Florida Commission on Human Relations. In addition, Petitioner's filing did not comply with the statute of limitations for filing exceptions under section 120.57(1)(k), *Florida Statutes*, which requires that Exceptions be filed within 15 days of the date that a Recommended Order is issued.

Additionally, even if the filing had been timely, the Administrative Procedure Act states that, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), *Florida Statutes* (2018); see, also Taylor v. Universal Studios, FCHR Order No 14-007 (March 26, 2014), McNeil v. HealthPort Technologies, FCHR Order No. 12-026 (June 27, 2012), and Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

Petitioner's document did not identify the disputed portion of the Recommended Order by page number or paragraph, and did not identify the legal basis for the exceptions with appropriate and specific citations to the record.

Accordingly, Petitioner's Exceptions are rejected.

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 27 day of January, 2022.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Angela Primiano (Panel Chair);
Commissioner Libby Farmer; and
Commissioner Larry Hart

Filed this 27 day of January, 2022, in Tallahassee, Florida.

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Jodi-Ann V. Livingstone, 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 27 day of January, 2022.

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