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IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOR THE FIFTH DISTRICT
Case Number:

02
FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

CDR SYSTEMS CORPORATION,

Petitioner,

LT Case No. 01-4315

vs.

DWD

EDDIE L. SWINSON,

Respondent.

**EMERGENCY PETITION FOR WRIT OF PROHIBITION
DIRECTED TO DIVISION OF ADMINISTRATIVE HEARINGS
JUDGE DON W. DAVIS, PRESIDING**

WILLIAM R. AMLONG
DEBRA L. HORTON
AMLONG & AMLONG, P.A.
500 Northeast Fourth Street
Fort Lauderdale, Florida 33301
(954) 462-1983
ATTORNEYS FOR
PETITIONER

Dated: January 17th, 2002

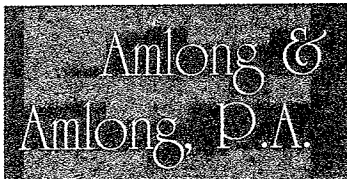


TABLE OF CONTENTS

Table of Contents	2
Statement of Jurisdiction and Designation of Division of Administrative Hearings and Don W. Davis, Administrative Law Judge, as Formal Parties to the Petition	3
Relief Sought and Statement of Emergency	4
Issue Presented	5
Statement of Facts	6
Reasons Why the Writ Should Issue	9
 <u>Point I.</u>	
A Writ of Prohibition lies to restrain the unauthorized exercise of jurisdiction by the Division of Administrative Hearings in the matter of <u>Eddie L. Swinson v. CDR Systems Corporation</u>, where a statutory condition precedent to invoking the jurisdiction of the Division of Administrative Hearings was not met, i.e., no request for an administrative hearing was made within 35 days of a no-cause determination as required by Florida Statute §760.11(7) to confer jurisdiction	
Conclusion	12
Certificate of Service	13
Certificate of Compliance with Font Requirements	13

**STATEMENT OF JURISDICTION AND DESIGNATION OF
DIVISION OF ADMINISTRATIVE HEARINGS AND
DON W. DAVIS, ADMINISTRATIVE LAW JUDGE
AS FORMAL PARTIES TO THE PETITION**

This is an action for a writ of prohibition under Florida Rule of Appellate Procedure 9.100.

Pursuant to Florida Rule of Appellate Procedure 9.100(e)(2), the Division of Administrative Hearings and Honorable Don W. Davis, Administrative Law Judge, are named as formal parties to the petition.

RELIEF SOUGHT AND STATEMENT OF EMERGENCY

Pursuant to Florida Rule of Appellate Procedure 9.100, petitioner, CDR Systems Corporation, seeks a writ of prohibition restraining the Division of Administrative Hearings ("DOAH") from the unauthorized exercise of jurisdiction in the matter of Eddie L. Swinson v. CDR Systems Corporation, Case No. 01-4315. DOAH lacks subject matter jurisdiction because the condition precedent to DOAH's exercise of jurisdiction was not met. Specifically, Mr. Swinson did not request an administrative hearing regarding the FCHR's No-Cause Determination on his Charge of Discrimination within the statutory time frame set forth in §760.11, Florida Statutes. Prohibition is appropriate because there is no adequate remedy available to address the remedy sought and to otherwise avoid the harm to petitioner. See State of Florida ex rel. Barbara Greenberg v. The Florida Board of Dentistry, 297 So.2d 628, 634 (Fla. 1st DCA 1974)(granting writ of prohibition and holding that "in cases where the respondent board is acting without jurisdiction or is exceeding its jurisdiction...those common-law processes adapted and designed to restrain such lack of jurisdiction or excessive exercise of power, including the remedy by prohibition, are proper. State ex rel. Crabtree v. Porter, 111 Fla. 621, 149 So. 610.").

This petition is being filed on an emergency basis because DOAH has set a hearing on the merits of Swinson's Charge of Discrimination before Honorable Don W. Davis, Administrative Law Judge, for January 29, 2002. Although the petitioner filed a Motion to Stay the Proceedings Pending Resolution of Petition for Writ of Prohibition, DOAH has not had the opportunity, as of the filing of this petition, to rule on the motion to stay, and may not rule on it before the date set for the merits hearing.

ISSUE PRESENTED

The sole issue presented is whether writ of prohibition lies to restrain the Division of Administrative Hearings (DOAH) from exercising jurisdiction and conducting proceedings in the case of Eddie L. Swinson v. CDR Systems Corporation where, under §760.11(7), Florida Statutes, DOAH does not obtain jurisdiction unless a request for an administrative hearing is made within 35 days of a no cause determination by FCHR. Swinson failed to request an administrative hearing until over two years, three months and eleven days after the deadline to request an administrative hearing had passed. Thus, DOAH is without subject matter jurisdiction.

STATEMENT OF FACTS

On or about December 28, 1995, Eddie L. Swinson filed a Charge of Discrimination with the Florida Commission on Human Relations ("FCHR") charging that CDR Systems Corporation discriminated against him because of his race. (App.¹ Tab B, at 8).² The Charge of Discrimination was assigned FCHR case number 95-1100. (App. Tab B, at 8). On January 20, 1999, Linda L. Mathis, Investigation Specialist with the Office of Employment Investigations and Enforcement, issued an Investigator's Memorandum recommending that there was "no reasonable cause to believe that respondent [CDR] discriminated against Complainant [Swinson] due to his race." (App. Tab B, at 9-10).

On June 3, 1999, FCHR issued Swinson a No Cause Determination, signed by Ronald McElrath, Executive Director of the FCHR. (App. Tab B, at 11-12). On June 3, 1999, FCHR also issued Swinson a "Notice of Determination: No Cause" signed by

¹ With this petition, petitioner has filed a separate Appendix pursuant to Florida Rule of Appellate Procedure 9.100(g). References to the Appendix will be made by "App." followed by the appropriate Tab and page number of Appendixes, if necessary.

² FCHR stamped the Charge of Discrimination received January 2, 1996. (App. Tab B, at 8).

Sharon Maultry, Clerk of the Commission. (App. Tab B, at 13-14). The Notice of Determination: No Cause contained the following language:

If the Complainant fails to request an administrative hearing within 35 days of the date of this notice, the administrative claim under the Florida Civil Rights Act of 1992, Chapter 760, will be dismissed pursuant to section 760.11, Florida Statutes (1992).

Id. (Emphasis added).

On September 14, 2001, over two years after the first No Cause Determination was issued, FCHR issued another no-cause determination for the same case — Swinson v. CDR Systems Corporation FCHR No. 95-1100. (App. Tab B, at 15).³

Swinson then filed a Petition for Relief on October 19, 2001. (App. Tab B, at 19-20). This Petition for Relief was filed approximately two years, three months and eleven days after the statutory deadline to request an administrative hearing as set forth in §760.11, Florida Statutes.⁴

³ The Notice of Determination: No Cause is silent as to why another notice was issued on that date.

⁴ Section 760.11(7), Florida Statutes, provides, in pertinent part,

If the commission [FCHR] determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but ***any such request must be made within 35 days of the date of determination of reasonable cause and***

FCHR forwarded Swinson's Petition for Relief to the Division of Administrative Hearings on October 31, 2001. (App. Tab B, at 21). The Division of Administrative Hearings has set the matter for hearing on January 29, 2002. (App. Tab A, at 1-3).

On December 19, 2001, CDR filed a Motion to Dismiss for lack of subject matter jurisdiction. (App. Tab A, at 4-22). The motion stated as grounds that *One*, Swinson's request for administrative hearing was untimely, and *Two*, because Swinson's request for an administrative hearing was untimely, his claim was barred by §760.11(7), Florida Statutes.

DOAH denied CDR's motion to dismiss without opinion. (App. Tab C, at 23-25).

A hearing has been set on the merits of Swinson's charge before Don W. Davis, Administrative Law Judge, Division of Administrative Hearings, for January 29, 2002, in Putnam County, Florida.⁵

any such hearing shall be heard by an administrative law judge and not by the commission or the commissioner. If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred.

(Emphasis added).

⁵ On January 17, 2002, CDR filed a Motion to Stay the Proceedings Pending Resolution of Petition for Writ of Prohibition.

Thus, by this petition, CDR Systems Corporation seeks issuance of a writ of prohibition restraining the Division of Administrative Hearings from exercising jurisdiction over this matter.

REASONS WHY THE WRIT SHOULD ISSUE

POINT I. A Writ of Prohibition lies to restrain the unauthorized exercise of jurisdiction by the Division of Administrative Hearings in the matter of Eddie L. Swinson v. CDR Systems Corporation, where a statutory condition precedent to invoking the jurisdiction of the Division of Administrative Hearings was not met, i.e., no request for an administrative hearing was made within 35 days of a no-cause determination as required by Florida Statute §760.11(7) to confer jurisdiction

In Edgerton v. International Company, Inc., 89 So.2d 488 (Fla. 1956), the Supreme Court of Florida affirmed the circuit court's issuance of a writ of prohibition for lack of subject matter jurisdiction due to the late filing of a complaint, and in so doing held:

Statutory authority given to administrative officers must be exercised in accordance with the requirements of controlling provisions and principles of law...Administrative authorities are creatures of statute and have only such powers as the statute confers on them. Their powers must be exercised in accordance with the statute bestowing such powers, and they can act only in the mode prescribed by statute....They cannot rightfully dispense with any of the essential forms of proceedings which the legislature has prescribed for the purpose of investing them with power to act. Officers must obey a law found upon the statute books until in a proper proceeding its constitutionality is judicially passed on....

89 So.2d at 489, 490. (Internal citations, quotations omitted). See also Fiat Motors of North America, Inc. v. Calvin, 356 So.2d 908 (Fla. 1st DCA 1978)(finding that the agency lacked subject matter jurisdiction because a verified complaint was not timely filed pursuant to Florida Statutes and the agency could not acquire jurisdiction after the time for initiating proceedings had expired).

With respect to this case, Florida Statute §760.11(7) provides, in pertinent part,

If the commission [FCHR] determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but ***any such request must be made within 35 days of the date of determination of reasonable cause and any such hearing shall be heard by an administrative law judge*** and not by the commission or the commissioner. ***If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred.***

Id. (Emphasis added).

Under §760.11(7), DOAH does not have jurisdiction until and unless the request for administrative hearing is timely filed. In this case, Swinson's request for administrative hearing came well beyond the 35 day period, i.e. two years, three months and eleven days after the deadline set forth in the statute.(App. Tab B, at 19-20). Therefore, the Division of Administrative Hearings could not and did not have jurisdiction over this matter.

Moreover, DOAH cannot expand its jurisdiction to encompass this matter. This is so because an agency such as the Division of Administrative Hearings

has only those powers which are conferred upon it by the legislature in order to carry out the aims for which it was established. See State v. Atlantic C.L.R. Co., 56 Fla. 617, 47 So. 969 (1908). Moreover an agency may not enlarge its jurisdiction; nor can jurisdiction be conferred upon the agency by agreement or consent of the parties. Gulf American Corp. v. Florida Land Sales Board, 206 So.2d 457 (Fla. 2d DCA 1968).

Swebilius v. Florida Constr. Industry Licensing Board, 365 So.2d 1069, 1070 (Fla. 1st DCA 1979).

The question in this case is one of DOAH's subject matter jurisdiction over this matter. The answer is no because the condition precedent to invoking the Division of Administrative Hearing's jurisdiction was not met. Specifically, a request for an administrative hearing was not made within 35 days of a no cause determination as is required by statute to confer jurisdiction over the matter to DOAH. Subject-matter jurisdiction cannot be waived by the parties and DOAH cannot confer such jurisdiction upon itself. As the Swebilius court observed:

Subject matter jurisdiction means the power of the court to deal with a class of cases to which the particular case belongs, Malone v. Meres, 91 Fla. 709, 109 So. 677 (1926), and it concerns the power of the court to adjudge as to the general question involved before it. Quigley v. Cremin, 94 Fla. 104, 113 So. 892 (1927); Crill v. Sate Road Dept., 96 Fla. 110, 117 So. 795 (1928); Curtis v. Albritton, 101 Fla. 853, 132 So. 677 (1931). If a court has no jurisdiction over

the subject matter, it has no jurisdiction to entertain questions pertaining thereto. Lovett v. Lovett, 93 Fla. 611, 112 So. 768 (1927). Moreover such jurisdiction cannot be waived. Judicial proceedings which are taken without subject matter jurisdiction are void in the strictest sense of the term. Roberts v. Seaboard Surety Co., 158 Fla. 686, 29 So.2d 743 (1947). For example, it has been held that the failure to make a timely objection to the circuit court's assumption of jurisdiction over an action for declaratory relief does not later preclude the objection from being raised on appeal. Pushkin v. Lombard, 279 So.2d 79 (Fla. 3d DCA 1973), cert.den., Fla., 284 So.2d 396....

Id. at 1070-1071.

Permitting this matter to remain with the Division of Administrative Hearings forum for a hearing on the merits of a barred claim, therefore, would permit DOAH to exercise jurisdiction which it did not have and be a useless exercise in both judicial and lawyer labor resulting in the unnecessary expenditure of resources.

CONCLUSION

Accordingly, based on the arguments presented and the authorities cited, Petitioner, CDR Systems Corporation, requests this Court issue a writ of prohibition restraining the unauthorized exercise of jurisdiction by Division of Administrative Hearings over the matter of Swinson v. CDR Systems Corporation, DOAH Case Number 01-4315.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of this petition has been furnished by Overnight Mail this 17th day of January, 2002, to Eddie L. Swinson, 1714 ½ Westover Drive, Palatka, Florida, 32177; and by Overnight Mail and Telecopier to Honorable Don W. Davis, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060.

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

The undersigned certifies that this petition complies with the font requirements of Florida Rule of Appellate Procedure 9.100(1). This petition was prepared in Times New Roman 14 point font.

Respectfully Submitted,



WILLIAM R. AMLONG

Florida Bar No. 470228

DEBRA L. HORTON

Florida Bar No. 526071

AMLONG & AMLONG, P.A.

Attorneys for Petitioner

500 Northeast Fourth Street

Second Floor

Fort Lauderdale, Florida 33301

(954) 462-1983

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOR THE FIFTH DISTRICT

Case Number:

CDR SYSTEMS CORPORATION,

Petitioner,

LT Case No. 01-4315

vs.

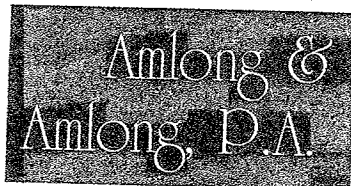
EDDIE L. SWINSON,

Respondent.

**APPENDIX TO EMERGENCY PETITION FOR WRIT OF PROHIBITION
DIRECTED TO DIVISION OF ADMINISTRATIVE HEARINGS
JUDGE DON W. DAVIS, PRESIDING**

WILLIAM R. AMLONG
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500 Northeast Fourth Street
Fort Lauderdale, Florida 33301
(954) 462-1983
ATTORNEYS FOR
PETITIONER

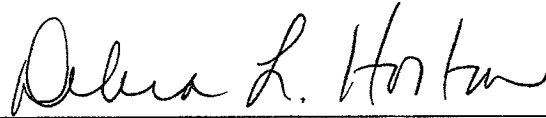
Dated: January 17th, 2002



CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of this appendix has been furnished by Overnight Mail, this 17th day of January, 2002, to Eddie L. Swinson, 1714 ½ Westover Drive, Palatka, Florida, 32177; and by Overnight Mail and Telecopier to Honorable Don W. Davis, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060.

Respectfully Submitted,



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INDEX

Notice of Hearing	Tab A
Respondent, CDR Systems Corporation's, Motion to Dismiss	Tab B
Order on Respondent, CDR Systems Corporation's, Motion to Dismiss	Tab C
Certificate of Service	i

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EDDIE L. SWINSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 01-4315
	)	
CDR SYSTEMS CORPORATION,	)	
	)	
Respondent.	)	
_____	)	

NOTICE OF HEARING

A hearing will be held in this case at the City Hall, City Commission Meeting Room, 201 North Second Street, Palatka, Florida, on January 29, 2002, at 10:30 a.m., or as soon thereafter as can be heard. Continuances will be granted only by order of the Administrative Law Judge for good cause shown.

ISSUE: Was Petitioner subjected to an unlawful employment practice.

AUTHORITY: Chapters 120 and 760, Florida Statutes.

The parties shall arrange to have all witnesses and evidence present at the time and place of hearing. Subpoenas will be issued by the Administrative Law Judge upon request of the parties. All parties have the right to present oral argument and to cross-examine opposing witnesses. All parties have the right to be represented by counsel or other qualified representative, in accordance with Rule 28-106.106, Florida Administrative Code. Failure to appear at this hearing may be grounds for entry of a recommended order of dismissal.

The agency shall be responsible for making the necessary arrangements for a court reporter.

November 19, 2001

Don W. Davis
DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

COPIES FURNISHED:

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500 Northeast Fourth Street
Fort Lauderdale, Florida 33301

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
325 John Knox Road
Building F, Suite 240
Tallahassee, Florida 32303-4149

Eddie L. Swinson
504 North 22nd Street
Apartment C192
Palatka, Florida 32177

ROOM CONFIRMATION COPY:

Betsy Driggers
City Hall
201 North Second Street
Palatka, Florida 32177
(386) 329-0100

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Judge's secretary no later than seven days prior to the hearing. The Judge's secretary may be contacted at the address or telephone numbers above, via 1-800-955-8771 (TDD), or 1-800-955-8770 (Voice) Florida Relay Service.

WILLIAM R AMLONG ESQUIRE
AMLONG & AMLONG PA
500 NE 4TH ST 2ND FL
FT LAUDERDALE FL 33301-1154

01-4315

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

Case Number: 01-4315

EDDIE L. SWINSON,

Petitioner,

VS.

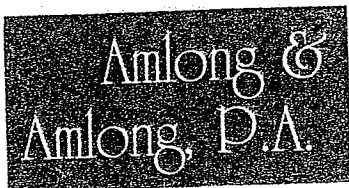
CDR SYSTEMS CORPORATION,

Respondent.

MOTION TO DISMISS

Respondent, CDR Systems Corporation ("CDR"), pursuant to Florida Administrative Code §28-106.303, moves for entry of an Order dismissing, with prejudice, petitioner, Eddie L. Swinson's, ("Swinson") Petition for Relief, and in support thereof states:

1. This cause is set for final hearing on January 29, 2002.
2. On December 28, 1995, Swinson filed a Charge of Discrimination with the Florida Commission on Human Relations ("FCHR"), a true and correct copy of which is attached as "Exhibit A." The Charge of Discrimination was given FCHR No. 95-1100.
3. On January 20, 1999, Linda L Mathis, Investigation Specialist with the Office of Employment Investigations and Enforcement, issued an



Investigator's Memorandum in which it was recommended that there was "no reasonable cause to believe that respondent (CDR) discriminated against Complainant (Swinson) due to his race." A true and correct copy of the Investigator's Memorandum is attached as "Exhibit B."

4. On June 3, 1999, FCHR issued a No Cause determination, signed by Ronald McElrath, Executive Director of the Florida Commission on Human Relations, a true and correct copy of which is attached as "Exhibit C."

5. On June 3, 1999, FCHR issued its Notice of Determination: No Cause, signed by Sharon Maultry, Clerk of the Commission, a true and correct copy of which is attached as "Exhibit D."

6. On June 3, 1999, Swinson was notified of his right to request an administrative hearing within 35 days of FCHR's No Cause determination. Swinson was also notified that if he failed to request an administrative hearing within 35 days of the date of the Notice of Determination, his administrative claim would be dismissed pursuant to §760.11, Florida Statutes.

7. Pursuant to §760.11, Florida Statutes, Swinson was required to request an administrative hearing on or before July 8, 1999.

8. Swinson did not request an administrative hearing on or before July 8, 1999.

9. On September 14, 2001, another Notice of Determination: No Cause was issued by FCHR for Case No. 95-1100, and signed by A. Coleman, Clerk of the Commission. A true and correct copy is attached as "Exhibit E."

10. On September 14, 2001, another Determination: No Cause was issued by FCHR for Case No. 95-1100, and signed by Derick Daniel, Executive Director for the Florida Commission on Human Relations. A true and correct copy is attached as "Exhibit F."

11. On October 17, 2001, Swinson filed a Petition for Relief. A true and correct copy is attached as "Exhibit G."

12. On October 31, 2001, FCHR transmitted Swinson's Petition for Relief and requested that an administrative judge be assigned. A true and correct copy of the Transmittal of Petition is attached as "Exhibit H."

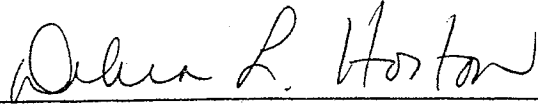
13. Pursuant to §760.11(7), Florida Statutes, Swinson's claim is barred because he did not request an administrative hearing within 35 days of receiving the June 3, 1999 No Cause Determination.

14. This motion is being made in good faith and not for purposes of delay.

WHEREFORE, respondent, CDR Systems Corporation, prays that this court will enter an Order dismissing, with prejudice, petitioner's Petition for Relief and for such other and further relief as may be just.

Respectfully Submitted,

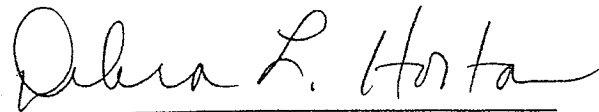
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Attorney for Plaintiff(s)
500 Northeast Fourth Street
Second Floor
Fort Lauderdale, Florida 33301-1154
(954) 462-1983



WILLIAM R. AMLONG
Florida Bar No: 470228
DEBRA L. HORTON
Florida Bar No: 526071

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 19th day of December, 2001 to Eddie L. Swinson, 504 N. 22nd Street, Apt. C192, Palatka, FL 32177 and Cecil Howard, Esquire, Florida Commission on Human Relations, 325 John Knox Road, Suite 240, Building F, Tallahassee, FL 32303-4149.



DEBRA L. HORTON

I:\CPWin\HISTORY\011126A\9DA.07

FLORIDA COMMISSION ON HUMAN RELATIONS
 325 John Knox Road, Suite 240, Building F
 Tallahassee, Florida 32399-1570

CC CHARGE OF DISCRIMINATION		FCHR No. 95-1100
Name (Indicate Mr., Ms., or Mrs.) Mr. Eddie L. Swinson		Telephone No. (area code)
Street Address 504 N. 22nd St., Apt. C172		Home 904-329-9824
City, State, and Zip Code Palatka, Fl 32177		Work (if possible to call you there)
List the employer, labor organization, employment agency, apprenticeship committee, government agency, or other person who discriminated against you.		
Name CDR Systems Corporation	No. of Employees 15+	Telephone No. (area code) 904-325-0690
Street Address 2 Kay Larkin Circle	City, State and Zip Code Palatka, Fl 32177	County Putnam
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) ☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ HANDICAP ☐ NATIONAL ORIGIN ☐ AGE ☐ MARITAL STATUS ☐ RETALIATION		DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (month, day, year) 02/07/95
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)): I. <u>PERSONAL HARM</u> On February 7, 1995, I was terminated from my position as a Production Supervisor. Prior to this time I was given different terms and conditions of employment. I have been employed for 2 1/2 years <u>5 1/2 years</u> C.S.		
II. <u>RESPONDENT'S REASON FOR ADVERSE ACTION</u> Mr. Richard Ramirez (Hispanic), Supervisor, told me that I was being laid off because the "big box" production was being moved to Oklahoma.		
III. <u>DISCRIMINATION STATEMENT</u> I believe I have been discriminated against because of my Race (Black) in violation of the Florida Civil Rights Act of 1992 and Title VII of the U. S. Civil Rights Act of 1964.		
I REQUEST THE FULL RELIEF TO WHICH I AM ENTITLED, UNDER THE LAW(S).		
EXHIBIT tabbies "A"		NOTARY PUBLIC CATHERINE H. SHEFFIELD My Commission CC487888 Expires May, 28, 1998 Bonded by ANB 800-932-5678
I will advise the agency if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		1998 DEC 23 4 07 PM RECEIVED FLORIDA COMMISSION ON HUMAN RELATIONS
SIGNATURE OF COMPLAINANT <i>Eddie Swinson</i>		NOTARY - (Required for Filing) SUBSCRIBED AND SWORN TO BEFORE ME <i>Catherine H. Sheffield</i> 28th of Dec. 1995
DATE 12/28/95		3

INVESTIGATOR'S MEMORANDUM

DATE: January 20, 1998

TO: Office of Executive Director
FROM: Office of Employment Investigations and Enforcement
Linda L. Mathis
Investigation Specialist

RE: EDDIE L. SWINSON v. CDR SYSTEMS CORP.
FCHR No. 95-1100
EEOC No. n/a

A. RECOMMENDED DETERMINATION: No Cause

1. DECLARATION OF JURISDICTION

Respondent is an employer within the meaning of the Florida Civil Rights Act of 1992 and all-jurisdictional requirements have been met.

2. FOCUS OF THE COMPLAINT

Complainant alleged that on February 7, 1995 he was terminated from his position as a Production Supervisor and prior to discharge was given different terms and conditions of employment, because of his race, (black)
(Tab A, page 1, items I and III)

3. SUMMARY OF RESPONDENT'S POSITION 3.

Respondent stated that Complainant left employment as a result of a lay off and company restructuring which followed an incident in which he had a confrontation with other employees (Tab D-2, page 1, par. 2).

4. ANALYSIS OF EVIDENCE AND CONCLUSION

Complainant was hired on 8/6/90 and was discharged on 2/7/95 when Respondent relocated the department which Complainant supervised to the company's Oklahoma facility. At that time, twelve employees including Complainant were affected. The other employees were placed in other departments within the Palatka plant, however, there was not a supervisory position for Complainant. Complainant did not accept a cut in pay and Respondent eliminated his position. Complainant received Unemployment Benefits after discharge. Documentation indicated that on or around January 27, 1995, Complainant had a serious confrontation with Mr. Jose Montanez over the fact that MR. Montanez had been given the key to the supply room. Several other employees including two black employees stated that Complainant had called Montanez stupid, pushed him in the chest and called him a racist. One

EXHIBIT

"B"

employee stated that Complainant had threatened to bring a gun and settle problem. Complainant denied having made this statement however. Mr. Rich Ramirez, Offshore Operations Director and Plant Manager decided to terminate Complainant's employment because of his confrontational behavior and his failure to be an example to the other employees as a supervisor. Mr. Rami stated that Complainant had been counseled verbally about his behavior prior to being discharged.

Several other employees stated that they observed the incident between Complainant and Mr. Montanez and that Complainant was the one who began the argument. (Tab D-2, page 7; and tab D-3, pages 1, 2, 5 and 6; and Tab E, p 1-4).

Respondent's workforce was composed of twenty-six white employees, twenty-three black employees and twenty-four Hispanic employees.
(Tab D-4, pages 1-2).

The evidence produced during this investigation indicated that Complainant engaged in inappropriate behavior toward other employees prior to being discharged for which he had been counseled by the Plant Manager. Complainant's position was eliminated due to business necessity and his discharge was also based on his inability to work with others and due to threatening behavior toward other employees.

Based on the foregoing discussion it is recommended that there is no reasonable cause to believe that Respondent discriminated against Complainant due to his race.

D. Other Violations: None.

E. INDEX OF INVESTIGATORY MATERIAL

Tab A - Complaint and Intake Material
Tab B - Investigative Notes
Tab C-1 - General Correspondence To/From Complainant
Tab C-2 - Substantive Material From Complainant
Tab D-1 - General Correspondence To/From Respondent
Tab D-2 - Respondent's Position Statement and Document Request Responses
Tab D-3 - Personnel File of Complainant
Tab D-4 - EEO Profile
Tab D-5 - Employee Handbook
Tab D-6 - Supplement Response from Respondent
Tab E - Affidavits
Tab F - Miscellaneous

/lm



Jeb Bush, Governor
Ronald M. McElrath, Executive Director

STATE OF FLORIDA
Florida Commission on Human Relations

FCHR No. 95-1100
EEOC No. none

Complainant

Mr. Eddie L. Swinson
17141/2 Westover
Palatka, FL 32177

Respondent

CDR Systems Corporation
Mr. Bud McGrane
President
533 N. Nova Road
Ste. 208
Ormond Beach, FL 32174

DETERMINATION: NO CAUSE

Complainant Filed a Complaint of Discrimination alleging that Respondent discriminated against him/her in violation of the Florida Civil Rights Act of 1992, as amended, Section 760.10, Florida Statutes (1993). An investigation of this matter has been conducted and shows the following:

Respondent is an employer within the meaning of the Florida Civil Rights Act of 1992, and the timeliness and all jurisdictional requirements have been met.

Pursuant to Rule 60Y-5.004(1), Florida Administrative Code, an Investigatory Report has been submitted by the Office of Employment Investigations.

On the basis of the report and recommendation, pursuant to the authority delegated to me by Rules 60Y-2.004(2)(e) and 60Y-5.004, Florida Administrative Code, it is my determination that there is no reasonable cause to believe that an unlawful employment practice has occurred.

11

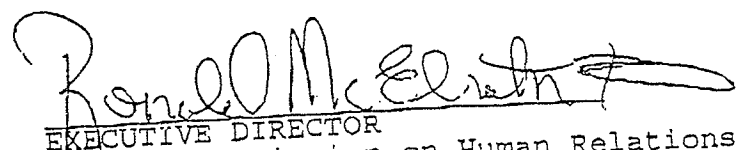
325 John Knox Road • Suite 240 • Building F • Tallahassee, Florida 32303-4149
(850) 488-7082 • 1-800-342-8170 (Complaints Only, Voice or TDD)
Investigation Fax (850) 488-5291 • Administration Fax (850) 922-3026
An Equal Opportunity Employer • Affirmative Action Employer

EXHIBIT

"C"

FCHR No. 95-1100
Page Two

Dated: June 3, 1999


EXECUTIVE DIRECTOR
Florida Commission on Human Relations

FILED: 6/3, 1999

By: Sharon Moulton
Clerk of the Commission



Jeb Bush, Governor
Ronald M. McElrath, Executive Director

STATE OF FLORIDA
Florida Commission on Human Relations

FCHR No. 95-1100
EEOC No. none

Mr. Eddie L. Swinson
17141/2 Westover
Palatka, FL 32177

Complainant

CDR Systems Corporation
Mr. ~~Ray McGowan~~
President
533 N. Nova Road
Ste. 208
Ormond Beach, FL 32174

Respondent

NOTICE OF DETERMINATION: NO CAUSE

PLEASE TAKE NOTICE that a Determination has been made on the above-referenced complaint that there is no reasonable cause to believe that an unlawful employment practice has occurred. A copy of the Determination is attached.

Complainant may request an administrative hearing by filing a PETITION FOR RELIEF within 35 days of the date of this NOTICE OF DETERMINATION: NO CAUSE.

A Petition for Relief form is enclosed with Complainant's notice. It may be beneficial for Complainant to seek legal counsel prior to filing the petition.

If the Complainant fails to request an administrative hearing within 35 days of the date of this notice, the administrative claim under the Florida Civil Rights Act of 1992, Chapter 760, will be dismissed pursuant to section 760.11, Florida Statutes (1992).

13

325 John Knox Road • Suite 240 • Building F • Tallahassee, Florida 32303-4149
(850) 488-7062 • 1-800-342-8170 (Complaints Only, Voice or TDD)
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EXHIBIT

"D"

NOTICE OF DETERMINATION: NO CAUSE
FCHR No. 95-1100
Page Two

FOR THE COMMISSION ON HUMAN RELATIONS

Sharon Mantley
Clerk of the Commission

I HEREBY CERTIFY that a copy of the foregoing Notice of Determination was mailed to the above-named addressees this 3rd day of June, 1999, by U.S. Mail.

By: Sharon Mantley DA

Enclosure: Petition for Relief, in blank (Complainant)



State of Florida
Florida Commission on Human Relations
An Equal Opportunity Employer • Affirmative Action Employer



FCHR No. 951100

Jeb Bush
Governor

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Panama City

Donick Daniel
Executive Director

Complainant

Mr. Eddie L Swinson
 1714 1/2 Westover
 Palatka, FL 32177

Respondent

CDR Systems Corporation
 c/o Mr. Eugene McGrane
 President
 533 N. Nova Road
 Suite 208
 Ormond Beach, FL 32174

NOTICE OF DETERMINATION: NO CAUSE

PLEASE TAKE NOTICE that a Determination has been made on the above-referenced complaint that there is no reasonable cause to believe that an unlawful employment practice has occurred. A copy of the Determination is attached.

Complainant may request an administrative hearing by filing a PETITION FOR RELIEF within 35 days of the date of this NOTICE OF DETERMINATION: NO CAUSE.

A Petition for Relief form is enclosed with Complainant's notice. It may be beneficial for Complainant to seek legal counsel prior to filing the petition.

If the Complainant fails to request an administrative hearing within 35 days of the date of this notice, the administrative claim under the Florida Civil Rights Act of 1992, Chapter 760, will be dismissed pursuant to section 760.11, Florida Statutes (1992).

FOR THE COMMISSION ON HUMAN RELATIONS

Arijuzi Coleman
 Clerk of the Commission

I HEREBY CERTIFY that a copy of the foregoing Notice of Determination was mailed to the above-named addresses this 14th day of September, 2004 by U.S. Mail.

BY: *Arijuzi Coleman* CR

Enclosure: Petition for Relief, in blank (Complainant)

15

325 John Knox Road • Suite 240 • Building F • Tallahassee, Florida 32303-4149
 (850) 488-7032 • 1-800-342-8170 (Complaints Only, Voice or TDD)
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EXHIBIT

"E"



State of Florida
Florida Commission on Human Relations
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Panama City

Derick Daniel
Executive Director

FCHR Case No. 951100

EDDIE SWINSON
1714 1/2 Westover
Palatka, Florida 32177

COMPLAINANT

CDR SYSTEMS CORPORATION
2 Kay Larkin Circle
Palatka, Florida 32177

RESPONDENT

DETERMINATION: NO CAUSE

On January 2, 1996, COMPLAINANT, EDDIE SWINSON, filed a Complaint of Discrimination with the Florida Commission on Human Relations ("Commission"), alleging that RESPONDENT, CDR SYSTEMS CORPORATION, had discriminated against him in violation of the Florida Civil Rights Act of 1992, Sections 509.092, and 760.01-760.11, Florida Statutes. The allegation of discrimination is based on race. The Commission has conducted an investigation of this matter, which shows as follows:

FINDINGS

1. Complainant was employed by Respondent from August of 1990 until February of 1995. Complainant alleges that Respondent terminated him from his supervisory position on February 7, 1995, because of his race (African American). He also alleges that he was treated differently than employees who were not in his protected class. As evidence of disparate treatment, Complainant pointed to an incident which occurred on January 27, 1995, between Complainant and a Hispanic employee. Complainant alleged that the other employee was the aggressor in the verbal and physical altercation, but that only Complainant was sent home following the incident. Additionally, Complainant claimed that he was the only employee layed off, or terminated, when he was released from the company.

16

EXHIBIT

"F"

2. Respondent denied discriminating against Complainant and claimed that he and approximately 11 other employees were laid off due to a business decision to relocate to another state a production function for which Complainant was responsible. Respondent stated that no supervisory position was available for Complainant to transfer into, and that Complainant did not wish to accept a cut in pay or a demotion. Regarding the January 27, 1995, altercation between Complainant and another employee, Respondent stated that Complainant had a history of disciplinary problems with Respondent involving his temper and aggression, and that such behavior was unacceptable for a supervisor. Respondent provided the names of black employees who had complained about Complainant's volatility in the workplace. Respondent stated that Complainant had been counseled by management on numerous occasions regarding this problem. Respondent's management interviewed several witnesses to the altercation for which Complainant was sent home, including 4 black employees. None of the witnesses supported Complainant's version of the events. The interviews confirmed that Complainant was the aggressor in the incident, and that he later issued threats toward the Hispanic employees. One witness claimed to have overheard Complainant threaten to "get his pistol and teach these people a lesson." Respondent stated that the threats and aggression Complainant demonstrated on January 27, 1995, did not play a role in the business decision regarding the layoffs, but that these disciplinary problems hastened Complainant's layoff and rendered him ineligible for re-employment with Respondent.

ANALYSIS

3. The Complaint of Discrimination was filed in a timely manner pursuant to Section 760.11(1), Florida Statutes.

4. The Commission has jurisdiction as the Complaint of Discrimination alleges discrimination based on race, and because Respondent employs more than 15 individuals. Sections 760.01-760.11, Florida Statutes.

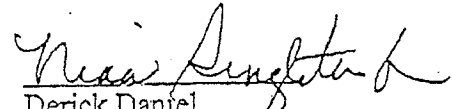
5. The evidence does not support a finding of reasonable cause to believe Complainant was discriminated against by Respondent based on his race. Although Complainant alleged that he was treated differently than those outside of his protected class, Respondent has shown that economics, rather than discrimination, was the reason for the layoffs. Respondent has also demonstrated why Complainant would not be considered for re-hire in light of his hostility, as perceived by his co-workers, regardless of their race or color.

CONCLUSION

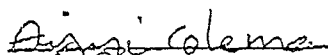
6. The Office of the General Counsel has reviewed the case file and recommends that the proper resolution of the case is the issuance of a determination of no reasonable cause.

Pursuant to the authority delegated to me by Rules 60Y-2.004(2)(e) and 60Y-5.004, Florida Administrative Code, it is my determination that reasonable cause does not exist to believe that an unlawful employment practice has occurred.

Dated September 14 2001


Derrick Daniel
EXECUTIVE DIRECTOR
Florida Commission on Human Relations

Filed: September 14, 2001

By:  LR
Clerk of the Commission

Mailed Date:

10-17-01

Lily

FLORIDA COMMISSION ON HUMAN RELATIONS

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS

01 OCT 19 PM 2:36

Eddie Swinson

PETITIONER

FCHR No. 951100

C.D.R. Systems Corporation

RESPONDENT

PETITION FOR RELIEF

Petitioner files this Petition for Relief from an Unlawful Employment Practice and says:

1. PETITIONER'S NAME, ADDRESS AND TELEPHONE NUMBER ARE AS FOLLOWS:

Name: Eddie L. Swinson

Street or P.O.Box 1714 1/2 Worstover Dr. Palatka

City, State, Zip Palatka FL 32177

Area Code & Phone Number (386) 326-9207

2. RESPONDENT'S NAME, ADDRESS AND TELEPHONE NUMBER ARE AS FOLLOWS:

Name: C.D.R. Systems Corporation

Street or P.O.Box 533 N. Nova Road Suite 208

City, State, Zip Ormond Beach FL 32174 = Palatka CDR.

Area Code & Phone Number ()

19

EXHIBIT

"G"

PETITION FOR RELIEF
Page Two

3. RESPONDENT HAS VIOLATED THE FLORIDA CIVIL RIGHTS ACT OF 1992, AS AMENDED, IN THE MANNER SPECIFICALLY DESCRIBED BELOW:

Employee attacked me - supervisor and said
racial slurs told me and got other employees
(racial) to get me off the crew.

4. THE DISPUTED ISSUES OF MATERIAL FACT, IF ANY, ARE AS LISTED BELOW:

Employee Physically and mentally abused me.
Employee said "You no good M-F-Nigger can't
tell me what to do. "I won't let any stupid
Nigger tell me what to do.

5. THE ULTIMATE FACTS ALLEGED & ENTITLEMENT TO RELIEF ARE AS LISTED BELOW:

Employee went to plant manager and changed
the story about what had happened. We had
a meeting between myself and manager & Hispanic
employees, they didn't want to hear the truth so
they fired me of 6 1/2 years.

WHEREFORE, Petitioner prays that the Florida Commission on Human Relations enter its order prohibiting the unlawful employment practice and granting such affirmative relief as may be just and equitable in this cause.

Edlie Simon
PETITIONER

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

EDDIE L. SWINSON,

Petitioner,

FCHR NO.: 95-1100

vs.

CDR SYSTEMS CORPORATION,

Respondent.

TRANSMITTAL OF PETITION

TO: Sharyn Smith, Chief Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(850) 488-9675

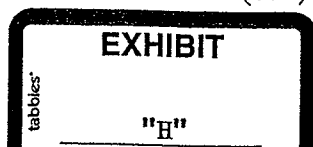
Please be advised that the Florida Commission on Human Relations has received a Petition for Relief from an Unlawful Employment Practice by Eddie L. Swinson. Pursuant to Section 120.57, Florida Statutes and Rule 60Y-4.016(1), Florida Administrative Code, the Commission requests the Division of Administrative Hearings to assign this matter to an administrative law judge and conduct all necessary proceedings required under the law and submit recommended findings to the Commission. Copies of all relevant pleadings and papers heretofore filed in this proceeding are attached to this notice.

CERTIFICATE OF TRANSMITTAL

Transmitted this 31st day of October, 2001, at Tallahassee, Florida.

Violet D. Crawford

Violet D. Crawford
Clerk of the Commission
Florida Commission on Human Relations
325 John Knox Road - Building F
Tallahassee, Florida 32303-4149
(850) 488-7082, extension 1032



Page Two
FCHR No. 95-1100

Attachments: Charge of Discrimination
Notice of Determination
Determination
Petition for Relief

Copies of Transmittal and Attachments furnished to:

Mr. Eddie L. Swinson
504 N. 22nd Street, Apt. C192
Palatka, Florida 32177

CDR Systems Corporation
2 Kay Larkin Circle
Palatka, Florida 32177

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EDDIE L. SWINSON,

Petitioner,

vs.

CDR SYSTEMS CORPORATION,

Respondent.

Case No. 01-4315

ORDER

This cause came before the undersigned on Respondent's Motion to Dismiss filed on December 24, 2001. Having reviewed the file and being otherwise advised in the premises, it is

ORDERED that Respondent's motion is DENIED.

DONE AND ORDERED this 10th day of January, 2002, in Tallahassee, Leon County, Florida.

Don W. Davis

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of January, 2002.

COPIES FURNISHED:

William R. Amlong, Esquire
Amlong & Amlong, P.A.
500 Northeast Fourth Street
Second Floor
Fort Lauderdale, Florida 33301-1154

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
325 John Knox Road
Building F, Suite 240
Tallahassee, Florida 32303-4149

Eddie L. Swinson
1714 1/2 Westover Drive
Palatka, Florida 32177

WILLIAM R AMLONG ESQUIRE
AMLONG & AMLONG PA
500 NE 4TH ST 2ND FL
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