

BUY™

SELL™

SHOP™



Downloaded From
www.TextBookDiscrimination.com



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)



BUY™

SELL™

SHOP™

www.TextBookDiscrimination.com

Get ***Booked Up*** on Justice!

© TBD Corporation. All Rights Reserved.

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

02 APR 19 AM 9:13

DIVISION OF
ADMINISTRATIVE
HEARINGS

SUSAN INDISH-MILITELLO,

EEOC Case No. N/

Petitioner,

FCHR Case No. 95-J843

v.

DOAH Case No. 01-2512

PINELLAS SUNCOAST TRANSIT
AUTHORITY,

FCHR Order No. 02-016

Respondent.

ORDER REMANDING REQUEST FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

This matter is before the Commission for consideration of the Recommended Order of Dismissal issued in the above-styled matter, on January 17, 2002, by Administrative Law Judge Carolyn S. Holifield.

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

Conclusions of Law

The Recommended Order of Dismissal indicates that the cause had come before the Administrative Law Judge on Respondent's "Motion to Dismiss" and that "[b]ased on Respondent's Motion, argument and representations of counsel and Petitioner, and a review of the record of the case and pertinent law" the file of the Division of Administrative Hearings is closed and the matter is returned to the Commission with the recommendation that the Commission issue a final order dismissing the matter. See Recommended Order of Dismissal.

Generally, Respondent's motion notes that the date of the discrimination alleged in this matter is September 8, 1994, that the Commission has not issued a determination in the matter, and that Petitioner filed a Request for Formal Administrative Hearing on May 9, 2001. See Motion.

Respondent's motion argues "the Florida Supreme Court recently held in Joshua v. City of Gainesville, 768 So. 2d 432 (Fla. 2000), that when the Commission fails to make any determination as to reasonable cause within 180 days, a four-year statute of limitations period for

any cause of action applies,” and that, “under Joshua, any subsequent action by the Petitioner was required to be filed within four years of the alleged discrimination, or by September 8, 1998,” thereby making the Request for Formal Administrative Hearing time-barred. Id.

The motion further argues that the matter should be dismissed because the Charge of Discrimination and Amended Charge of Discrimination filed in the matter “are completely devoid of any facts or statements describing the violation sufficient to put the Respondent on notice of the alleged violation or to allow the Respondent to prepare a proper defense.” Id.

The Administrative Law Judge’s Recommended Order of Dismissal contains no findings of fact or conclusions of law to reveal the reasoning as to why the Administrative Law Judge closed the file of the Division of Administrative Hearings. See Recommended Order of Dismissal.

The Florida Civil Rights Act of 1992 (Act) states, “In the event that the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days of the filing of the complaint, an aggrieved person may proceed under subsection (4), as if the commission determined that there was reasonable cause.” Section 760.11(8), Florida Statutes (2001).

The referred to subsection (4) states, “In the event that the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either: (a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or (b) Request an administrative hearing under ss. 120.569 and 120.57.” Section 760.11(4), Florida Statutes (2001).

With regard to civil suits, the Act states, “A civil action brought under this section shall be commenced no later than 1 year after the date of determination of reasonable cause by the commission.” Section 760.11(5) Florida Statutes (2001).

With regard to administrative proceedings, the Act states, “An administrative hearing pursuant to (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission.” Section 760.11(6), Florida Statutes (2001).

In a case such as the instant case, in which no “determination” was issued by the Commission and in which the Commission noted that the request for administrative hearing was filed both more than four years after the filing of the initial complaint, and, obviously then, more than four years after the date of harm, the Commission concluded the request for administrative hearing to be timely filed, despite the Respondent’s argument that Joshua, *supra*, barred the

request for administrative hearing. See Prentice v. North American Realty Corp., d/b/a North American Acquisition Corp., FCHR Order No. 00-021 (FCHR 2000).

In so doing, the Commission panel in Prentice noted, "In interpreting these statute sections a Commission panel stated, '...we conclude that the plain meaning of the cited statutory provisions is that a complainant may request an administrative hearing at any time after the conclusion of the initial 180-day period following the filing of the complaint and no later than 35 days after the date of a determination by the Commission (or simply no later than 35 days after the date of determination, if the Commission's investigation is completed within 180 days of the filing of the complaint).' Wilson v. Scotty's, Inc., FCHR Order No. 98-032 (FCHR 1998)." Prentice, supra.

The Commission panel in Prentice further noted "that Joshua dealt with the time frame for filing a civil action in court, as opposed to the time frame to request an administrative hearing, the issue presented in this case, and conclude that nothing in the Joshua decision requires deviation from the Commission's position set out in Wilson, supra." Id.

With regard to the suggestion that the matter should be dismissed because insufficient facts were set out in the charging documents to notice the Respondent of the alleged violation, it would appear to us that dismissal of the matter prior to providing an opportunity to a pro se Petitioner to correct defects in the filing is severe.

Nevertheless, we cannot discern from the Recommended Order of Dismissal the reasoning of the Administrative Law Judge for recommending that the Commission enter a final order dismissing the matter.

We conclude this matter should be remanded for further proceedings in accordance with the guidance provided in this Order.

Exceptions

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

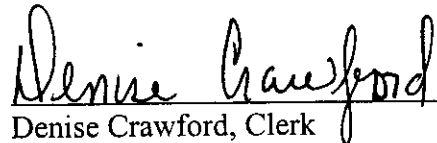
Remand

This matter is hereby REMANDED to the Administrative Law Judge for further proceedings consistent with this Order.

DONE AND ORDERED this 17th day of April, 2002.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson;
Commissioner Juan Montes; and
Commissioner Billy Whitefox Stall

Filed this 17th day of April, 2002,
in Tallahassee, Florida.



Denise Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, suite100
Tallahassee, FL 32303-4149
(850) 488-7082

Copies furnished to:

Susan Indish-Militello
17885 South Highway 475
Summerfield, FL 33491

Elita Cobb, Esq.
Pinellas Suncoast Transit Authority
2650 McCormick Drive, Suite 100
Clearwater, FL 33759

Carolyn S. Holifield, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

BUY™

SELL™

SHOP™



Downloaded From
www.TextBookDiscrimination.com



SELL YOUR OWN SAMPLES

(help others get the justice that they deserve)



BUY™

SELL™

SHOP™

www.TextBookDiscrimination.com

Get ***Booked Up*** on Justice!

© TBD Corporation. All Rights Reserved.