

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MACK WILLIAMS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 98-2539  
 )  
 SHANDS AT ALACHUA GENERAL )  
 HOSPITAL/SANTA FE HEALTH CARE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Upon due notice, this cause came on for formal hearing on September 28, 1998, in Gainesville, Florida, before Ella Jane P. Davis, a duly assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jesse W. Jones, As Qualified Representative  
The Dutton Building, Suite 203  
20 West University Avenue  
Gainesville, Florida 32601

For Respondent: Jennifer M. Monroe, Esquire  
Alley and Alley/Ford  
and Harrison LLP  
Post Office Box 1427  
Tampa, Florida 33601

STATEMENT OF THE ISSUE

Is Shands at Alachua General Hospital/Santa Fe Health Care guilty of a discriminatory employment practice against Petitioner?

PRELIMINARY STATEMENT

On May 29, 1998, the Florida Commission on Human Relations (FCHR) transmitted a May 29, 1998, "Notice of Transmittal," an April 22, 1998, "Determination of No Cause," an October 25, 1993, "Charge of Discrimination" by Petitioner against "Mid-American Food Services of Florida," and a May 22, 1998, "Petition for Relief" by Petitioner against "Shands at Alachua General Hospital/Santa Fe Health Care," to the Division of Administrative Hearings (DOAH).

On June 26, 1998, the undersigned mailed a Notice of Hearing, scheduling the disputed fact hearing before DOAH for September 28, 1998.

On or about August 12, 1998, Shands at Alachua General Hospital filed a Motion to Dismiss, based upon grounds that it was a successor in interest but not a successor of liability for Petitioner's charge. No timely response was filed by Petitioner.

An order was entered September 17, 1998, notifying the parties that the only efficient way to determine the Motion to Dismiss was an "in person" hearing during which the parties and the undersigned might simultaneously view the same documents and during which testimony on the issues raised in the motion might be heard and that the motion would be considered at the commencement of the scheduled formal hearing on the merits.

On September 24, 1998, FCHR's General Counsel forwarded to DOAH Petitioner's "Charge of Discrimination" dated February 16, 1996, which she represented should have accompanied Petitioner's

May 22, 1998, "Petition for Relief" and FCHR's "Notice of Transmittal" dated May 29, 1998. I have taken official recognition of this letter and attachment.

Prior to commencing the motion hearing, Jesse W. Jones was examined on the record and accepted as Petitioner's Qualified Representative for purposes of this case only.

Therefore, all procedural aspects of the case(s) were considered, various stipulations were entered into by the parties, and oral rulings were made. Because these procedural aspects affect jurisdiction of this case and the merits of one or more of Petitioner's sequential Charges of Discrimination, and because no transcript was provided, these matters will be covered in the following Findings of Fact and Conclusions of Law.

Petitioner presented the oral testimony of Turner Johnson, Jr., Turner Johnson, Sr., and Naomi Hall. Petitioner testified on his own behalf and had nineteen exhibits admitted.

Respondent presented the oral testimony of Constance Schott.

Respondent's Proposed Recommended Order was filed October 26, 1998. Petitioner's Proposed Recommended Order was filed November 4, 1998. By agreement of the parties, both submittals have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner is a black male. His birth date is March 1,

1933. At various times, he has filed three Charges of Discrimination with FCHR.

2. The entity named in the May 22, 1998, Petition for Relief is "Shands at Alachua General Hospital/Santa Fe Health Care." "Shands at Alachua General Hospital" is the only entity which timely received FCHR's May 29, 1998, Notice of Transmittal. It also is the only entity which has appeared in this proceeding as a potential Respondent or for formal hearing herein.

3. It was stipulated that in 1992, Petitioner filed a Charge of Discrimination with FCHR. Neither party hereto has a copy of that charge. To the best of Petitioner's recollection, his 1992 Charge of Discrimination was made against "Alachua General Hospital" for refusing to hire him and no charge was made at that time against "Shands at Alachua General Hospital." Apparently, that Charge was lost within FCHR. That Charge has never been before the undersigned, and I find as a matter of fact and law that it cannot be considered herein.<sup>1</sup>

4. On October 25, 1993, Petitioner filed a second Charge of Discrimination with FCHR. This was the Charge transmitted to DOAH on May 29, 1998, together with a May 22, 1998, Petition for Relief, and which gave rise to the instant proceeding. By this 1993 Charge, Petitioner had alleged discrimination against himself by Mid-American Food Services of Florida. The 1993 Charge also alleged that the last act of discrimination by Mid-American had occurred on February 28, 1991. Petitioner

stipulated that FCHR never made any determination of "cause" or "no cause" against Mid-American because his 1993 Charge was settled and he received money damages for Mid-American as a result of the settlement. Accordingly, it would appear that the October 25, 1993, Charge has never been before the undersigned, and I find as a matter of fact and law that it cannot be considered herein.

5. On February 16, 1996, Petitioner filed a third Charge of Discrimination against "Santa Fe Health Care" on the basis of race. That Charge alleged that the most recent discrimination had occurred on August 3, 1995. The parties stipulated this February 16, 1996, Charge was the charge which underlay the FCHR's April 22, 1998, "Determination of No Cause" and the May 22, 1998, "Petition for Relief" which FCHR had transmitted to DOAH to initiate the instant proceeding on or about May 29, 1998.<sup>2</sup> Upon the foregoing stipulation and a September 24, 1998, letter of the FCHR General Counsel, declaring that the February 16, 1996, Charge of Discrimination should have accompanied the FCHR's May 29, 1998, Notice of Transmittal (see supra), I find that this instant proceeding is bounded by these documents.

6. The May 22, 1998, "Petition for Relief" added the words "age 60" in an attempt to add age discrimination to the previous sole allegation of racial discrimination contained in the

February 16, 1996, Charge. It also named a new Respondent, "Shands at Alachua General Hospital/Santa Fe Health Care," in place of "Santa Fe Health Care," which had been the sole employer named by Petitioner in his February 16, 1996, Charge. Apparently the "new" Respondent's name was derived from the April 22, 1998, "Determination No Cause" entered by FCHR. FCHR mailed the April 22, 1998, "Determination No Cause" and the May 22, 1998, "Petition for Relief" to "Shands at Alachua General Hospital/Santa Fe Health Care, 801 Southwest 2nd Avenue, Gainesville, Florida 32602."

7. After the foregoing pleadings were clarified, Petitioner and Shands at Alachua General Hospital opposed any remand to FCHR for reconciliation of documents or so that FCHR could provide notice to other appropriate legal persons of the pending case. These parties stipulated that they were prepared to proceed to formal hearing on the merits of the issues as framed by the February 16, 1996, Charge, April 22, 1998, Determination of No Cause, and May 22, 1998, Petition for Relief, even if it required a second FCHR notice and another evidentiary hearing as to other entities.

8. These parties stipulated that on February 16, 1996, after sale of Alachua General Hospital to Shands, Petitioner filed his Charge of Discrimination against "Santa Fe Health Care," not Shands. The first notice received by Shands regarding

Petitioner's allegations and Charge of Discrimination was almost a year later on January 23, 1997, when FCHR mailed its Notice of Charge to Shands. So far as can be determined on this record, no other Notice of Charge was sent to any entity.

9. The parties stipulated that Petitioner never applied for employment with Shands and that he is not alleging herein that he applied for employment with Alachua General Hospital during any period of time when Alachua General Hospital was owned and operated by Shands.<sup>3</sup>

10. The parties stipulated that Shands did not own Alachua General Hospital prior to 1996; that Shands purchased Alachua General Hospital in an asset sale with no stock exchanged in the transaction or merger of the two companies; that after the sale, there was no overlap of officers or directors of the predecessor and successor corporations; and that after the sale, there was no overlay in labor relations functions.

11. The parties stipulated that four to five years before the purchase of Alachua General Hospital by Shands, Petitioner was employed by Mid-America Food Service, which entity had obtained a contract to provide meals for congregate meal sites and home delivered meal clients -- "Meals On Wheels."

12. The parties stipulated that in 1992, approximately one year after obtaining the meal contract, the contract was put out for bid and Alachua General Hospital was the new successful bidder.

13. The parties stipulated that from 1992 until the present, Petitioner was aware of how to apply for employment with Alachua General Hospital.

14. The only cognizable pleadings herein assert that in 1992, Petitioner had applied for positions at Alachua General Hospital on several occasions but was denied employment based on his race and/or age.

15. The parties stipulated that on April 22, 1998, FCHR determined that there was no reasonable cause to believe that Shands had violated the Florida Civil Rights Act of 1964, and dismissed Petitioner's complaint [sic] of discrimination. (See the April 22, 1998, "Determination No Cause.")

16. Evidence and testimony at formal hearing support a finding that Petitioner was employed by Mid-America as a chef-manager from approximately 1986 to 1992. From 1991 to 1992, Mid-America had the Meals On Wheels contract.

17. Evidence and testimony at formal hearing support a finding that after Mid-America lost the Meals On Wheels contract to Alachua General Hospital in 1992, Petitioner continued to work for Mid-America until the original contract expired. During this period, he was approached by Alachua General Hospital personnel who observed his Meals On Wheels procedures and asked him to teach his procedures to their staff.

18. Evidence and testimony at formal hearing support a finding that during this period, Petitioner was aware that



Alachua General Hospital was an entity which provided health care, while Santa Fe Health Care was the hospital's food service arm. There is no clear evidence that Santa Fe Health Care was ever a corporate entity in its own right.

19. Petitioner conceded that no one from either Alachua General Hospital or Santa Fe Health Care promised Petitioner a job under the new Meals On Wheels contract or otherwise, but Beth Britt, a contact person between Mid-America and Alachua General Hospital/Santa Fe Health Care, insinuated that Petitioner would get a job when the contract changed over and food preparation was done out of a different building.

20. In anticipation of getting a job with the new contract provider, Petitioner had remained on the job for nine months, holding his staff together. Three black co-workers (two male and one female) testified that they had been made no promises of future employment by Shands, Alachua General Hospital, or Santa Fe Health Care. Naomi Hall (female) testified that she had heard Petitioner say that he had been promised employment. Ms. Hall stayed on because Mid-America had offered her a percentage of the company. She only hoped to be offered a job with the new contract provider, Alachua General Hospital.

21. At the changeover of the contract, the new contract provider did not offer a job to any witness or to Petitioner.

22. Immediately after the changeover, Petitioner instructed the new providers' personnel what to do. A secretary told

Petitioner that Mr. Hope with Alachua General Hospital would get in touch with him. At that time, Petitioner did not know of any positions open at Alachua General Hospital or Santa Fe Health Care.

23. Petitioner applied to Miss Van Harrin for jobs at Alachua General Hospital three times: March 4, 1992; April 4, 1992; and approximately April 25, 1992 or mid-May. Because he had been chef-manager, Petitioner felt he was overqualified for all three jobs for which he applied.

24. Petitioner thought some females, ages 25-30 were hired by Alachua General Hospital/Santa Fe Health Care during this period in 1992. He did not testify as to their race, and he did not know if they were hired for the same jobs for which he had applied. He only knew that he did not see them on the premises when he applied but did not see them later. Petitioner conceded that Alachua General Hospital hires blacks.

25. Petitioner was never hired. Petitioner felt he was discriminated against because he had to fill out so many applications; because he was not summoned back to work as a chef-manager; and because he was not hired for other positions when he applied.

26. Constance Schott has been employed in the Human Resources Department of Alachua General Hospital, since February 1, 1996. The building complex/physical plant has been at 801 Southwest 2nd Avenue, Gainesville, Florida, for twenty

years, but it was purchased as an asset by Shands in February 1996, after a 90-day "due diligence" process, during which the prior owners (apparently a conglomerate nicknamed "Av-Med"), did not disclose to Shands any of Petitioner's Charges of Discrimination.

27. Respondent has argued, but failed to show, exactly who or what entity owned Alachua General Hospital/Santa Fe Health Care in 1992.

28. Ms. Schott first became aware of Petitioner's complaints in January 1997, when FCHR notified her of the February 16, 1996, Charge (See Finding of Fact 8). At that time, she informed FCHR that Shands did not own or operate Alachua General Hospital in 1992 and that Santa Fe Health Care was essentially non-existent.

29. There is no reason to assume, on the basis of this record, that FCHR ever investigated Petitioner's charge of age discrimination, formulated any proposed final agency action on the claim of age discrimination, or notified Av-Med of any charges against it.

#### CONCLUSIONS OF LAW

30. This case arises as a disputed fact case pursuant to Section 120.57(1), Florida Statutes, [1997], and is brought pursuant to Chapter 760, Florida Statutes. Nuances of jurisdiction are discussed, *infra*.

31. As a matter of fact and law, Petitioner's lost 1992 Charge of Discrimination, whoever it named as "employer," is not before me. FCHR still has jurisdiction of that case.

32. As a matter of fact and law, Petitioner's October 25, 1993, Charge of Discrimination against Mid-American Food Services of Florida for alleged discriminatory acts up to February 28, 1991, is not before me, and FCHR should clarify that a settlement has been achieved.

33. Petitioner and "Shands at Alachua General Hospital" opposed any remand to FCHR for reconciliation of documents or so that FCHR could provide a Notice of Determination and Notice of Transmittal to any other appropriate legal persons in the pending case, and both parties stipulated that they were prepared to proceed to formal hearing on the merits of the issues as framed by the February 16, 1996 Charge, April 22, 1998, Determination of No Cause, and May 22, 1998 Petition for Relief, even if this procedure required new notices by the FCHR and a second evidentiary hearing before DOAH for other legal entities.

34. This stipulation does not absolve FCHR of noticing the correct employer, whoever it may be. See Henry v. Texas Technological University, 446 F. Supp. 141 (U.S.N.D. of Texas 1979) It likewise does not empower the undersigned to accomplish what the Petitioner prayed for in his post-hearing proposal, which is to "request FCHR submit a timely investigation upon the rightful violator of Title VII in this action; And to request

that the respondent prove that individuals of one sex, national origin, or religion could perform the duties of the positions applied in a safe and efficient manner and that the essence of the business would be undermined by hiring exclusively members of a given class"<sup>4</sup>

35. This cause is limited by the February 16, 1996, Charge of Discrimination against "Santa Fe Health Care" on the sole basis of race, the last alleged discrimination occurring on August 3, 1995. The April 22, 1998, Determination of No Cause naming "Shands at Alachua General Hospital/Santa Fe Health Care" constitutes FCHR's proposed final agency action on the charge of racial discrimination. The portion of the May 22, 1998, Petition for Relief which attempts to add a charge of age discrimination must be struck and cannot be considered. See Luke v. Pic 'N' Save Drug Company, Inc., Division of Administrative Hearings Case No: 94-0294 (Recommended Order of 8/25/94; Final Order of 11/30/95); Austin v. Florida Power Corp., Division of Administrative Hearings Case No: 90-5137 (Recommended Order of 6/20/91; Final Order of 10/24/91, filed 10/30/91). Therefore, the instant case only concerns the issue of racial discrimination, not age discrimination.<sup>5</sup>

36. Regardless of whom it was posed against, Petitioner's February 16, 1996, Charge of racial discrimination, which alleged that the last act of discrimination occurred on August 3, 1995, presents a statute of limitations problem. At formal hearing,

Petitioner did not even attempt to prove any discriminatory act occurring on or about August 3, 1995. All his "evidence" for the racial discrimination Charge filed February 16, 1996, relates back to late April or mid-May, 1992. This time frame would suggest that his February 16, 1996 Charge was not timely filed within 365 days of the last discriminatory act. See Section 760.11(1), Florida Statutes.<sup>6</sup> However, be that as it may, the undersigned will treat this problem as a "failure of proof," rather than an absolute statutory bar.

37. Under the facts as found, Petitioner never sought employment from Shands at Alachua General Hospital. He sought it from Alachua General Hospital and/or Santa Fe Health Care. Certainly, Shands never had a fair opportunity for any defense, because it was not notified of any charge against it or its predecessors in interest until three to six years after any allegations were made.<sup>7</sup> Indeed, due to repeated FCHR "snafus," DOAH would not even have had jurisdiction of Shands, but for both parties voluntarily offering to try this case on the merits after its procedural history was unraveled in the course of the hearing on the motion to dismiss. However, upon that stipulation, I conclude that I have jurisdiction to resolve the issues between Petitioner and Shands at Alachua General Hospital. Likewise, to the degree that Shands at Alachua General Hospital may have any succession in interest or liability for Alachua General Hospital or Santa Fe Health Care as the food service arm of the old

Alachua General Hospital, those issues also may be addressed here. However, this conclusion does not absolve FCHR of determining and noticing Av-Med or any other remnants of Alachua General Hospital or Santa Fe Health Care, if it finds they exist. See Henry v. Texas Technological University, supra.

38. Petitioner has failed to carry his burden of proof. In order to prove a prima facie case of racial discrimination, Petitioner must prove that (1) he is a member of a protected class; (2) he was qualified for and applied for employment with Respondent; (3) he was rejected; (4) a member of a non-protected class was hired for the position for which he applied.

39. Petitioner established that in 1992 he was a member of a protected group -- black. In that year, he applied for jobs for which he was qualified. He did not know if others were hired for those same jobs, but he did know that blacks were regularly hired by Alachua General Hospital/Santa Fe Health Care. Petitioner failed to prove a prima facie case of discrimination on the basis of race.

#### RECOMMENDATION

Upon the foregoing findings of fact and conclusions of law, it is

#### RECOMMENDED:

1. That the Florida Commission on Human Relations make a diligent search to determine if it has ever received a 1992 Charge of Discrimination from Petitioner and advise him and any

named employer(s) of its status.

2. That the Florida Commission on Human Relations enter a Final Order which recognizes Petitioner's stipulation herein that he has settled his October 25, 1993, Charge of Discrimination against Mid-American Foods and dismisses that charge.

3. That the Florida Commission on Human Relations enter a second Final Order that dismisses Petitioner's May 22, 1998, Petition for Relief against Shands at Alachua General Hospital, and bars any claims or charges Petitioner has alleged against Shands at Alachua General Hospital before August 3, 1995 (the last alleged date of discrimination); and that in the same Final Order, the Commission determine whether any prior employer remnants (be they Alachua General Hospital, Santa Fe Health Care, or Av-Med), should be investigated or given an opportunity to be heard with regard to any charges or claims arising out of Petitioner's February 16, 1996, Charge of Discrimination.

DONE AND ENTERED this 8th day of January, 1999, in Tallahassee, Leon County, Florida.

---

ELLA JANE P. 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](http://www.doah.state.fl.us)

Filed with the Clerk of the



Division of Administrative Hearings  
this 8th day of January, 1999.

## ENDNOTES

<sup>1/</sup> It is noted that Petitioner's Proposed Recommended Order claims for the first time, and contrary to certain oral stipulations, that the February 16, 1996, Charge of Discrimination was merely a means of trying to get FCHR to activate or resurrect the 1992 Charge. The evidence shows Petitioner did repeatedly ask FCHR to act on the 1992 Charge.

<sup>2/</sup> See endnote 1

<sup>3/</sup> See endnote 1

<sup>4/</sup> This language seems to track case law permitting the exclusive hiring of co-religionists or minorities, but the post-hearing submittal is the first time Petitioner even mentioned national origin or religion. Certainly, no evidence was presented on these issues.

<sup>5/</sup> Assuming, arguendo that discrimination as to age could be considered, Petitioner could not prevail because he failed to prove a prima facie case of age discrimination, in that he did not prove that any younger person was hired for the same position(s) for which he had applied.

<sup>6/</sup> See endnote 1

<sup>7/</sup> Shands, which purchased Alachua General Hospital's and presumably, Santa Fe Health Care's assets four years after any failure to hire occurred, has asserted that it should not be held liable for the actions of Alachua General Hospital's prior owner because a complainant may be barred from holding liable and seeking damages against, a successor corporation if the predecessor corporation is fully able to provide relief, Weaver v. Casa Gallardo, Inc., 922 So. 2d 1515 (11th Cir. 1991), and because a successor corporation may not be held liable for alleged discriminatory acts of its predecessor where, in an asset sale such as here, (a) the successor had no notice of the claim prior to the sale; (b) the predecessor was able to provide relief for the claim; and (c) there has been no continuity of business operations of the predecessor and successor corporations, Wheeler v. Snyder Buick, Inc., 794 F. 2d 1228, 1236 (7th Cir. 1986). Unfortunately, upon this record, there is no way the undersigned can determine whether any predecessor in interest (the most recent, in 1996, probably being Av-Med) was fully able to provide relief. FCHR's failure to notify has precluded Av-Med's opportunity to participate in this proceeding at any level, and the other predecessor entities apparently no longer exist. Therefore, the Motion to Dismiss could not be granted upon the case law asserted.



COPIES FURNISHED:

Jesse W. Jones,  
The Dutton Building, Suite 203  
20 West University Avenue  
Gainesville, Florida 32601

Jennifer M. Monroe, Esquire  
Alley and Alley/Ford  
and Harrison LLP  
Post Office Box 1427  
Tampa, Florida 33601

Mack C. Williams  
Post Office Box 306  
Gainesville, Florida 32602

Brenda Hyatt, Chief  
Department of Agriculture  
and Consumer Services  
508 Mayo Building  
Tallahassee, Florida 32399-0800

Sharon Moultry, Clerk  
Human Relations Commission  
Building F, Suite 240  
325 John Knox Road  
Tallahassee, Florida 32303-4149

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.