

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHAROLETTE JONES,)
)
 Petitioner,)
)
 vs.) Case No. 05-3279
)
 AKAL SECURITY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER OF DISMISSAL

On November 1 2005, AKAL Security filed a Motion to Dismiss the Petition for Lack of Subject Matter Jurisdiction or for Summary Final Order, together with three exhibits, which included one affidavit. The undersigned has authority only to make a recommendation to the Florida Commission on Human Relations (FCHR) and, therefore, the motion is considered a motion for a recommended order of dismissal.

APPEARANCES

For Petitioner: Charolette Jones, pro se
444 East Mowry Drive, Apartment 7
Homestead, Florida 33030

For Respondent: Aaron Reed, Esquire
Littler Mendelson, P.C.
2 South Biscayne Boulevard, Suite 1500
Miami, Florida 33131

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent discriminated against Petitioner on the basis of gender, marital status, and retaliation in violation of the Florida Civil Rights Act of 1992, as amended.

PRELIMINARY STATEMENT

Charolette Jones filed a complaint with the FCHR charging AKAL Security with discrimination on the basis of gender, marital status, and retaliation in violation of the Florida Civil Rights Act of 1992, as amended. On September 12, 2005, this matter was referred to the Division of Administrative Hearings.

This matter was scheduled for hearing to be held on November 15, 2005. AKAL Security requested a continuance and concurrently filed a Motion to Dismiss the Petition for Lack of Subject Matter Jurisdiction or for Summary Final Order, together with three exhibits, which included one affidavit. AKAL Security was unable to contact Ms. Jones and, therefore, could not represent her position on the pleading. By Order dated November 4, 2005, the hearing was continued, the case was placed in abeyance, and the parties were directed to file a status of this matter no later than December 30, 2005. Further by separate Order dated November 4, 2005, Ms. Jones was provided an

opportunity to respond, by December 7, 2005, to AKAL Security's motion. No response was filed by Ms. Jones.

On December 29, 2005, AKAL Security filed a status report indicating, among other things, that Ms. Jones represented that she had received the motion and the undersigned's order, providing her an opportunity to respond to the motion; and that it had informed Ms. Jones that AKAL Security was filing the status report and that she could file her own status report. AKAL Security's status report indicated a different address for Ms. Jones in the Certificate of Service than the address of record. On February 8, 2006, a Stipulation for Substitution of Counsel was filed by AKAL Security. The Stipulation also indicated the same address, as the status report, for Ms. Jones.

On June 22, 2006, AKAL Security's new counsel filed a Notice of Petitioner's Failure to File a Response to Respondent's Motion to Dismiss and Request for Ruling. On June 26, 2006, Ms. Jones filed a letter indicating that, in August 2005 she had moved to another apartment, indicating her new address, and, therefore, had never received the order providing her an opportunity to respond to the motion; and that she wanted a continuance of this matter and wanted this matter to proceed to a hearing. The Notice indicated Ms. Jones' address of record in the Certificate of Service, not her new address, even though the Stipulation and status report indicated

her new address. On June 27, 2006, the undersigned issued a Notice of Ex-Parte Communication because it did not appear that Ms. Jones had forwarded a copy of her letter to AKAL Security.

By Order dated July 7, 2006, Ms. Jones was provided an opportunity to respond to AKAL Security's motion to dismiss, with the Order being forwarded to her new address. She was directed to file her response no later than July 31, 2006 and advised that her failure to respond, as directed, would result in the undersigned issuing a ruling on the motion without further notice. Ms. Jones filed a response on July 31, 2006, requesting a continuance of this matter, indicating that she is at "no time . . . willing to dismiss . . . dispute," and not directly addressing the argument of the motion to dismiss. The undersigned is not persuaded that this matter should be delayed with a continuance.

AKAL Security's Motion to Dismiss the Petition for Lack of Subject Matter Jurisdiction or For Summary Final Order is considered a motion for a recommended order of dismissal. AKAL Security seeks dismissal of this matter on the basis that it contracts to perform work at a federal enclave, that all of Ms. Jones duties were performed on federal property, and that, therefore, subject matter of jurisdiction does not exist to hear Ms. Jones' claim.

Based on past experience with the FCHR, the undersigned perceives that the FCHR would prefer to have a hearing conducted on all issues in order to render a final order on the evidence presented at a hearing even if a recommendation for dismissal is involved. Even considering the undersigned's perception of the FCHR's preference, to conduct a hearing and, subsequently, determine that subject matter jurisdiction does not exist would be a waste of the resources of all concerned and would not be economically prudent. Hence, the undersigned will address the motion for a recommended order of dismissal. The record in this matter is considered in resolving this motion.

A basic tenant of the law is that in addressing motions to dismiss, allegations of the complaint must be accepted as true and in the light most favorable to the Complainant. Fox v. Professional Wrecker Operators of Florida, Inc., 801 So. 2d 175, 178 (Fla. 5th DCA 2001); City of Gainesville v. State Department of Transportation, 778 So. 2d 519, 522 (Fla. 1st DCA 2001).

FINDINGS OF FACT

1. On April 11, 2005, Ms. Jones filed a complaint of discrimination against AKAL Security with the FCHR alleging that AKAL Security discriminated against her on the basis of sex (gender--female),¹ marital status (single),¹ and retaliation in violation of the Florida Civil Rights Act of 1992, as amended.

2. On August 8, 2005, the FCHR issued a DETERMINATION: NO JURISDICTION (FEDERAL ENCLAVE). In the Determination, the FCHR provides, in pertinent part, that AKAL Security contracts with the federal government and all of the services performed by AKAL Security are on a federal enclave subject to the exclusive jurisdiction of the U.S. Government. Further, the FCHR provided, in pertinent part, that the discrimination complained of occurred at Krome where state anti-discrimination laws are not applicable to employees of private contractors on federal enclaves.

3. Also, on August 8, 2005, the FCHR issued a NOTICE OF DETERMINATION: NO JURISDICTION. The Notice reiterated that the FCHR lacked jurisdiction.

4. Ms. Jones filed a Petition for Relief with the FCHR on September 2, 2005.

5. On November 1 2005, AKAL Security filed a Motion to Dismiss the Petition for Lack of Subject Matter Jurisdiction or for Summary Final Order, together with three exhibits, which included one affidavit.

6. The affidavit provided with the motion to dismiss was provided by Jonathan Rhodes, the Human Resources Office [sic] for AKAL Security. Mr. Rhodes states in his affidavit that AKAL Security contracts with the U.S. Department of Homeland Security Immigration and Customs Enforcement (ICE) to provide security

services to the Krome Servicing Processing Center (Krome), located at 18201 Southwest 12th Street, Miami, Florida. Further, he states that ICE is an agency of the U.S. Department of Justice. As to Ms. Jones' position, Mr. Rhodes states that she was a Custody Officer for AKAL Security at Krome and all of her duties were performed on federal property.

7. Nothing in the record, including AKAL Security's motion, indicates that Congress clearly authorized the Florida Civil Rights Act of 1992 to be applicable to Krome.

CONCLUSIONS OF LAW

8. "When the federal government acquires title to state land with the consent of the state legislature, Congress acquires exclusive power to legislate in respect thereto." (citations omitted) Miller v. Wackenhut Services, Inc., 808 F. Supp. 697, 699 (W.D. Mo. 1992). "Such places are 'federal enclaves' within which the United States has exclusive jurisdiction." (footnote omitted) Akin v. Ashland Chemical Co., 156 F.3d 1030, 1034 (10th Cir. 1998). "A federal enclave is territory which has been transferred by a state through cession or consent to the United States and over which the federal government has acquired exclusive jurisdiction." (citation omitted) Osburn v. Morrison Knudsen Corporation, 962 F. Supp. 1206, 1208 (E.D. Mo. 1997). A "federally owned facility performing a federal function is shielded from direct

state regulation, even though the federal function is carried out by a private contractor unless Congress clearly authorizes such regulation." Goodyear Atomic Corporation v. Miller, 486 U.S. 174, 181, 108 S. Ct. 1704, 1710, 100 L. Ed. 2d. 158, 169 (1988). As a result, Florida does not have the "power to legislate over 'federal enclaves which' are to [Florida] as the territory of one of her sister states or a foreign land." (citation omitted) Lord v. Local Union No. 2088, IBEW, 646 F.2d 1057, 1062 (5th Cir. 1981).

9. Ms. Jones alleges that the discriminatory conduct occurred at AKAL Security's worksite, which is located at Krome. On federal enclaves, state anti-discrimination laws are not applicable to activities in federal enclaves and, therefore, not applicable to employees of private contractors. See Kelly v. Lockheed Martin Services Group, 25 F. Supp. 2d 1, 5 (D.P.R. 1998) ("No such [Congressional] statute has been passed to permit state antidiscrimination statutes to be enforced on federal enclaves.") ("Congress has made no . . . adoption [specifically making state laws applicable on federal enclaves] with regard to local tort or discrimination laws."); Miller, supra at 699-700. "[A]n authorization of state regulation is found only when and to the extent there is a clear congressional mandate, specific congressional action that makes this

authorization of state regulation clear and unambiguous."

(citation omitted) Miller, supra, at 700.

10. In the instant matter, Krome is a federal enclave. AKAL Securities contracts with Krome. Ms. Jones performed all of her duties at Krome. No congressional mandate authorized Florida's anti-discrimination laws to be applicable and enforceable at the federal enclave, Krome.

11. The FCHR fails to have subject matter jurisdiction over this matter and, therefore, the Division of Administrative Hearings lacks subject matter of jurisdiction over this matter.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the complaint of discrimination filed by Charolette Jones against AKAL Security for lack of subject matter jurisdiction.

DONE AND ENTERED this 2nd day of August, 2006, in
Tallahassee, Leon County, Florida.

Errol H. Powell

ERROL H. POWELL
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 2nd day of August, 2006.

ENDNOTE

^{1/} Sex was FCHR's category of discrimination used on the
complaint.

COPIES FURNISHED:

Charolette Jones
444 East Mowry Drive, Apartment 7
Homestead, Florida 33030

Aaron Reed, Esquire
Littler Mendelson, P.C.
2 South Biscayne Boulevard, Suite 1500
Miami, Florida 33131

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

Cecil Howard, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway
Suite 100
Tallahassee, Florida 32301

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.