

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED  
2009 JAN 13 A 10:50  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

SUSIE M. WALTON BANKS,

EEOC Case No. 15D200800405

Petitioner,

FCHR Case No. 2008-01161

v.

DOAH Case No. 08-4878

DEPARTMENT OF CORRECTIONS,

FCHR Order No. 09-003

Respondent.

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

This matter is before the Commission for consideration of the Recommended Order of Dismissal, dated October 30, 2008, issued in the above-styled matter by Administrative Law Judge T. Kent Wetherell, II.

**Findings of Fact and Conclusions of Law**

The matter was before the Administrative Law Judge on Respondent's motion to dismiss. The motion argued that the matter should be dismissed because no employment relationship existed between Petitioner and Respondent. Judge Wetherell issued an Order to Show Cause directing Petitioner to address this issue, but Petitioner's subsequent filing did not allege any facts that might establish that Respondent was Petitioner's employer. Judge Wetherell concluded that because the pleadings do not raise any disputed issues of material fact as to whether Respondent was Petitioner's employer, it was appropriate to relinquish jurisdiction to the Commission for entry of a final order.

We agree that the record of this case reflects that relinquishment of jurisdiction to the Commission is appropriate. Accord, Newton v. Pensacola Glass Company, FCHR Order No. 05-001 (January 31, 2005) in which upon Petitioner's failure to respond to Requests for Admission the matters contained therein were deemed admitted, there were no disputed issues of material fact remaining to be litigated, and the Administrative Law Judge consequently relinquished jurisdiction of the matter to the Commission.

Further, we adopt the Administrative Law Judge's findings of fact and conclusions of law which lead to the determination that it has not been established that Respondent was Petitioner's employer, and that, therefore, the discrimination claim brought against Respondent by Petitioner should be dismissed. Accord, Huth v. National Admark Corporation, 23 F.A.L.R. 4075 (FCHR 2001) in which a Commission panel adopted conclusions of law indicating that the matter should be dismissed because "[a]bsent a showing that she was an applicant for employment or that she

became an employee, the Petitioner lacks a statutory basis for seeking relief from an unlawful employment practice.”

Exceptions

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

Dismissal

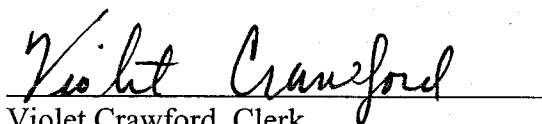
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 of appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 12<sup>th</sup> day of January, 2009.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;  
Commissioner Anice R. Prosser; and  
Commissioner Billy Whitefox Stall

Filed this 12<sup>th</sup> day of January, 2009,  
in Tallahassee, Florida.



Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 200  
Tallahassee, FL 32301  
(850) 488-7082

NOTICE TO COMPLAINANT / PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request EEOC to review this Commission’s final agency action. To secure a “substantial weight review” by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131.

Copies furnished to:

Susie M. Walton Banks  
2503 Northeast 10<sup>th</sup> Terrace  
Gainesville, FL 32609

Department of Corrections  
c/o Mark Henderson, Esq.  
Assistant General Counsel  
2601 Blair Stone Road  
Tallahassee, FL 32399-2500

T. Kent Wetherell, II, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 12<sup>th</sup> day of January, 2009.

By: *Krist Crawford*  
Clerk of the Commission  
Florida Commission on Human Relations