

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JESSICA MILES, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 10-8308  
 )  
 MACFARLANE, FERGUSON AND )  
 MCMULLEN, P.A., )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER OF DISMISSAL

This cause came on for consideration without an evidentiary hearing for the reasons set out below.

STATEMENT OF THE ISSUE

Whether this cause is barred by a release of all claims.

PRELIMINARY STATEMENT

On February 5, 2010, Petitioner, Jessica Miles ("Petitioner"), filed an Employment Complaint of Discrimination with the Florida Commission on Human Relations ("FCHR") alleging that Respondent, MacFarlane, Ferguson and McMullen, P.A. ("Respondent"), discriminated against Petitioner due to her gender and her pregnancy, in violation of the Florida Civil Rights Act of 1992, Sections 760.01 through 760.11, Florida Statutes (2008).

On July 27, 2010, the FCHR determined that there was no reasonable cause to believe that it had jurisdiction because the complainant had signed a general release. The FCHR's Notice of Determination was sent to Petitioner with a point of entry to request an administrative hearing by filing a Petition for Relief ("Petition") with the FCHR within 35 days of the date of the Notice of Determination.

On August 19, 2010, Petitioner timely filed a Petition with the FCHR. On August 25, 2010, the FCHR forwarded the Petition to the Division of Administrative Hearings for the assignment of an administrative law judge to conduct all necessary proceedings and submit a recommended order to the FCHR.

In response to an initial order by the undersigned regarding scheduling the final hearing, the parties separately indicated that only a short hearing would be necessary, because the sole issue presented was whether Petitioner's general release of claims constituted a bar to the FCHR's jurisdiction and to administrative proceedings on Petitioner's Petition.

On September 21, 2010, the undersigned issued an Order to Show Cause stating that the parties appear to be in agreement, that there are no disputed issues of material fact, and that the sole issue presented was a legal question regarding jurisdiction. The parties were each given an opportunity to respond, to address whether any disputed issues of material fact

had been raised for resolution in an evidentiary hearing, and, if not, to address whether a recommended order of dismissal should be entered based on the lack of jurisdiction as a matter of law.

The parties each timely filed their legal arguments on jurisdiction. Neither party disputed the suggestion that no disputed issues of material fact had been raised for resolution in an evidentiary hearing. Accordingly, a telephonic hearing was scheduled and held on November 9, 2010, for argument on the legal question presented.

#### UNDISPUTED FACTS

1. Petitioner admits that she signed a severance agreement with Respondent, which included a release of claims against Respondent.

2. Petitioner's Petition does not allege any disputed issues of material fact. For example, the Petition does not contend that Petitioner was not acting knowingly or voluntarily when she executed a release of claims.

3. Instead, the Petition asserts that the FCHR is not bound by Petitioner's release of claims. That is the only basis upon which the Petition disputes the FCHR's determination of no jurisdiction. Petitioner contends in her Petition that the FCHR has the right and obligation to independently prosecute the complaint of discrimination.

CONCLUSIONS OF LAW

4. The Division of Administrative Hearings has jurisdiction of the subject matter and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.<sup>1</sup>

5. The FCHR forwarded this matter for the assignment of an Administrative Law Judge to conduct "all necessary proceedings" and issue a recommended order.

6. The parties acknowledge that there are no disputed issues of material fact for resolution in an evidentiary hearing. Instead, the parties agree that the sole legal question presented is whether Petitioner's admitted execution of a general release of all claims operates as a bar to FCHR jurisdiction and to administrative proceedings.

7. The FCHR has already conclusively resolved this legal question against Petitioner's position. Further, even if Petitioner had alleged that her severance agreement with a release of claims was invalid, that allegation would not be cognizable in this proceeding.

8. In Wunderlich v. WCI Communities, Inc., Case No. 08-0684 (DOAH April 8, 2008), the Administrative Law Judge entered a Recommended Order of Dismissal on the basis of undisputed facts similar to the undisputed facts in this case. In that case, Mr. Wunderlich executed a "separation agreement," which included a release of claims, terminating his employment

with WCI Communities. Mr. Wunderlich, thereafter, filed a complaint of discrimination with the FCHR, asserting that WCI Communities had engaged in an unlawful employment practice while Mr. Wunderlich was employed there. Following the FCHR's determination of no reasonable cause, Mr. Wunderlich filed a Petition for Relief, alleging a dispute based upon WCI Communities' failure to pay all installments due under the separation agreement. The Recommended Order of Dismissal determined that Mr. Wunderlich had released any claims he had under the Florida Civil Rights Act of 1992, as amended, and further, "Unless and until a court of competent jurisdiction permits Petitioner to rescind the Separation Agreement, he is precluded from bringing this complaint of discrimination." Wunderlich, Recommended Order at 3.

9. The FCHR's Final Order (FCHR Order No. 08-040) adopted the Administrative Law Judge's recommendation of dismissal. In ruling on exceptions, the FCHR sets forth a detailed discussion of the FCHR precedent on the subject of a complainant's release of claims, as follows:

The Administrative Law Judge concluded that Petitioner, through entering into a Separation Agreement, released his claims under the Florida Civil Rights Act of 1992 against Respondent. . .

Essentially, the exceptions document argues that Respondent is in breach of the Separation Agreement. . .

In a case in which Petitioner argued that she had not received the money she was entitled to under a settlement agreement and Respondent argued that the money agreed to had been paid, a Commission panel stated: "Whether Petitioner received what she was entitled to under the Settlement and Release Agreement is not an issue appropriately before the Commission in our view. Rather the issue before the Commission is whether there is competent substantial evidence in the record to support the Administrative Law Judge's finding that claims brought forth in this matter have been released by Petitioner." Keeley v. Millers SuperValue Store, FCHR Order No. 03-057 (July 24, 2003).

In conclusions of law adopted by a Commission panel, it has been stated, "Enforcement of a settlement agreement is not within the jurisdiction conferred upon FCHR under Chapter 760, Florida Statutes. . . . McShane v. Brevard County Sheriff's Office, FCHR Order No. 03-040 (July 3, 2003) . . .

Further, in a case in which a Petitioner alleged that he was unjustly pressured to sign a settlement agreement, a Commission panel adopted an Administrative Law Judge's conclusion that in the absence of a showing of legislative authority to "go behind" a settlement agreement by the parties in order to determine whether a settlement agreement by the parties resulted from just or unjust pressure, it must be concluded that in the face of the existing settlement agreement between the parties the case should be dismissed. Cotter v. Gambro Renal Products, Inc., FCHR Order No. 03-087 (December 29, 2003).

Finally, in a case in which a Petitioner alleged that he executed a settlement agreement under duress and without benefit of legal counsel, and in which the

Administrative Law Judge concluded that the Division of Administrative Hearings "has no authority to interpret, enforce, or nullify a private contract," a Commission panel stated, "If, as suggested by Keeley and McShane, supra, the Commission is without jurisdiction to enforce settlement agreements entered into in cases brought pursuant to the Florida Civil Rights Act of 1992, in our view, it would logically follow that the Commission is without jurisdiction to determine the validity of those agreements." Howard v. Colomer, USA, FCHR Order No. 06-084 (September 18, 2006).

Based on the foregoing, we conclude that the Commission has no authority to interpret whether Respondent is in breach of the Separation Agreement. It is undisputed that the agreement released Petitioner's Florida Civil Rights Act of 1992 claims against Respondent.

Accordingly, the FCHR dismissed the Petition for Relief and complaint of discrimination with prejudice.

10. More recently, in Bovea v. Mercantile Commercebank, Case No. 09-0394 (DOAH June 30, 2009), the Administrative Law Judge recommended dismissal, for lack of jurisdiction of Mr. Bovea's Petition for Relief from employment discrimination, because Mr. Bovea had released his claims against Commercebank. In that case, as here, Mr. Bovea had signed a general release agreeing to forego any claims against his employer, but later filed a complaint with the FCHR. The FCHR investigated Mr. Bovea's complaint of employment discrimination and issued a determination of no jurisdiction. Mr. Bovea filed a Petition

for Relief, alleging that he did not knowingly or voluntarily release his claims. After an evidentiary hearing, the Administrative Law Judge found that Mr. Bovea failed to prove his challenge to the validity of his release and concluded as follows: "Mr. Bovea, therefore, has no claim cognizable under the Florida Civil Rights Act of 1992, as amended, and the FCHR has no jurisdiction in this matter." Bovea, Recommended Order at 19.

11. In its Final Order (FCHR Order No. 09-089), the FCHR adopted the Administrative Law Judge's recommendation of dismissal for lack of jurisdiction based on the release. However, the FCHR commented in its Conclusions of Law that in accordance with its precedent discussed in the Wunderlich Final Order, supra, the FCHR would not have jurisdiction to determine the validity of Mr. Bovea's release in any event. Final Order at 2.

12. In this case, Petitioner fails to address these indistinguishable final orders of the FCHR. Instead, Petitioner's argument is based solely on the premise that a complainant's release of claims would not operate as a bar to the federal Equal Employment Opportunity Commission's ("EEOC") separate prosecution of a discrimination charge. Petitioner filed materials regarding the EEOC's authority and policies about releases to support its argument. But as Respondent aptly



points out in its Reply to Petitioner's Response to Order to Show Cause, the scope of the EEOC's authority and the EEOC's policies about releases are irrelevant. The FCHR's authority and jurisdiction under the Florida Civil Rights Act of 1992, as amended, must be addressed by reference to Florida law. As detailed in Respondent's reply, the structure and authority of the EEOC and the FCHR are different.

13. With respect to claims of employment discrimination, the FCHR has specific authority to receive complaints, investigate, conciliate, and make initial determinations, but FCHR does not, itself, have authority to initiate administrative proceedings or enforcement actions in court. See §§ 760.05, 760.06, and 760.11, Fla. Stat. In contrast, with respect to claims of housing discriminatory practices under the Fair Housing Act, the FCHR is expressly given the statutory authority and discretion to institute civil actions in court and to initiate administrative proceedings. §§ 760.34(7)(a) and 760.35(3)(a)1., Fla. Stat.

14. Thus, Petitioner's argument that the FCHR has the power to independently prosecute a claim of employment discrimination, even though the aggrieved party has released her claims against the employer, must be rejected as contrary to law. Under Florida law and FCHR precedent, Petitioner's release of claims against Respondent means that Petitioner has no claims

cognizable under the Florida Civil Rights Act of 1992, as amended, and the FCHR has no jurisdiction in this matter.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by the Florida Commission on Human Relations dismissing Petitioner, Jessica Miles', Petition for Relief from employment discrimination for lack of jurisdiction.

DONE AND ENTERED this 9th day of December, 2010, in Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the  
Division of Administrative Hearings  
this 9th day of December, 2010.

ENDNOTE

<sup>1/</sup> Unless otherwise indicated, all references to the Florida Statutes are to the 2010 version. Although the current versions of these statutes are cited, they have not been amended during any time pertinent to this case.

COPIES FURNISHED:

Larry Kranert, General Counsel  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

Denise Crawford, Agency Clerk  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

David J. Linesch, Esquire  
The Linesch Firm  
700 Bee Pond Road  
Palm Harbor, Florida 34683

Frank E. Brown, Esquire  
MacFarlane, Ferguson & McMullen, P.A.  
Post Office Box 1531  
Tampa, Florida 33601

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.