STATE OF FLORIDA COMMISSION ON HUMAN RELATIONS

ALBERT MARCHMAN,

Petitioner,

FCHR Case No. 2012-02239

v.

DOAH Case No. 13-0242

ST. ANTHONY'S HOSPITAL, INC.,

Respondent.

FCHR Order No. 13-051

FINAL ORDER DISMISSING PETITION FOR RELIEF FROM AN UNLAWFUL PUBLIC ACCOMMODATIONS PRACTICE

This matter is before the Commission for consideration of the Order Closing File and Relinquishing Jurisdiction, dated May 10, 2013, issued in the above-styled matter by Administrative Law Judge Linzie F. Bogan.

Findings of Fact and Conclusions of Law

This case involves allegations of unlawful public accommodations discrimination. The Administrative Law Judge's order before the Commission indicates that the Commission issued a "Determination: No Jurisdiction," concluding that Respondent hospital was not a public accommodation or public food service establishment, as those terms are defined.

With regard to the vending machines and Koffey Korner Coffee and Pastries Shops, referenced in the Technical Assistance Questionnaire filed with the Commission by Petitioner and whether their existence makes the Respondent hospital a "public accommodation," the Administrative Law Judge concluded, "the facts, as stated in the Petition for Relief, are insufficient to establish matters over which FCHR has jurisdiction." With regard to whether the existence of the Respondent's cafeteria makes the hospital a public accommodation, the Administrative Law Judge concluded that FCHR's precedential authority that it does not, as stated in the <u>Mena</u> case, cited infra, has resolved this issue as a matter of law. Based on these two conclusions, the Administrative Law Judge relinquished jurisdiction of the matter to the Commission.

We conclude that the record as it exists before the Commission does not indicate that the Commission has jurisdiction of the matter.

Consequently, we conclude the matter should be dismissed. Accord, <u>Mena v. Lifemark</u> <u>Hospitals of Florida, Inc., d/b/a Palmetto General Hospital</u>, FCHR Order No. 12-023 (May 16, 2012), per curiam affirmed 109 So. 3rd 787 (Fla. 1st DCA 2013). FCHR Order No. 13-051 Page 2

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge's Order Closing File and Relinquishing Jurisdiction.

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, <u>Florida Statutes</u>, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this <u>23rd</u> day of <u>July</u>, 2013. FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

> Commissioner Gilbert M. Singer, Panel Chairperson; Commissioner Lizzette Romano; and Commissioner Mario M. Valle

Filed this <u>23rd</u> day of <u>July</u>, 2013, in Tallahassee, Florida.

/s/

Violet Crawford, Clerk Commission on Human Relations 2009 Apalachee Parkway, Suite 100 Tallahassee, FL 32301 (850) 488-7082

Copies furnished to:

Albert Marchman c/o Matthew W. Dietz, Esq. Law Offices of Matthew W. Dietz, P.L. 2990 Southwest 35th Avenue Miami, FL 33133 FCHR Order No. 13-051 Page 3

St. Anthony's Hospital, Inc. c/o Scott T. Silverman, Esq. Akerman Senterfitt 401 East Jackson Street, Ste. 1700 Tampa, FL 33602

Linzie F. Bogan, 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 <u>23rd</u> day of <u>July</u>, 2013.

By: ____/s/

Clerk of the Commission Florida Commission on Human Relations