

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

KELLI LAWHEAD,

Petitioner,

v.

ADAMS AND REESE, FORMERLY d/b/a
IGLER & DOUGHERTY LAW OFFICES,
P.A.,

Respondent.

EEOC Case No. NONE

FCHR Case No. 2013-00581

DOAH Case No. 13-1911

FCHR Order No. 14-022

**ORDER REMANDING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

This matter is before the Commission for consideration of the Recommended Order of Dismissal, dated March 20, 2014, issued in the above-styled matter by Administrative Law Judge Susanne Van Wyk.

Findings of Fact and Conclusions of Law

The Recommended Order of Dismissal recommends that the Commission dismiss the Petition for Relief on the basis that Petitioner named the wrong Respondent in this action.

The Recommended Order of Dismissal finds that Petitioner was terminated by Iglar & Dougherty Law Offices, P.A., and that Respondent Adams and Reese was not Petitioner's employer at the time of Petitioner's alleged discriminatory termination from employment. The Preliminary Statement section states that, at the close of the hearing leading to the Recommended Order of Dismissal, the Administrative Law Judge ruled that Respondent was not Petitioner's employer at the time of the alleged discriminatory act, nor was Respondent "otherwise liable for the alleged discriminatory employment practice."

A review of the transcript of the hearing, specifically at page 77, reveals that the Administrative Law Judge did rule that Respondent was not Petitioner's employer at the time of the alleged discriminatory act, but there is no indication in the transcript that this included a ruling that Respondent was not "otherwise liable for the alleged discriminatory employment practice."

In an order entitled, "Order Striking Petitioner's Amended Petition for Relief," dated March 20, 2014, the same day as the issuance of the Recommended Order of Dismissal, the Administrative Law Judge ruled that Petitioner could not add Iglar & Dougherty Law Offices, P.A., as a party Respondent in an amended Petition for Relief.

In our view, the issue not addressed by the Recommended Order of Dismissal, and the issue raised by the manner in which the case has been styled, is whether Respondent Adams and Reese is liable for the alleged discriminatory termination of Petitioner by Iglar & Dougherty Law Offices, P.A., on the theory of “successor liability.” See, e.g., Bagwell v. Peachtree Doors and Windows, Inc., 2011 WL 1497831 (N.D. Ga. 2011), citing Desporte-Bryan v. Bank of America, 147 F. Supp. 2d 1356 (S.D. Fla. 2001). The Recommended Order of Dismissal contains no findings of fact or conclusions of law on this issue.

We recognize that there is case law to suggest that in some instances, in employment law cases, a “merger” or “transfer of assets” is not always a precondition to “successor liability.” See, e.g., Cuervo v. Airport Services, Inc., 2013 WL 6170661 (S.D. Fla. 2013), a case involving “successor liability” under the Fair Labor Standards Act and Florida’s Minimum Wage Act, in which it is indicated that under Florida law “successor liability” could apply if: (1) the successor expressly or impliedly assumes the obligations of the predecessor; (2) the transaction is a de facto merger; (3) the successor is a mere continuation of the predecessor; or (4) the transaction is a fraudulent effort to avoid liabilities of the predecessor.

Consequently, we conclude this case should be remanded to the Administrative Law Judge for a determination of findings of fact and conclusions of law as to whether Respondent could be found liable in this case on the basis of “successor liability,” and if so, for further proceedings on the merits of the claim.

Exceptions

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

Remand

The Petition for Relief and Complaint of Discrimination are REMANDED to the Administrative Law Judge for further proceedings on the Petition for Relief consistent with this Order.

DONE AND ORDERED this 11th day of June, 2014.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Michael Keller, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Rebecca Steele

Filed this 11th day of June, 2014,
in Tallahassee, Florida.

/s/
Violet Crawford, Clerk
Commission on Human Relations
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Suzanne Van Wyk, 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 11th day of June, 2014.

By: _____
/s/
Clerk of the Commission
Florida Commission on Human Relations