

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

SELWYN TITUS,

EEOC Case No. 15D201600290

Petitioner,

FCHR Case No. 2016-00654

v.

DOAH Case No. 16-5774

MIAMI-DADE COUNTY,

FCHR Order No. 17-025

Respondent.

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

This matter is before the Commission for consideration of the “Order on Motions,” dated January 5, 2017, issued in the above-styled matter by Administrative Law Judge June C. McKinney.

Findings of Fact and Conclusions of Law

Judge McKinney’s “Order on Motions” grants Respondent’s motion to dismiss the Petition for Relief for lack of jurisdiction. The record in this case reflects that Petitioner filed a Petition for Relief with the Commission on September 16, 2016, and filed a “nearly identical” civil action in federal court on September 17, 2016. Judge McKinney’s order indicates that Respondent’s motion to dismiss asserts that Section 760.11(4), Florida Statutes, provides Petitioner the right to either pursue a civil complaint or an administrative hearing, and that Section 760.11(5), Florida Statutes, indicates that by Petitioner commencing a civil action, the Commission is divested of jurisdiction over the administrative complaint. Judge McKinney concluded that “by Petitioner electing the federal court action when he filed his complaint on September 17, 2016, section 760.11(5) requires dismissal of the pending administrative petition before DOAH” because the commencement of the federal court action divested the Commission of jurisdiction of the complaint.

We conclude that the Petition for Relief should not be dismissed, and that the case should be remanded to the Administrative Law Judge for further proceedings on the Petition for Relief.

Section 760.11(4), Florida Statutes (2016), states, “The election by the aggrieved person of filing of a civil action or requesting an administrative hearing under this subsection is the exclusive procedure available to the aggrieved person pursuant to this act.”

Section 760.11(5), Florida Statutes (2016), setting out parameters for the filing of a civil action in court under the Florida Civil Rights Act of 1992, states, “The commencement of such [a civil] action shall divest the [C]ommission of jurisdiction of the complaint, except that the [C]ommission may intervene in the civil action as a matter of right.”

The “Order Denying Motion to Dismiss,” dated December 18, 2000, issued by Administrative Law Judge Lawrence P. Stevenson in the case of Torres v. Sweet Tomatoes Restaurant, DOAH Case No. 00-3018, FCHR Case No. 20-02137, provides guidance for the disposition of the matter before us.

In Torres, Respondent moved for dismissal of Petitioner’s administrative Petition for Relief because, after filing the Petition for Relief, Petitioner also filed a lawsuit in federal court seeking relief under federal law and the Florida Civil Rights Act of 1992. Respondent argued that this court filing divested the Commission of jurisdiction under Section 760.11(5), Florida Statutes, the applicable part of which is set out above. Judge Stevenson disagreed and denied Respondent’s motion to dismiss. Judge Stevenson concluded that the statutory scheme of the Florida Civil Rights Act of 1992 requires an aggrieved person to elect a forum at the outset, that in the case before him the Petitioner “properly” elected the administrative forum and was bound by that election, and that it was the subsequent pursuit of a judicial remedy that was problematic. In discussing the statutory provisions involved, and concluding that in the case before him the court’s jurisdiction had not been properly invoked, Judge Stevenson stated, “The undersigned concludes that the better view is that the quoted language essentially admonishes the Commission that it may take no further action on a complaint once an aggrieved person has properly invoked a court’s jurisdiction.”

Like in Torres, in the case before us Petitioner filed a Petition for Relief with the Commission and then subsequently filed a civil action in federal court. Following Judge Stevenson’s reasoning in Torres, we conclude that Petitioner properly elected the administrative forum, and is bound by that election. It is Petitioner’s subsequent pursuit of a judicial remedy under the Florida Civil Rights Act of 1992 that is problematic.

In concluding that this matter should be remanded to the Administrative Law Judge for further proceedings on the Petition for Relief, we feel compelled to comment on the content of the Petition for Relief. The record reflects that the initial complaint in this matter contains only allegations of unlawful retaliation. The Petition for Relief contains not only allegations of unlawful retaliation, but also allegations of discrimination based on race, color, national origin, religion and age. A Commission Panel has stated, “...the Petition for Relief may not contain allegations that were not initially contained in the complaint of discrimination. See, Bratcher v. City of High Springs, FCHR Order No. 11-091 (December 7, 2011), and cases cited therein.” Breville v. Florida Department of Economic Opportunity, FCHR Order No. 13-030 (May 1, 2013).

As indicated above, we conclude that this matter should be remanded to the Administrative Law Judge for further proceedings on the Petition for Relief.

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge’s “Order on Motions.”

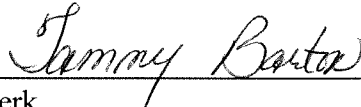
Remand

This matter is REMANDED to the Administrative Law Judge for further proceedings on the Petition for Relief.

DONE AND ORDERED this 30 day of March, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Jay Pichard; and
Commissioner Sandra Turner

Filed this 30 day of March, 2017,
in Tallahassee, Florida.



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June C. McKinney, 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 30 day of March, 2017.

By: Jimmy Barton
Clerk of the Commission
Florida Commission on Human Relations