

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KATHY L. MCKETHAN,

Petitioner,

vs.

Case No. 20-4258

WINTER PARK IMPORTS, D/B/A LEXUS OF
ORLANDO,

Respondent.

_____ /

RECOMMENDED ORDER OF DISMISSAL

This case is before the undersigned based upon Petitioner's response to the Order to Show Cause filed on October 22, 2020. No hearing is necessary.

STATEMENT OF THE ISSUE

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

PRELIMINARY STATEMENT

On January 15, 2020, Petitioner, Kathy L. McKethan (Petitioner), filed a Technical Assistance Questionnaire for Employment Complaints with the Florida Commission on Human Relations (FCHR) alleging that Respondent, Winter Park Imports, d/b/a Lexus of Orlando (Respondent), discriminated against Petitioner due to her age, her disability, and by retaliating against her, in violation of sections 760.01 through 760.11, Florida Statutes, the Florida Civil Rights Act of 1992 (FCRA).

On August 14, 2020, FCHR notified Petitioner that it was unable to conciliate or make a reasonable cause determination within 180 days of the

filing of the complaint and that, pursuant to sections 760.11(4) and (8), Petitioner was entitled to either: (1) bring a civil action against the person named in the complaint in any court of competent jurisdiction within one year of the date of the notice; or (2) request an administrative hearing with the Division of Administrative Hearings (DOAH) under sections 120.569 and 120.57, Florida Statutes, by filing a Petition for Relief (Petition) within 35 days of the date of the notice.

On September 18, 2020, Petitioner timely filed a Petition with FCHR, requesting an administrative hearing before DOAH. On September 22, 2020, FCHR forwarded the Petition to DOAH for the assignment of an Administrative Law Judge to conduct all necessary proceedings required under the law and submit recommended findings to FCHR.

On September 23, 2020, the undersigned issued an Initial Order to facilitate the scheduling of the final hearing. In response, on September 28, 2020, Respondent filed Respondent's Motion to Dismiss (Motion) in which Respondent asserted that Petitioner and Respondent entered into a Dispute Resolution Agreement in which they agreed to mediate and, if necessary, arbitrate, any disputes between them, including disputes based on the types of claims Petitioner attempts to bring in her Petition for Relief. Further, Respondent asserted that Petitioner signed a General Release on January 16, 2019, her last day of employment with Respondent, in which she released Respondent from any and all claims she had or might have had as of the date of her execution of the General Release. Copies of the Dispute Resolution Agreement and the General Release were attached as exhibits to the Motion.

The undersigned treated Respondent's Motion as a motion to relinquish jurisdiction pursuant to section 120.57(1)(i), based on the documents attached to the motion. The documents raised a threshold question of whether the

undersigned has jurisdiction to address the disputed facts raised in the Petition for Relief, or whether, instead, Petitioner's claim is barred by the General Release or cannot be heard in this tribunal because of Petitioner's agreement to arbitrate.

On October 8, 2020, the undersigned issued an Order to Show Cause in which Petitioner was directed to file a written response to the Order setting forth material facts that dispute Respondent's assertion that Petitioner has released her claim through the signing of a General Release and agreed to final and binding arbitration to resolve disputes under the FCRA, as suggested by the documents attached to Respondent's Motion.

On October 22, 2020, Petitioner timely responded to the Order to Show Cause by filing Petitioner's Response to Show Cause Order and Respondent's Motion to Dismiss (Response). In the Response, Petitioner made specific allegations regarding Respondent's purported discriminatory conduct and asserted that the General Release was signed under duress, she did not give up her rights because she had not yet received her final paycheck or her belongings from Respondent, and that there is no proof that she received consideration for signing the General Release. Specifically, Petitioner asserts that there is no proof she was given "the \$10 to keep quiet."

Due consideration has been given to Petitioner's Response to the Order to Show Cause. No hearing is necessary.

All statutory references are to the 2018 version of the Florida Statutes.

FINDINGS OF FACT

1. On January 16, 2019, on her last day of employment with Respondent, Petitioner executed a General Release.

2. Petitioner does not dispute that she signed the General Release, which states, in pertinent part:

I knowingly and voluntarily release and forever discharge [Respondent] of and from any and all claims, known and unknown, anticipated and unanticipated, asserted and unasserted, which I have or may have against the [Respondent] as of the date of execution of this General Release. These released claims include, but are not limited to, any alleged violation of ... Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act; the Age Discrimination in Employment Act; the Family and Medical Leave Act; ... [and] the Florida Civil Rights Act[.]

* * *

By signing below, I am knowingly and freely waiving and releasing all claims I may have against the [Respondent]. I further affirm I have been given a sufficient amount of time to consider whether to sign this General Release.

3. The subject complaint of discrimination was brought by Petitioner, after she signed the General Release, pursuant to the FCRA, which is specifically referenced as a released claim in the General Release.

4. By executing the General Release, Petitioner released Respondent from the claims that were the basis for her complaint of discrimination.

5. Petitioner asserts that the General Release was signed under duress, she did not give up her rights because she had not yet received her final paycheck or belongings, and that there is no proof that she received consideration for signing the general release.

CONCLUSIONS OF LAW

6. DOAH has jurisdiction over the parties and the subject matter of this cause pursuant to sections 120.569 and 120.57(1).

7. The FCRA prohibits discrimination in the workplace. *See* §§ 760.10 and 760.11, Fla. Stat. Section 760.10(1)(a) states that it is an unlawful employment practice for an employer:

To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

8. The issue at hand is whether Petitioner's execution of the General Release operates as a bar to FCHR's jurisdiction or the undersigned having authority to resolve this matter on the merits in an administrative proceeding. FCHR has already conclusively resolved this legal question, as set forth below, and, unless and until a court of competent jurisdiction permits Petitioner to rescind the General Release, she is precluded from bringing this complaint of discrimination in this administrative proceeding.

9. It is settled law that a person may waive his or her right to pursue an employment discrimination claim. *See, gen., Puentes v. UPS*, 86 F.3d 196, 198 (11th Cir. 1996).

10. As found above, Petitioner released Respondent from any claim brought under the FCRA. Accordingly, FCHR has no jurisdiction in this matter. This conclusion is consistent with results reached in previous DOAH Recommended Orders and FCHR Final Orders.

11. In *Keeley v. Millers Super Value Store*, Case No. 02-4727 (Fla. DOAH Jan. 21, 2003; FCHR July 24, 2003), the Administrative Law Judge entered a Recommended Order of Dismissal on the basis that by entering into a release agreement, Petitioner waived her rights under section 760.11, to prove that Respondent discriminated against her based on her race and/or disability. In *Keeley*, the Petitioner did not dispute that she signed the release discharging

Respondent from all legal and equitable claims of any nature that she had or may have had against Respondent.

12. In *Wunderlich v. WCI Communities, Inc.*, Case No. 08-0684 (Fla. DOAH Apr. 8, 2008; FCHR July 1, 2008), the Administrative Law Judge entered a Recommended Order of Dismissal determining that Mr. Wunderlich had released any claims he had under FCRA, and further, “[u]nless and until a court of competent jurisdiction permits Petitioner to rescind the Separation Agreement, he is precluded from bringing this complaint of discrimination.” FCHR’s Final Order (FCHR Order No. 08-040) adopted the Administrative Law Judge’s recommendation of dismissal. In ruling on exceptions, FCHR sets forth a detailed discussion of 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.

13. Petitioner has asserted that the General Release was procured under duress, that she signed it before receiving her last paycheck and that there is no proof she received consideration for the execution. FCHR has previously determined that it lacks jurisdiction to determine the validity of settlement agreements. *See Wunderlich v. WCI Communities, Inc.*, FCHR Order No. 08-040 (July 1, 2008)(noting 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 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.").

14. In accordance with Florida law and FCHR precedent, Petitioner's claims are barred by the General Release and FCHR does not have jurisdiction in this matter.

15. Based on the finding above, a determination of whether Petitioner's claim could be heard in this tribunal (if it had not been released) because of Petitioner's agreement to arbitrate is unnecessary.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a Final Order dismissing Kathy L. McKethan's Petition for Relief due to a lack of jurisdiction.

DONE AND ENTERED this 28th day of October, 2020, in Tallahassee, Leon County, Florida.



JODI-ANN V. LIVINGSTONE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of October, 2020.

COPIES FURNISHED:

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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.