IN THE DISTRICT COURT OF APPEAL
STATE OF FLORIDA
SECOND DISTRICT

PEGGY S. CISKO,

Appellant,

vs. Case No. 00-3113

PHOENIX MEDICAL PRODUCTS, INC.,

Appellee.

BRIEF AMICUS CURIAE OF THE
NATIONAL EMPLOYMENT LAWYERS ASSOCIATION, FLORIDA CHAPTER

ON APPEAL FROM THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA

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SUMMARY OF ARGUMENT

The EEOC failure to determine letter sent to Appellant in this case did not constitute a no-cause determination triggering the 35 day time limit set forth in § 760.11(7), Fla Stat., to request a hearing before an administrative law judge. There is no evidence in the record to support such a proposition and the relevant case law indicates that no-cause determinations are totally different than the failure to determine letter received by Appellant here. In fact, the EEOC abandoned it policy of issuing no-cause determinations in April, 1995. Even if the EEOC failure to determine letter was a no-cause finding, since it was not issued until after the expiration of the 180 day period set forth in F.S. §760,11(8), it was not effective to preclude the filing of a civil action within the four year statute of limitations period described in *Joshua v. City of Gainesville*, 2000 Fla. LEXIS 1751; 25 Fla. Law W. S 641, (Fla. 2000).

Moreover, the procedure sanctioned by the lower court's ruling clearly runs afoul of Appellant's constitutional right to procedural due process and the doctrine of separation of powers. The procedural due process considerations were recently described in *Joshua v. City of Gainesville*, 2000 Fla. LEXIS 1751; 25 Fla. Law W. S 641, (Fla. 2000), as encompassing, at a bare minimum, the right to fair notice and the opportunity to be heard. The court observed that constitutionally protected rights should not be denied because the Commission failed to give adequate notice.

Adequate notice requires that the Commission inform the claimant regarding the status of her case at some point before the expiration of the 180 day period. This was not done in Joshua, supra, and it was not done in the case at bar.

In addition, the action by the Florida Commission on Human Relations in delegating its power to investigate and make a determination to the federal Equal Employment Opportunity Commission constitutes a violation of Article II, Section 3, of the Florida Constitution. Florida's constitution requires a strict separation of powers such that the exercise by a member of one branch of any powers appertaining to either of the other branches of government is expressly prohibited. *Askew v. Cross Key Waterways*, 372 So.2d 913,924 (Fla. 1978). The statutes authorizing the FCHR to investigate and make determinations only permit it to refer complaints made under the Florida Civil Rights Act of 1992 to other state government entities recognized by the FCHR's internal rules. Moreover, the record in this case and the applicable law, rules and regulations fail to make it clear that it was the intention of the FCHR to permit the EEOC to make a determination in the first place. Nevertheless, under either analysis, the lower court's ruling must be reversed in order to preserve Appellant's basic constitutional rights.

ARGUMENT

I. APPELLANT MET ALL ADMINISTRATIVE REQUIREMENTS OF THE FLORIDA CIVIL RIGHTS ACT OF 1992 BEFORE FILING SUIT

Summary judgment was granted on behalf of the Defendant in the court below on the basis that Plaintiff had failed to properly exhaust her administrative remedies and satisfy all conditions precedent to filing a civil action as required by §760.11(7), Fla. Stat. The lower court's ruling was incorrect because it was based upon an erroneous factual determination that Plaintiff had received a no-cause determination from the Equal Employment Opportunity Commission. Said ruling was further erroneous because it was based upon the conclusion that a no-cause determination received after the passage of 180 days prevents the filing of a civil action pursuant to Florida's administrative scheme for the processing of complaints of discrimination. As will be demonstrated *infra*, the lower court's determination is not supported by the record and is contrary to the requirements of the Florida Civil Rights Act of 1992.

A. THE EEOC DISMISSAL AND NOTICE OF RIGHTS WAS NOT A NO CAUSE DETERMINATION

The lower court's order granting summary judgment was necessarily based upon the factual determination that the EEOC Form 161 entitled Dismissal and Notice of Rights dated March 25, 1999, constituted a determination that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992

has occurred. This factual determination is significant in view of the requirements of § 760.11(7), Florida Statutes (1999). Said statute provides:

> If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved party may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date the determination of reasonable cause and any such hearing shall be heard by an administrative law judge and not by the commission or a commissioner. If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred.

The trial court apparently interpreted this statute to preclude the filing of a civil action based upon a violation of the Florida Civil Rights Act under circumstances where a request for an administrative hearing was not made within the 35 day period. However, it should be noted that this case was not actually investigated by the Florida Commission on Human Relations. Instead, the FCHR deferred to the EEOC pursuant to the terms of a worksharing agreement entered into between the EEOC and the FCHR. Section II(C) of said agreement provides:

> Normally, once an agency begins an investigation, it resolves the charge. Charges may be transferred between the EEOC and the Florida Commission on Human Relations within the framework of a mutually agreeable system. Each agency will advise Charging Parties that charges will be resolved by the agency taking the charge . . .

Thus, the lower court apparently concluded that the above referenced language of the Worksharing Agreement both permitted the delegation of the responsibility to investigate to the EEOC and that it necessarily must be construed so as to require that the EEOC determination be considered the determination of the FCHR. Finally, the lower court concluded that the EEOC failure to determine letter was the equivalent of a no-cause determination. Amicus disagrees with all three propositions. With regard to the delegation issue, that matter is more fully discussed in the second issue raised in this brief. With regard to the proposition that the EEOC decision constitutes the decision of the FCHR, there is simply no language contained in the applicable statutes nor the Worksharing Agreement that compels such a conclusion. Lastly and most importantly, there exists no reasonable basis either in law or in fact for the conclusion that the EEOC failure to determine letter is the same as a no-cause determination. In fact, a close examination of the EEOC Form 161 Dismissal and Notice of Rights Form itself reveals that there are a myriad of ways to dismiss an EEOC charge which clearly do not involve a determination that there is not reasonable cause to believe that a violation of the statutes has occurred. For example, a charge can be dismissed because of a failure to accept a reasonable settlement offer that affords full relief. Moreover, the last box on a EEOC Form 161 is simply a catchall for any reason the EEOC deems appropriate. Presumably, a no cause determination could be inserted in this section of the

form if indeed a no cause determination was warranted.

As a practical matter, however, the EEOC is not likely to issue a no cause finding in the future because effective as of April of 1995, the EEOC abandoned its previous policy of issuing "no-cause" determinations in cases where reasonable cause was not established, and instead initiated a policy of dismissing such charges without particularized findings. *See* Lindemann & Grossman, *Employment Discrimination Law*, ABA Section of Labor and Employment Law, 3rd Edition, 1996. Ch. 29, p. 1240, note 219; *Daily Lab. Rep.* (BNA) at E-5 (Apr, 20, 1995).

To illustrate an example of a “no cause” determination by the EEOC, *Cortes v. Maxus Exploration Company*, 758 F.Supp. 1182 (S.D. Tex.1991), aff’d. 977 F.2d 195 (5th Cir. 1992), is instructive. Although the particular issue addressed in *Cortes* is not relevant here, in the appendix to the opinion the Court described the no cause finding. It includes a letter of determination and a notice of right to sue and dismissal. The letter of determination attached to *Cortes* begins “Under the authority vested in me by the Commission’s procedural regulations, I issue on behalf of the Commission, the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act.” The letter concludes . . .“there is not reasonable cause to believe that the charging parties proposed transfer was retaliatory. There is not reasonable cause to believe that the proposed transfer to work under the former supervisor constituted discrimination because

of her sex female, nor that her resignation constituted constructive discharge based upon sex and retaliation." The letter closes "should the charging party wish to pursue this matter further, the party may do so by filing a private action in Federal District Court against the Respondent named above within 90 days of receipt of this letter." This letter of determination as set forth in the Appendix of the *Cortes* case clearly correlates to the requirements of Title 29, Code of Federal Regulations, §1601.19(a), which fully describes the EEOC no cause determination. Also included in the appendix to the *Cortes* decision is a notice of right to sue. The box checked on that notice of right to sue states as follows: "no reasonable cause was found to believe that the allegations made in your charge are true".

As an examination of *Cortes* reveals that the no cause determination was clear and decisive and left no question as to the finding of the EEOC. This no cause finding is totally different than the EEOC Form 161 sent to Ms. Cisko in the instant case.

Thus, in the case at bar, the conclusion is inescapable that the EEOC failure to conclude letter was not a no cause determination.

Most of the cases cited by Defendant in its Motion for Summary Judgement in the court below involve explicit no cause determinations rather than an EEOC dismissal without particularized findings, and are therefore inapplicable to the case at bar.

The one case cited by defendant in its motion with facts

similar to those in the case at bar is *Blakely v. United Services Automobile Association*, No. 99-1046-CIV-T-17F, 1999 U.S. Dist. LEXIS 17723, 13 Fla. Law W. Fed. D. 79 (M.D. Fla. October 4, 1999)(Kovachevich, J.). However, *Blakely* is based on two faulty premises. First, the court in Blakely apparently assumed without deciding that an EEOC failure to determine decision was the same as a no cause decision. Second, the Court also apparently concluded by implication that the reason that the court did not have to decide whether there was a difference between a no cause finding and a failure to determine finding is that both findings are treated the same under the Florida administrative scheme. Thus, the court stated in framing the issue that "The present situation can be viewed two ways: 1) the letters issued to Plaintiffs by the EEOC constituted a decision by both the EEOC and the FCHR; or 2) the letters issued by the EEOC did not constitute a determination of reasonable cause by the FCHR." This was clearly not a proper framing of the issue since regardless of whether either or both propositions were true, Florida law nevertheless would not preclude the filing of a civil action under the circumstances. In other words, if the letters issued by the EEOC constituted a decision by both the EEOC and the FCHR, that does not necessarily lead to the conclusion that a civil action cannot be brought because it is not the fact of a decision that triggers the 35 day time limit to request a hearing, but rather, only a no cause finding that requires such a request. Similarly, the fact that the EEOC

determination was not a reasonable cause determination is not dispositive. It is not the failure to obtain a reasonable cause determination that triggers the 35 day time limit to request a hearing, but again, an actual finding of no cause is required before such a request must be made on pain of losing the right to file a civil action. The *Blakely* court's erroneous interpretation of the statute is further evidenced by the conclusion that "[T]his decision by the EEOC replaced the decision by the FCHR and therefore failed to find the reasonable cause necessary to make the cause actionable under the FCHR." Thus, the court clearly assumed that the only EEOC finding that could lead to a civil action was a reasonable cause finding. This overlooks the possibility that other findings may be made which do not trigger the 35 day time limit for requesting a hearing and that a civil action may be filed in those cases where the requisite 180 days elapses subsequent to the filing of a claim.

The court in *Blakely*, *supra*, cited a previous decision by the same court as supporting the decision, i.e. *Dawkins v. Bellsouth Telecommunications, Inc.*, 53 F. Supp. 2d 1356 (M.D. Fla. June 8, 1999)(Kovachevich, J.). However, in *Dawkins*, there is no reference to a failure to determine decision at all.[1] The court observed that the defendant argued that the finding was a no-cause

[1]Although there is no reference in *Dawkins* to an EEOC failure to determine letter having been received, *Dawkins* is currently on appeal and the briefs submitted to the court indicate that such a letter was indeed sent to appellant.

determination and the court stated in its conclusion that "[T]he EEOC's no-cause determination did operate as a no cause determination by the FCHR."

Since § 760.11(7), Fla, Stat., clearly permits a dismissal of a complaint only where there is a determination that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, a dismissal under any other circumstances simply cannot trigger the 35 day time limit to request a hearing.

There are several unpublished state and federal trial court decisions that have determined that the EEOC failure to determine letter is not a no cause determination. One of the more recent decisions in this regard is *Motry v. The Devereux Foundation, Inc.* Case No. 99-1457-CIV-ORL-19B (M.D. Fla. April 21, 2000)(Fawcett, J.) *Motry* is particularly significant because it is based upon three grounds all of which are present in this case. First, Judge Fawcett determined that there was no evidence in the record from which it could be determined that the EEOC determination was the equivalent of an FCHR determination. Second, even if it was equivalent, the EEOC determination occurred after 180 days had elapsed and therefore did not bar a civil action. And finally, the EEOC determination was defective because it did not comply with the notice requirements of § 760.11(3), Fla. Stat.

In *Nichols v. Wal-Mart Stores, Inc*. 958 F. Supp. 583 (M.D. Fla. 1997), the court was presented with a similar argument

claiming that the Plaintiff failed to meet the administrative requirements if the FCRA before filing suit. In rejecting the Defendant's contention in this regard, the court observed that although the EEOC issued a right to sue letter prior to the passage of the 180 day period described in § 760.11(8), Fla. Stat., the FCHR itself neither withdrew its jurisdiction nor made a determination within the 180 day period. The court stated, "[i]t is apparent that . . . the FCHR had jurisdiction over the Plaintiff's claim for the required 180 days and made no determination." The court concluded that since Plaintiff's civil action was not commenced until after the passage of the required 180 days, all administrative remedies had properly been exhausted. The court's analysis in *Nichols*, *supra*, was further explained and discussed subsequently in *Armstrong v. Lockheed Martin*, 990 F. Supp. 1395 (M. D. Fla. 1997), where Defendant claimed that Plaintiff failed to exhaust her administrative remedies because of her request for an EEOC right to sue letter before the passage of the 180 day period. The court noted that if the FCHR viewed a right to sue letter as an acceptable resolution of the administrative process this would be "troubling to the court in light of the different administrative schemes." *Id.* at 1399, fn. 4. The court stated that "if the Florida Commission accepts the right to sue procedure as terminating its inquiry, its avoids its responsibilities under the Florida scheme and may jeopardize the complainant's rights to pursue legal remedies further." *Id.* The

court observed that "this is an area of confusion if not outright disagreement" because of the difference between the Florida administrative scheme and the federal scheme. *Id.* at 1400. The issuance of the EEOC right to sue letter "does not neatly fit into the state administrative scheme." *Id.* The court concluded that the EEOC right to sue letter does not terminate a complainant's right to bring a state claim "as long as the claimant allows the Florida Commission the full 180 days to conduct whatever investigation it chooses to conduct." *Id.*

Similarly, in this case Appellant allowed the Florida Commission to conduct whatever investigation it chose to conduct within the 180 day period. The EEOC failure to determine letter, like the right to sue letter, does not neatly fit into the state administrative scheme. The EEOC failure to determine letter neither terminates the FCHR's inquiry nor triggers the 35 day time limit for requesting an administrative hearing. Florida law is clear that nothing short of a no cause determination requires a claimant to request a hearing on pain of losing her right to bring a civil action.

Other courts have reached the same conclusion. The following unpublished decisions held that an EEOC failure to determine letter was not a no cause determination: *Beckman v. AT&T Universal Card Services Corp.*, 98-211-Civ-J-10B (June 23, 1999)(Hodges, J.)and *Peralta v. Florida Detroit Diesel-Allison, Inc.*, Case No. 98-894-Civ-J-20B (March 16, 1999)(Schlesinger, J.).

Thus, the failure to determine letter sent to Cisko is not a no cause finding and is not otherwise significant in terms of the claimant's requirement to exhaust her administrative remedies. Such a letter at most constitutes an indication by the EEOC that it simply could not determine one way or the other whether the law was violated, i.e., it could neither find cause, nor determine that there was no cause. This type of EEOC action does not fit into Florida's administrative scheme and should properly serve as nothing more than a signal to the Florida Commission that it may commence it's investigation if it so chooses.

B. AN EEOC LETTER ISSUED AFTER THE PASSAGE OF 180 DAYS DOES NOT AFFECT THE RIGHT TO FILE A CIVIL ACTION

Even if it is assumed that a failure to determine letter is the equivalent of a no cause finding, under Florida law it cannot trigger the 35 day time limit for requesting an administrative hearing if it is not rendered within 180 days. § 760.11(8), Fla. Stat., provides "In the event that the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days of the filing of the complaint, an aggrieved person may proceed under subsection(4), as if the commission determined that there was reasonable cause." Subsection (4) is the section authorizing the filing of a civil action within one year if there is a finding of cause. Thus, the Act clearly permits the filing of a civil action at the point where 180 has elapsed without any action taken by either the EEOC or the

FCHR. In *Joshua v. City of Gainesville*, 2000 Fla. LEXIS 1751; 25 Fla. Law W. S 641, (Fla. 2000), the Court held that the general four-year statute of limitations for statutory violations applies to actions filed pursuant to chapter 760, Florida Statutes, if the Commission on Human Relations does not make a reasonable cause determination on a complaint within the 180 days contemplated by section 760.11(8), Florida Statutes (1995). The court observed that Joshua "did not receive a reasonable cause determination from the Commission based on her July 1995 claim nor did she receive any other communication regarding the status of her complaint within the 180-day period.(emphasis added). The court further observed that "the Florida Civil Rights Act embodied in Chapter 760 of the Florida Statutes does not provide clear and unambiguous guidance to those who file complaints under its provisions nor to those who are brought into court on allegations of violating its terms." After reviewing the Florida Civil Rights Act of 1992 in detail the court indicated that the failure of the Commission to provide some type of notice to Joshua within 180 days of filing regarding the status of her claim implicated the fair notice and opportunity to be heard requirements inherent in her constitutional right to procedural due process. The Court concluded that the Florida Civil Rights Act of 1992 should be liberally construed to preserve and promote access to the remedy provided. See also *Motry v. The Devereux Foundation, Inc.* Case No. 99-1457-CIV-ORL-19B (M.D. Fla. April 21, 2000)(Fawcett, J.)

Similarly, in the case at bar, Appellant did not receive a reasonable cause determination based upon her July 1998 claim nor did she receive any other communication from the Commission regarding the status of her complaint within the 180 day period[2]. In accordance with the reasoning in Joshua, supra, the failure of the EEOC or the Commission to act on her complaint within the 180 day period resulted in Appellant's right to file a civil action within the four-year statute of limitations found applicable in Joshua.

Regardless of the analysis employed or the factual permutations involved, the conclusion is invariably the same, i.e., as long as a no cause determination is not made within the 180 day period and as long as the Florida Commission is given the full 180 days to conduct whatever investigation it chooses, all administrative remedies and conditions precedent have been satisfied under Florida's administrative scheme and a civil action may properly be commenced upon the expiration of the 180 day period. Hence, this action was timely and properly filed.

II. THE REFERRAL OF APPELLANT'S FCHR CLAIM TO THE EEOC PURSUANT TO THE WORKSHARING AGREEMENT CONSTITUTED A VIOLATION OF THE DOCTRINE OF SEPARATION OF POWERS

Florida's separation of powers doctrine is found in Article

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[2]Appellant did receive a letter informing her that her FCHR charge had been referred to the EEOC in August, 1998, but no further information was forthcoming regarding the actual status of her claim within the 180 day period.

II, Section 3 of the Florida Constitution. “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” §Art. II, 3, Fla. Const.

As Florida courts have consistently recognized,

> The prohibition contained in the second sentence of Article II, section 3 of the Florida Constitution could not be plainer, as our cases clearly have held. This Court has stated repeatedly and without exception that Florida's Constitution absolutely requires a "strict" separation of powers. Cases on this point are numerous, but an examination of a leading decision will suffice. In *Askew v. Cross Key Waterways*, 372 So.2d 913, 924 (Fla.1978), we stated:
>
> Article II, Section 3, Florida Constitution, contrary to the Constitution[ ] of the United States ... does by its second sentence contain an express limitation upon the exercise by a member of one branch of any powers appertaining to either of the other branches of government.....
>
> [The nondelegation doctrine] represents a recognition of the express limitation contained in the second sentence of Article II, Section 3 of our Constitution. Under the fundamental document adopted and several times ratified by the citizens of this State, the legislature is not free to redelegate to an administrative body so much of its lawmaking power as it may deem expedient.

B.H. v. State, 645 So.2d 987, 991-992 (Fla. 1994) (invalidating statute that permitted Department of Human and Rehabilitative Services to determine from what level of custody would escape by juvenile be a felony).

> [U]nder this doctrine fundamental and primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.

Askew, 372 So.2d at 925.

> This Court has repeatedly held that, under the doctrine of separation of powers, the legislature may not delegate the power to enact laws or to declare what the law shall be to any other branch. Any attempt by the legislature to abdicate its particular constitutional duty is void. *Pursley v. City of Fort Myers*, 87 Fla. 428, 432, 100 So. 366, 367 (1924); *Bailey v. Van Pelt*, 78 Fla. 337, 350, 82 So. 789, 793 (1919). As recently as 1978, in *Askew v. Cross Key Waterways*, 372 So.2d 913, 920-21 (Fla.1978), we reaffirmed that the legislature, under article II, section 3 of our constitution, may not delegate its lawmaking function to another branch notwithstanding policy considerations or the fiscal operations of other states which do not have Florida's constitutional prohibitions against the delegation of powers.

Chiles v. Children A, B, C, D, E, and F, 589 So.2d 260, 264 (Fla. 1991) (holding that legislature "violated the doctrine of separation of powers by assigning to the executive branch the broad discretionary authority to reapportion the state budget").

Fundamental and primary policy decisions may only be made by members of the legislature. Furthermore, administration of legislative programs must be pursuant to some minimal standards and guidelines that are ascertainable by a reading of the enactment establishing the program. *Askew* at 918. If the legislation at

issue is so lacking in guidelines that the courts cannot determine whether the agency is carrying out the intent of the legislature, then it is the agency that becomes the lawgiver rather than the legislature. *Avatar Development Corp. v. State*, 723 So.2d 199, 202 (Fla. 1998).

With regard to the laws governing the FCHR, an examination of the relevant statutes leads to the inescapable conclusion that the legislature clearly did not authorize the FCHR to employ the federal EEOC to fulfill the FCHR's investigatory and determinative functions under the law. Thus, the FCHR itself has stepped into the shoes of the members of the legislature and has taken it upon itself to decline the legislature's direction to investigate and adjudicate alleged violations of Florida's civil rights laws. This it most assuredly cannot do.

The Florida Civil Rights Act of 1992(FCRA), §§ 760.01-11, Fla. Stat., created the Florida Commission on Human Relations which it empowered to "receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice, as defined by the Florida Civil Rights Act of 1992." §760.06(5), Fla. Stat. The only authority granted by the legislature empowering the FCHR to defer investigations of discrimination filed under the FCRA is found at § 760.11(2) where it states that "in the event that any agency of the **state** or of any other unit **of the state** has jurisdiction of the subject matter of any complaint filed with the commission and has legal authority to

investigate the complaint, the commission may refer such complaint to such agency for an investigation." (Emphasis added). The statue further provides that if a referral is made under § 760.11(2), the commission shall accord substantial weight to any findings and conclusions of any such agency and that referral to a local agency does not divest the commission of jurisdiction over the complaint. § 760.11(3), Fla. Stat., clearly states that the commission shall investigate the complaint, unless deferred as described in § 760.11(2), Fla. Stat. Thus, no provision was made by the legislature permitting the FCHR to defer a complaint to the EEOC or any other federal agency. The FCRA permits deferral to state agencies or state governmental units only. If that is not done in accordance with the statute, the FCHR must conduct the investigation itself.

Accordingly, it is abundantly clear that the FCHR's attempt to delegate its power to the federal EEOC through its worksharing agreement amounted to an unconstitutional violation of the doctrine of separation of powers since only the members of the legislature could have authorized this action.

III. THE FAILURE OF THE FCHR TO NOTIFY APPELLANT REGARDING THE STATUS OF HER CLAIM WITHIN 180 DAYS VIOLATED HER RIGHTS TO PROCEDURAL DUE PROCESS

As noted, *supra*, "an individual procedural due process rights are violated when a deprivation of a right has occurred without notice and an opportunity to be heard." *Joshua v. City of*

Gainesville, 2000 Fla. LEXIS 1751; 25 Fla. Law W. S 641, (Fla. 2000)(citations omitted). As Joshua made clear, the Florida Civil Rights Act shows that the intent of the Legislature was to have the Commission make a preliminary determination, notify the claimant of its findings, and inform the claimant of the steps that must be taken next to further pursue the claim. The court stated that "Joshua's constitutionally protected rights should not be denied because the Commission failed to give her adequate notice. A claimant should not be penalized for attempting to allow a government agency to do its job." Id. The court concluded that the Commission should "take the necessary steps to protect the interests of claimants . . .by providing some type of notice to claimants within 180 days of filing regarding the status of their claims."Id. As was the case in *Joshua*, no such notice was given to Cisko. Therefore, Cisko's procedural due process rights were clearly violated.

CONCLUSION

Since Appellant properly met all administrative requirements of the FCRA before filing suit and because of the serious constitutional issues regarding the separation of powers doctrine and Appellant's procedural due process rights implicated by the FCHR's action or lack thereof, Appellant respectfully submits that the decision of the court below should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a correct copy of the foregoing was served by U.S. Mail this 17th day of November, 2000, to Douglas Wilson, Esq., The Wilson Law Firm, 616 Sanctuary Road, Naples, Florida 34120-4837, and to Cathy S. Reiman, Esq., and Jason H. Korn, Esquire, P.O. Box 413032, Naples, Florida 34101-3032.

____

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