SUPREME COURT OF FLORIDA

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Case No.: SC01-2160

Lower Tribunal No.: 3D00-2277

_____

CORDETTE WOODHAM

Petitioner,

v.

BLUE CROSS AND BLUE
SHIELD OF FLORIDA, INC.

Respondent.

_____

On Review of a Certified Question From
The Third District Court of Appeal

_____

**AMENDED BRIEF OF AMICUS CURIAE,
HR FLORIDA STATE COUNCIL AND HUMAN RESOURCES ASSOCIATION OF BROWARD COUNTY, IN SUPPORT OF RESPONDENT
BLUE CROSS AND BLUE SHIELD OF FLORIDA, INC.**

_____

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATUTES & RULES

OTHER AUTHORITIES

STATEMENT OF INTEREST OF AMICUS CURIAE[1]

The HR Florida State Council ("HR Florida") and the Human Resources Association of Broward County ("HRABC") are organizations dedicated to serving the needs of their members: the human resource professional. Both organizations are affiliates of the Society for Human Resource Management ("SHRM"), which is the leading voice of the human resource profession. HR Florida and HRABC provide their members with education and information services, conferences, seminars, online services and publications.

As premier organizations for human resource professionals in this state, HR Florida and HRABC are vitally concerned with the orderly development and interpretation of the law construing, in practical terms, the nature of the administrative mechanism of Florida's Civil Rights Act (the "FCRA" or the "Act"), and more specifically, the nature and scope of the employer's and employee's requirements under the Act. HR Florida and HRABC have long recognized their special responsibility to support and encourage compliance with the statutory scheme of the Act and encourage their members to rely on the reasonable interpretation of the Act to determine the rights of the employer thereunder.

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[1] In this "Amended Brief," pages vi and vii of the original Brief were re-numbered as pages 1 and 2, with all other pages and page references re-numbered accordingly. There are no substantive changes.

The issue before this Court -- the circumstance under which an employee may bring suit under the Act -- is vital to HR Florida and HRABC because of their members' interest to determine when an employer is subject to liability and when a discrimination claim finally has run its course.

As discussed herein, the rule that Petitioner Cordette Woodham ("Woodham") suggests that the Court adopt in this case would essentially abrogate the legislative intent expressly stated in the Act -- the requirement that a complainant obtain a "reasonable cause" finding prior to bringing a lawsuit. Indeed, human resource professionals have relied on this statutory requirement to assess potential liability of pending or threatened civil action. If Woodham's argument succeeds, it would open the floodgates of litigation to claims that had previously been administratively closed and would revive them as far back as the past four years, due to the statute of limitations. Accordingly, HR Florida and HRABC submit this amicus curiae brief to support the interests of their members in relying on the legitimate intent and reasonable interpretation of the Act.

SUMMARY OF ARGUMENT

The Florida Civil Rights Act of 1992 (the "FCRA" or the "Act") provides three different scenarios whereby a claimant may file a civil lawsuit after filing a timely charge of discrimination. First, if a "reasonable cause" finding is issued; second, if no finding is issued after 180 days; and third, if the employee exhausts his or her administrative remedies after a "no reasonable cause" finding has been reversed by an administrative law judge.

Here, because the EEOC's "unable to conclude" finding in this case is the equivalent of a "no reasonable cause" finding under the Act, none of these three requirements have been satisfied. Therefore, Cordette Woodham ("Woodham") was not authorized to file a civil lawsuit under the FCRA.

Under the Worksharing Agreement between the Equal Employment Opportunity Commission (the "EEOC") and the Florida Commission on Human Relations (the "FCHR"), the EEOC is authorized to investigate and issue determinations on behalf of the FCHR. In April 1995, despite the wording of the Act's pre-suit requirements, the EEOC abolished its determination that contains the verbiage "no cause." In its place, it adopted Form 161, which provides that in situations where there is no basis for finding that a violation of the statute occurred, the EEOC's determination will state that it is "unable to conclude" that the

information provided establishes a violation of the statute. Thus, the EEOC's new "unable to conclude" finding replaced its "no cause" determination.

Because the EEOC was authorized to conduct an investigation and issue a finding on behalf of the FCHR regarding Woodham's charge, its finding should not be ignored because the exact words "no cause" were not utilized. Otherwise, "unable to conclude" becomes the equivalent of "reasonable cause" under the Act. Because a court should interpret a statute in accordance with its intended meaning, the FCRA should not be misinterpreted to relieve a claimant of the pre-suit conditions precedent under the Act. Indeed, if an "unable to conclude" finding were not considered a "no cause" finding, it would abrogate the legislature's intent that a claimant exhaust his or her administrative remedies prior to filing suit.

Section 760.11, Fla. Stat. (1999) lays out the only three situations in which a claimant may file suit. Whatever else Woodham might say, she cannot say that she looked at the statute and saw any of those situations present. Therefore, if Woodham eventually wanted to file suit; she was first required to request an administrative hearing pursuant to Section 760.11(7), Fla. Stat. (1999). Having failed to do that, her claim must be dismissed.

Policy considerations also dictate that the lower court should be affirmed. The legislature drafted the Act to provide employees with an avenue of redress,

while balancing the right of an employer to require a claimant to satisfy the exhaustion requirements set forth in the Act. Because the Act emphasizes its exhaustion requirement, it contravenes the intent of the legislature to allow a claimant to escape its administrative steps. Because Woodham chose to circumvent the administrative process, she cannot claim that there has been a denial of justice.

ARGUMENT

I. STANDARD OF REVIEW

"Judicial interpretation of Florida Statutes is a purely legal matter and therefore subject to de novo review." Racetrac Petroleum, Inc. v. Delco Oil, Inc., 721 So. 2d 376, 377 (Fla. 5th DCA 1998). An issue of law is reviewed under the de novo standard. Cassoutt v. Cessna Aircraft Co., 742 So. 2d 493 (Fla. 1st DCA 1999); Parlato v. Secret Oaks Owners Ass'n., 793 So. 2d 1158 (Fla. 1st DCA 2001) (same); United States v. Pistone, 177 F.3d 957 (11th Cir. 1999) (same).

II. NON-COMPLIANCE WITH THE ADMINISTRATIVE REQUIREMENTS OF SECTION 760.11 BARS A CLAIMANT'S RIGHT TO SUE UNDER THIS SECTION WHERE AN "UNABLE TO CONCLUDE" DETERMINATION HAS BEEN ISSUED BY THE EEOC.

The Third District Court of Appeal certified to this Court the following question as being of great public importance:

> WHETHER A CLAIMANT MUST PURSUE THE ADMINISTRATIVE REMEDIES PROVIDED IN SECTION 760.11(7), FLORIDA STATUTES, WHEN THE CLAIMANT HAS FILED A COMPLAINT UNDER THE FLORIDA CIVIL RIGHTS ACT WITH THE FLORIDA COMMISSION ON HUMAN RELATIONS AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION JOINTLY, AND HAS RECEIVED AN EEOC "DISMISSAL AND NOTICE OF RIGHTS" STATING: "BASED UPON ITS INVESTIGATION, THE EEOC IS UNABLE TO

CONCLUDE THAT THE INFORMATION OBTAINED ESTABLISHES VIOLATIONS OF THE STATUTES. THIS DOES NOT CERTIFY THAT THE RESPONDENT IS IN COMPLIANCE WITH THE STATUTES. NO FINDING IS MADE AS TO ANY OTHER ISSUES THAT MIGHT BE CONSTRUED AS HAVING BEEN RAISED BY THIS CHARGE."?

A. SECTION 760.11 AUTHORIZES A CLAIMANT TO FILE SUIT IN THREE CIRCUMSTANCES, NONE OF WHICH ARE PRESENT HERE.

The Act sets forth the administrative scheme that a claimant must follow to bring a civil lawsuit thereunder. As a prerequisite to filing suit based on a violation of the FCRA, a claimant must first file a complaint with the FCHR within 365 days of the alleged violation. Thereafter, if the FCHR determines that there is reasonable cause to believe that a violation of the Act occurred, the charging party has the option of either bringing a civil lawsuit or requesting an administrative hearing. Section 760.11(4), Fla. Stat. (1999). Section 760.11(8), Fla. Stat. (1999) provides that where a claimant does not receive any finding after 180 days, the claimant may proceed as if there were a finding of "reasonable cause," under Section 760.11(4).

However, where a determination has been made and "reasonable cause" was not found, the Act spells out the procedure a claimant must follow as an administrative prerequisite to a lawsuit. Section 760.11(7), Fla. Stat. (1999), 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 person 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 of determination of reasonable cause and any such hearing shall be heard by an administrative law judge and not by the commission or the commissioner. If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred.

Id. (Emphasis added).

"When construing a statutory provision, we are guided by the rule that the intent of the legislature is the overriding consideration." Cassoutt v. Cessna Aircraft Co., 742 So. 2d 493, 495 (Fla. 1st DCA 1999). "Legislative intent, absent an ambiguity, is discerned from the plain meaning of the language used in the statutory provision under consideration." Id. at 495. Section 760.11 is unambiguous.

Here, the legislature set forth the three pre-suit situations that permit a civil action to be filed. What the legislature intended is that absent a finding of "reasonable cause" or no finding at all after 180 days, a claimant must comply with the administrative scheme by requesting a hearing within 35 days of the determination. Section 760.11, Fla. Stat. (1999). Woodham did receive a determination; and it was not a "reasonable cause" determination. Therefore, her

only way to file a civil lawsuit was to request an administrative hearing and have the determination overturned. This did not occur.

During the time that Woodham's Charge of Discrimination was pending before the FCHR, that agency and the EEOC had two Worksharing Agreements: the 1998 one that was in effect when her charge was filed and the 1999 one that was in effect when the determination at issue here was made.[2] Specifically, both versions of the Worksharing Agreements stated as follows:

> II. A. In order to facilitate the assertion of employment rights, the EEOC and the FEPA each designate each other as its agent for the purpose of receiving[,] drafting, and filing charges, including those that are not jurisdictional with the agency that initially receives the charge. . . .

1998 EEOC/FCHR Worksharing Agreement, page ii; 1999 EEOC/FCHR Worksharing Agreement, page ii. (The 1998 and 1999 agreements are annexed hereto as Appendix Tabs A and B, respectively). Each of the Worksharing

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[2] With respect to the 1998 and 1999 EEOC/FCHR Worksharing Agreements, we ask that this Court take judicial notice, in accordance Fla. Stat. 90.202 (11) & (12), that allows a court to take judicial notice of information that is either generally known in the territorial jurisdiction or is capable of accurate and ready determination by an unquestionable source. We also request that this Court take judicial notice of similar facts contained elsewhere in this brief; and for the Court's convenience, we do so without repeating this footnote 2.

Agreements also stated that "once an agency begins an investigation, it resolves the charge." Id.

Here, the EEOC conducted the investigation on behalf of both itself and the FCHR. On July 22, 1999, Woodham received a determination from the EEOC, Form 161 (annexed hereto as Appendix Tab C). Therein, she was informed, that "based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes violations of the statutes." This is not a finding of "reasonable cause," nor does it represent a situation where no investigation was conducted and the EEOC made no finding.

Therefore, regardless of which Worksharing Agreement was operative when the EEOC made its determination, the results are the same: the investigating agency will resolve the charge as the designee or agent for the other. Id.[3] And, that resolution was not "reasonable cause."

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[3] The Petitioner and NELA argue that the Worksharing Agreement was not followed because of Woodham's lack of notice from the FCHR of the obligation to exhaust her administrative remedies. (Pet. Amended Brief, p. 25); (NELA Amicus Brief p. 12). Assuming that there was a lack of notice in Woodham's particular case, that was a direct result of Woodham's failure to make her EEOC charge a dual-filed charge. (After all, how could Woodham expect a notice from an agency where her charge was never filed.) Thus, this Court's response to the certified question should speak to other litigants who are not subject to this aberrational fact pattern, but rather the almost universal situation where litigants claims are actually dual-filed.

B. AN "UNABLE TO CONCLUDE" FINDING IS NOT THE EQUIVALENT OF A FINDING OF "REASONABLE CAUSE," AND THEREFORE, DOES NOT PERMIT A CLAIMANT TO FILE SUIT.

As discussed in Section II. A., supra, at pp. 7-10, the only way a claimant is permitted to file suit immediately (when a finding is issued without requesting an administrative hearing) is when he or she receives a "reasonable cause" finding. Woodham has not argued that she received a "reasonable cause" finding. Woodham merely claims that she did not receive a "no reasonable cause" finding. (Pet. Amended Brief p. 17). As will be established below, however, the "unable to conclude" finding is the equivalent of a "no reasonable cause" finding.

In April 1995, the EEOC abandoned its previous practice of issuing a "no cause" determination where reasonable cause could not be established by its investigation. Instead, it began to use the following language:

> The Commission issues the following **determination**: Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

(EEOC Form 161 10/95, annexed hereto as Appendix Tab D). (Emphasis added).

In so doing, the EEOC intended to use the "unable to conclude" language as an exact replacement for the "no reasonable cause" finding. This is evident for

several reasons. First, the EEOC's website contains a chart that offers a breakdown of the disposition of cases from 1992 through 2000. Therein, the EEOC provides statistics for the number of cases that have received a "no reasonable cause" determination. It would be illogical for the EEOC to use this characterization after 1995 if it did not consider "unable to conclude" to be synonymous with a "no reasonable cause" finding. The EEOC's website confirms that the EEOC has issued thousands of these findings as "no reasonable cause" findings: in 1997, 64,567 no reasonable cause findings; in 1998 61,794 no reasonable cause findings; in 1999, 58,174 no reasonable cause findings; and in 2000, 54,578 no reasonable cause findings. (EEOC website www.eeoc.gov/stats/all.html, annexed hereto as Appendix Tab E).

Second, of all of the choices on Form 161, the "unable to conclude" option is the only one that states on its face that it is a "determination." Therefore, Woodham's argument that the EEOC's "determination" should be treated as no finding by the FCHR places form over substance. (Pet. Amended Brief p. 12). There is no question that the net effect of the "determination" was a "dismissal" of her charge as plainly stated in the title of the document: "Dismissal and Notice of Rights."

Third, and most important, the EEOC's own April 19, 1995 memorandum states that it is replacing the "no cause" determination with the "unable to conclude" language. Specifically, the EEOC memorandum reads:

> That the Commission eliminate the substantive "no cause" letter of determination in cases where the appropriate investigation of the charge has not established reasonable cause to believe that discrimination has occurred. Such charges should be dismissed without particularized findings. However, field offices are encouraged to share with charging parties the basis for EEOC's determination through such means as predetermination interviews. (Approved: 4-1, Commissioner Tucker Disapproving)

(EEOC's April 19, 1995 Memorandum, annexed hereto as Appendix Tab F).

Equally compelling as this April 1995 memorandum is the EEOC's adoption of its "Priority Charge Handling Procedures" (unanimously adopted by the Commission). The Priority Charge Handling Procedures, issued by the EEOC on June 20, 1995, contains the unequivocal intent of the EEOC:

> **4. End Use of Substantive "No Cause" LODs [Letters of Determination].**
>
> The Commission ended the use of the substantive "no cause" letter of determination in cases <u>where an appropriate investigation has not established that a violation has occurred</u>. Instead, the <u>parties will be informed</u> in a short-form determination <u>that the investigation failed to disclose a violation</u>. However, communication with CPs regarding the basis for the dismissal of their charges remains essential.

* * *

F. DETERMINATIONS

1. Elimination Of Substantive "No Cause" LODs

Substantive "no cause" determinations will no longer be used. Instead, the parties will be informed in a short-form determination that the investigation failed to disclose a violation. These determinations will not include particularized factual findings, but rather will use the following uniform language which is included in the dismissal form approved on May 1, 1995, and a copy of which is attached as Attachment B:

> Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issue that might be construed as having been raised by this charge.

(Priority Charge Handling Procedures 10/95 annexed hereto as Appendix Tab G). (Emphasis added).

To prove further that "unable to conclude" is the same as "no reasonable cause," an examination of the "no cause" definition previously utilized reveals that the use of the "no cause" determination covered the same situation as the new wording. (Priority Charge Handling Procedures, 10/95).

Other courts have previously determined that the EEOC's "unable to conclude" determination, contained in Form 161, operates as a "no reasonable cause" finding under the FCRA. The Middle District of Florida held that the "unable to conclude" determination was a binding determination of "no reasonable

cause" on the FCHR. Blakely v. United Services Auto Ass'n, 13 Fla. L. Weekly Fed. D79; 1999 WL 1053122 (M.D. Fla. 1999). There, the court held 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 FCRA." Id. at *4. The Middle District of Florida correctly pointed out that under the Worksharing Agreement (which had the same language as the ones in effect during the pendency of the administrative claim in this case), "the EEOC's finding took the place of the FCHR's finding" requiring the claimant to request an administrative hearing in order to continue to pursue the claim under the FCRA. Id. at *4.[4]

The Middle District of Florida again addressed this issue recently and concluded that the EEOC's "unable to conclude" determination is the equivalent of a "no reasonable cause" determination for the FCHR. In Gorman v. Jim Palmer Trucking, Inc., Case. No. 8:01-cv-170-T-MSS, (M.D. Fla., Sept. 20, 2001)

[4] The Eleventh Circuit recently affirmed a decision where an EEOC "no cause" finding was held to trigger the 35 day mandatory request period for an administrative hearing, prior to filing suit. Dawkins v. BellSouth Telecommunications, Inc., 53 F. Supp. 2d 1356 (M.D. Fla., June 8, 1999), aff'd 247 F.3d 245 (11th Cir. 2001) (unpublished opinion). Although, the Court did not discuss the exact words used by the EEOC, due to the fact that a "no cause" determination was eliminated by the EEOC in 1995 and this determination occurred in 1998, it is self-evident that Form 161 was at issue.

(unpublished opinion, annexed hereto as Appendix Tab H), the court held that "the selected language makes clear that the agency had concluded [and] for whatever reason the investigation had not yielded enough evidence for the agency to conclude 'that the information obtained establishes violations of the statutes.'" Id. at 5. The court reasoned that "a close reading of the form [161], however, reveals that there are ample signals that this provision does serve as a Fla. Stat. Section 760.11(7) determination." Id. at 4-5.

In Cheneque v. The School District of Palm Beach County, Fla., Case No. 97-8644-Civ-Moore (S.D. Fla., March 10, 1998) (unpublished opinion, annexed hereto as Appendix Tab I), in finding that the EEOC's "unable to conclude" determination triggered the 35-day administrative requirement of the FCRA, the court stated that, "[w]hile there is no doubt that the words 'no cause' do not appear on the face of the Notice [of Dismissal and Rights letter], it is equally evident that the EEOC did not determine that there was reasonable cause to believe that a discriminatory practice in violation of the FCRA occurred as required by § 760.11(4), Fla. Stat." Id. at page 2, n.1. (Emphasis added). See also Lynch v. Lexford Residential Trust, Case No. 6:99-cv-1591-Orl-28KRS (M.D. Fla., Nov. 26, 2001) (unpublished opinion, annexed hereto as Appendix Tab J) (citing to Blakely, supra and Dawkins, supra in dismissing FCRA claim for failure to comply with Fla.

Stat. 760.11 (7). But see Ward v. City of Jacksonville Beach, Case No. 3:00-CV-510-J-25TJC (M.D. Fla., March 26, 2001) (unpublished opinion, annexed hereto as Appendix Tab K) ("unable to conclude" finding does not constitute a "no reasonable cause" finding under the FCRA); Beckman v. AT&T Universal Card Services Corp., Case No. 99-1457-Civ. (M.D. Fla., June 23, 1999) (unpublished opinion, annexed hereto as Appendix Tab L) (same); Motry v. The Devereux Foundation, Inc., Case No. 99-1457-CIV-ORL-19B (M.D. Fla., April 21, 2000) (unpublished opinion, annexed hereto as Appendix Tab M) (no evidence in the record that EEOC determination is an FCHR determination). (See also Hughes v. Pinellas County Sheriff's Dept., Case No. 8:01-cv-70-T-30MSS (M.D. Fla., Nov. 8, 2001) (unpublished opinion, annexed hereto as Appendix Tab N) (the court followed the holding in Cisko, at p. 18 because it believed that the 2nd DCA, a state court, bound its decision, but ignored the 3rd DCA's holding in the case at bar, as well as in Bach, infra at p. 19, both of which would have eliminated the "binding" effect of Cisko on a federal court).

With regard to Florida state court interpretations of the "unable to conclude" finding, two 2nd District Court of Appeals cases reached a contrary conclusion from this case. In Jones v. Lakeland Regional Medical Center, 2001 WL 1386595 (Fla. 2nd DCA 2001), plaintiff requested an administrative hearing after receiving

the EEOC's "unable to conclude" determination, but then dismissed the request for review before its completion. The appellate court in Jones reversed, finding that the Worksharing Agreement stated that the FCHR would make its own findings. Id.

The Jones rationale is faulty, however, because it ignores the portion of the Worksharing Agreement that states:

> 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 except when the agency taking the charge lacks jurisdiction or when the agency taking the charge is to be transferred in accordance with Section III (DIVISION OF INITIAL CHARGE-PROCESSING RESPONSIBILITIES).

(1999 EEOC/FCHR Worksharing Agreement, page ii). (Emphasis added). Therefore, under this Worksharing Agreement, the EEOC did make a final determination on behalf of the FCHR -- something that the court ignored.

Likewise, the same court erred in Cisko v. Phoenix Medical Products, Inc., 26 Fla. L. Weekly D1851 (Fla. 2nd DCA 2001). There, the court reasoned that the literal verbiage of the Act required the determination to state on it that "no reasonable cause" existed to find a violation. Here, again, the court ignored the facts that: (i) the Worksharing Agreement permits a determination by the EEOC on behalf of the FCHR; (ii) the EEOC replaced its "no cause" finding with the "unable

to conclude" finding in 1995; and (iii) the Act enumerates the three situations in which a claimant can file suit, none of which were present in Cisko.

In addition to the 3rd DCA that decided this case correctly, the 4th DCA did likewise in Bach v. United Parcel Service, Inc., 26 Fla. L. Weekly D2095 (Fla. 4th DCA 2001). There, the court cited the opinion by the 3rd DCA below in support of its decision that the plaintiff had to proceed under subsection (7) and request an administrative hearing and held "[w]e agree with the analysis of the third district and adopt it as our own."

In short, the only reasonable interpretation of the Act and the legislature's intent is that the administrative remedies be exhausted prior to a claimant filing suit. Woodham failed to comply with this requirement.

III. POLICY CONSIDERATIONS DICTATE THAT THE LOWER COURT SHOULD BE AFFIRMED.

As a prerequisite to a civil action, the legislature drafted the FCRA to require a "reasonable cause" finding, where a determination is made. The legislature balanced the rights of employees and employers to formulate the administrative requirements of the Act. These same policy considerations dictate that the EEOC's "unable to conclude" determination be treated as a "no reasonable cause" determination.

If the determination were not considered a "no reasonable cause" determination, it will have the effect of allowing claimants, who otherwise would be barred from pursuing a state claim, to file FCRA claims from as far back as December 1997. In many instances, Florida courts will experience a flood of discrimination claims that were otherwise barred by the terms of the Act. Many claimants who failed to seek administrative review within the 35-day time period could now proceed to court with their state claims. This "delay of justice" would be inherently unfair to employers, where in many instances, the personnel who were either directly involved in the alleged violation, or the investigation thereof, are no longer employed with the company.

This is plainly not the intent of the legislature, which emphasized the requirement for the exhaustion of administrative remedies. Section 760.07, Fla. Stat. states:

> Any violation of any Florida statute making unlawful discrimination because of race, color, religion, gender, national origin, age, handicap, or marital status in the areas of education, employment, housing, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made

> available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 760.07, Fla. Stat. (2001) (emphasis added).

The holding in Joshua v. City of Gainesville, 2000 WL 1227755, 25 Fla. L. Weekly S641 (Fla. 2000), does not nullify this policy consideration. This Court's holding preserved the rights of a claimant to file suit where she allowed the agency to conduct an investigation, but the agency failed to do so after 180 days. Joshua was not penalized for allowing the administrative phase to run its course. Joshua was given a four-year statute of limitations because the legislature had not addressed the possibility of no finding being issued after 180 days and the claimant allowing the agency to continue to investigate. It was not clear whether the employee would have one year or four years to bring suit after the 180th day.

That is not the case here: A determination had been made; and the FCHR was no longer investigating the charge. In those circumstances, the legislature gave a specific 35 day time limit for those employees who wanted to go to court.

Here, Woodham did not permit the FCHR to proceed with an administrative hearing. Rather, she chose to circumvent the process by failing to request an administrative hearing after receiving the determination. The statute is plain that where a finding is issued, only a "reasonable cause" finding will permit a claimant to

file suit immediately. Woodham jumped the proverbial gun in a statutory scheme that contains specific exhaustion requirements. There is no compelling reason to rescue her from her own failure.

CONCLUSION

For the foregoing reasons, this Court should affirm the decisions of the trial court and the 3rd District Court of Appeal. Cordette Woodham failed to comply with the statutory provisions of the FCRA. As a result, her claim is barred for failure to request an administrative hearing within 35 days of the determination. Having failed to receive a "reasonable cause" determination, she should not be permitted immediate access to a civil suit.[5]

Dated December ___, 2001 at Boca Raton, Florida.

Respectfully submitted,

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[5] On November 21, 2001, Respondent filed a Motion to Strike portions of the Petitioner's and NELA's initial briefs that go beyond the scope of the certified question in this appeal. Should the Motion to Strike be denied, HR Florida and HRABC respectfully request that this Court allow them additional time to respond to those issues.

CERTIFICATE OF SERVICE

I certify that on December ___, 2001, a copy of this document was served by U.S. Mail on:

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CERTIFICATE OF COMPLIANCE

This amicus curiae answer brief complies with the font requirements of Rule 9.210, Fla. R. App. P.

Dated: December ___, 2001.

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APPENDIX

Tab A	1998 Worksharing Agreement between the EEOC and the FCHR
Tab B	1999 Worksharing Agreement between the EEOC and the FCHR
Tab C	Woodham's EEOC Form 161 Determination
Tab D	EEOC Form 161 10/95 Version
Tab E	EEOC website www.eeoc.gov/stats/all.html
Tab F	EEOC's April 19, 1995 Memorandum
Tab G	EEOC Priority Charge Handling Procedures 10/95
Tab H	Gorman v. Jim Palmer Trucking, Inc.,Case. No. 8:01-cv-170-T-MSS, (M.D. Fla., Sept. 20, 2001)
Tab I	Cheneque v. The School District of Palm Beach County, Fla., Case No. 97-8644-Civ-Moore (S.D. Fla., March 10, 1998)
Tab J	Lynch v. Lexford Residential Trust, Case No. 6:99-cv-1591-Orl-28KRS (M.D. Fla., Nov. 26, 2001)
Tab K	Ward v. City of Jacksonville Beach, Case No. 3:00-CV-510-J-25TJC (M.D. Fla., March 26, 2001)
Tab L	Beckman v. AT&T Universal Card Services Corp.,Case No. 99-1457-Civ. (M.D. Fla., June 23, 1999)
Tab M	Motry v. The Devereux Foundation, Inc.,Case No. 99-1457-CIV-ORL-19B (M.D. Fla., April 21, 2000)
Tab N	Hughes v. Pinellas County Sheriff's Dept., Case No. 8:01-cv-70-T-30MSS (M.D. Fla., Nov. 6, 2001)
Tab O	Copy of Certified Question from the 3rd DCA, Woodham v. Blue Cross and Blue Shield of Florida, Inc.