IN THE SUPREME COURT OF FLORIDA

Case No.: SC01-2598
Lower Tribunal No.: 4D01-252

JENNIFER BACH,

Petitioner,

vs.

UNITED PARCEL SERVICE, INC.,

Respondent.

ON REVIEW FROM A DECISION OF
THE FOURTH DISTRICT COURT OF APPEAL

BRIEF OF U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF AMICUS CURIAE EEOC

The U.S. Equal Employment Opportunity Commission ("EEOC") is the agency established by Congress to administer, interpret and enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq*., ("Title VII") and other federal employment discrimination laws. To assist EEOC in carrying out its investigative functions under the statutes it enforces, Title VII expressly authorizes EEOC to enter into agreements with State fair employment practices ("FEP") agencies that are charged with the administration of state FEP laws. See 42 U.S.C. § 2000e-8(b); see also EEOC v. Commercial Office Products Company, 486 U.S. 107, 112 (1988). The Florida Commission on Human Relations ("FCHR" or "Florida Commission") is one such FEP agency, see 29 C.F.R. § 1601.74(a), and the EEOC has had such an arrangement with the FCHR for a number of years as reflected in annual "Worksharing Agreements" between the two agencies.

Under the worksharing arrangement between the EEOC and FCHR, each agency has authorized the other to accept discrimination charges or complaints on the other's behalf. The worksharing agreement does not, however, dictate that an administrative determination by one agency is automatically a determination of the other. A number of state and federal

courts in Florida that have considered this question have reached conflicting results on this issue. This Court has not yet resolved the question.

This Court accepted jurisdiction in the present case to review whether a complainant is precluded from pursuing her claims under the Florida Civil Rights Act ("FCRA" or "Act") after she receives a "no cause" administrative determination from the Florida Commission, when the commission's determination was issued more than 180 days after the complainant filed her discrimination complaint with the agency. The administrative determination in this case, however, was initially issued by the Palm Beach County Office of Employment Opportunity ("OEO") and thereafter adopted by the EEOC, but never acted upon by the Florida Commission. Therefore, the question on which this Court accepted jurisdiction requires resolution, as a preliminary matter, of whether an EEOC administrative determination is properly equated automatically with that of the Florida Commission for purposes of determining a claimant's right to proceed in court with a claim under the FCRA. Although the court below did not explain why it treated the EEOC's determination as a determination of the Florida Commission, it appears likely that this assumption was based on the worksharing agreement

between EEOC and the FCHR. For this reason, EEOC respectfully submits that an understanding of the EEOC/FCHR Worksharing Agreement will assist this Court in reaching a proper resolution of the issue before it. The EEOC therefore offers its views.

STATEMENT OF THE CASE AND FACTS

1. Nature of the Case

This Court accepted jurisdiction to review a decision of the Fourth Florida District Court of Appeal ("Fourth DCA") on the question of whether a complainant who alleges employment discrimination in violation of the Florida Civil Rights Act can pursue that claim in court if the complainant previously received an administrative finding that there is "no reasonable cause" to believe that a discriminatory practice has occurred, where the administrative finding was issued more than 180 days after the complaint was filed with the Florida Commission on Human Relations.

As explained more fully infra, the FCRA provides that any person aggrieved by a violation of §§ 760.01 through 760.10 of the Act may file a complaint with the Florida Commission, and the Commission shall investigate the complaint and determine within 180 days if there is reasonable cause to believe that a discriminatory practice occurred in violation of the Act. See

§§ 760.11(1) and (3), Fla. Stat. (2001). If the Commission determines there is reasonable cause to believe that a discriminatory practice occurred in violation of the FCRA, the aggrieved person can either bring a civil action in court or request an administrative hearing, but the election of one of these two options "is the exclusive procedure available to the aggrieved person pursuant to this act." § 760.11(4), Fla. Stat. (2001). If the FCHR determines there is not reasonable cause to believe there was a violation of the FCRA, the FCHR shall dismiss the complaint. § 760.11(7), Fla. Stat. (2001). The aggrieved person then has 35 days from the date of the determination of "no reasonable cause" to request an administrative hearing, and "[i]f the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred." Ibid.

As noted above, the FCRA requires the Florida Commission to make its determination of "reasonable cause" or "no reasonable cause" within 180 days of the filing of the complaint. See § 760.11(3), Fla. Stat. (2001). The FCRA further 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.

§ 760.11(8), Fla. Stat. (2001). As previously noted, the ability to proceed under subsection (4) permits a complainant to pursue his or her discrimination claim in court.

Petitioner Jennifer Bach filed her complaint of gender discrimination against United Parcel Services, Inc., ("UPS") on May 13, 1999,[1] with the Palm Beach County OEO alleging violations of the Palm Beach County Equal Employment Opportunity Ordinance and Title VII. Pursuant to a worksharing agreement between the Palm Beach County OEO and the EEOC, Bach's complaint was automatically dual-filed with the EEOC as an EEOC charge alleging a violation of Title VII and, at the same time, dual-filed with the FCHR as an FCHR complaint alleging a violation of the FCRA.[2]

The Palm Beach County OEO investigated the charge and

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[1] Although the trial court stated that the complaint was filed with the Palm Beach County OEO on April 12, 1999, the OEO's determination states that Bach's complaint was filed on May 13, 1999. Appendix at 16a.

[2] According to Harry L. Lamb, Jr., Director of the Palm Beach County OEO, the OEO did not have a worksharing agreement with the FCHR to investigate employment discrimination claims on FCHR's behalf during 1999 and 2000, and has not had such an agreement at any time since. Palm Beach County OEO dual-filed Bach's complaint of gender discrimination with the FCHR because of a requirement in the worksharing agreement between Palm Beach County and the EEOC, see Appendix at 9a-11a, and not based on any agreement between Palm Beach County and the Florida Commission.

issued an administrative determination on April 10, 2000. The OEO's determination stated that, based on the information and evidence gathered during its investigation, there were no reasonable grounds to believe there had been a violation of either the Palm Beach County equal employment opportunity ordinance or Title VII. Appendix at 16a-17a. The EEOC adopted these findings in a written dismissal notice dated June 14, 2000, Appendix at 18a, more than a year after the complaint was originally filed. The record does not reflect that the FCHR was ever notified of this determination or that it issued any separate findings or determination with respect to Bach's complaint.

In light of this procedural posture, Petitioner Bach has explained to this Court that the "principal issue on appeal to the Fourth District Court of Appeal" was whether:

> the trial court erred in its application of the Florida Civil Rights Act . . . [when it held] that a "no-cause" determination issued by a local Fair Employment Practices agency more than 180 days after a claimant files her discrimination charge, and thereafter adopted by the U.S. Equal Employment Opportunity Commission ("EEOC"), but never expressly adopted by the Florida Commission on Human Relations ("FCHR"), strips a claimant of her right to pursue her state law claims in court.

See Petitioner Bach's May 12, 2002, Reply to this Court's February 26, 2002, Order to Show Cause at 1-2.

The Fourth DCA, on the other hand, characterized the

issue before it as "whether [Bach] may avoid the requirement to pursue an administrative remedy after the [Florida] Commission dismisses the complaint" where the dismissal occurred more than 180 days after the complaint was originally filed. Bach v. UPS, Inc., Case No. 4D01-252 (Fla. 4th DCA, Aug. 29, 2001)(Appendix at 24a) [emphasis added]. Since the FCHR never issued an administrative determination on Bach's complaint, the Fourth DCA could only reach this question if it first assumed that EEOC's adoption of Palm Beach County's "no cause" determination was the same as, or equivalent to, an administrative determination by the Florida Commission. Although the Fourth DCA did not indicate the basis for such an implicit assumption, it indicated its agreement with, and adoption of, the analysis of the Third DCA in Woodham v. Blue Cross and Blue Shield of Fla., Inc., 793 So.2d 41 (Fla. 3d DCA 2001). The court in Woodham, in turn, expressly held that, for purposes of addressing a very similar question, "a 'no cause' determination issued by the EEOC operates as a 'no cause' finding by the FCHR." Id. at 42 n.1 (citing Blakely v. United Servs. Auto Ass'n, 1999 WL 1053122 (M.D. Fla., Oct. 4, 1999). Blakely relied on the existence of a worksharing agreement between EEOC and the FCHR as the basis for equating an EEOC charge determination with a final administrative

finding by the FCHR.

Title VII expressly authorizes EEOC to enter into agreements with State and local fair employment practice (FEP) agencies that are charged with the administration of State FEP laws, for the purpose of carrying out the EEOC's investigative functions. See 42 U.S.C. § 2000e-8(b); EEOC v. Commercial Office Products Company, 486 U.S. 107 (1988). Title VII also provides, more generally, that EEOC has the power "to cooperate with and, with their consent, utilize regional, State, local and other agencies, both public and private" to fulfill its various responsibilities. See 42 U.S.C. § 2000e-4(g)(1). The Palm Beach County OEO is a local FEP agency and, as noted above, EEOC has had a worksharing agreement with the Palm Beach County OEO for several years. See, e.g., Appendix at 9a-15a. Similarly, the Florida Commission is one of the state FEP agencies with which the EEOC has had an annual worksharing agreement for a number of years. 29 C.F.R. § 1601.74(a). The Fiscal Year (FY) 1999 Worksharing Agreement between EEOC and the FCHR, Appendix at 1a-7a, is typical.[3]

[3] EEOC's worksharing agreements with state and local FEP agencies are renewed annually on a federal fiscal year basis, which runs from October 1 to September 30. Bach's charge was dual-filed with EEOC and the Florida Commission pursuant to EEOC's FY 1999 Worksharing Agreement with the Palm Beach County OEO. Palm Beach County issued its determination April 10, 2000, and EEOC adopted those findings on June 14, 2000,

The EEOC/FCHR's FY 1999 Worksharing Agreement provides, among other things, that each agency designates the other for the purpose of receiving, drafting, and filing charges, and that the receipt of a charge by one agency "will automatically initiate the proceedings of both EEOC and the [FCHR] for the purposes of [each agency's respective statutes]." See, e.g., Section II.A. The Agreement specifies certain categories of dual-filed charges that the Florida Commission will process initially and other categories that EEOC will process initially. Sections III.A.1. and 2, II.D.2.b. Otherwise, whichever agency receives the charge originally will investigate it, Section III.A., and the agency that begins an investigation will normally be the agency to resolve the charge. Section II.C. Of course, in Bach neither the Florida Commission nor the EEOC originally received the charge, and neither agency conducted any independent investigation of the charge that Bach filed with the Palm Beach County OEO in May

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under its FY 2000 Worksharing Agreement with Palm Beach County. EEOC's FY 1999 and FY 2000 Worksharing Agreements with FCHR were in effect during this same period of time. Since EEOC/FCHR's FY 2000 Worksharing Agreement, signed in September 1999, simply extended the FY 1999 agreement for another year, EEOC's *amicus* brief refers primarily to the provisions of the FY 1999 agreement. Pursuant to Fl.R.Evid. 90.202(5), this Court may take judicial notice of these agreements as official actions of a federal executive agency. Copies of these agreements are appended.

of 1999.

Once the processing agency has completed its investigation and resolved the charge, that agency transfers its findings and conclusions to the nonprocessing agency. See Sections IV.A and V.B. When EEOC is the nonprocessing agency, as it was in Bach, Title VII requires EEOC to "accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law ...." 42 U.S.C. § 2000e-5(b). Upon reviewing and accepting the results of the FEP agency's investigation pursuant to 29 C.F.R. §§ 1601.75-.80, EEOC issues the appropriate EEOC notice advising the charging party of the disposition of his/her charge under federal law. EEOC issued such a notice to Bach on June 14, 2000. See Appendix at 18a. The EEOC notice contained the agency's standard language advising the claimant of his/her right to seek *de novo* court review within 90 days of the date of the EEOC notice. The notice said nothing about the recourse a claimant might have under any state or local law.

2. Course of the Proceedings

Following her receipt of the Palm Beach County OEO and EEOC administrative determinations, Bach filed suit in state court asserting a claim of gender discrimination under the

FCRA. UPS moved to dismiss, arguing that Bach had failed to exhaust her administrative remedies and was, therefore, precluded from bringing any claims under the FCRA. Appendix at 19a. The trial court agreed and dismissed Bach's suit on the grounds that Bach's failure to request an administrative hearing within 35 days barred her from filing a lawsuit under the FCRA. The trial court stated:

> Logical interpretation of § 760.11, Fla. Stat. (2000) suggests that once the EEOC/FCHR adopted the "no cause" finding of OEO on 6/14/00, Plaintiff had 35 days in which to request an administrative hearing. See § 760.11(7), Fla. Stat. (2000). Plaintiff failed to do so. Therefore, Plaintiff should be barred from bring any claims under the Florida Civil Rights Act.

Slip op. at 4-5 (Appendix at 22a-23a).

3. Decision of the Court Below

The Fourth DCA affirmed, holding that Bach's receipt of a "no cause" administrative determination required her to exhaust the administrative remedies provided in § 760.11(7), Fla. Stat. (1999), before asserting claims under the FCRA in a Florida court. The Fourth DCA held that it was immaterial that the "no cause" determination was issued more than 180 days after Bach filed her administrative complaint. The court stated:

> This question has recently been answered by the

> third district in Woodham v. Blue Cross and Blue Shield of Fla., Inc. . . . . That court held that "[t]he receipt of a 'no cause' determination terminates the person's option to proceed under section 760.11(8), and requires that the person follow subsection 7, and exhaust the administrative remedy provided therein, *prior* to filing a lawsuit in a Florida court."

Bach v. UPS, Case No. 4D01-252 (Fla. 4th DCA, Aug. 29, 2001), Appendix at 24a (citation omitted; emphasis in original). The court then indicated that it agreed with the analysis of the Third DCA on this issue and adopted it as its own. Ibid.

Both the trial court and the Fourth DCA ignored the fact that the Florida Commission never issued an administrative determination on Bach's gender discrimination complaint, which the Palm Beach County OEO had dual-filed with the FCHR pursuant to Palm Beach County's worksharing agreement with the EEOC. Indeed, the Fourth DCA did not even mention that the charge was originally filed with, and investigated by, the Palm Beach County OEO, stating only that "Appellant filed a complaint for gender discrimination with the Florida Commission on Human Relations." Ibid. The Fourth DCA also did not indicate that the administrative determination was originally issued by the OEO and then adopted by the EEOC, stating that "the [Florida] Commission found no reasonable cause and dismissed the complaint . . . ." Ibid. The trial

court, on the other hand, had noted the Palm Beach County OEO's role as the agency that had received and investigated the charge, slip op. at 2, but then, without explanation, referred to EEOC's June 14, 2000, adoption of the Palm Beach County finding, in both its timeline and throughout its opinion, as "EEOC/FCHR adopted the findings of the OEO." Bach v. UPS, No. 00-8390 AG (15th Judicial Cir. of Fla., Dec. 21, 2000), slip op. at 2, 4 (emphasis added)(Appendix at 20a, 22a).

The court in Woodham was more explicit on this issue. Unlike Bach, Woodham originally filed her charge with the EEOC. As was the case with Bach, the charge was then dual-filed with the Florida Commission (pursuant to EEOC's worksharing agreement with the FCHR). Woodham, like Bach, did not ask the Florida Commission to review EEOC's determination, and the Florida Commission never issued any separate determination or notice with respect to Woodham's claims under the FCRA. Nevertheless, as noted above, the Third DCA held that the EEOC's determination operated as a "no cause" finding by the FCHR. Woodham, 793 So.2d at 42 n.1. The court then concluded that Woodham was limited by the EEOC's determination to requesting an administrative hearing from the FCHR within 35 days, and was precluded from filing her claims in court.

Id. at 43-46.

The Third DCA certified that Woodham raised an issue of great public importance and that its determination conflicted with Cisko v. Phoenix Medical Prod., 797 So.2d 11 (Fla. 2d DCA 2001). 793 So.2d at 47. This Court accepted the certified question and heard oral argument in Woodham on June 6, 2002.[4] Although the issue in Woodham arose in a different factual context than in Bach, both cases involve the same underlying question of the extent to which an administrative determination by the EEOC is properly treated as a determination of the FCHR under § 760.11, Fla. Stat. (2001), where the Florida Commission has not acted to adopt or ratify the EEOC determination.

[4] On January 23, 2002, the EEOC moved for leave to file an amicus curiae brief in Woodham. The Respondent objected on the grounds that EEOC's brief was untimely, and this Court denied EEOC's motion on February 11, 2002.

SUMMARY OF THE ARGUMENT

Nothing in EEOC's Worksharing Agreement with the FCHR mandates that an EEOC determination automatically serves as a determination by the Florida Commission. Rather, just as EEOC receives final actions from state and local FEP agencies and then reviews them under a "substantial weight" standard, EEOC's Worksharing Agreement with the FCHR provides the opportunity for the Florida Commission to review EEOC's determinations and issue its own findings, either adopting, rejecting or modifying the Commission's conclusions.

In addition, the determinations that EEOC issues in dual-filed charges pursuant to the Worksharing Agreement advise charging parties of their rights, under federal law, to obtain *de novo* review of their federal discrimination claims by filing a lawsuit in federal or state court within 90 days. These EEOC determinations contain no notice of Florida state procedural rights.

Other courts that have addressed similar questions have concluded that an EEOC Worksharing Agreement with a state FEP agency does not dictate that an EEOC determination automatically becomes an FEP agency determination upon issuance by the EEOC.

ARGUMENT

THE WORKSHARING AGREEMENT BETWEEN EEOC AND THE FCHR DOES NOT DICTATE THAT AN EEOC DETERMINATION AUTOMATICALLY BECOMES AN FCHR DETERMINATION UPON ISSUANCE BY THE EEOC.

The worksharing agreement between EEOC and the FCHR contemplates that the two agencies will share charge processing duties in an effort to avoid duplicative charge intake activities and factual investigations of the same allegations. To that end, the agreement provides that filing a charge or complaint with one agency automatically serves as a charge filing with the other. EEOC/FCHR Worksharing Agreement for FY 1999, Section II.A. The agreement further contemplates that one agency (the "processing agency") will investigate the charge through to conclusion and share the results with the other (the "nonprocessing agency"). In this way, state and federal agencies with similar responsibilities over civil rights claims do not need to redo enforcement activities that the other agency has already adequately accomplished.

This worksharing arrangement is not intended to prevent either agency from effectuating its own enforcement needs and interests. For instance, the Agreement specifies that the delegation of authority to each agency to receive charges on

behalf of the other does not include the right of one Agency to determine the jurisdiction of the other Agency over a charge. Section II.A. In addition, to reflect each agency's unique priorities, the agreement specifies certain categories of cases that each agency will process initially. Section III.A.; see also Section II.D.2.b. (FCHR will transfer to EEOC for initial processing disability charges raising issues that are potential violations under federal law but not under Florida law). If a charge falls into one of these specified categories, it is referred to the respective agency at the outset. Sections III.A. and B., II.C. Once an investigation is completed, however, nothing in the worksharing agreement dictates that an EEOC determination on federal claims automatically serves as the FCHR's final determination on state claims, or vice versa. Cf. EEOC v. Commercial Office Products, 486 U.S. at 112 (nonprocessing party to a worksharing agreement generally reserves the right to review the processing party's resolution of a charge).

Indeed, there is express language to the contrary in EEOC/FCHR's FY 1999 Worksharing Agreement (which was re-adopted for FY 2000). In these paragraphs, each agency agreed to issue its own final action notices, regardless of which agency initially processed and investigated the complaint.

See Section II., ¶¶ F. and G.[5] See Segura v. Hunter Douglas Fabrication Co., 184 F. Supp. 2d 1227, 1228-30 (M.D. Fla. 2002)(construing this section of EEOC/FCHR Worksharing Agreement and concluding that "the agreement provides that the EEOC determination is not the FCHR determination"); Jones v. Lakeland Regional Medical Center, 805 So.2d 940, 941 (Fla. 2d DCA 2001)(same).

Because the EEOC/FCHR Worksharing Agreement does not contemplate that an EEOC determination will automatically serve as a determination by the FCHR, EEOC determinations lack any notice of, or reference to, the procedural options available to a claimant under state law following a final determination of a state FEP agency. EEOC-issued notices explain only that under Title VII (and the other federal

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[5] These two paragraphs provide:

> F. The FEPA agrees to provide the EEOC with notice of its final actions on all dual-filed charges. The EEOC agrees to timely issue its Notice of Right to Sue upon receipt of each of the FEPA's acceptable final notices.
>
> G. The EEOC agrees to provide the FEPA with notice of its final actions on all dual filed charges. The FEPA agrees to timly [*sic*] issue its final action and Notice of Right to Sue, as appropriate, upon receipt of each of EEOC's acceptable final action notices.

FY 1999 Worksharing Agreement Section II., ¶¶ F. and G (Appendix at 3a), readopted in FY 2000 (Appendix at 8a).

statutes enforced by the EEOC) a charging party "may pursue this matter [their federal claims] further by bringing suit in state or federal court" to obtain *de novo* court review within 90 days of an EEOC determination. See, e.g., Appendix at 18a. Since this *de novo* court review is available under federal law, regardless of whether the EEOC's determination is a finding of "reasonable cause" or a finding of "no reasonable cause," see 42 U.S.C. § 2000e-5(f)(1), the same notice of procedural rights appears at the bottom of each EEOC charge determination, regardless of the substance of the EEOC finding. EEOC dismissal notices provide no information to a claimant on procedural differences under Florida state law. See White v. City of Pompano Beach, 813 So.2d 1003, 1007 (Fla. 4th DCA 2002)(EEOC dismissal notice did not constitute a "no cause" finding by the FCHR in part because EEOC notice "did not specify the options White had available under the [Florida Civil Rights] Act upon dismissal of his case by the commission.").

The Fourth DCA offered no discussion or analysis of its implicit assumption in Bach that an EEOC dismissal notice should be construed as a final determination of the FCHR. Instead, the court simply referred, throughout its brief opinion, to the Florida Commission's finding and dismissal of

Bach's complaint. The court then cited Woodham in support of its conclusion that a "no cause" determination issued more than 180 days after a charge was filed has the same effect as a "no cause" determination issued within 180 days of the charge filing.

Although the Fourth DCA did not mention Woodham in conjunction with its treatment of the EEOC determination as a determination by the FCHR, its citation to Woodham for the broader legal issue, and the absence of any alternate analysis, suggest that the Fourth DCA adopted the Third DCA's reasoning on this implicit point, as well. The court in Woodham relied on Blakely v. United Servs. Auto Ass'n, 1999 WL 1053122 (M.D. Fla. Oct. 4, 1999)(Appendix 25a), for its holding that a "no cause" determination issued by the EEOC operates as a "no cause" finding by the FCHR. See Woodham, 793 So.2d at 42 n.1. Blakely, in turn, relied on an earlier district court decision, Dawkins v. Bellsouth Telecom., Inc., 53 F. Supp. 2d 1356 (M.D. Fla. 1999), aff'd without op. 247 F.3d 245 (11th Cir. 2001). To the extent that the decisions in Woodham and, by extension, Bach are premised on the rationale in Blakely and Dawkins, these decisions reflect a fundamental misunderstanding of the worksharing agreement between the EEOC and the FCHR.

In dismissing Dawkin's FCRA claims even though the FCHR had never issued a separate determination, the court in Dawkins reasoned, in part, that if the filing of a charge with EEOC is automatically considered a simultaneous filing with the FCHR, "then a no-cause finding by the EEOC must also trigger the FCRA's [administrative] appeals process". 53 F. Supp. 2d at 1360-61. It is true, as noted above, that EEOC's worksharing agreement with the FCHR expressly provides that filing a charge with the EEOC automatically serves as a simultaneous charge filing with the Florida Commission, and vice versa. See Section II.A.; see also § 760.11(1), Fla. Stat. (2001) (expressly authorizing this provision of the worksharing agreement). There is no similar provision in the worksharing agreement with respect to either agency's issuance of a determination.[6] Thus, the worksharing agreement itself provides no basis for concluding that automatic reciprocity with respect to the filing of a complaint requires or even suggests automatic reciprocity with respect to the issuance of a determination. See Vielma v. Eureka Company, 218 F.3d 458,

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[6] Indeed, as discussed above, the FY 1999 and FY 2000 Worksharing Agreements expressly provided that when one agency issued its determination, it would notify the other, and the second agency would promptly issue its findings for that charge. See Section II, ¶¶ F. and G., FY 1999 Worksharing Agreement, discussed at pp 16-17, supra.

463-64 (5th Cir. 2000) (issuance of right to sue letter by EEOC does not trigger Texas state filing period notwithstanding fact that EEOC and Texas FEP agency act as agents for each other for purposes of receiving and processing complaints); Mitchell-Carr v. McLendon, 980 P.2d 65, 69-70 (N.Mex. 1999)(fact that worksharing agreement provided for charges to be dual-filed does not dictate reciprocity of agencies' respective administrative decisions, and decision of EEOC would not be deemed an order of nondetermination under New Mexico Human Rights Act where worksharing agreement did not so provide); cf. Commercial Office Products Company, 486 U.S. at 112 ("[T]he nonprocessing party to the worksharing agreement generally reserves the right to review the initial processing party's resolution of the charge and to investigate the charge further after the initial processing party has completed its proceedings.").

The court in Dawkins also placed erroneous reliance on the language of the worksharing agreement that provides: "Normally, once an agency begins an investigation, it resolves the charge." Id. at 1361 (quoting from Section II.C. of the EEOC/FCHR Worksharing Agreement). The word "resolves" in that provision does not refer to the issuance of a determination by one agency that is final and binding on the other. Instead,

it indicates only that the agency that begins the investigation will normally complete it and then issue a determination which will be final as to the issuing agency, but reviewable by the other agency. See, e.g., 42 U.S.C. § 2000e-5(b)(EEOC reviews the determinations of FEP agencies in dual-filed charges under a "substantial weight" standard).[7] This section of the worksharing agreement is intended to avoid unnecessary duplication of investigative activities, not to dictate a particular result to the non-processing agency.

This conclusion is consistent with the result reached by the Eleventh Circuit in McKelvy v. Metal Container Corporation, 854 F.2d 448 (11th Cir. 1988), construing similar provisions in an earlier worksharing agreement between EEOC and FCHR involving charges of age discrimination in employment.[8] The worksharing agreement at issue in McKelvy provided that the EEOC and FCHR would each refer to the other

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[7] 29 C.F.R. §§ 1601.75-.80 explains how this "substantial weight" review is exercised with respect to the findings of certain designated FEP agencies, including the FCHR.

[8] In McKelvy, the validity of the plaintiff's federal claim under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.*, depended on whether the FCHR had properly "commenced" and "terminated" proceedings under state law, as required under 29 U.S.C. § 633(b). See 854 F.2d at 449-52. The worksharing agreement provisions in question were interim procedures added to the agreement in response to the Supreme Court's decision in Oscar Mayer & Co. v. Evans, 441 U.S. 750 (1979), construing 29 U.S.C. § 633(b).

agency copies of age discrimination charges it received. Each agency would then investigate the charges it had received and advise the other agency of the results of its processing of the charge. Id. at 452 n.8. The employer argued that the FCHR's agreement to waive its right to investigate ADEA charges that were filed first with the EEOC meant that the FCHR had waived jurisdiction in advance over those charges. The Eleventh Circuit rejected this argument and held that "FCHR waived only its right to *investigate* claims filed with EEOC. ... [and did not waive] any other rights, including the right to reopen proceedings and grant relief if EEOC's resolution is unsatisfactory." Id. at 452 [emphasis in original].

Courts in other jurisdictions have considered the effect of an EEOC determination and/or an EEOC right-to-sue notice where there is a worksharing agreement with a state FEP agency and the charge has been dual-filed with the state agency. These courts have concluded that the EEOC notice does not trigger state filing deadlines. See, e.g., Vielma v. Eureka Co., 218 F.3d at 461-68 (receipt of EEOC right to sue notice does not trigger statutory time limit for filing employment discrimination claim under Texas law); Ledesma v. Allstate Insurance Co., 68 S.W.3d 765 (Tex. App. 2001) (same);

Mitchell-Carr v. McLendon, 980 P.2d at 67, 69-71 (receipt of EEOC right to sue notice does not trigger statutory time limit for filing employment discrimination claim under New Mexico law); Oliver v. New York Telephone Co., 1993 WL 173471 *3 (W.D.N.Y. 1993) (EEOC right to sue letter addresses plaintiff's right to pursue claim under federal law only, and is unnecessary and irrelevant to filing of state law action)(Appendix 32a); cf. Burgh v. Borough Council of Bor. of Montrose, 251 F.3d 465, 470-71, 474-76 (3d Cir. 2001) (issuance of EEOC right-to-sue notice did not start the two year state statute of limitations where Pennsylvania Human Relations Commission never sent separate notice that it was closing the case); accord Jones v. Lakeland Regional Medical Center, 805 So.2d at 941; Segura v. Hunter Douglas Fabrication Co., 184 F. Supp. 2d at 1228-30.

These courts properly recognized that the considerations of efficiency that underlie the sharing of charge filing and investigative responsibilities by EEOC and state FEP agencies pursuant to a worksharing agreement do not compel automatic reciprocity of determinations. Indeed, as one court recently noted, "[t]o hold otherwise would upset the intricate interplay between the federal and state anti-discrimination agencies." Jones v. Grinnell Corporation, 235 F.3d 972, 975

(5th Cir. 2001). The worksharing agreement between EEOC and the Florida Commission likewise does not mandate that the determination of one agency is automatically the determination of the other.

CONCLUSION

For all of the foregoing reasons, EEOC urges this Court to recognize that the Worksharing Agreement between the EEOC and the FCHR does not require that a determination by the EEOC automatically operates as a determination by the FCHR. As explained above, there is nothing in the EEOC/FCHR Worksharing Agreement that dictates such a result.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the EEOC's Brief as Amicus Curiae was furnished by Federal Express this 12th day of July, 2002, to the following counsel of record:

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Pursuant to Fla.R.App.P. 9.210(a)(2), I hereby certify that this brief was prepared using proportionately spaced Courier New 12 point font.

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