IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC01-2598
LOWER TRIBUNAL NO.: 4D01-252

JENNIFER BACH,
Petitioner,

vs.

UNITED PARCEL SERVICE, INC.,
Respondent.

_____/

INITIAL BRIEF FILED ON BEHALF OF PETITIONER

On Appeal from the Fourth District Court of Appeal
L.T. Case No. 4D01-252

Law Offices of STROLLA & STROLLA
Attorneys for Appellant
319 Clematis Street
Suite 801
West Palm Beach, FL 33401
Phone: (561) 802-8987
Fax: (561) 802-8957

_____
STACY STROLLA, ESQUIRE
Florida Bar No.: 0044954

TABLE OF CONTENTS

Table of Citations . . . . . ii-iii

Issue on Appeal 1

Statement of Case & Facts 1-4

Summary of Argument 4-7

Argument 7-20

I CLAIMANT HAS THE RIGHT TO FILE A LAWSUIT IF A "NO-CAUSE" DETERMINATION IS ISSUED AFTER THE 180 DAY INITIAL INVESTIGATION PERIOD. 7

A. A Clear Reading Of Fla. Stat. §§760.11(3) and (8) Provide A Claimant The Right To Sue If The Investigating Agency Fails To Render A Determination As To That Charge Within 180 Days 7

B. Statutory Construction Of The Act Supports That Petitioner Has The Right To Sue If A No-Cause Determination After 180 Days. 9

II THE FAILURE TO ISSUE A DETERMINATION WITHIN 180 DAYS, AS REQUIRED BY SECTION 760.11(3), DEPRIVE PETITIONER DUE PROCESS AND PROPERTY INTEREST. . 15

A. Vested Rights Are Not Written In Disappearing Ink 15

B. Petitioner Is Denied Due Process When The Florida Commission On Human Relations Fails to Advise of Her Options Available Under the Act After The "No Cause" Finding Is Issued 17

III THE NEWLY CREATED RACE TO THE COURTHOUSE CONFLICTS WITH LEGISLATIVE POLICY AND SUPREME COURT MANDATE 20

Conclusion 20

TABLE OF CITATIONS

Statutes:

Florida Statutes §760.01 16

Florida Statutes §760.11 (3) 3,5-8,10-12,15-20

Florida Statutes §760.11 (4) 4,5,8,10-12,16

Florida Statutes §760.11 (7) 5,11-13

Florida Statutes §760.11 (8) 4,5,7,8,11,12

Other:

U.S.C.A. Const.Amend. 14 15

Cases:

Allstate Ins. Co. v. Rush, 777 So.2d 1027 (Fla. 4th DCA 2000)10

Andujar v. National Property and Casualty, 659 So.2d 1214
Fla. 4th DCA 1995) 14

Blinn v. Florida Dept. of Transportation, 2000 WL 1880213
(Fla. 1st App., December 29, 2000) 9

Holly v. Auld, 450 So.2d 217 (Fla.1984) 7,9

Jones v. Lakeland Regional Medical Center, 805 So.2d 940
(Fla. 2d DCA 2001) 18

Joshua v. City of Gainesville, 768 So.2d 432
Fla. 2000) 4,8,9,16,17,20

Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S.Ct.
1148 (1982) 15,16

Las Olas Tower Co. v. City of Fort Lauderdale, 742 So.2d 308,

312 Fla. 4th DCA 1999) 9

Mayo Clinic Jacksonville v. Department of Professional Regulation,Board of Medicine, 625 So.2d 918, 919 Fla. 1st DCA 1993) 10

TABLE OF CITATIONS

Cases:

McElrath v. Burley, 707 So.2d 836 (Fla. 1st DCA 1998) 12,13,14

Miele v. Prudential- Bache Secs., Inc., 656 So.2d 470 Fla.1995) 9

Segura v. Hunter Douglas Fabrication Co., 184 F.Supp.2d 1227 (M.D. Fla. 2002) 18

State v. Putnam County Dev. Auth., 249 So.2d 6 (Fla. 1971) 10

State v. Iacovone, 660 So.2d 1371 (Fla.1995) 9

White v. City of Pompano Beach, 2002 WL 429241 (Fla. App. 4 Dist.)(March 20, 2002) 18,19

Woodham v. Blue Cross and Blue Shield of Florida, Inc., 793 So.2d 41 (Fla. 3d DCA 2001) 3,4,20

ISSUE ON APPEAL

Whether the Fourth District Court of Appeal properly affirmed the trial court's dismissal of Petitioner's Complaint, finding that Petitioner's sole remedy under the Florida Civil Rights Act of 1992, was to request an administrative hearing after the investigating agency issued a "no-cause" determination after the 180 day investigation period.

STATEMENT OF CASE AND FACTS

The Petitioner, Appellant below, JENNIFER BACH, by and through her undersigned counsel, hereby files this Initial Brief in support of her Appeal of the Fourth District Court of Appeal's affirmance of the trial court's Order Granting Defendant's Motion to Dismiss Plaintiff's Complaint or Alternative Motion for Summary Judgment.

The Complaint at issue plead, in relevant part, two counts under the Florida Civil Rights Act of 1992 ["the Act"], Fla. Stat. §760 et. al..[1] The trial court granted Defendant's Motion to Dismiss Plaintiff's Complaint, finding that Petitioner's claims in Counts I and II are time-barred for her failure to request an administrative hearing after a

[1] Petitioner alleged claims for Hostile Working Environment under the Florida Civil Rights Act, Fla. Stat. §760 (Count I), Failure to Promote under Fla. Stat. §760 (Count II), and Wages Owed under Fla. Stat. §440 (Count III). Only Counts I and II are at issue in this appeal. The trial court granted Respondent's Motion to Dismiss, as opposed to the requested alternative Motion for Summary Judgment. The Court entered Final Judgment in favor of the Respondent as to Counts I and II on January 3, 2001.

"no cause" finding was issued by the Palm Beach County Equal Opportunity Office ["Local EO"], with that finding later adopted by the Equal Employment Opportunity Commission ["EEOC"].

The dates of each event are critical to the issue on appeal. Petitioner originally filed her discrimination charge with the Local EO on April 12, 1999.[2] Her discrimination charge was dually filed with the Florida Commission on Human Relations ["FCHR"] and with the EEOC.[3] One (1) year later, on April 10, 2000, the Local EO issued its "no cause" determination.[4] The Local EO determination failed to advise Petitioner of her rights and options under the Act. Instead, the Local EO merely advised Petitioner that it was referring her case to the EEOC for a substantial weight review. On June 14, 2000, the EEOC adopted the findings of the Local EO.[5] Like the Local EO, the EEOC failed to advise Petitioner of her options under the Act, instead only disclosing her remedies for *federal* claims. *There was never a finding issued by the*

---

[2] See Appendix Filed In Support of Petitioner ["Appendix"], Tab 4.

[3] The FCHR deferred the investigation of Petitioner's complaint to the EEOC.

[4] See Appendix, Tab 5.

[5] See Appendix, Tab 6.

FCHR.

On August 28, 2000, Petitioner filed her Complaint in circuit court. Respondent sought dismissal of Petitioner's discrimination claims, arguing that regardless if a "no cause" determination is made before or after 180 days of filing, a claimant is only permitted to request an administrative hearing. Petitioner maintained that because the investigating agency failed to timely issue a determination within 180 days, as required by Fla. Stat. §760.11(3), she had the right to initiate a civil claim. In agreeing with Respondent's position, the trial court recognized that this issue presented a matter of first impression.[6]

Petitioner filed her appeal with the Fourth District Court of Appeal, seeking reversal of the trial court's dismissal order. While this case was pending on appeal with the Fourth District Court of Appeal, the Third District Court of Appeal addressed this issue, in part, in Woodham v. Blue Cross and Blue Shield of Fla., Inc., 26 Fla.L.Weekly D1360 (Fla. 3rd DCA May 30, 2001), certified on other grounds, 2001 WL 1041025 (Fla. 3d DCA Sept. 12, 2001). The Fourth District

[6] See Appendix, Tab 1.

Court of Appeal adopted the logic of Woodham[7], and affirmed the trial court's order.[8]

Petitioner filed her Motions for Rehearing, for Certification and for Rehearing en banc. These Motions were denied.[9] Consequently, Petitioner sought discretionary appeal with this Court. This Court entered an Order to Show Cause why this appeal should not be stayed pending this Honorable Court's decision in Woodham. After the parties submitted their replies to said Order, this Court accepted jurisdiction of this appeal. The issue on appeal are now ripe for determination.

SUMMARY OF ARGUMENT

The Fourth District Court of Appeal's decision affirming the trial court's dismissal of Petitioner's FCHR claims should be reversed on several grounds.

First, a clear reading of Fla. Stat. §760.11(8) provides a claimant the right to sue if the investigating agency fails to render a determination as to that charge within 180 days.

---

[7] Woodham is currently on appeal with this Honorable Court. The certified question on appeal in Woodham is not identical to this appeal. The certified question in Woodham is whether an "unable to conclude" finding operates as a "no cause" finding.

[8] See Appendix, Tab 2.

[9] See Appendix, Tab 3.

Section 760.11(8) states that if the FCHR fails to conciliate or determine whether cause exists within 180 days, the claimant may proceed under §760.11(4). Subsection (4) provides the right to file a lawsuit. This Court recognizes, however, that the "Legislature was well aware of the fact that the Commission did not always make a determination within the 180 days following the filing of the complaint." Joshua v. City of Gainesville, 768 So.2d 432, 438 (Fla. 2000). As such, the Legislature established a self-invoking right to sue if no determination was made before that 180-day period expires. Fla. Stat. §760.11(8).

Second, even if this Court determines that a conflict exists between the Act's subsections, only Petitioner's position provides a consistent reading of the statutory language of the Act. Section 760.11(3) of the Act requires the FCHR to investigate the allegations of a discrimination charge within 180 days. Section 760.11(7) of the Act, however, has an illusionary conflict with Sections (3), (4) and (8). Section 760.11(7) states that a complaint is to be dismissed if the FCHR renders a no-cause finding.[10]

[10] Section 760.11(7) states: "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."

Subsections (4) and (8) of the Act clearly state that complainants have the right to file a civil action after the 180 day period expires. Unfortunately, the Legislature did not specifically state whether a complaint is to be dismissed if the no-cause finding is issued *after* 180 days. The statutory construction of the Act supports that a claimant has the right to initiate litigation if the FCHR issues a "no-cause" determination after the 180 initial investigation period. Third, permitting a "no-cause" determination that is issued after the 180 day statutorily mandated period to destroy Petitioner's right to sue denies Appellant her due process

rights. There is a non-delegable duty on the part of the FCHR to provide some notice to Petitioner as to the status of her charge within the 180 day period. This was never done. Petitioner should not be deprived of her constitutionally protected rights simply because the investigating agency failed to timely investigate her claim.

Fourth, Section 760.11(3) requires the FCHR to properly notify Petitioner of her options under the Act once a determination was made. It is undisputed that the Local EO, the EEOC and the FCHR failed to comply with this statutory

requirement. The agencies' failure to do so, once again, denies Petitioner due process.

Fifth, the appellate opinion is not consistent with legislative and this Honorable Court's intent for liberal interpretation of the Act.

Lastly, the Legislature and this Court have expressed a strong policy in favor of letting the administrative process run its course, even while affording the claimant a right to end that process by filing a lawsuit after 180 days has passed. But no reasonable claimant will let the process run its course if, after day 180, doing so involves the risk of losing an already-acquired right to sue. The appellate opinion sets up a race to the courthouse wherein the complainant will rush to divest the FCHR of jurisdiction to avoid being stripped of the right to sue by an untimely "no cause" determination.

ARGUMENT AND ANALYSIS

I. CLAIMANT HAS THE RIGHT TO FILE A LAWSUIT IF A "NO-CAUSE" DETERMINATION IS ISSUED AFTER THE 180 DAY INITIAL INVESTIGATION PERIOD.

The Fourth District Court of Appeal concluded that if the FCHR issues a "no-cause" determination, even if issued after the 180 day initial investigation period, a claimant's sole remedy is to request an administrative hearing. The

appellate court's interpretation of the Act's language was erroneous for three reasons: (1) it conflicts with the plain language of Fla. Stat. §760.11(8); (2) even if there exists conflict between the sections, statutory construction establishes that a claimant is not stripped of her vested right to sue; and (3) it defeats the legislative intent of the Act to preserve access to the courts.

A. A Clear Reading Of Fla. Stat. §§760.11(3) and (8) Provide A Claimant The Right To Sue If The Investigating Agency Fails To Render A Determination As To That Charge Within 180 Days.

If a statute's language is clear and unambiguous, it should be given its plain meaning. Holly v. Auld, 450 SO.2d 217 (Fla. 1984). Section 760.11(3) is clear and unambiguous:

> [T]he commission **shall** investigate the allegations in the complaint. Within 180 days of the filing of the complaint, the commission **shall** determine if there is reasonable cause to believe that discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992.[Emphasis added].

Section 760.11(3) does not provide that the FCHR *may*, *can*, or s*hould* investigate a claim within 180 days of filing, but mandates that it "shall" do so.[11]

[11] Section 760.11(3) also states that if a no-cause finding is issued, the claimant must be notified by registered

Section 760.11(8) states: "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**." [Emphasis added].

Again, the statutory language is clear. The FCHR has an affirmative duty to investigate charges "**within 180 days**." Fla. Stat. §760.11(8) [emphasis added]. If they fail to do so, a claimant has her choice of remedies under subsection (4). One of these remedies includes the option of filing a lawsuit.

If the FCHR, or its deferral agency, fails to issue a determination within 180 days, this Court holds that a claimant has four (4) years in which to file suit. Joshua v. City of Gainesville, 768 So.2d 432 (Fla. 2000). As it is undisputed that Petitioner filed her circuit court action after 180 days but before the four year statute of limitations, the Fourth District Court of Appeal's opinion

---

mail and advised of her options. As discussed *infra*, it is undisputed that Petitioner never received a registered letter from any agency advising of her options under the Act. Not only did the FCHR fail to comply with this notice requirement, it is logical to conclude that no such letter was sent because the FCHR recognizes that once 180 days passes without a determination, Petitioner is free to file her lawsuit.

should be reversed and Petitioner's Complaint reinstated.

B. Statutory Construction Of The Act Supports That Petitioner Has The Right To Sue If A No-Cause Determination After 180 Days.

"When interpreting a statute and attempting to discern legislative intent, courts must first look at the actual language used in the statute." Joshua at 435, relying on State v. Iacovone, 660 So.2d 1371 (Fla.1995), Miele v. Prudential- Bache Secs., Inc., 656 So.2d 470 (Fla.1995), and Holly v. Auld, 450 So.2d 217 (Fla.1984). If the language of the statute is unclear, then rules of statutory construction control. Id., relying on Holly, 450 So.2d at 219. Where the literal language of the statute is in conflict with the stated legislative policy of the act, the court will not give the language its literal interpretation "when to do so would lead to an unreasonable conclusion or defeat legislative intent or result in a manifest incongruity." Id. at 435. See also Blinn v. Florida Dept. of Transportation, 2000 WL 1880213 (Fla. App. 1 Dist., 2000); Las Olas Tower Co. v. City of Fort Lauderdale, 742 So.2d 308, 312 (Fla. 4th DCA 1999), *review granted,* No. SC95674, 761 So.2d 330 (Fla. March 20, 2000). Once the intent is determined, the statute may then be read as a whole to properly construe its effect.

As a general rule of statutory construction, if there is

any reasonable basis for consistency, provisions of an act are to be read as consistent with one another rather than in conflict. Allstate Ins. Co. v. Rush, 777 So.2d 1027 (Fla. 4th DCA 2000), relying on State v. Putnam County Dev. Auth., 249 So.2d 6 (Fla. 1971). When conflicting provisions exist within the same statute, the most recent expression contained in the statute normally prevails, but if the last expression in one section is plainly inconsistent with preceding sections which conform to the legislature's obvious policy and intent, the later section must be construed as to give it effect consistent with such other sections and with policy they indicate. Id. The Petitioner's position provides for a consistent reading of the Act.

Section 760.11 must be considered in pari materia. Mayo Clinic Jacksonville v. Department of Professional Regulation, Board of Medicine, 625 So.2d 918, 919 (Fla. 1st DCA 1993). The sequence of relevant subsections establishes that a claimant has the right to file a civil lawsuit after 180 days, even if the FCHR later issues a no-cause finding.

The first section of importance is the 180 day required initial screening process under §760.11(3). The next provision goes on to explain what remedies are available once a cause finding is issued. See Fla. Stat. §760.11(4). The

next relevant section states that if a no-cause finding is issued, then the complaint is dismissed and the complainant's only recourse is to seek an administrative hearing. Fla. Stat. §760.11(7). The very next provision, Fla. Stat. §760.11(8), states that if the FCHR fails to conciliate or determine whether cause exists within 180 days, the claimant may proceed under §760.11(4), which provides the right to file a lawsuit.

At first blush, §760.11(7) appears to support that a complaint must be dismissed when a no-cause finding is rendered, regardless of when it is issued. That interpretation, however, is in direct conflict with subsections (3), (4) and (8).

As discussed *supra*, Section 760.11(3) is clear and unambiguous in mandating that "**[w]ithin 180 days** of the filing of the complaint, the commission **shall** determine if there is reasonable cause to believe that discriminatory practice has occurred." [Emphasis added].

Section 760.11(4) explains the remedies available:

> In the event that the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either: (a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or (b) Request an administrative hearing

under ss. 120.569 and 120.57.

Section 760.11(8) states that if the FCHR "**fails to conciliate** or determine whether there is reasonable cause... **within 180 days,"** a complainant may proceed under subsection (4), as if the commission determined that there was reasonable cause." [Emphasis added]. It must be noted that subsection (8) is completely void of any language that "unless a no-cause finding is later issued," a claimant may chose her remedies.

Critically, subsections (4) and (7) fall *between* the mandated 180-day initial screening process of subsection (3) and the self-invoking right to sue provision of subsection (8). The logical interpretation of that sequence is that the Legislature intended that subsection (4) apply to a "reasonable cause" determination made within the 180 day period and that subsection (7) applies to a "no-cause" determination timely made within the 180 day period. That is precisely why the Legislature included, at the end of the process, the option of an administrative hearing or a civil lawsuit "in the event that the commission fails to conciliate or determine whether there is reasonable cause" within 180 days. Fla. Stat. §760.11(8).

Petitioner's interpretation is further supported by McElrath v. Burley, 707 So.2d 836 (Fla. 1st DCA 1998). In

McElrath, an employee filed a declaratory judgment against the FCHR, seeking to declare the Act as unconstitutional. Ms. Burley asserted that the Act was unconstitutional, explaining that:

> both claimants who receive a determination by the FCHR of reasonable cause to believe that an unlawful employment practice has occurred and those claimants whose claims are not processed within 180 days, **regardless of merit**, have the right to proceed directly
>
> to court without having to go through the administrative process to which the statute relegated Burley after issuance of the 'no-cause' determination. McElrath at 838. [Emphasis added].

Ms. Burley recognized that under the Act, "two plaintiffs with identical charges may be treated differently because one who receives a **timely** no-cause determination must proceed through the administrative process challenged herein, but one whose claim is not examined expeditiously and who receives no determination within the 180-day period may proceed to court on a claim for damages without having to go through the administrative process." McElrath at 839. [Emphasis added].

In declaring the constitutionality of the Act, the court expressed that "[n]ot until expiration of the 180-day period, or the **prior** issuance of a cause or no-cause determination, is there any divergence in the treatment of charging parties." McElrath at 840. [Emphasis added]. That very language

appears to confirm that the FCHR, or its deferral agency, must issue a determination within 180 days.

The McElrath court also provided great insight into the effect of §760.11(7) of the Act by explaining that the "provision permitting those who have had no action within the 180-day period to proceed directly to circuit court protects such charging parties from any preclusive effect of dilatory review." McElrath at 840. The court further explained that the Act "avoids having that screening process arbitrarily eliminate the right to review **by allowing those whose charges are not efficiently handled to proceed to circuit court if no ruling has been rendered in 180 days.**" McElrath at 840. [Emphasis added]. This language supports that once 180 days pass without the agency concluding its investigation, a claimant is free to initiate litigation, regardless of a delayed and untimely finding.

In Andujar v. National Property and Casualty Underwriters, 659 So.2d 1214 (Fla. 4th DCA 1995), the plaintiff filed a discrimination charge with the FCHR. The FCHR failed to take any action within 180 days. Instead, eight (8) months after filing her charge, the EEOC issued a Right to Sue letter. Ms. Andujar then filed a federal discrimination claim. The federal trial court granted summary judgment

against Ms. Andujar. As a result, the plaintiff filed a state discrimination claim in circuit court. Although the issue on appeal involved an argument of res judicata, the court explained that when the FCHR "takes final action or after the passage of 180 days, **whichever happens first**, the complainant may file a civil action." Andujar at 1217.

As discussed *supra*, the liberal and logical interpretation of the Act establishes that a claimant who receives an untimely "no-cause" determination has the right to file a lawsuit, and is not bound by the administrative hearing option. Accordingly, the Fourth District Court of Appeal's opinion should be reversed with instructions to reinstate Counts I and II of Petitioner's Complaint.

II. THE FAILURE TO ISSUE A DETERMINATION WITHIN 180 DAYS, AS REQUIRED BY SECTION 760.11(3), DEPRIVE PETITIONER DUE PROCESS AND PROPERTY INTEREST.

A. Vested Rights Are Not Written In Disappearing Ink

The trial court and the appellate agree that after 180 days, Petitioner had the right to file a civil lawsuit. The erroneous conclusion, however, was that this right was lost once the untimely no-cause determination was issued.

The FCHR's failure to make a reasonable cause determination concerning Petitioner's civil rights complaint within 180 days, as required by Section 760.11(3), deprive

Petitioner due process and property interest. U.S.C.A. Const.Amend. 14; West's F.S.A. §760.11(3).

The United States Supreme Court found that a charge of discrimination is a constitutionally protected property interest and that every claimant is entitled to have her complaint processed. Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S.Ct. 1148 (1982). A cause of action is also a "species of property protected by the Fourteenth's Amendment's Due Process Clause." Id. at 428. Accordingly, permitting a "no-cause" determination made *after* the 180 day investigatory period to strip Petitioner of her right to sue destroys Petitioner's vested right to file a cause of action once the 180 day period passes. This right to sue cannot be terminated simply because the FCHR failed to conduct its statutorily mandated procedure.

This Court, relying on Logan, explained that:

> The Florida Civil Rights Act, sections 760.01-760.11 (1995), was created to protect that property interest. It follows that violations of the Act are themselves deprivations of a property interest. The Act demonstrates the Legislature's intent that one claiming a deprivation under its terms would have the Commission make a preliminary reasonable cause determination, notify the claimant of its findings, and inform the claimant of the possible next steps that can be taken. *See* §§ 760.11(3),(4).
>
> Since the Legislature has undertaken to address the problem of discrimination, we believe that its agents

> should take the necessary steps to protect the interests of the claimants who fall within its purview. The Commission should take that step by providing **some type of notice to claimants within 180 days of filing regarding the status of their claims**.
> Joshua at 439. [Emphasis added].

As in Joshua and Logan, the Petitioner's case involves "administrative inaction and error." Joshua at 439. This Court holds that the FCHR should provide "some type of notice to claimants **within 180 days** of filing regarding the status of their claims." Joshua at 439. [Emphasis added]. Here, not the Local EO, not the EEOC, nor the FCHR ever provided any notice to Petitioner as to the status of her pending discrimination charge. Like Ms. Joshua, Petitioner should not be deprived of her constitutionally protected rights simply because all three (3) agencies failed to timely investigate her claim. To strip Petitioner of that property right not only deprives her of that vested right, but denies her due process.

Joshua further required **pre-deprivation** due process before the state may void this vested right. In this case and all others like it, the FCHR affords no due process of any sort from the time the right vests on day 180 and the time the vested right is revoked by issuance of a "no cause" determination.

Further, since claimants who receive no determination within 180 days are legally equal under the statute with claimants who receive a "cause" finding, the panel's opinion necessarily means that the FCHR may revoke a "cause" finding and replace it with a "no cause" finding at any time before the claimant brings suit. Therefore, the constitutionally and statutorily vested rights of both classes of claimants are written in disappearing ink which may be eradicated at the whim of the agency with no pre-deprivation due process of any sort. No such divestiture has been tolerated in any other area of American law. The vested right to sue is not to be treated as a coin in a stage magician's hand that appears and disappears with a flick of the wrist.

B. Petitioner Is Denied Due Process When The Florida Commission On Human Relations Fails to Advise of Her Options Available Under the Act After The "No Cause" Finding Is Issued

Section 760.11(3) is clear and unambiguous in its mandate that the FCHR "by registered mail **shall** promptly notify the aggrieved person and the respondent of the reasonable cause determination, the date of such determination, and the options available under this section." Fla. Stat. §760.11(3).[12]

[12] It is undisputed that the FCHR never issued its own findings. The Second District Court of Appeal has recently held that a finding by the EEOC is *not* a determination by the FCHR. Jones v. Lakeland Regional Medical Center, 805 So.2d

Neither the FCHR, the EEOC, nor the Local EO ever complied with the requirement to send the determination via registered mail, and especially failed to notify Petitioner of her options available under the Act.

Although Petitioner raised this very same issue before the Fourth District Court of Appeal,[13] the appellate court failed to address this issue in its opinion. The Fourth District Court of Appeal had the opportunity to revisit this issue in White v. City of Pompano Beach, 2002 WL 429241 (Fla. App. 4 District).[14] The White decision falls directly into

---

940 (2d DCA 2001). In Jones, although a "no cause" finding was issued by the EEOC, the court explained that Page 3, paragraph G of the 1999 "Worksharing Agreement" between the EEOC and the FCHR specifically states that the FCHR must issue its own findings. Id. at 941. Consequently, the court reversed the dismissal of plaintiff's claims, explaining that because the FCHR failed to issue its own findings, plaintiff was not required to elect the administrative option within 35 days, but instead was free to initiate litigation. Id. *See also* Segura v. Hunter Douglas Fabrication Co., 184 F.Supp.2d 1227 (M.D. Fla. 2002) (relying on Jones in holding that a determination by the EEOC is not a determination by the FCHR so that plaintiff is not required to seek administrative review before filing suit).

The 1999 "Worksharing Agreement" also applies to Petitioner. She filed her discrimination charge in 1999. *[See* Petitioner's Appendix, Tab 4.]

[13] Appellant's Initial Brief, FN 6, and Appellant's Reply Brief, Section III, pp. 11-12.

[14] In White, the Fourth District Court of Appeal also addressed the issue as to whether an "unable to conclude" finding equates to a "no cause" finding. That issue is not before this Court.

Petitioner's position.

In White, the court held that the determination letter sent by the EEOC failed to comply with Section 760.11(3), because "the form also did not specify the options White had available under the Act upon dismissal of his case by the commission." Id. at 4. Because the agency failed to advise plaintiff of his rights and remedies under the Act once the determination was made, the court ordered reinstatement of plaintiff's claims, declaring that suit may be filed after 180 days but before the four year statute of limitations expires.

A review of the determination notices received by Petitioner also establishes that there was a complete failure by the agencies to comply with Section 760.11(3).[15] As Petitioner was never provided her options under the Act, she is not required to exhaust her administrative remedies, and instead has the right to sue.

//

//

III THE NEWLY CREATED RACE TO THE COURTHOUSE CONFLICTS WITH LEGISLATIVE POLICY AND SUPREME COURT MANDATE

[15] The determination notice by the Local EO is found in Appendix, Tab 5. The determination notice and dismissal by the EEOC is found in Appendix, Tab 6.

Section 760.01(3) of the Act states: "The Florida Civil Rights Act of 1992 shall be construed according to the fair import of its terms and shall be *liberally construed* to further the general purposes stated in this section and the special purposes of the particular provision involved." [Emphasis added]. As such, Chapter 760 "is remedial and requires a liberal construction to preserve and promote access to the remedy intended by the Legislature." Joshua v. City of Gainesville, 768 So.2d 432, 435 (Fla. 2000). The appellate panel opinion in this case does not comport with the Joshua language, nor the direct language if the Act itself, requiring that the Act be liberally construed. Indeed, the appellate court's opinion, in adopting Woodham, takes the opposite approach of struggling to construe the statute to deny access to the remedy. Neither the statute itself nor the Joshua mandate permits such a reading.

CONCLUSION

For the grounds stated above, Petitioner respectfully requests that this Honorable Court reverse the Fourth District Court of Appeal's opinion, with instructions to reinstate Counts I and II of Petitioner's Complaint.

CERTIFICATE OF COMPLIANCE

IT IS HEREBY CERTIFIED that Petitioner's Initial Brief complies with the font requirements of Florida Rules of Appellate Procedure 9.210(2).

Law Offices of STROLLA & STROLLA
The Comeau Building
319 Clematis Street
Suite 801
West Palm Beach, FL 33401
Attorneys for Petitioner
Phone:(561) 802-8987
Fax: (561) 802-8957

By:_____
STACY STROLLA
Florida Bar No. 0044954

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing has been furnished Federal Express this 10th day of July 2002 to Lucinda Hofmann, Esq., Holland & Knight, 701 Brickell Ave., Suite 3000, Miami, Florida 33131.

Law Offices of STROLLA & STROLLA
The Comeau Building
319 Clematis Street
Suite 801
West Palm Beach, FL 33401
Attorneys for Petitioner
Phone:(561) 802-8987
Fax: (561) 802-8957

By:_____
STACY STROLLA
Florida Bar No. 0044954

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC01-2598
LOWER TRIBUNAL NO.: 4D01-252

JENNIFER BACH,
Petitioner,

vs.

UNITED PARCEL SERVICE, INC.,
Respondent.

_____/

APPENDIX FILED IN SUPPORT OF PETITIONER

On Appeal from the Fourth District Court of Appeal
L.T. Case No. 4D01-252

Law Offices of STROLLA & STROLLA
Attorneys for Appellant
319 Clematis Street
Suite 801
West Palm Beach, FL 33401
Phone: (561) 802-8987
Fax: (561) 802-8957

_____
STACY STROLLA, ESQUIRE
Florida Bar No.: 0044954

APPENDIX FILED IN SUPPORT OF PETITIONER

---

3. Circuit Court Order granting Defendant's Motion to Dismiss Plaintiff's Complaint or Alternative Motion for Summary Judgment filed December 21, 2000

4. Fourth District Court of Appeal Opinion filed August 29, 2001

5. Fourth District Court of Appeal Order denying Appellant's motions for rehearing, for certification and rehearing en banc filed October 19, 2001

6. Petitioner's Charge of Discrimination dated April 12, 1999

7. Palm Beach County Office of Equal Opportunity "Determination of No Reasonable Grounds" dated April 10, 2000

8. Equal Employment Opportunity Commission's "Dismissal and Notice of Rights" dated June 14, 2000

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing has been furnished Federal Express this 10th day of July 2002 to Lucinda Hofmann, Esq., Holland & Knight, 701 Brickell Ave., Suite 3000, Miami, Florida 33131

Law Offices of STROLLA & STROLLA
The Comeau Building
319 Clematis Street
Suite 801
West Palm Beach, FL 33401
Attorneys for Petitioner
Phone:(561) 802-8987
Fax: (561) 802-8957

By:_____
STACY STROLLA
Florida Bar No. 0044954