

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS

03 APR 24 PM 3:45

SUE KREICHER,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 20-01839

v.

DOAH Case No. 02-3357

SUNSHINE MEDIA,

FCHR Order No. 03-036

Respondent.

03 APR 30 AM 9:11
FILED
ADMINISTRATIVE
LAW JUDGE
RINGS

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

This cause came before the Commission for review of the Order Closing File issued in this matter on January 6, 2003, by Administrative Law Judge T. Kent Wetherell, II.

Pursuant to notice, public deliberations were held on April 9, 2003, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Order Closing File.

Findings of Fact and Conclusions of Law

The matter was before the Administrative Law Judge on Respondent Sunshine Media's motion to relinquish jurisdiction. Citing the provision of the Administrative Procedure Act which authorizes an Administrative Law Judge to relinquish jurisdiction to the agency when a dispute of material fact no longer exists, the Administrative Law Judge granted Respondent's motion.

Specifically, the Administrative Law Judge concluded, "...no genuine dispute of material fact exists with respect to the ultimate issue in this proceeding, i.e., whether Petitioner was an independent contractor rather than an employee of Respondent and therefore not entitled to the protections of the Florida Civil Rights Act of 1992 (FCRA)."

The Administrative Law Judge further concluded, "...the deposition testimony of Petitioner and the deposition testimony of Andrew Archer, Respondent's former Chief Financial Officer, and the exhibits attached to the depositions, conclusively show that there are no material facts in dispute with respect to the factors that are used to determine whether a person is an employee or an independent contractor."

While the order does not state an ultimate conclusion of whether Petitioner is an independent contractor or employee, it must be assumed that the conclusion is that Petitioner is an independent contractor, because if it were determined that Petitioner was an employee there would remain disputed issues of material fact in the case, e.g., whether discrimination occurred.

Further the language of the motion that was granted supports this interpretation by stating that the Administrative Law Judge should relinquish jurisdiction in this action, "because Petitioner, Sue Kreicher ("Kreicher") is an independent contractor under Florida law. Accordingly, this Court has no jurisdiction over her alleged claims against [Respondent]."

We accept the conclusion that Petitioner is an "independent contractor," not entitled to the protection of the Florida Civil Rights Act of 1992.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order Closing File in a letter dated, January 21, 2003. In the document, Petitioner specifically takes issue with Respondent's argument that she was not an "employee" of Respondent.

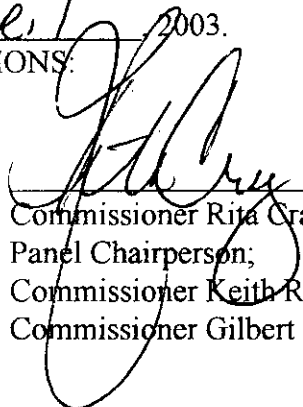
For reasons discussed in the "Findings of Fact and Conclusions of Law" section of this order, supra, we reject Petitioner's exceptions.

Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 29th day of April, 2003.
FOR THE COMMISSION ON HUMAN RELATIONS:



Commissioner Rita Craig,
Panel Chairperson;
Commissioner Keith Roberts; and
Commissioner Gilbert M. Singer

Filed this 29th day of April, 2003,
in Tallahassee, Florida.

Violet Crawford
Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

Copies furnished to:

Sue Kreicher
274 Port Royal Lane, S.
Apollo Beach, FL 33572

Sunshine Media
c/o Jason Oletsky, Esq.
Kluger, Peretz, Kaplan & Berlin, P.A.
201 South Biscayne Boulevard, 17th Floor
Miami, FL 33131

T. Kent Wetherell, II, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed
addressees this 29th day of April, 2003.

By: Violet Crawford
Clerk of the Commission
Florida Commission on Human Relations