

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS
TALLAHASSEE, FLORIDA

JANE SMITH,

Claimant,

FCHR NO.: 22-09999

vs.

WEST FLORIDA PEDIATRICS, INC.,
a Florida Corporation,

Respondent.

_____ /

**RESPONDENT WEST FLORIDA PEDIATRICS, INC.'S
MOTION TO DISMISS FOR LACK OF JURISDICTION**

COMES NOW the Respondent, West Florida Pediatrics, Inc., by and through its undersigned counsel, and files this, its Motion to Dismiss and states:

1. Jane Smith began work at West Florida Pediatrics, Inc. in January, 1997. West Florida Pediatrics, Inc., is a small medical group of three doctors who practice pediatrics. On October 8, 2001, Ms. Smith's employment was terminated.

2. On or about March 21, 2002, Ms. Smith apparently filed a complaint of discrimination with the Florida Commission on Human Relations, alleging racial discrimination by her employer under the Florida Civil Rights Act (Chapter 760, Florida Statutes) (FCRA), and Title VII of the Federal Civil Rights Act.

3. West Florida Pediatrics, Inc. is located in Deltona, Florida. It has three shareholders and, at the time of this incident in October 2001, there were only eleven (11) employees, including Ms. Smith. See attached affidavit of Dr. G.B. Shaw, President of West Florida Pediatrics, Inc.

4. An entity must have at least 15 employees each workday for at least twenty weeks in the current or preceding year to be an “employer” for purposes of coverage under the Florida Civil Rights Act or Title VII of the Civil Rights Act . Section 760.02(7), Florida Statutes, clearly states this. The cases and decisions of courts interpreting these laws, clearly state that the number of employees is a jurisdictional issue. Since West Florida Pediatrics did not have the minimum number of employees to even meet the definition of "employer" under the act, there is no claim under the FCRA. West Florida Pediatrics is not a statutory employer under the act.

5. The attached affidavit of Dr. Shaw shows that West Florida Pediatrics, Inc., did not meet this threshold to bring it under the FCRA or Title VII or to give the Florida Commission on Human Relations or the Equal Employment Opportunity Commission (EEOC) jurisdiction in this matter. Such affidavits in a motion of this nature are appropriate and routinely accepted by the commissions and courts. See Fountain v. Metcalf, Zima and Co., 925 F2d 1398 (11th Cir. 1991).

6. Respondent West Florida Pediatrics, Inc. is also filing a Memorandum of Law in Support of this Motion to Dismiss which further discusses the legal issues involved and shows the legal authority for the fact that there is no jurisdiction.

7. As a result, Ms. Smith’s complaint must be dismissed for lack of subject matter jurisdiction. It does not properly lie as a permissible claim under the Florida Civil Rights Act or Title VII and neither the Florida Commission on Human Relations nor the EEOC has authority over the employer in this matter.

WHEREFORE, based upon the foregoing, the Respondent, West Florida Pediatrics, Inc., respectfully requests that the Commission:

1. Dismiss the Claimant's Complaint of Discrimination on the grounds that there is no jurisdiction in this case;

2. Rule that West Florida Pediatrics, Inc., was not a statutory employer for purposes of a discrimination complaint under the Florida Civil Rights Act or Title VII; and

3. Make the foregoing ruling prior to requiring any other action, discovery, defense or participation by Respondent West Florida Pediatrics, Inc., in these proceedings.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served as follows:

Original filed with (per instructions of the Florida Commission on Human Relations):

Mr. Joe Cash, Supervisor
Customer Service Unit
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
Telephone: (850) 488-7082

With a copy served on:

Ms. Jane Doe
7111 South North Avenue
De3ltona, Florida

by United States mail, postage prepaid, this _____ day of _____, 200 ____.

GEORGE F. INDEST III, ESQUIRE
Board Certified in Health
THE HEALTH LAW FIRM
1101 Douglas Avenue
Altamonte Springs, Florida 32714
Telephone: (407) 331-6620
ATTORNEY FOR RESPONDENT
WEST FLORIDA PEDIATRICS, INC.

Attachment: Affidavit of G.B. Shaw, M.D., President, West Florida Pediatrics, Inc.

A:\Motion to Dismiss.wpd