

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-80123-CIV-COHN

WILLIAM N. ALBAUGH,

Plaintiff,

vs.

Magistrate Judge Seltzer

SHAUN DONOVAN¹, Secretary,
Department of Housing and Urban Development,Defendant.

ORDER DENYING MOTION TO TRANSFER
ORDER GRANTING JOINT MOTION TO APPOINT MAGISTRATE JUDGE AS MEDIATOR
ORDER REFERRING CASE FOR MEDIATION TO JUDGE PETER PALERMO

THIS CAUSE is before the Court upon Defendant Department of Housing and Urban Development's Motion to Transfer [DE 21], Plaintiff's Request to Deny Transfer [DE 22], and the Joint Motion to Appoint a Magistrate Judge as Mediator [DE 27/28]. The Court has carefully considered the filings and is otherwise fully advised in the premises.

Plaintiff William N. Albaugh ("Plaintiff") filed this action against Steve Preston, then Secretary of the Department of Housing and Urban Development ("HUD" or "Defendant") alleging age discrimination, sex discrimination, race discrimination and hostile work environment. After filing an Answer to Plaintiff's Amended Complaint [DE 15], Defendant HUD moved to transfer this case to the United States District Court for the District of Columbia. Plaintiff opposes the motion.

Defendant relies upon the venue provision for Title VII claims, which governs Plaintiff's sex and race discrimination claims. That provision, 42 U.S.C. § 200e-5(f)(3),

¹ Shaun Donovan was confirmed as Secretary of HUD on January 26, 2009 and shall be substituted as the defendant in this action.

states that:

Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office.

Defendant argues that the Southern District of Florida does not meet any of these criteria.

Plaintiff does not take issue with Defendant's position on the above quoted Title VII special venue provision but instead relies upon the general venue provision that governs his age discrimination claim under the Age Discrimination in Employment Act. When an agency of the United States is a defendant, an action may be brought where a defendant resides, a substantial part of the events giving rise to the claim occurred, or where the plaintiff resides if no real property is involved in the action. 28 U.S.C. § 1391(e). Defendant acknowledges that venue would be appropriate for Plaintiff's age discrimination claim in either the District of Columbia or the Southern District of Florida. Defendant contends that the entire lawsuit should be transferred to the District of Columbia, citing to unpublished decisions from outside this District.

This Court recognizes that it has the authority to transfer this action to the District of Columbia. However, as Plaintiff now resides in the Southern District of Florida, such a transfer would be an undue hardship upon Plaintiff. Because there is venue present in this Court to hear Plaintiff's age discrimination claim, the Court concludes that the entire

lawsuit should remain in the Southern District of Florida.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant Department of Housing and Urban Development's Motion to Transfer [DE 21] is hereby **DENIED**;
2. Plaintiff's Request to Deny Transfer [DE 22] is hereby **GRANTED**;
3. The Joint Motion to Appoint a Magistrate Judge as Mediator [DE 27/28] is hereby **GRANTED**;
4. This matter is **REFERRED** to Senior Magistrate Judge Peter Palermo for a mediation conference to be held at a time to be set by Judge Palermo.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,
this 1st day of September, 2010.


JAMES I. COHN
United States District Judge

copies to:

William Albaugh
501 NW 9th Street
Delray Beach, FL 33444

Stefanie Fidler, AUSA