

11-3-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
05 JAN 20 AM 10:03
DIVISION OF ADMINISTRATIVE HEARINGS

FORNETHA JUDGE RIZOS,

HUD Case No. 04-04-0280-8

Petitioner,

AT

FCHR Case No. 24-90189H

v.

DOAH Case No. 04-1888

DSM
CWS

POINT VISTA APARTMENTS,

FCHR Order No. 05-010

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM A DISCRIMINATORY HOUSING PRACTICE**

Preliminary Matters

Petitioner Fornetha Judge Rizos filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2003), alleging that Respondent Point Vista Apartments committed a discriminatory housing practice on the bases of Petitioner's race (Black), sex (female), familial status (children under age of 18), and disability (disability of children) by refusing to renew Petitioner's apartment lease.

The allegations set forth in the complaint were investigated, and, on April 23, 2004, the Executive Director issued a determination finding that there was no reasonable cause to believe that a discriminatory housing practice had occurred.

Petitioner filed a Petition for Relief from a Discriminatory Housing Practice and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Orlando, Florida, on October 8, 2004, before Administrative Law Judge Daniel Manry.

Judge Manry issued a Recommended Order of dismissal, dated November 3, 2004.

Pursuant to notice, public deliberations were held on January 13, 2005, 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 Petition for Relief.

Findings of Fact

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Exception," received by the Commission on November 18, 2004. In addition, the Commission's file contains a document, received by the Commission on November 22, 2004, which apparently seeks permission to amend the exceptions.

Generally, it can be said that Petitioner excepts to the facts found by the Administrative Law Judge, and, seemingly, excepts that other alleged facts were not found by the Administrative Law Judge.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

Further, as indicated above, the Commission's file does not contain a transcript of the proceeding on the merits before the Administrative Law Judge. With regard to findings of fact set out in Recommended Orders, the Administrative Procedure Act states, "The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law." Section 120.57(1)(l), Florida Statutes (2003). In the absence of a transcript of the proceeding before the Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See, National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988).

Finally, there is no indication on Petitioner's exceptions document that it was served on Respondent by Petitioner as is required by Fla. Admin. Code R. 28-106.110.

Petitioner's exceptions are rejected.

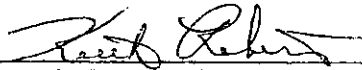
FCHR Order No. 05-010
Page 3

Dismissal

The Petition for Relief and Housing Discrimination Complaint 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 19th day of JANUARY, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Keith Roberts,
Panel Chairperson;
Commissioner Aletta Shutes; and
Commissioner Gilbert M. Singer

Filed this 19th day of JANUARY, 2005,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
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Daniel Manry, 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 19th day of JANUARY, 2005.

By: *Victor Crawford*
Clerk of the Commission
Florida Commission on Human Relations