

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRANK M. BAFFORD, SR.,)
)
 Petitioner,)
)
 vs.) Case No. 04-3272
)
 GARY HEDIGER, MARCUS AND)
 MILLICHAP COMPANY AND TOWNSHIP)
 APARTMENTS ASSOCIATES, ET AL.,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER OF DISMISSAL

This cause, set for final hearing on December 20, 2004, came before the undersigned via telephonic conference call on November 15, 2004, on Petitioner's pleading, captioned Motion to Clarify and Dismiss, filed on November 12, 2004, before Fred L. Buckine, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Frank M. Bafford, Sr., pro se
9622 Theresa Drive
Thonotosassa, Florida 33592

For Respondent Gary Hediger:

Mark A. Hanley, Esquire
Glenn, Rasmussen, Fogarty & Hooker, P.A.
100 Ashley Drive, Suite 1300
Tampa, Florida 33602

For Respondents Marcus and Millichap Company and
Darron Kattan:

Edward C. LaRose, Esquire
Trenam & Kemker
2700 Bank of America Plaza
101 East Kennedy Boulevard
Tampa, Florida 33602

For Respondent Township Apartments Associates:

David J. Tong, Esquire
Saxon, Gilmore, Carraway, Gibbons,
Lash & Wilcox, P.A.
201 East Kennedy Boulevard, Suite 600
Tampa, Florida 33602

On May 11, 2004, Petitioner, Frank M. Bafford, Sr., filed a complaint with the Florida Commission on Human Relations¹ (Commission) alleging injury by discriminatory act of refusal to sell and false denial or representation of availability.

On June 16, 2004, Petitioner filed an Amended Housing Discrimination Complaint with the Commission.

On August 6, 2004, the Commission issued a Notice of Dismissal and a Determination of No Jurisdiction.

On September 14, 2004, the Commission issued a Notice of Determination of No Jurisdiction: No Jurisdiction and Rescission of Notice of Dismissal.

On September 17, 2004, Petitioner filed a Petition for Relief, with the Commission, alleging violations of the Fair Housing Act, as amended, by Respondents, Gary Hediger, Marcus and Millichap Company, and Township Apartments Associates, et

al., to wit: "refusal to sale, denial of a property's availability, setting different terms and conditions in a contract, and refusing to negotiate."

On September 20, 2004, the Commission referred this matter to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct all necessary proceedings required under the law and to submit recommended findings to the Commission.

On October 1, 2004, Petitioner filed a Motion to Rule on Motion to Relinquish Jurisdiction and Refer the Case back to the Florida Commission for Investigation and Representation. Ten days later, Respondents, Marcus and Millichap Company and Darron Kattan, responded to Petitioner's motion and, on October 7, 2004, filed a Motion to Dismiss or, in the alternative, Motion for Summary Final Order.

On October 10, 2004, a Notice of Hearing, scheduling the final hearing for December 2, 2004, in Tampa, Florida, and an Order of Pre-hearing Instructions were entered.

On October 11, 2004, Petitioner filed a Response to Marcus and Millichap Company and Darron Kattan's Motion to Dismiss.

On October 14, 2004, Marcus and Millichap Company and Darron Kattan filed a response to Petitioner's Motion to Relinquish Jurisdiction, and, on that same date, Respondent

Township Apartments Associates, filed a Notice of Adoption of Motion to Dismiss or for Summary Final Order.

On October 18, 2004, Petitioner filed an Amended Complaint and Demand for a Jury Trial and an Emergency Motion to Rule on Jurisdiction or Provide Counsel.

On October 21, 2004, Respondent, Gary Hediger, filed a Notice of Adoption of Motion to Dismiss or for Summary Final Order, and Marcus and Millichap Company and Darron Kattan filed a response to Petitioner's Emergency Motion to Rule on Jurisdiction or Provide Counsel.

On October 22, 2004, an Amended Notice of Hearing, rescheduling the final hearing for December 20, 2004, in Tampa, Florida, was entered.

On October 26, 2004, a case status conference on all pending motions filed in this cause was held via telephonic conference, with the parties located in Tampa and the undersigned in Tallahassee, Florida.

On October 28, 2004, Petitioner filed a Motion to Provide Counsel at Petitioner's Expense, and Marcus and Millichap Company and Darron Kattan filed a Motion to Shorten Time for Responding to Discovery.

On November 1, 2004, Petitioner filed a Motion to Provide Counsel, Reconsider Referring to Commission, or Stay.

On November 3, 2004, an Order ruling on pending motions heard during the October 28, 2004, telephone conference was entered. In that Order, the following motions filed by Petitioner were DENIED: (1) Motion to Rule on Jurisdiction and Refer Case Back to the Commission for Investigation and Representation; (2) Emergency Motion to Rule on Jurisdiction or Provide Counsel; and (3) Amended Complaint and Demand for Jury Trial. The following pending motions filed by Respondents were DENIED: (1) Motion to Dismiss or, in alternative, Motion for Summary Final Order and (2) Motion to Adopt Motion to Dismiss or for Summary Final Order.

On November 4, 2004, Petitioner filed a Motion to Stay, and, on November 8, 2004, Petitioner filed a Motion to Rule on Previously Filed Motion.

On November 9, 2004, a case status telephone conference was held with all parties present for discussion of all preliminary matters before the final hearing scheduled for December 20, 2004.

On November 10, 2004, Petitioner filed a Motion for Summary Recommended Order. Having considered the motion, it is DENIED.

On November 12, 2004, the undersigned provided a Notice of Understanding and Agreement that resulted from the telephonic conference held November 9, 2004.

On November 12, 2004, Petitioner filed a Motion to Clarify and Dismiss the Petition for Relief, which provided:

Petitioner, Frank M. Bafford, Sr., desires to clarify his previous filed motion. In the event the court does not grant a summary recommended order, the Petitioner asked the Division of Administrative Hearings (DOAH) to refer its ruling to the state court. The Florida Commission on Human Relations (FCHR) based a premature findings and conclusions on a ruling from this court. The FCHR's problem in determining the Petitioner's intent to dwell will be solved by the final ruling of the state court. We have two courts that will rule on the Petitioner's intent to dwell during the same period, which is not necessary and will be a waste of tax dollars. Before this court wastes any judicial resources it should allow the FCHR to do its due diligence to solve this matter itself. If the FCHR can't determine the Petitioner's intent after the state court's ruling, then and only then, should the DOAH hear testimony. The DOAH was not designed to hear testimony in cases where a state agency can solve the problem itself, but in cases where the agency has done everything possible to solve the problem and has not been able to. In the event the DOAH does not grant the Petitioner's motion, the Petitioner would like to dismiss. It will be destructive to the Petitioner to give a deposition without an attorney. The Petitioner thanks the court for its professionalism and its patience with the Petitioner's ignorance of the law and legal system.

The motion was heard by telephonic conference on November 15, 2004, with all parties in attendance.

FINDINGS OF FACT

1. At the telephonic hearing, it was explained to Petitioner that should his Motion to Dismiss be granted, this Recommended Order of Dismissal to the Commission would be entered, recommending dismissal of his Petition for Relief filed in this cause, and should the Commission adopt the recommendation, his petition would be dismissed. Notwithstanding explanations given and being otherwise fully advised of the consequences, Petitioner insisted that his Petition for Relief be dismissed.

2. Based upon the pleadings filed, the discussions and arguments made during the several telephonic conferences, it is found that Petitioner willingly and knowingly made his Motion to Dismiss, as an alternative, should he not prevail on his previously filed Motion for Summary Recommended Order.

CONCLUSIONS OF LAW

3. The Division of Administrative Hearing has jurisdiction over the parties to the subject matter of this proceeding pursuant to Section 120.569 and Subsections 120.57(1) and 760.23(1), Florida Statutes (2004).

4. Petitioner, after conferencing with Respondents and the undersigned regarding procedure, of his own free will knowingly and willingly declined to pursue his claim of housing

discrimination against Respondents by a written motion that his Amended Housing Discrimination Complaint be dismissed.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order of dismissal of the Petition for Relief filed in the cause by Petitioner, Frank M. Bafford, Sr.

DONE AND ENTERED this 16th day of December, 2004, in Tallahassee, Leon County, Florida.



FRED L. BUCKINE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of December, 2004.

ENDNOTE

1/ The Florida Commission on Human Relations is a substantially equivalent agency as recognized by the U.S. Department of Housing and Urban Development (HUD).

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.