

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

WILLIAM KLEINSCHMIDT,

HUD Case No. 04-04-0737-8

Petitioner,

FCHR Case No. 24-90885H

v.

AT

DOAH Case No. 04-3873 ^{CA} closed

THREE HORIZONS NORTH
CONDOMINIUMS, INC.,

FCHR Order No. 05-097

Respondent.

2005 AUG 24 1:41
ADMINISTRATIVE HEARINGS
DIVISION

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

Preliminary Matters

Petitioner William Kleinschmidt filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2003), alleging that Respondent Three Horizons North Condominiums, Inc., committed discriminatory housing practices on the basis of Petitioner's disability (asthma) by refusing to waive its "no pets" policy, which would require Petitioner to remove his "emotional support animals" (two cats) from his condominium unit, and by retaliating against Petitioner for his refusal to remove his cats from his condominium unit.

The allegations set forth in the complaint were investigated, and, on September 28, 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 Miami, Florida, on March 31, 2005, before Administrative Law Judge Claude B. Arrington.

Judge Arrington issued a Recommended Order of dismissal, dated May 25, 2005.

Pursuant to notice, public deliberations were held on August 18, 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.

Preliminary Motions

Petitioner filed a motion received by the Commission on August 11, 2005, requesting that the August 18, 2005, Commission deliberation be continued until the resolution of allegations of retaliation, and requesting permission to tape record the deliberation hearing in lieu of a court reporter. Petitioner also filed a motion received by the Commission on August 17, 2005, entitled, "Emergency Motion to Include (if not already included) All Retaliatory Charges [in the] Commission Deliberations."

Upon oral argument of the parties, both of Petitioner's motions are denied.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

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, "Petitioner Exceptions and Exhibits to Division of Administrative Hearings ("DOAH") Recommended Order." The document consists of 3 volumes, one containing 37 pages of exceptions, plus exhibits, and two containing exhibits.

The exceptions on pages 1 through 4, pages 8 through 9, and page 14 argue that Petitioner's cats could serve as emotional support animals. While the Administrative Law Judge concluded that Petitioner's cats were not "service animals" (Recommended Order, ¶ 14), the Administrative Law Judge did not conclude that animals that were not "service animals" could not be a reasonable accommodation to a person with a handicapping condition. See, generally, Gabor v. Bay Country Club Condominium Association, Inc., FCHR Order No. 01-022 (May 22, 2001), (in which a Commission panel remanded a case to an Administrative Law Judge for analysis of whether given the circumstances of that case a pet dog substantially helped Petitioners' daughter adjust to the difficulties of living with insulin-dependent diabetes, and a determination of whether Petitioners' request to keep the dog met the requirements of showing that the desired accommodation would affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability.) Rather, in the instant case, the Administrative

Law Judge found that “[w]hether Petitioner’s cats help him avoid anxiety attacks, which could, in turn trigger an asthma attack, is speculative.” Recommended Order, ¶ 14.

The exceptions on pages 5 through 7 discuss the issue of knowledge of a Petitioner’s disability by a Respondent, and argue that Respondent was required to provide Petitioner a reasonable accommodation. The Administrative Law Judge did not conclude that Respondent did not have to provide a reasonable accommodation to disabled residents, but rather concluded that, “Petitioner failed to prove that his requested accommodation is necessary to afford him the equal opportunity to use and enjoy his unit...” (Recommended Order, ¶ 25), and that “[b]ecause Petitioner failed to prove that his requested accommodation is necessary, he was unable to prove that the requested accommodation was reasonable...” (Recommended Order, ¶ 26).

Collectively, the exceptions found on pages 9 through 13, pages 15 through 17, and pages 19 through 37, take exception to the facts found, facts not found, and inferences drawn from the evidence presented. 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). Accord, Gatewood v. Department of Children and Family Services, FCHR Order No. 05-069 (June 15, 2005).

The exceptions found on page 18 argue that Petitioner was prejudiced by the substitution of a new Administrative Law Judge to conduct the hearing on the merits. The Administrative Procedure Act gives the Division of Administrative Hearings the authority to assign a new Administrative Law Judge to a case, stating, “If the administrative law judge assigned to a hearing becomes unavailable, the division shall assign another administrative law judge who shall use any existing record and receive any additional evidence or argument, if any, which the new administrative law judge finds necessary.” Section 120.57(1)(a), Florida Statutes (2005).

Based on the foregoing, Petitioner’s exceptions are rejected.

Dismissal

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

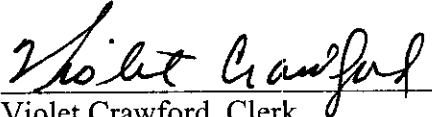
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right

to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 23rd day of August, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig,
Panel Chairperson;
Commissioner Keith Roberts; and
Commissioner Aletta Shutes

Filed this 23rd day of August, 2005,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
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Claude B. Arrington, 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 23rd day of August, 2005.

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