

6-21-05

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS
Division of Administrative Hearings

FILED
Date 9.12.05

KARLA MAXWELL,

Petitioner,

v.

OAKPOINTE APARTMENTS, DAVE DILL
and FLOURNOY PROPERTIES,

Respondents.

HUD Case No. 04-05-04208

FCHR Case No. 24-91470H

DOAH Case No. 05-0760

FCHR Order No. 05-093

AT

EJD
closed

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

Preliminary Matters

Petitioner Karla Maxwell filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2003), alleging that Respondents Oakpointe Apartments, Dave Dill and Flournoy Properties committed discriminatory housing practices on the bases of race (African-American) and familial status with regard to terms, conditions, privileges and facilities relating to Petitioners' apartment lease and with regard to a discriminatory refusal to rent.

The allegations set forth in the complaint were investigated, and, on February 10, 2005, 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 Tallahassee, Florida, on May 5, 2005, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis issued a Recommended Order of dismissal, dated June 21, 2005.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

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 note that the Administrative Law Judge concluded, "Mr. Dill, on a single occasion, behaved in a prejudiced, rude and verbally abusive manner to Petitioner. Although he was named in the Petition for Relief, no valid address was provided for him. He has had no notice of this proceeding, and therefore, jurisdiction over him by the Division has not been acquired. To rule with regard to his rights at this time would be a denial of due process...the undersigned is not satisfied that, as a mere employee of the other Respondents, Mr. Dill could bear any liability to Petitioner under the facts of this case..." Recommended Order, ¶ 29.

We note that the Commission has concluded that individuals can bear liability under the Fair Housing Act. See, Thornhill v. Admiral Farragut Condominium Association, et al., FCHR Order No. 01-018 (March 15, 2001); see, also, Sections 760.22(8) and 760.34(1), Florida Statutes (2005). Further, we note that in a case involving findings of the utterance of racially repugnant remarks, a Commission panel has stated, "We note the Hearing Officer's finding that, 'The racially repugnant comments of the Respondent, in the absence of any acts infringing on the tenants' free use of the leasehold, are not a violation of Section 760.23, Florida Statutes.'... We hereby clarify that this finding does not mean that racially-repugnant comments can never amount to a violation of the Fair Housing Act." Fletcher v. Hatfield, 18 F.A.L.R. 1590, at 1591 (FCHR 1995).

Nevertheless, given the Administrative Law Judge's finding that Mr. Dill had no notice of the proceeding, and the finding that "[b]y firing Mr. Dill, Oak Pointe and Flournoy took steps to prevent further bad acts or bad words by him against Petitioner and others (Recommended Order, ¶ 28)," and in the absence of a transcript of the proceeding before the Administrative Law Judge, we adopt the Administrative Law Judge's conclusions of law, with these clarifying comments.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

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

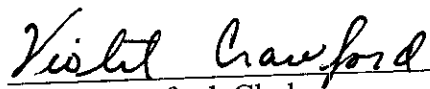
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right

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

DONE AND ORDERED this 9th day of September, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario M. Valle, Panel Chairperson;
Commissioner Dominique B. Saliba, M.D.; and
Commissioner Billy Whitefox Stall

Filed this 9th day of September, 2005,
in Tallahassee, Florida.



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Ella Jane P. Davis, 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 9th day of September, 2005.

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