

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRANK M. BAFFORD, SR.,)	
)	
Petitioner,)	
)	
vs.)	Case Nos. 05-2985RU
)	05-2986RU
FLORIDA COMMISSION ON HUMAN)	05-3167RU
RELATIONS,)	05-3168RU
)	05-3294RU
Respondent.)	05-3808RU
_____)	05-3981RU

SUMMARY FINAL ORDER OF DISMISSAL

These causes came on for review upon numerous motions and the waiver by the parties of the need for an evidentiary hearing before Daniel M. Kilbride, Administrative Law Judge of the Division of Administrative Hearings (DOAH), in Tallahassee, Florida.

APPEARANCES

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

For Respondent: William J. Tait, Jr., Esquire
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301-4830

STATEMENT OF THE ISSUE

Whether the Motions for Rule Challenge Proceedings (referred to as Petition(s)) filed in each of the above-cited cases meet the requirements both in form and substance, pursuant to Subsection 120.56(4)(a), Florida Statutes (2004).

PRELIMINARY STATEMENT

A. Petitioner, Frank M. Bafford, Sr., filed his first rule challenge proceeding against Respondent, Florida Commission on Human Relations (FCHR), on March 15, 2005, and the case was assigned to the undersigned Administrative Law Judge (ALJ) and given DOAH Case No. 05-0966RU.

B. Petitioner requested a procedural change in his first rule challenge proceeding on March 23, 2005, and later gave a Notice of Clarification or Stay on March 28, 2005. Following a conference call, the undersigned ALJ issued an Order on April 1, 2005, placing the proceeding in abeyance, noting that the parties agreed that there are no disputed issues of material fact; that the issues remaining for determination are legal in nature, which can be determined by submittal of legal briefs; and that Petitioner fully understood that he was waiving his right to an evidentiary hearing in this matter. A schedule was set for the filing of the initial reply and response briefs on two issues. Petitioner submitted his initial "argument" on April 4, 2005.

C. Petitioner also submitted a second (April 1, 2005--DOAH Case No. 05-1211RU) and a third (April 4, 2005--DOAH Case No. 05-1219RU) rule challenge. An Order was issued consolidating the two new rule challenges into the initial one and specifying dates for the briefs for those challenges.

Petitioner submitted his initial brief and denoted "arguments" on April 14, 2005.

D. Petitioner submitted a fourth rule challenge (April 19, 2005--DOAH Case No. 05-1462RU), which was consolidated with the three previous cases.

E. On April 24, 2005, Petitioner submitted a Motion to Stay. A telephonic hearing took place on April 25, 2005, at which time Petitioner, Respondent's attorney, and the undersigned ALJ conferred about his request. An Order placing the four pending consolidated rule challenge cases in abeyance was issued on May 4, 2005, suspending the briefing schedule and requiring a status briefing by the parties prior to June 1, 2005.

F. Petitioner then submitted his fifth (May 10, 2005--DOAH Case No. 05-1664RU) rule challenge and a third Order (May 13, 2005) consolidating that challenge with the four earlier ones was issued.

G. Petitioner, subsequently, filed a Motion for Extension of Stay on May 18, 2005, in which he requested a six-month stay. Petitioner alleged that he had "seen a professional and they [sic] have suggested that he take this amount of time away from his cases." Respondent did not object to the motion, and on May 23, 2005, an Order was issued to abate the five consolidated cases until December 1, 2005.

H. Nevertheless, Petitioner then submitted his sixth (June 5, 2005--DOAH Case No. 05-2050RU) rule challenge, and a fourth Order (June 13, 2005) was issued consolidating that challenge with the five earlier ones. On June 16, 2005, an Order to abate was issued on the six consolidated cases until December 1, 2005.

I. While pursuing the above rule challenges, Petitioner had also filed two additional complaints of discrimination with FCHR based on the same set of events that occurred in the Spring of 2004 leading up to his initial Complaint (FCHR Case No. 24-91007H) that was, subsequently, dismissed by FCHR upon his withdrawal of the Complaint that was pending before another ALJ (Bafford v. Gary Hediger, et al., Case No. 04-3272 (DOAH December 16, 2004, FCHR Final Order No. 05-017, February 22, 2005)).

J. While reserving its ruling on jurisdiction, FCHR accepted the two complaints for investigation on June 3, 2005, and July 27, 2005. The June 3, 2005, Complaint (FCHR Case No. 25-91671H) consisted of the same or similar facts and the same Respondents (with several additional Respondents in the same ownership group) as the initial Complaint filed and, subsequently, abandoned by Petitioner. The July 27, 2005, Complaint (FCHR Case No. 25-91672H) consisted of the same basic set of events leading to the initial and June 3, 2005,

Complaints, but also allegations of later actions. In addition, the July 27, 2005, Complaint raised new allegations against Petitioner's three sets of former attorneys and one of the original Respondents. It alleged a violation of Section 818 of the Federal Fair Housing Act (FHA), relating to intimidation, coercion and interference (harassment), and retaliation.

K. During the investigation phase of these new Complaints, Petitioner filed additional rule challenges with DOAH directed towards FCHR's investigatory procedures and actions.

L. Petitioner filed his seventh (August 18, 2005--DOAH Case No. 05-2985RU) and eighth (August 18, 2005--DOAH Case No. 05-2986RU) rule challenge and moved for a telephonic conference. An Order consolidating the two cases was issued, as well as the Order Following Telephone Conference dated August 26, 2005. The Order required Respondent to file a response to Petitioner's motions on or before September 2, 2005, and allowed Petitioner to file a reply thereto on or before September 9, 2005. Both Respondent and Petitioner filed a timely response and reply, respectively.

M. Petitioner filed his ninth and tenth rule challenges (September 1, 2005--DOAH Case Nos. 05-3167RU and 05-3168RU), Petitioner, subsequently, filed a "Notice as Reminder" indicating that he seemed ready for a hearing on the challenge and had no current disabilities.

N. Petitioner filed his eleventh, twelfth, and thirteenth rule challenges (September 13, 2005--DOAH Case No. 05-3294RU; October 17, 2005--DOAH Case No. 05-3808RU; and October 26, 2005--DOAH Case No. 05-3981RU, respectively).

O. Petitioner has also brought suit against the same Respondents as in DOAH Case No. 04-3272, other than his attorneys, in both state and federal court based on the same set of alleged circumstances leading to his Complaints with FCHR.

P. The Honorable James S. Moody, Jr., Judge of the United States District Court for the Middle District of Florida, Tampa Division, dismissed his federal case (Case No. 8:04-CV-1502-T-30MSS), on March 3, 2005, specifically finding that the facts of his case as alleged, including his "intent to dwell," did not change the finding that the underlying Complaint was not covered by the FHA, citing Home Quest Mortgage LLC v. American Family Mutual Insurance Co., 340 F. Supp. 1177, 1186 (D. Kan. 2004); Shaikh v. City of Chicago, No. 00-C-4235, WL 123784, *4 (N.D. Ill. Feb. 13, 2001). The United States Court of Appeals for the Eleventh Circuit dismissed his appeal (Case No. 05-11309-11) on June 10, 2005, as frivolous. The court cited Eleventh Circuit Rule No. 42-4, which states: "Frivolous Appeals. If it shall appear to the court at any time that an appeal is frivolous and entirely without merit, the appeal may be dismissed." The rule

also cross-references Rules 3 and 38 of the Federal Rules of Appellate Procedure and 28 U.S.C. Section 1927.

Q. DOAH Case Nos. 05-2985RU, 05-2986RU, 05-3167RU, 05-3168RU, 05-3294RU, 05-3808RU, and 05-3981RU were consolidated and abated.

R. DOAH Case Nos. 0966RU, 05-1211RU, 05-1219RU, 05-1462RU, 05-1664RU, and 05-2050RU are being treated in a separate Summary Final Order of Dismissal.

S. Petitioner has also brought suit against the same Respondents as in DOAH Case No. 04-3272, other than his attorneys, in state circuit court Case No. 04-04230 (Division E), in the Thirteenth Judicial Circuit in and for Hillsborough County. The Court dismissed the action with leave to amend and dissolved a Lis Pendens. Petitioner, subsequently, served a Second Amended Complaint and obtained a stay. It appears that this case is still pending.

T. Petitioner has also filed Complaints with the Florida Bar against his former attorneys based on the same set of alleged circumstances leading to his Complaints with FCHR. The Florida Bar found no ethical violations by any of the attorneys involved and dismissed his Complaints.

U. Petitioner has provided "arguments" for his Petitions in DOAH Case Nos. 05-0966RU, 05-1211RU, and 05-1219RU and a "Reply to Respondent's Responses" for his Petitions in DOAH Case

Nos. 05-2985RU and 05-2986RU. Where Petitioner has supplied additional information beyond that contained in the Petition (as in DOAH Case Nos. 05-0966RU, 05-2985RU and 05-2986RU), Respondent has provided responses. In all other Petitions, including DOAH Case Nos. 05-1211RU and 05-1219RU, where Petitioner's "argument" merely consisted of attaching his original Petition, Respondent has provided responses to the extent possible.

V. On December 23, 2005, Petitioner filed his fourteenth (DOAH Case No. 05-4681RU) and fifteenth (DOAH Case No. 05-4688RU) rule challenge. Upon review by this ALJ, it was determined that the Petitions failed to comply with the statutory requirements of Subsection 120.54(1) and/or (4), Florida Statutes (2004), and were dismissed without prejudice. Petitioner was given 21 days to amend the Petitions in order to comply with the statute or the cases would be automatically dismissed with prejudice. The deadline has passed, and no amendment to the Petitions has been filed.

W. On January 3, 2006, Petitioner filed his sixteenth rule challenge (DOAH Case No. 06-0001RU). Upon review, it was determined that the Petition failed to comply with the statutory requirements of Subsection 120.54(1) and/or (4), Florida Statutes (2004), and was dismissed without prejudice. Petitioner was given 21 days to amend the Petition in order to

comply with the statute or the case would be automatically dismissed with prejudice. The deadline has passed, and no amendment to the Petition has been filed.

X. On January 26, 2006, Petitioner filed four additional rule challenges (DOAH Case Nos. 06-0332RU, 06-0333RU, 06-0334RU, and 06-0335RU). Upon review, it was determined that the Petitions failed to comply with the statutory requirements of Subsection 120.54(1) and/or (4), Florida Statutes (2004), and these cases were dismissed without prejudice. Petitioner was given 21 days to amend the Petitions in order to comply with the statute or the cases would be automatically dismissed with prejudice. The deadline has passed, and no amendment to the Petitions has been filed.

Y. During the Fall of 2005, while Petitioner continued to file additional rule challenges at DOAH, FCHR issued its Notice of Determination: No Cause in FCHR Case Nos. 25-91671H and 25-91672H (referred to in paragraph J). Petitioner timely filed his Petition for Relief alleging housing discrimination and other allegations on December 15, 2005, in which were assigned DOAH Case Nos. 05-4562 and 05-4563, respectively. Immediately thereafter, Petitioner filed various motions with the undersigned ALJ seeking a stay for the Petition to be referred back to FCHR for further investigation. These motions were denied, and the matter set for hearing in Tampa on February 15

and 16, 2006. In addition to various other motions, on February 6, 2006, Petitioner filed a Motion for 90 Day Stay to Gather Thoughts, which was denied. On February 9, 2006, Petitioner filed a Notice of Impairment and other motions. In response thereto, an Order was issued directing Petitioner to show proof that Petitioner was under the care of a physician and that he was impaired and unable to appear at the final hearing and present his case. On February 13, 2006, Petitioner filed a Notice of Dr.'s Determination. Upon review, the notice was determined to be inadequate, and on February 14, 2006, the parties were notified that all pending motions would be heard before the undersigned ALJ prior to the commencement of the formal hearing scheduled for February 15 and 16, 2006, in Tampa. At 5:00 p.m. that same day, Petitioner filed a Notice of Dismissal in both cases. An Order Closing File was issued on February 15, 2006, and the matter was referred back to FCHR for final agency action. FCHR has not entered a final order on those cases, as of the date of this Summary Final Order of Dismissal. However, Petitioner has filed an appeal with the Second District Court of Appeal, which is still pending.

Upon a complete review of each of these files and being fully advised in the premises, it is

FOUND AND DETERMINED as follows:

1. In DOAH Case Nos. 05-2985RU, 05-2986RU, 05-3167RU, 05-3168RU, 05-3294RU, 05-3808RU, and 05-3981RU, as to each case, there are no genuine issues as to any material fact. Fla. Admin. Code R. 28-106.204(4).

2. All Petitions are found to be deficient in both form and substance, pursuant to the requirements set forth in Subsection 120.56(4)(a), Florida Statutes (2004). None of the Petitions include the text of the purported statement, and few, if any, provide adequate descriptions of a purported statement. Where descriptions have been provided, the description does not state with particularity facts sufficient to show that the statement constitutes a rule under Section 120.52, Florida Statutes (2004), and that the agency has not adopted the statement by the rulemaking procedure provided by Section 120.54, Florida Statutes (2004).

AS TO DOAH CASE NO. 05-2985RU

3. Petitioner stated that FCHR had not given him adequate guidance as to what constitutes proof of his "intent to dwell," nor had it set standards for determining what constitutes an "intent to dwell." In addition to being deficient in both form and substance, as held above, the Petition for Rule Challenge is dismissed for the following additional reasons. The request for information to which Petitioner alludes in this Petition would seem to be one of the "normal" requests for information from an

investigator. Petitioner asserted in his Complaint that he intended to dwell in one of the 347 units of the 14-apartment complexes he sought to purchase. The investigator merely asked him to provide any factual information, including location, to show that this was in fact his intention. Whether or not "intent to dwell" is a material fact in his case under investigation has not been determined; however, evidently it was of some import to the investigator to establish the factual basis for any FCHR determination.

4. FCHR's investigative practice requires its investigators to ascertain the facts of a complaint and evaluate their probity. In the process, they request a complainant (in these causes Petitioner) to provide any and all facts, including documentation where available, they have in their possession that they believe are relevant to the allegations contained in the Complaint and, if necessary, any facts relevant to establishing FCHR's jurisdiction. The investigators are instructed not to determine the "law" (standards to be met) first, and then attempt to fit facts into the law. They apply the facts as found to the legal requirements of establishing jurisdiction and proving a prima facie case only at the time they are to determine whether there is a "reasonable cause to believe that a discriminatory act occurred." In that process, the investigator may find that he or she requires additional

information and makes a request to the complainant for it. The final determination issued by FCHR provides its best judgment as to the facts of the case, establishes its jurisdiction, and makes a determination as to whether the facts support a finding that a discriminatory act has occurred in light of the standards of law to be applied.

5. Clearly, if it is an important material fact; and if the investigator did not find that it was adequately established, based on complainant's factual submissions, the complainant has the right to challenge FCHR's determination by seeking a formal administrative hearing, pursuant to Subsection 760.35(3), Florida Statutes (2004), and Florida Administrative Code Rule 60Y-8.001, and Petitioner has done so. See Bafford v. Township Apartments, et al., DOAH Case No. 05-4562, and Bafford v. Hernandez, et al., DOAH Case No. 05-4563.

AS TO DOAH CASE NO. 05-2986RU

6. Petitioner has stated that FCHR should be prevented from "revisiting issues that have been already determined in the previous case." In addition to being deficient in both form and substance, as held above, the Petition is dismissed for the following additional reasons. Petitioner alleges that the principle of res judicata should apply and further states that "it is an invalid exercise of delegated legislative authority for FCHR to waste the tax payer's [sic] money to investigate

facts that have been investigated and to once again enter determinations on those facts, when there is no new information available that could change the prior determination."

7. Petitioner is mistaken. As he states in the second sentence in his Petition, the initial case was "dismissed for lack of jurisdiction." He further states that, "the only difference is that there are more Defendants and new information on the Petitioner's 'intent to dwell' that was not considered in the previous case."

8. The initial case was not determined on its merits, but was actually dismissed by Petitioner who withdrew his Petition for Relief during a telephonic hearing before a different ALJ (see Bafford, Case No. 04-3272). The merits of the case have never been considered by DOAH in its administrative hearing process or by a FCHR panel in its final order reviewing authority.

9. The doctrines of res judicata and collateral estoppel both concern the preclusive effect of a prior adjudication. Res judicata precludes relitigation of the same claim, between the same parties, on the same cause of action. Principles of collateral estoppel preclude relitigation of issues actually litigated in a prior proceeding where the issues at stake are identical and where determination of those issues was a critical and necessary part of the first litigation. See Exhibitors

Poster Exchange, Inc. v. National Screen Service Corp., 517 F.2d 110 (5th Cir. 1975), cert. den. 423 U.S. 1054 (1976); State v. Short, 513 So. 2d 679 (Fla. 2d DCA 1987); Hays v. State of Florida, Department of Business Regulation, Division of Pari-Mutuel Wagering, 418 So. 2d 331 (Fla. 3d DCA 1982).

10. Neither doctrine applies in the case before this tribunal. The issues were not litigated, nor determined in the prior case. In fact, even Petitioner acknowledges that Respondents and issues differ and that the prior case was dismissed for lack of jurisdiction.

AS TO DOAH CASE NO. 05-3167RU

11. Petitioner stated in his Motion for Rule Challenge Proceeding filed on September 1, 2005, that "[t]hrough documented acts FCHR has shown that they are partial and not able to render an impartial determination in the Petitioner's cases." In addition to being deficient in both form and substance, as held above, the Petition is dismissed for the following additional reasons. Petitioner has not provided any documentation to support his allegations, nor has he shown any elements required under Subsection 120.56(4)(a), Florida Statutes (2004).

AS TO DOAH CASE NO. 05-3168RU

12. Petitioner restated in his Motion for Rule Challenge Proceeding filed on September 1, 2005, that FCHR "cannot state one guideline, standard or indicator in law that has been established to prove a person's 'intent to dwell' under the FHA." (See also his Motion for Rule Challenge Proceeding filed on April 1, 2005 (DOAH Case No. 05-1211RU)). The Petition is clearly deficient in both form and substance, pursuant to the requirements set forth in Subsection 120.56(4)(a), Florida Statutes (2004), and is duplicative.

AS TO DOAH CASE NO. 05-3294RU

13. Petitioner has stated in his Motion for Rule Challenge Proceeding filed on September 13, 2005, that FCHR was knowing and intentionally overlooking information provided by Petitioner as to "information that is available that will probably validate his claims." He states FCHR "was set to make a determination without considering this information." The Petition is clearly deficient in both form and substance as held above.

AS TO DOAH CASE NO. 05-3808RU

14. Petitioner filed a Motion for Rule Challenge on October 17, 2005. In addition to being deficient in both form and substance, as held above, the Petition is dismissed for the following additional reasons. Again, Petitioner has provided no documentation that he provided a written request for an amendment and the nature of the amendment.

AS TO DOAH CASE NO. 05-3981RU

15. Petitioner filed another Motion for Rule Challenge on October 25, 2005. In addition to being deficient in form and substance, the Petition alleges that FCHR has a conflict of interest which disqualified FCHR from making a determination in his underlying case. Petitioner has provided no documentation to support his allegations.

ORDER

Based on the foregoing, it is

ORDERED that the Petition for Rule Challenge Proceedings in Case Nos. 05-2985RU, 05-2986RU, 05-3167RU, 05-3168RU, 05-3294RU, 05-3808, and 05-3981RU are dismissed with prejudice.

DONE AND ORDERED this 27th day of March, 2006, in Tallahassee, Leon County, Florida.



DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of March, 2006.

COPIES FURNISHED:

Frank M. Bafford, Sr.
9622 Theresa Drive
Thonotosassa, Florida 33592

William J. Tait, Jr., Esquire
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301-4830

Cecil Howard, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301-4830

Scott Boyd, Executive Director
and General Counsel
Joint Administrative Procedures Committee
120 Holland Building
Tallahassee, Florida 32399-1300

Liz Cloud, Program Administrator
Bureau of Administrative Code
Department of State
R.A. Gray Building, Suite 101
Tallahassee, Florida 32399-0250

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original Notice of Appeal with the agency Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.