

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

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FLORIDA COMMISSION ON HUMAN RELATIONS,
ON BEHALF OF DIANA ARGUINZONI DEL TORO
Petitioner,

DOAH Case No. 05-1839-7
FCHR Case No. 24-9087-MS
HUD Case No. 04-04-1009-8
FCHR Order No. 06-028

v.

WATERFORD CROSSING COMMUNITY
ASSOCIATION, INC.

Respondent.

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

I. Panel of Commissioners

The following three Commissioners participated in the disposition of this matter:

Commissioner Mario Valle, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Roosevelt Paige

II. Appearances

Vicki D. Johnson, Esquire For Petitioner, Florida Commission on Human Relations, on behalf of
Diana Arguinzoni Del Toro

Thomas K. Luken, Esquire For Respondent Waterford Crossing Community Association, Inc.

III. Preliminary Matters

Petitioner Florida Commission on Human Relations, on behalf of Diana Arguinzoni Del Toro filed a housing discrimination complaint pursuant to the Florida Fair Housing Act, Sections 760.22 through 760.37, Florida Statutes (2003), alleging that Respondent Waterford Crossing Community Association, Inc. committed a discriminatory housing practice on the basis of gender (Female) by unlawfully towing Petitioner's vehicle from the parking lot. Petitioner alleged that the towing was done in retaliation for rejecting William Shaw's unwarranted sexual advances. Mr. Shaw was a member of the Board at the time of the advances.

The allegations in the complaint were investigated by the FCHR and on March 16, 2005 the FCHR issued a determination finding that cause existed to support a discriminatory housing violation had occurred. This matter was referred to Administrative Law Judge Robert Meale and a hearing was held on December 5, 2005. Judge Meale prepared a Recommended Order of Dismissal on January 13, 2006. The Order recommends that the Petition for Relief submitted by the Commission should be dismissed. The findings of fact provide that Ms. Del Toro has "proved that Mr. Shaw made an unwelcome sexual advance upon Ms. Del Toro" however, the Petitioner has failed to establish that the unwanted advances were a pretext or basis for the towing of her car. The Recommended Order also found that the Respondent was not entitled to fees and costs under §57.1111(4)(a) because the actions of the Petitioner were substantially justified.

IV. Findings of Fact

Neither party filed with the Commission a transcript of the proceeding before the Administrative Law Judge. Therefore, in the absence of a transcript we must adopt the Administrative Law Judge's finding of fact.

V. 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.

VI. Exceptions

Respondent filed exceptions to the Recommended Order of Dismissal in a document entitled Respondents Exceptions to Recommended Order. Respondents' exceptions are based on the arguments that 1) The Fair Housing Act does not apply to the allegations of Petitioner since the sale of the property occurred 7 years earlier, 2) that the Petition was not timely filed, and 3) the Administrative Law Judge's factual determination finding Petitioner's car was legally parked was made in error.

As indicated above, there is no transcript of the proceedings before the Administrative Judge. 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) and Rizos v. Point Vista Apartments, FCHR Order No. 05-010 (January 19, 2005). Based upon the Recommended Order, the Commission finds no support for Respondent's exceptions. Petitioner's exceptions are rejected.

V. Dismissal

The Petition for Relief for an Unfair Housing Practice is Dismissed. Each party is advised of his right to petition the Florida District Court of Appeal for the judicial review of this Final Agency Order. Such notice of Appeal must be filed within 30 days of the date this order is filed with the clerk of the Commission. Section 120.68, Florida Statutes, and Fla.R.App.P. 9.110(b).

DONE AND ORDER this 13th day of April, 2006.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario Valle,
Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Roosevelt Paige

Filed this 13th day of April, 2006, in Tallahassee, Florida.



Violet Crawford, Clerk,
Commission on Human Relations
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Copies furnished to:

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Waterford Crossing Community Association, Inc.
c/o Thomas K. Luken, Esquire
1001 W. Cypress Creek Road
Suite 400
Fort Lauderdale, FL 33309

Robert E. Meale, Administrative Law Judge

James D. Young, Legal Advisor for Commission Panel