

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
07 FEB 16 AM 11:00
DIVISION OF
ADMINISTRATIVE
HEARINGS

SAMUEL SUKYASOV,

HUD Case No. 04-06-0407-8

Petitioner,

FCHR Case No. 26-91811H

v.

DOAH Case No. 06-2819

GMC PROPERTY MANAGEMENT

FCHR Order No. 07-012

Respondent.

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

Preliminary Matters

Petitioner Samuel Sukyasov filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2005), alleging that Respondent GMC Property Management committed discriminatory housing practices on the basis of Petitioner's National Origin (Armenian).

The allegations set forth in the complaint were investigated, and, on June 21, 2006, 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 Jacksonville, Florida, on October 17, 2006, before Administrative Law Judge Suzanne F. Hood.

Judge Hood issued a Recommended Order of dismissal, dated November 30, 2006.

Pursuant to notice, public deliberations were held on February 13, 2007, 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 Recommended Order.

Findings of Fact

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. 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). Accord, Beach-Gutierrez v. Bay Medical Center, FCHR Order No. 05-011 (January 19, 2005), and Waaser v. Streit's Motorsports, FCHR Order No. 04-157 (November 30, 2004).

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, "Exceptions," received by the Commission on December 20, 2006.

In our view, the "Exceptions" document is not timely.

Parties have 15 days from the date of the Recommended Order to file exceptions to it with the Commission. See Section 120.57(1)(k), Florida Statutes (2006) and Recommended Order, "Notice of Right to Submit Exceptions" section.

In this instance, the Recommended Order is dated November 30, 2006, and the exceptions document was received by the Commission on December 20, 2006, more than 15 days after the date of the Recommended Order.

The document "excepts" to indicated findings of fact contained in the Recommended Order, but in the absence of a transcript of the proceeding before the Administrative Law Judge, the Commission is bound by the facts found in the Recommended Order, since there is no way for the Commission to determine the extent to which the facts found are supported by the testimony presented.

As indicated, the Commission's file does not contain a transcript of the proceeding on the merits before the Administrative Law Judge. With regard to findings of fact set out in Recommended Orders, the Administrative Procedure Act states, "The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law [emphasis added]." Section 120.57(1)(l), Florida Statutes (2005). As stated above, 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., supra. Accord, Jones v. Suwannee County School Board, FCHR Order No. 06-088

(September 11, 2006), Johnson v. Tree of Life, Inc., FCHR Order No 05-087 (July 12, 2005), Beach-Gutierrez, supra and Waaser v. Streit's Motorsports, supra.

Further, 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).

Finally, there is no indication on Petitioner's exception document that it was served on Respondent by Petitioner as is required by Fla. Admin. Code R. 28-106.104(2)(f) and (4), and Fla. Admin. Code R. 28-106.110.

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 15th day of February, 2007.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Keith Roberts; and
Commissioner Gilbert M. Singer

Filed this 15th day of February, 2007,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

Copies furnished to:


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2705 Stardust Court, Apt. 10
Jacksonville, FL 32211

GMC Property Management
c/o Gregory Simms, Owner
9550 Regency Square Boulevard
Suite 902
Jacksonville, FL 32225

Suzanne F. Hood, 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 15th day of February, 2007.

By: 

Clerk of the Commission
Florida Commission on Human Relations

SAMUEL SUKYASOV

SAMUEL SUKYASOV,)
)
 Petitioner,)
)
 Vs.)
)
 GMC PROPERTY MANAGEMENT,)
)
 Respondent.)
)
)

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 26-91811H,
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RECEIVED
 FLORIDA DEPARTMENT OF
 PROFESSIONAL REGULATION
 2006 DEC 20 PM 2:30

EXEPTIONS

I, Samuel Sukyasov, the petitioner, file exceptions accordingly to and with:
 DOAH - Uniform Rules Chapter
 PART I GENERAL PROVISIONS
 28-106.103 Computation of Time
 28-106.217 Exceptions and Responses

I want to state, with regard to the recommended order and findings of facts that:

Re. 12

- a. Respondent did not inspect Petitioner apartment.
- b. One maintenance entered and replaced one bath appliance.

Re.13

Respondent sent not just one "erroneous \$50.00 one time" charge, but also eviction notices with charges \$370.00-420.00

Re.14

No maintenance repaired the sink in my bathroom on July 5, 2005 by my request or a work order. It was the day when I called the office and told them that it was them who have been causing spots at the bath in my residence. (Evidence for that had been presented). No evidence were ever presented to me by the landlord during the court, so I really don't understand where this "the greater weight of the evidence" by the landlord came from, while I do have photos of the bath which are clearly showing that those spots were caused by the Respondent.

Re. 15

Per respondent Gregory Simms' claim, stated during the hearing, it was Michael Simms (who is the respondent's brother) who placed in July of 2005 (respondent could not give the exact date) a warning notice on my car due to my car allegedly had "expired tag as of

May 2003 and a flat tire". Respondent did not have any other witness or evidence to confirm his brother's allegation. Therefore there was only one person, who is Michael Simms, who alleged that he put a notice on my car because it had the above listed violations and no witness to confirm his allegations!

While I did and do have the evidence that Respondent's allegation were wrong. However, this evidence was disregarded during the court.

Re. 17

Per respondent Gregory Simms claim stated during the hearing, it was Michael Simms (who is the respondent's brother) placed in August of 2005 (respondent could not give the exact date) a warning notice on my car due to my car allegedly had "expired tag as of May 2003 and a flat tire".

I strictly state that I complied with all requirements stated on that notice, I also have the evidence of that that I did comply with the notice, however my evidence was not taken into consideration during the hearing.

Re. 18

I did provide the long list of cars whose owners were violating the lease parking provision in the same manner as the landlord allegedly accused I was in violation, however, my evidence was disregarded during the hearing yielding to respondent's "persuasive" evidence that all of those cars on my list had been moved or towed away from the premises.

However, I want to state that:

- a. None of those cars brought as the evidence by the landlord are even on my list!
- b. Landlord (except two cars belonging to not FL residents) never had posted a notice on these cars demanding them to comply with his parking regulations. Thus the respondent was giving them generous time frame to fix parking violations at their, tenants sole discretion, while he had posted on my car two notices within less than two months and towed away my car within that period of time.
- c. Those cars, presented as the evidence by the respondent ARE NOT even located in the apartments complex I reside at!

Therefore, logical question is why my long list of evidences is disregarded while the respondent's evidence listing just a few cars which are not located in the apartments complex I live at is granted more "persuasive evidence" status if I don't even live there where respondent's evidence came from !

Re. 23 and 26

If respondent claim that I was moving furniture all night long in August of 2005, then why he sent me a notice about that only on October 12, 2005? If I continued moving furniture all night from August to October 2005, then it would be the second or more violations of lease same provision! Then why the landlord did not go by due procedures he is usually going by and had me move out? This is same scenario as with me allegedly not paying the rent, multiple notices posted on my door and never taking me to the court because the respondent knew that I do have the evidence to confront landlord's multiple harassing allegations like I don't pay my rent, paying late, keep my bath dirty, move my furniture all night...etc.

Notice that there was NOT any other statement from the same "witness" that I was moving my furniture or making any noise whatsoever in September and October of 2005.

Then reasonable question is why landlord posts a notice on my door accusing me in what I have not ever even done on that day of October 12 of 2005, the day when I was actually making pictures of cars violating the lease and the landlord posted that notice solely with regard to that as well as Michael Simms warned me, when I called the office to ask why this notice was posted on my door, not to make pictures of cars violating the lease parking provisions.

Re. 34

I did demonstrate that the respondent treated my differently!

a. I produced the letter from consumer services where I called in June of 2005 that the landlord enters repeatedly in my residence having the same claim like there is a leak which he somehow wouldn't fix for prolonged period of time.

b. Per respondent's allegation, his brother Michael Simms put two notices on my car (first in July, second in August) for allegedly "expired tag as of May of 2003 and a flat tire" and towed away my car within same period of time, which is less than two months, while I did present the evidences that other tenants who were in similarly situation: expired tags, flat tire, no tag at all, disabled cars... were not ever posted a notice, were not towed away by the landlord for lease same parking violation!

However my evidence was disregarded in the court.

Re. 37

This is wrong again, I repeat that per respondent Gregory Simms' claim, stated during the hearing, it was Michael Simms (who is the respondent's brother) who placed in July of 2005 (respondent could not give the exact date) a warning notice on my car due to my car allegedly had "expired tag as of May 2003 and a flat tire". Respondent did not have any other witness or evidence to confirm his brother's allegation. Therefore there was only one person, who is Michael Simms, who alleged that he put a notice on my car because it had the above listed violations and no witness to confirm his allegations!

While I did and do have the evidence that Respondent's allegation were wrong. However, this evidence was disregarded during the court.

Re. 38

I did present evidence during the hearing that the landlord did threaten me with eviction by sending me eviction notices.

Re. 39

If I made that alleged noise, that is "I was moving furniture all night long", then why the landlord posted a notice about that only on October 12, 2005, while that presented and the only statement was dated on August 30, 2005 (note also, that date on that statement presented by the landlord had been fixed from August 20, 2005, to August 30, 2005)???

Note also that there was NO other whatsoever statement, witness, plaintiff, evidence from August 30, 2005 to October 12, 2005. Note also that there was even no witness, or evidence, or whatever to confirm that alleged noise on August 30, 2005.

I want to make statement, as I did on the hearing that I did not cause any noises, and did not and do not move my furniture after midnights!

Actually this neighbor himself is causing noises by running his music at extremely loud level (can be confirmed by his neighbor behind the wall), park his car improperly, thus violating the lease parking provision, change his locks...

Re.40

Pictures of the tub in my bathroom as well as admittance by the landlord management, after I warned them that I did make pictures of that bath, are the evidence that the landlord did contaminate the tub and did it repeatedly.

Re.41

There was no evidence presented to me before, during and after the final hearing that I did violate the lease agreement and its rule addendum!

Per respondent statement during the hearing, he had only one person, Michael Simms, who is respondent's own brother, who alleged that my car had an expired tag as of May of 200, and a flat tire and therefore he placed that notice on my car. There is NO witness to confirm that, no evidence, and no fact whatsoever!

There is no witness or evidence presented that my bath was dirty, while I do have evidence that it was the landlord who repeatedly contaminated the tub in my bathroom by pouring that brownish stuff from the apartment located next to mine, and right behind the common wall.

No witness or evidence that I did not let maintenance to enter my residence. I always let maintenance enter my residence and my only request from GMC management was to give me prior notices accordingly to the law, which they never complied with. As a matter of fact, I just want to know if someone enters my residence while I am not home!

This is matter of privacy for me and I am not in jail! If someone enters my residence I want to know it that someone was in my residence, plain and simple! After all, there is a law for that which the landlord has to go by!

In conclusion, I want to state that I do have evidences to confront landlord's allegations regarding these listed above facts as well as the other facts including those which the respondent skipped during the hearing and/or did not give me prior to the hearing and I would be thankful if I can appeal this final order which ruled in respondent's favor despite the fact that I did have hard evidences to prove my side while the respondent did not!

Sincerely,
Samuel Sukyasov
2705 Stardust court, apt. #10
Jacksonville, FL, 32211
Phone# (904) 551-4143

Samuel Sukyasov