

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARTHA S. BOFILL and)
PEDRO BOFILL,)
)
 Petitioners,)
)
vs.) Case No. 06-3302
)
DEPARTMENT OF TRANSPORTATION,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Miami, Florida, on March 21, 2007.

APPEARANCES

For Petitioner: Susan Schwartz
Department of Transportation
Haydon Burns Building, Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399-0450

For Respondent: Martha S. and Pedro Bofill
540 Northwest Boulevard
Miami, Florida 33126

STATEMENT OF THE ISSUES

The issues are whether Petitioners are entitled to replacement housing payments in connection with Respondent's acquisition of their mother's home, at which both Petitioners also reside, and whether Petitioner Pedro Bofill is entitled to

business moving expenses for the business that he operates from his mother's former home.

PRELIMINARY STATEMENT

By letter dated June 27, 2006, Respondent informed Petitioners that they were not entitled to relocation benefits as tenants in their mother's home. The letter states that, prior to any payments to the mother, who owned the home, Respondent explained to Mr. Bofill that any replacement housing payment to him or his sisters (only one of whom is a party) would reduce the amount of the replacement housing payment otherwise payable to his mother. The letter states that, based on this information, Mr. Bofill and his two sisters decided not to assert separate claims, but allowed their mother's claim to proceed as from a single household, which would result in a larger payment to her.

Petitioners timely requested a formal hearing. In their petitions, Petitioners claimed entitlement to relocation housing payments separate from the single relocation housing payment made to their mother. Petitioner Pedro Bofill also claimed entitlement to moving and related expenses for his business that he operated from his mother's home.

At the hearing, Petitioners called eight witnesses and offered into evidence 10 exhibits: Petitioners Exhibits 1-8 and 10-11. Respondent called five witnesses and offered into

evidence 12 exhibits: Respondent Exhibits 1-3 and 5-13. All exhibits were admitted except Petitioners Exhibits 5-8, which were proffered. The Administrative Law Judge admitted one exhibit--the claim application filed by Petitioner's mother.

The court reporter filed the transcript on April 30, 2007. The parties filed their post-hearing filings by May 10, 2007.

FINDINGS OF FACT

1. Petitioners are siblings. By permission of Respondent, Petitioners presently reside in a single-family home at 540 Northwest Boulevard in Miami. Once part of a larger neighborhood, Petitioners' home now stands alone, as the other homes have been cleared in preparation for the construction of improvements to the nearby Dolphin and Palmetto Expressways.

2. Until purchased by Respondent, the home at 540 Northwest Boulevard was owned by Petitioners' mother. For at least 20 years, Petitioner Pedro Bofill (Mr. Bofill) has resided in the home, which was divided so that he could live in one section and operate a small retail perfume business, and his mother and one or two sisters could live in the other section of the home. Petitioner Martha S. Bofill (Ms. Bofill) lived in the home up until the early 1990s, when she moved out after becoming married, but she returned a few years later after a divorce. The side occupied by Mr. Bofill has its own exterior entrance, kitchen, and bathroom, and the side occupied by Petitioners'

mother and her two daughters has its own exterior entrance, kitchen, and bathrooms.

3. One of Respondent's agents, an employee of Post, Buckley, Schuh, and Jernigan, Inc. (Post Buckley), first observed the home in 1988, as she was preparing the initial public information campaign for the Palmetto Expressway Improvements Project. Respondent identified nearly 40 residences to be demolished and over 80 families to be displaced by the project.

4. On June 25, 2004, the Post Buckley representative knocked on the door of the residence located at 540 Northwest Boulevard. She was met by Mr. Bofill. The representative explained that Respondent would be purchasing this and surrounding homes and asked if they could speak. During their conversation, the representative told Mr. Bofill that the purpose of her visit was to determine the needs of the persons who would be displaced by the road project. Mr. Bofill informed the representative that the residence comprised two separate dwellings: his and that of his mother and sisters. The Post Buckley representative asked Mr. Bofill to complete a survey, and he agreed to do so.

5. As reflected by the completed survey, which was filled out by the representative, pursuant to Mr. Bofill's responses, and signed by Mr. Bofill, Mr. Bofill stated that he paid \$150-

\$250 monthly in utilities and \$1200 monthly in "contract rent." He added that he "wants to move into same setting w/mother and continue to have home office."

6. The Post Buckley representative asked to speak with Mr. Bofill's mother, but she was unprepared to receive a visitor. Mr. Bofill did not offer to take the representative to the other side of the house. However, he provided the information to the representative so she could complete a survey for Mr. Bofill's mother. This survey discloses that Ms. Bofill lives with her mother, the mother is retired, and Ms. Bofill is unemployed, as she is a student. This form indicates that Mr. Bofill pays for the utilities for both sides of the house.

7. From this information, Post Buckley prepared a Needs Assessment Survey Report. This document helped Respondent determine the number of impacted families, the existence of any special needs, and whether sufficient properties in the market were available to accommodate the displaced persons.

8. In September 2004, Post Buckley notified Petitioners' mother of the acquisition and relocation program that was now underway. The notification informs the homeowner of the right to obtain an independent appraisal, at Respondent's expense. On the same date, Respondent sent a letter to Petitioners' mother informing her of the process, including her entitlement to full

compensation for the property acquired by Respondent and relocation assistance benefits.

9. Although Petitioners are bilingual, their mother speaks only Spanish. The Post Buckley representative is bilingual, and the two letters sent to Petitioners' mother in September were sent in English and Spanish.

10. By letter dated July 14, 2005 (English only), Respondent conveyed an offer to purchase the fee simple interest in the property owned by Petitioners' mother for \$340,000. This is the acquisition payment and does not include relocation assistance, such as a replacement housing payment, which is described in greater detail below. A separate letter in English bearing the same date informed Petitioners' mother of her right to receive a replacement housing payment, if, among other things, "a comparable replacement dwelling costs more than the amount you are paid for your current dwelling."

11. On August 11, 2005, the Post Buckley representative updated the surveys by forwarding them to the attorney of Petitioners' mother, as the attorney had asked the representative not to contact his client. The information did not change from the earlier surveys.

12. On October 6, 2005, the Post Buckley representative and two representatives of Respondent met at the attorney's office with Mr. Bofill's sister. The meeting lasted 30-45

minutes and addressed the special needs of Petitioners' mother, such as that she required an outside walkway to reduce the risk of falling in the yard and needed to live near a hospital due to her age and medical condition.

13. At this point, Post Buckley and Respondent assessed the information available and determined that Respondent should pay a single housing replacement payment to Petitioners' mother and no housing replacement payments to Petitioners. The available information was not limited to Mr. Bofill's survey response concerning his intent to relocate with his mother. Post Buckley and Respondent were aware that Petitioners, as adult children, had lived with their mother for many years, their mother was in poor health and living on a fixed income, Ms. Bofill has not been employed at anytime during this matter, and Mr. Bofill pays all of the utilities at the residence. Concluding from these circumstances that it was unlikely that Petitioners would establish separate residences from their mother, Respondent justifiably interpreted the absence of a request for separate residential housing payments from either Petitioner as evidence that they would continue to live with their aged mother.

14. The decision of Respondent to proceed with a single housing relocation payment was further justified by later events. On November 15, 2005, a representative of Respondent

spoke with Mr. Bofill by telephone about the effect of the payment of a separate housing relocation payment to him and his sisters, in terms of reducing the payment to their mother. Mr. Bofill said that he and his sisters would not pursue separate housing relocation payments.

15. On December 1, 2005, Respondent signed a Statement of Eligibility for Supplementary Replacement Housing Payment for Owner (Statement of Eligibility). The Statement of Eligibility states that Petitioners' mother is eligible for a replacement housing payment of \$120,000, based on the difference between the \$460,000 cost of comparable replacement housing and the \$340,000 acquisition price.

16. By letter dated December 16, 2005, Petitioners' mother rejected the comparable replacement housing used in the December 1 letter, noting, among other things, that she lived solely on her Social Security payments of \$550 per month and suggesting that comparable replacement housing would need to be in the range of \$600,000 to \$750,000. The clear implication of this letter, given the disparity between the mother's annual income of about \$6000, and the substantial costs of maintaining a house in this price range, in terms of property taxes and utilities, for instance, was that she would continue to receive assistance from her children, who had lived with her, paid some rent, and helped her with the activities of daily living.

17. By Revised Offer and Purchase Agreement, signed by Post Buckley and Petitioners' mother on December 22, 2005, and accepted by Respondent on March 8, 2006, Respondent agreed to acquire the home for \$411,400. By Replacement Housing Payment Computation Explanation of the same date, Respondent's Relocation Project Manager stated to Respondent's Relocation Administrator that the home contained only one residential dwelling, the acquisition price would be \$411,400, the selection of the proper comparable--with similar square footage and number of rooms to the acquired property--resulted in a replacement housing payment of \$123,600, so that Respondent would pay Petitioners' mother an additional \$123,600 in the form of a replacement housing payment. Petitioners' mother signed a new Statement of Eligibility--in both English and Spanish--on the same date, reflecting these new figures.

18. The closing eventually took place on March 13, 2006. According to a letter written by Ms. Bofill, in February 2006, she learned that Respondent would pay a single housing relocation payment to her mother. She retained an attorney. Four days prior to the closing, she met with two representatives of Respondent and complained about not receiving any housing relocation payments. At the closing, the attorney sat with Ms. Bofill and her mother and explained each of the documents that she was signing, and at no time did Petitioners' mother

indicate an intent not to proceed with a single housing relocation payment, payable to her.

19. Respondent's finding of a single household is probably based on the extent to which Petitioners' mother and Petitioners necessarily pooled their resources to pay for basic necessities. However, the configuration of the home suggests separate households, so this Recommended Order will treat the home as comprising two households (although the ultimate result is the same under either analysis). One household was occupied by Mr. Bofill and the other was occupied by Petitioners' mother and her two daughters. However, neither Petitioner was entitled to a separate replacement housing payment under the present facts. As noted above, Mr. Bofill affirmatively stated his intent to relocate with his mother, and Respondent reasonably inferred the same intent by Ms. Bofill, based on the financial circumstances of her and her mother, their prior history of living together, and Ms. Bofill's failure to take affirmative action to claim a separate housing replacement payment until after the closing, at which Respondent obligated itself to pay a single such payment to Petitioners' mother. For the reasons explained below, Respondent's failure to pay a separate housing relocation payment to Mr. and Ms. Bofill was thus proper.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2006) and Fla. Admin. Code Rule 14-66.007(11)

21. Section 339.09(2), Florida Statutes, authorizes Respondent to expend money for "relocation assistance." Section 421.55(3), Florida Statutes, provides similarly.

22. As applicants, Petitioners bear the burden of proof. Department of Transportation v. J. W. C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

23. Florida Administrative Code Rule 14-66.007 creates the "Relocation Assistance Program." The Relocation Assistance Program covers two non-acquisition costs: moving expenses and replacement housing payments. This case does not involve any dispute about the acquisition payment to Petitioners' mother. This case involves claims by Petitioners that they are entitled to replacement housing payments and a claim by Mr. Bofill that he is entitled to moving and related expenses for his home perfume business, even though Respondent has already made a full replacement housing payment to their mother that would have been reduced if Petitioners had made their claims prior to the closing on their mother's home.

24. Florida Administrative Code Rule 14-66.007(7) generally provides for certain moving and related expenses for

displaced persons, including businesses. Florida Administrative Code Rule 14-66.007(8) recognizes that a person may be entitled to a replacement housing payments, apart from the acquisition payment made to acquire his or her residence. A replacement housing payment eliminates the problem that arises when the selling price of a comparable replacement dwelling exceeds the purchase price of the residence being purchased by Respondent. In the case of a residence on a typically sized tract for the area, for instance, Florida Administrative Code Rule 14-66.007(8)(b)1. provides that the replacement housing payment will be equal to the amount by which the probable cost of a comparable replacement residence exceeds the purchase price paid by Respondent for the residence that it is acquiring. In calculating the replacement housing payment, Florida Administrative Code Rule 14-66.007(8)(b)4. requires Respondent to carve out any portion of the acquired residence used for nonresidential purposes, such as a home business.

25. This case raises the issue of the rights of multiple occupants to replacement housing payments. Two subsections of the rule address this situation: the first covers a single household in a single residence, and the second covers two or more households in a single residence. Florida Administrative Code Rule 14-66.007(8) provides:

(d) Single Household, Multiple Occupancy: If two or more eligible occupants of the displacement dwelling move to separate replacement dwellings and the Agency determines only one household existed, payment shall be as follows:

1. If a comparable replacement dwelling is not available and the displaced persons are required to relocate separately, a replacement housing payment will be computed for each person separately, based on housing which is comparable to the quarters privately occupied by each individual plus the full value of the community rooms shared with other occupants.

2. If a comparable replacement dwelling is available, the displaced persons are entitled to a prorated share of the singular relocation payment [i.e., replacement housing payment] allowable had they moved together to a single dwelling.

(e) Multiple Household [sic], Multiple Occupancy: If two or more eligible occupants of the displacement dwelling move to separate replacement dwellings and the Agency determines that separate households had been maintained in the displacement dwelling, the replacement housing payment computation shall be based on housing which is comparable to the quarters privately occupied by each individual plus a prorated share of the value of community rooms shared with other occupants. If two or more eligible occupants of the displacement dwelling move to a single comparable replacement dwelling, they shall be entitled to only one replacement housing payment under this subsection.

26. Ms. Bofill's claim is covered by Florida Administrative Code Rule 14-66.007(8)(d), as she resided in a single household with her mother, and Mr. Bofill's claim is

covered by Florida Administrative Code Rule 14-66.007(8)(e), as he resided in a separate household from his mother.

27. Ms. Bofill's claim is covered by Florida Administrative Code Rule 14-66.007(8)(d)2. because a comparable replacement dwelling was available. She was thus entitled to a prorated share of the replacement housing payment paid to her mother--if she had timely informed Respondent of her intent to move to separate replacement dwellings. She did not do so, likely because she never intended to move to a separate replacement dwelling, but possibly to allow her mother to obtain the largest possible total payment from Respondent. As reflected by her visit to Respondent's office four days before the closing, Ms. Bofill had ample opportunity to make a claim prior to Respondent's paying the unprorated replacement housing payment to her mother, and she elected not to make it. Thus, Respondent fairly treated her as intending to relocate to the same residence as her mother and paid "Ms. Bofill's" share of the replacement housing payment to her mother.

28. Mr. Bofill's claim is covered by Florida Administrative Code Rule 14-66.007(8)(e)--specifically, the last sentence. He filled out the first survey and affirmatively disclosed his intention to relocate to the same residence as his mother. He never informed Respondent of any change in this regard prior to the closing. Thus, Respondent properly paid the

single relocation housing payment to Mr. Bofill's mother. His claim for business moving expenses is covered by Florida Administrative Code Rule 14-66.007(7). Had he pressed this claim, his mother's replacement housing payment would have been reduced to reflect the part of her home used for the business. But Mr. Bofill declined to claim these expenses at the same time as he declined to claim a separate relocation housing payment.

29. Florida Administrative Code Rule 14-66.007(5) requires various notices to displaced persons, which includes Petitioners. Post Buckley and Respondent did not provide Petitioner with all of these notices, but the failure is immaterial because Petitioners had actual notice of the entire acquisition process at all material times.

RECOMMENDATION

It is

RECOMMENDED that the Department of Transportation enter a final order denying the requests of Petitioners for housing relocation payments and business moving expenses.

DONE AND ENTERED this 11th day of May, 2007, in
Tallahassee, Leon County, Florida.

S

ROBERT E. MEALE
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 11th day of May, 2007.

COPIES FURNISHED:

James C. Meyers, Clerk of Agency Proceedings
Department of Transportation
Haydon Burns Building, Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399-0450

Alexis M. Yarbrough, General Counsel
Department of Transportation
Haydon Burns Building, Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399-0450

Stephanie Kopelousos, Interim Secretary
Department of Transportation
Haydon Burns Building, Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399-0450

Susan Schwartz
Department of Transportation
Haydon Burns Building, Mail Station 58
605 Suwannee Street
Tallahassee, Florida 32399-0450

Martha S. and Pedro Bofill
540 Northwest Boulevard
Miami, Florida 33126

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.