

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED  
08 DEC -2 AM 10:07  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

DONALD AND MIRANDA SMITH,

HUD Case No. 04-08-0222-8

Petitioners,

FCHR Case No. 27-92354H

v.

DOAH Case No. 08-1955

MARIANNE C. MONTGOMERY,  
REALTOR / BROKER,

FCHR Order No. 08-075

Respondent.

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

Preliminary Matters

Petitioners Donald and Miranda Smith filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2007), alleging that Respondent Marianne C. Montgomery, Realtor / Broker, committed discriminatory housing practices on the basis of race (Miranda Smith is African-American, Donald Smith is Caucasian, and they have bi-racial family members) related to the sale and marketing of their home.

The allegations set forth in the complaint were investigated, and, on March 27, 2008, the Executive Director issued a determination finding that there was no reasonable cause to believe that a discriminatory housing practice had occurred.

Petitioners 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 Brooksville, Florida, on July 16, 2008, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis issued a Recommended Order of dismissal, dated September 19, 2008.

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. 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). See, also, Villamizar, et al. v. Gomez, FCHR Order No. 06-093 (November 13, 2006).

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

None of the parties filed exceptions to the Administrative Law Judge's Recommended Order.

#### Dismissal

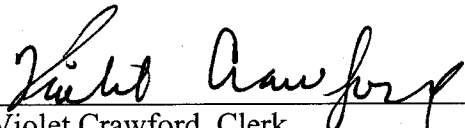
The Petition for Relief and Housing Discrimination Complaint are DISMISSED with prejudice.

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 1<sup>st</sup> day of December, 2008.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner Gayle Cannon; and  
Commissioner Billy Whitefox Stall

Filed this 1<sup>st</sup> day of December, 2008,  
in Tallahassee, Florida.

  
Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 200  
Tallahassee, FL 32301  
(850) 488-7082

Copies furnished to:

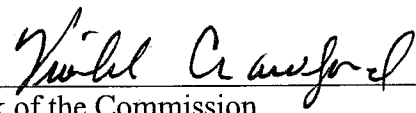
Donald and Miranda Smith  
1047 Rudolph Court  
Spring Hill, FL 34609

Marianne C. Montgomery, Realtor / Broker  
c/o David H. Sturgil  
Exit Realty / Realty Shoppe  
5300 Spring Hill Drive  
Spring Hill, FL 34606

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 1<sup>st</sup> day of December, 2008.

By:   
Clerk of the Commission  
Florida Commission on Human Relations