

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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DIVISION OF
ADMINISTRATIVE
HEARINGS
04-084072-8

GEORGINE ASSANTE,

HUD Case No. 04-084072-8

Petitioner,

FCHR Case No. 27-92355H

v.

DOAH Case No. 08-2220

WINDSOR PLACE AT BERKSHIRE
(LAKES),

FCHR Order No. 08-083

Respondent.

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

Preliminary Matters

Petitioner Georgine Assante filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2007), alleging that Respondent Windsor Place at Berkshire (Lakes) committed discriminatory housing practices on the bases of Petitioner's sex (female) and alleged disability (identified in the Petition for Relief as "limb disabled") by undertaking actions to enforce Respondent condominium's window treatment rules.

The allegations set forth in the complaint were investigated, and, on April 4, 2008, 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 Naples, Florida, on July 24, 2008, before Administrative Law Judge Daniel Manry.

Judge Manry issued an Amended Recommended Order of dismissal, dated September 22, 2008.

Pursuant to notice, public deliberations were held on November 20, 2008, 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 200, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Amended Recommended Order.

Petitioner's Motion for Continuance

Petitioner filed with the Commission a motion to continue the November 20, 2008, Commission deliberation of this matter. The motion contains the representation that Respondent opposes the motion. As a preliminary matter to the November 20, 2008, Commission deliberation, the Commission Panel heard oral argument from the parties on the motion.

Upon considering the motion and the oral argument presented, Petitioner's motion to continue the November 20, 2008, Commission deliberation of this matter is hereby **DENIED**.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

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.

With regard to the Administrative Law Judge's award of attorney's fees and costs to Respondent in this matter, pursuant to Section 120.595(1), Florida Statutes (2007), we note that the Commission does not have "final order" authority over such an award. See, e.g., G.E.L. Corporation v. Department of Environmental Protection, et al., 875 So. 2d 1257 (5th DCA 2004), supporting the position that an agency is powerless to correct possible errors made by an Administrative Law Judge in the awarding of attorney's fees pursuant to Section 120.595(1), Florida Statutes, because entitlement to such an award is not a conclusion of law within the substantive jurisdiction of the agency.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Amended Recommended Order, in an eighteen-page document dated October 3, 2008. The document reflects that it was stamped received by the Commission on October 9, 2008, but the FAX markings suggest it was received by the Commission on October 7, 2008.

The document does not contain an indication that it was served on Respondent's counsel, but the document was published to Respondent and placed in the record through a Notice of Ex Parte Communication issued by the Commission on October 14, 2008.

The document contains eleven numbered exceptions paragraphs.

In each instance the exceptions paragraphs take issue with facts found (5, 6, 7, 11), facts not found (1, 2), and / or simply contain argument (1, 2, 3, 4, 8, 9, 10, 11).

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). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005).

Petitioner's exceptions are rejected.

Dismissal

All motions pending before the Commission are disposed of by this Order.

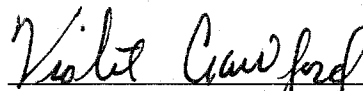
The Petition for Relief and Housing Discrimination Complaint are DISMISSED with prejudice.

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 24th day of November, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Patty Ball Thomas; and
Commissioner Mario M. Valle

Filed this 24th day of November, 2008,
in Tallahassee, Florida.



Violet Crawford, Clerk
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Daniel Manry, 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 24th day of November, 2008.

By: *Kristi Crawford*
Clerk of the Commission
Florida Commission on Human Relations