

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

YOLANDA CLARK, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 08-2669  
 )  
 HOMEQ SERVICING CORP., )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER OF DISMISSAL

This case is before the undersigned based upon the Response to Order to Show Cause filed by Petitioner on June 13, 2008. No hearing is necessary.

APPEARANCES

For Petitioner: Yolanda Clark, pro se  
Post Office Box 211  
Lawtey, Florida 32508

For Respondent: Jane H. Henryck  
Homeq Servicing Corporation  
4837 Watt Avenue, Suite 200  
North Highlands, California 95660

STATEMENT OF THE ISSUE

The issue is whether the Petition for Relief was timely filed.

PRELIMINARY STATEMENT

On April 18, 2008, the Florida Commission on Human Relations (FCHR) mailed a Notice of Determination of No Cause

(Notice) to Petitioner. The Notice advised Petitioner that FCHR determined that there was no reasonable cause to believe that a discriminatory housing practice has occurred. The Notice further advised Petitioner that she had 30 days from the date that the Notice was mailed to request an administrative hearing on that determination.

On May 23, 2008, FCHR received a Petition for Relief (Petition) from Petitioner. On June 3, 2008, FCHR referred the Petition to the Division of Administrative Hearings (DOAH). The referral was received by DOAH on June 5, 2008.

On June 6, 2008, the undersigned issued an Order to Show Cause because it appeared from a review of the case file that the Petition was not timely filed with FCHR. The Order directed Petitioner to "show cause in writing as to why the Petition should not be dismissed as untimely."

Petitioner filed a response to the Order to Show Cause on June 13, 2008, stating that she "never received any paperwork on the above case" and that "the only paperwork that [she] received was on or a about June 9, 2008." Due consideration has been given to that filing.

#### FINDINGS OF FACT

1. In January 2008, Petitioner filed a "Housing Discrimination Complaint" with FCHR and/or the U.S. Department of Housing and Urban Development. The complaint alleged that

Respondent discriminated against Petitioner based upon her race (black) and religion (Christian) in its servicing of her home mortgage loan.

2. On or about March 27, 2008, a "Determination" was issued finding no reasonable cause to believe that Respondent committed a discriminatory housing practice against Petitioner.

3. On April 18, 2008, FCHR sent a "Notice of Determination of No Cause" to Petitioner by certified mail No. 7007 1490 0002 5958 0931.

4. Petitioner received the Notice on April 22, 2008, according to the certified mail receipt included in the case file.

5. The Notice advised Petitioner that "FCHR has determined reasonable cause does not exist to believe that a discriminatory housing practice has occurred." The Notice further advised Petitioner that she could request an administrative hearing, and clearly stated that any such request "must be filed with the FCHR within 30 days of the date of mailing of this Notice." A "Petition for Relief, in blank" was sent to Petitioner along with the Notice.

6. On May 23, 2008, FCHR received a completed "Petition for Relief" form from Petitioner. The form was signed by Petitioner and dated May 20, 2008.

7. Petitioner stated in her response to the Order to Show Cause that she "never received any paperwork on the above case" and that "the only paperwork that [she] received was on or a about June 9, 2008."

CONCLUSIONS OF LAW

8. DOAH has jurisdiction over the parties to and subject matter of this proceeding pursuant to Sections 120.569, 120.57(1), and 760.35(3)(b), Florida Statutes (2007).<sup>1/</sup>

9. FCHR is the state agency responsible for administering the Fair Housing Act, which is codified in Part II of Chapter 760, Florida Statutes. See § 760.30(1), Fla. Stat.

10. The rules adopted by FCHR to implement the Fair Housing Act include Florida Administrative Code Rule 60Y-8.001, which provides in pertinent part:

(1) Petition. A complainant may file a Petition for Relief from a Discriminatory Housing Practice within 30 days of service of a Notice of Determination (No Cause) or Notice of Determination (Cause).<sup>[2/]</sup> . . . .  
(Emphasis supplied).

(2) For good cause shown, the Chairperson may grant an extension of time to the complainant to file the Petition for Relief, provided the motion for extension of time is filed within the 30-day period.

(3) Procedures. Petitions for Relief, and proceedings thereupon, are governed by the provisions of Chapters 28-106 and 60Y-4, F.A.C., except as otherwise provided by this section.

11. There is no indication in the case file or Petitioner's response to the Order to Show Cause that Petitioner requested or was granted an extension of time to file her Petition by FCHR under Florida Administrative Code Rule 60Y-8.001(2).

12. The period for requesting an administrative hearing typically commences upon "receipt" of notice of the agency's decision. See Fla. Admin. Code R. 28-106.111(2). However, based upon the preemptive language in subsection (3) of Florida Administrative Code Rule 60Y-8.001 and the clear language in subsection (1) of the rule stating that the 30-day period for filing a petition for relief from a discriminatory housing practice commences upon "service" of the Notice, the date that Petitioner received the Notice is not determinative.

13. The 30-day period for Petitioner to file a petition for relief from a discriminatory housing practice commenced on April 18, 2008, when FCHR mailed the Notice to her. The period expired on Monday, May 19, 2008, because the thirtieth day was a Sunday. See Fla. Admin. Code R. 28-106.103.

14. The Petition was "filed" on May 23, 2008, when it was received by FCHR. See Fla. Admin. Code R. 28-106.104(1), 60Y-3.001(29).

15. The fact that the Notice was mailed to Petitioner does not extend the filing deadline. See Fla. Admin. Code R. 28-

106.103 (last sentence); Watson v. Brevard County Clerk of the Court, 937 So. 2d 1264, 1266 (Fla. 5th DCA 2006) (explaining that the administrative rule adding five days to a response period when service is made by mail does not apply to initial pleadings).

16. The Petition was not timely filed. It was filed 35 days after the date that the Notice was mailed to Petitioner, and four days after the deadline in Florida Administrative Code Rule 60Y-8.001(1).

17. An untimely request for hearing must be dismissed unless the doctrine of equitable tolling applies. See § 120.569(2)(c), Fla. Stat.; Aleong v. Dept. of Business & Professional Reg., 963 So. 2d 799 (Fla. 4th DCA 2007); Patz v. Dept. of Health, 864 So. 2d 79 (Fla. 3d DCA 2003); Whiting v. Dept. of Law Enforcement, 849 So. 2d 1149 (Fla. 5th DCA 2003); Cann v. Dept. of Children & Family Servs., 813 So. 2d 237 (Fla. 2d DCA 2002); Environmental Resource Associates of Florida, Inc. v. Dept. of General Servs., 624 So. 2d 330 (Fla. 1st DCA 1993).

18. The doctrine of equitable tolling applies when "the plaintiff has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum." Machules v. Dept. of Administration, 523 So. 2d 1132, 1134 (Fla. 1988).

19. Petitioner's response to the Order to Show Cause does not allege facts that, if proven, would implicate the doctrine of equitable tolling. There is no basis for her claim of not receiving any paperwork concerning this case prior to June 9, 2008, in light of the certified mail receipt dated April 22, 2008, and the "Petition for Relief" form filled out by Petitioner and signed on May 20, 2008.

20. The circumstances of this case are similar to Manhego v. Cocoa Lakes Apartments, Case No. 04-2804, 2005 Fla. Div. Adm. Hear. LEXIS 822 (DOAH Jan. 18, 2005), adopted, Order No. 05-029 (FCHR Mar. 8, 2005), in which FCHR dismissed with prejudice a petition for relief from a discriminatory housing practice that was filed six days late.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that FCHR issue a final order dismissing the Petition for Relief with prejudice.

DONE AND ENTERED this 18th day of June, 2008, in  
Tallahassee, Leon County, Florida.



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T. KENT WETHERELL, II  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 18th day of June, 2008.

ENDNOTES

<sup>1/</sup> All statutory references are to the 2007 version of the Florida Statutes.

<sup>2/</sup> The rule appears to be inconsistent with Section 760.35(3)(a)2., Florida Statutes, in so far as it requires a petition to be filed within 30 days of service of a "cause" determination because the statute requires the complainant to file a request for administrative hearing "within 30 days after receiving notice that the commission has concluded its investigation" when FCHR "has reasonable cause to believe that a discriminatory practice has occurred." That said, the statute is not implicated in this case because FCHR issued a "no cause" determination, and even if the 30-day period commenced upon Petitioner's receipt of the Notice, the Petition would still be untimely because the Petition was filed 31 days after Petitioner received the Notice on April 22, 2008.



COPIES FURNISHED:

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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 should be filed with the agency that will issue the Final Order in this case.