

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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DIVISION OF
ADMINISTRATIVE
HEARINGS

BERNICE F. BUCHANAN,

HUD Case No. 04-08-0830-8

Petitioner,

FCHR Case No. 28-92506H

v.

DOAH Case No. 08-4498

KEY WEST CONDOMINIUM
ASSOCIATION, INC.,

FCHR Order No. 09-077

Respondent.

**FINAL ORDER AWARDING AFFIRMATIVE RELIEF
FROM A DISCRIMINATORY HOUSING PRACTICE**

Preliminary Matters

Petitioner Bernice F. Buchanan filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2007), alleging that Respondent Key West Condominium Association, Inc., committed a discriminatory housing practice on the basis of Petitioner's handicap by failing to make reasonable accommodation for Petitioner by failing to provide Petitioner an appropriate handicapped parking space.

The allegations set forth in the complaint were investigated, and, on July 30, 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 Sanford, Florida, on December 2, 2008, before Administrative Law Judge Carolyn S. Holifield.

Judge Holifield issued a Recommended Order, dated May 29, 2009, recommending that the Commission enter a final order finding that Respondent unlawfully discriminated against Petitioner, and recommending affirmative relief.

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, Hall v. Villages of West Oaks HOA, FCHR 08-007 (January 14, 2008), 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

Respondent filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Respondent's Objections to Recommended Order," received by the Commission on June 12, 2009.

Respondent's document contains ten numbered paragraphs that except to the findings of fact, paragraphs 4 through 13 of the exceptions document. Respondent's document also contains 9 numbered paragraphs to the conclusions of law, paragraphs 14 through 21 of the exceptions document (note that the exceptions document contains two paragraphs numbered 14).

With regard to the findings of fact, paragraph numbers 4, 5, 6, 8, and 12 of Respondent's exceptions document take issue with the Administrative Law Judge's finding that Petitioner was disabled; paragraph number 11 of Respondent's exceptions document takes issue with the Administrative Law Judge's finding that Petitioner's parking request was a "reasonable" accommodation; and paragraph numbers 7, 9, 10, and 13 of Respondent's exceptions document take issue with inferences drawn by the Administrative Law Judge from the evidence presented.

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. Gainey v. Winn Dixie Stores, Inc., FCHR Order No. 07-054 (October 12, 2007).

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 (2007). As indicated, 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, Hall, supra, 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, 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). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005).

Based on the foregoing, Respondent's exceptions to the findings of fact are rejected.

With regard to the conclusions of law, we note that much of the argument made by Respondent in the 9 numbered paragraphs of the exceptions document that except to the conclusions of law are based on information developed at hearing, a hearing for which, as indicated above, no transcript was filed with the Commission.

We note that we have concluded, above, that the Administrative Law Judge's application of the law to the facts has resulted in the correct disposition of the matter.

We reject Respondent's exceptions to the conclusions of law.

Affirmative Relief

Through our adoption of the Administrative Law Judge's findings of fact and conclusions of law, as set out above, we find that unlawful discrimination occurred in this matter in the manner found by the Administrative Law Judge and have adopted the Administrative Law Judge's recommendations for the remedy of the discrimination. Accord, Botero v. Calusa Club Village, P.O.A., FCHR Order No. 06-004 (January 6, 2006).

Respondent is hereby ORDERED:

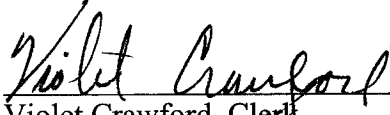
- (1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner, as recommended by the Administrative Law Judge in the Recommended Order; and
- (2) to provide Petitioner a handicapped parking space close to her unit and designated for her use, as recommended by the Administrative Law Judge in the Recommended Order.

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 18th day of August, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Anice R. Prosser, Panel Chairperson;
Commissioner Lizzette Gamero; and
Commissioner Billy Whitefox Stall

Filed this 18th day of August, 2009,
in Tallahassee, Florida.



Violet Crawford, Clerk
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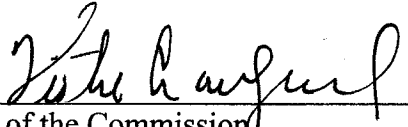
Carolyn S. Holifield, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

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I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 18th day of August, 2009.

By: 
Clerk of the Commission
Florida Commission on Human Relations