

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

NANCY E. CRONK,

Petitioner,

v.

BROADVIEW MOBILE HOME PARK AND
LAMONT GARBER,

Respondents.

HUD Case No. 04-09-0051-8

FCHR Case No. 2009H0024

DOAH Case No. 09-0037

FCHR Order No. 09-068

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

Preliminary Matters

Petitioner Nancy E. Cronk filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2007), alleging that Respondents Broadview Mobile Home Park and Lamont Garber committed discriminatory housing practices on the basis of Petitioner's disability / handicap by coercing, intimidating, threatening or interfering with Petitioner in the exercise of her fair housing rights or her assistance of another in enjoying such rights. Specifically, Petitioner alleged that Respondents retaliated against her for reporting them to another state agency, by turning off her electricity and water, refusing her rental payments and eventually evicting her for nonpayment of rent.

The allegations set forth in the complaint were investigated, and, on December 11, 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 Palm Bay, Florida, on April 28, 2009, before Administrative Law Judge Daniel Manry.

Judge Manry issued a Recommended Order of dismissal, dated May 20, 2009.

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

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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

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document received by the Commission on June 3, 2009.

The Recommended Order contains 20 numbered paragraphs (18 findings of fact, and 2 conclusions of law), and Petitioner's exceptions document references all of them, and attempts to submit into evidence a document that was not previously admitted.

Petitioner did not dispute the findings of fact at paragraphs 1 and 9.

With regard to the following Recommended Order paragraph numbers, Petitioner's exceptions document does not appear to except to the findings contained therein, but rather contains commentary and explanation about the facts found therein: 2, 4, 5, 6, 7, 8, 10, 11, 15, and 17. In addition, Petitioner appears to simply comment about conclusion of law paragraph 19.

Since these are not really "exceptions," they are rejected.

The following paragraphs contain exceptions to facts found (12, 13, 14, 16, and 18), and facts not found (3). The exceptions to Recommended Order paragraphs 12, 13, and 14, and to conclusion of law paragraph 20, specifically take issue with the Administrative Law Judge's conclusion that Petitioner was not handicapped within the meaning of the Fair Housing Act. We note that this conclusion of the Administrative Law Judge is not ultimately dispositive of the case, since the Administrative Law Judge also concluded that even if Petitioner was "handicapped" within the meaning of the Fair Housing Act, Petitioner still failed to show that Respondent discriminated against her on that basis. Recommended Order, ¶ 14 through ¶ 18.

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, Petitioner's exceptions to Recommended Order paragraphs 3, 12, 13, 14, 16, 18, and 20, are rejected.

Dismissal

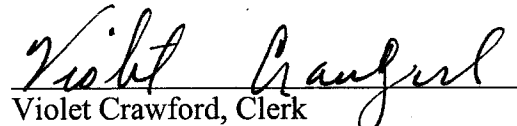
The Petition for Relief and Housing Discrimination Complaint are DISMISSED with prejudice.

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 3rd day of August, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Watson Haynes, II; and
Commissioner Patty Ball Thomas

Filed this 3rd day of August, 2009,
in Tallahassee, Florida.


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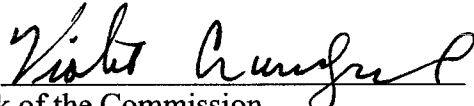
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Daniel Manry, Administrative Law Judge, DOAH

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 3rd day of August, 2009.

By: 
Clerk of the Commission
Florida Commission on Human Relations