

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

DIANE SCOTT,

Petitioner,

v.

MONROE COUNTY HOUSING
AUTHORITY,

Respondent.

HUD Case No. 04-09-0442-8

FCHR Case No. 2009H0102

DOAH Case No. 09-1240

FCHR Order No. 09-113

2009 DEC 15 A 10:46

DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Diane Scott filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2007), alleging that Respondent Monroe County Housing Authority committed a discriminatory housing practice on the basis of Petitioner's race (African American) and on the basis of retaliation by refusing to renew Petitioner's apartment lease.

The allegations set forth in the complaint were investigated, and, on February 17, 2009, 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 Marathon, Florida, on June 22, 2009, before Administrative Law Judge Larry J. Sartin.

Judge Sartin issued a Recommended Order of dismissal, dated July 14, 2009.

The Commission issued a "Final Order Dismissing Petition for Relief from an Unlawful Employment Practice," dated September 22, 2009, designated FCHR Order No. 09-090. This order noted that neither of the parties had filed exceptions to the Recommended Order. Upon discovering that Petitioner had, in fact, timely filed exceptions to the Recommended Order, the Commission rescinded FCHR Order No. 09-090, in an order dated October 5, 2009, to enable the matter to again go before a Commission panel to consider the Recommended Order in light of the filed exceptions.

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

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in two documents, one a 14-page document entitled, "Exceptions," and the other a two-page document adding a page to the document entitled "Exceptions," both received by the Commission on July 28, 2009.

There is no indication on the two exceptions documents that they were provided to Respondent as is required by Fla. Admin. Code R. 28-106.104(4) and Fla. Admin. Code R. 28-106.110. However, the Commission published the documents to the Respondent, and placed the documents in the record of this case, through the issuance of a notice of ex parte communication, mailed to the parties on October 5, 2009.

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2007); see, also, Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

A review of Petitioner's exceptions documents suggests that they do not comply with this statutory provision.

Rather, Petitioner's exceptions documents appear to be a statement of Petitioner's view of the facts. It can be said, generally, that Petitioner excepts to the Administrative Law Judge's finding that no discriminatory housing practice occurred in this matter.

Further, 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)(1), 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.

Finally, 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 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 14th day of December, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Billy Whitefox Stall, Panel Chairperson;
Commissioner Elena Flom; and
Commissioner Lizzette Gamero

Filed this 14th day of December, 2009,
in Tallahassee, Florida.



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

Copies furnished to:


Diane Scott
Post Office Box 501586
Marathon, FL 33050

Monroe County Housing Authority
c/o Franklin D. Greenman, Esq.
Greenman, Manz & Ables
Gulfside Village, Suite 40
5800 Overseas Highway
Marathon, FL 33050

Larry J. Sartin, 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 14th day of December, 2009.

By: 
Clerk of the Commission
Florida Commission on Human Relations