

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

SUSAN WALTERS,

Petitioner,

v.

STERLING BALDWIN, B.A. AND
BLACKWATER HOUSING CORPORATION,
ET AL.,

Respondents.

HUD Case No. 04-09-0542-8

FCHR Case No. 2009H0038

DOAH Case No. 09-2805

FCHR Order No. 09-109

2009 DEC 15 A 10:45
DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Susan Walters filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2007), alleging that Respondents Stephen Baldwin, B.A., Blackwater Housing Corporation, Progressive Management of Milton, and Boardwalk Apartments, committed a discriminatory housing practice on the bases of Petitioner's race (white), sex (female), color (white), and handicap by assigning Petitioner a rental unit that was not clean.

The allegations set forth in the complaint were investigated, and, on May 5, 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 Pensacola, Florida, on August 4, 2009, before Administrative Law Judge Diane Cleavinger.

Judge Cleavinger issued a Recommended Order of dismissal, dated September 28, 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

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 entitled, "Written Exceptions to Recommended Order," received by the Commission on October 7, 2009.

There is no indication on the document that it was provided to Respondents 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 document to the Respondents, and placed the document in the record of this case, through the issuance of a Notice of Ex Parte Communication, mailed to the parties on October 12, 2009.

Petitioner's exceptions document excepts to one statement in the "Statement of the Issue" section of the Recommended Order, two statements in the "Preliminary Statement" section of the Recommended Order, and to Recommended Order, paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, and 19.

With regard to the exceptions to statements in the "Statement of the Issue" and "Preliminary Statement" sections of the Recommended Order, these have no impact on the outcome of the case and are rejected.

The remaining exceptions take issue with facts found (4, 6, 7, 8, 10) and / or provide explanatory argument about facts and / or conclusions of law set out in the Recommended Order (3, 5, 9, 13, 14, 15, 16, 19) [numbers referenced are to Recommended Order paragraph numbers excepted to in Petitioner's exceptions document].

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, Petitioner's remaining exceptions to the indicated Recommended Order paragraph numbers are rejected.

Dismissal

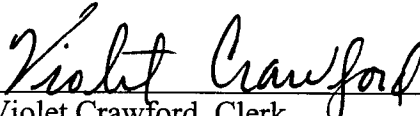
The Petition for Relief and Housing Discrimination Complaint are DISMISSED with prejudice.

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
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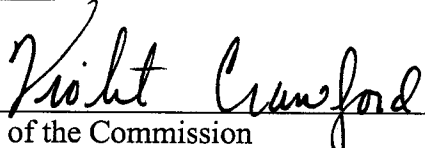
Sterling Baldwin, B.A.
Lakeview Center
1813 North J Street, Building L
Pensacola, FL 32501

Blackwater Housing Corporation,
Progressive Management of Milton and
Boardwalk Apartments
c/o Dan D'Onofrio
205 Brooks Street, Southeast, Suite 201
Fort Walton Beach, FL 32548

Diane Cleavinger, 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