

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FLORIDA COMMISSION ON HUMAN
RELATIONS ON BEHALF OF
BAHIYYIH WATSON,

Petitioner,

v.

CHRISTINA VIERING,

Respondent.

HUD Case No. 04-09-0310-8

FCHR Case No. 2009H0066

DOAH Case No. 10-9371

FCHR Order No. 11-067

**ORDER FINDING THAT DISCRIMINATORY HOUSING PRACTICES
OCCURRED AND REMANDING CASE TO ADMINISTRATIVE LAW JUDGE
FOR ISSUANCE OF RECOMMENDED ORDER RECOMMENDING RELIEF**

Preliminary Matters

Complainant Bahiyyih Watson filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2008), alleging that Respondent Christina Viering committed discriminatory housing practices on the bases of Complainant's race (Black) and religion (Yoruba) by subjecting Complainant to harassment and by denying Complainant full enjoyment of the premises Complainant had leased from Respondent.

The allegations set forth in the complaint were investigated, and, on March 19, 2009, the Executive Director issued a determination finding that there was reasonable cause to believe that a discriminatory housing practice had occurred.

Complainant elected to have the Commission resolve the charge in an administrative proceeding pursuant to Section 760.35(3)(a)1, Florida Statutes (2008).

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 Orlando, Florida, on December 14, 2010, and February 22, 2011, before Administrative Law Judge R. Bruce McKibben.

Judge McKibben issued a Recommended Order of dismissal, dated May 11, 2011.

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

We find the Administrative Law Judge's findings of fact at Recommended Order, ¶ 1 through ¶ 39, to be supported by competent substantial evidence, with the clarifications set out below.

The Administrative Law Judge found that there was "no persuasive evidence that Viering was aware of Watson's religion, Yoruba." Recommended Order, ¶ 37. We note that there is no finding that Respondent was unaware that Complainant Watson's religion was not Christian. In addition, there is no finding that Respondent was unaware that Complainant Watson's race was Black.

With these comments, and noting that the statement in Recommended Order, ¶ 39, that Respondent's "...actions *appear* to be based on her own personality and demeanor, rather than on any intent to discriminate based on race or religion [emphasis added]," stops short of specifically finding that Respondent's actions did not intend to discriminate based on race or religion, we adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

The Fair Housing Act states, "It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of her or his having exercised, or on account of her or his having aided or encouraged any other person in the exercise of any right granted under ss. 760.20-760.37. This section may be enforced by appropriate administrative or civil action." Section 760.37, Florida Statutes (2008).

Both the Housing Discrimination Complaint and Petition for Relief contain allegations of unlawful harassment.

We conclude that the findings of fact set out at Recommended Order, ¶ 26, ¶ 27, ¶ 29, and ¶ 30, present direct evidence of discriminatory housing practices under the above statutory section.

We agree with the Administrative Law Judge that the burden-shifting analysis set out at Recommended Order, ¶ 43 through ¶ 45, can be used to prove Fair Housing Act cases by circumstantial evidence.

Nevertheless, we conclude that the findings of fact set out above prove by direct evidence that discriminatory housing practices occurred in this case.

The Administrative Law Judge's conclusions of law do not address the issue of proving discriminatory housing practices in this matter by direct evidence.

The conclusions of law are corrected accordingly.

In correcting these conclusions of law of the Administrative Law Judge, we conclude: (1) that the conclusions of law being corrected are conclusions of law over which the Commission has substantive jurisdiction, namely conclusions of law stating what must be demonstrated to prove that a discriminatory housing practice has occurred under the Fair Housing Act; (2) that the reason the correction is being made by the Commission is that the findings of fact set out in the Recommended Order establish by

direct evidence that discriminatory housing practices occurred in this matter; and (3) that in making this correction the conclusions of law being substituted are as or more reasonable than the conclusions of law which have been rejected. See, Section 120.57(1)(l), Florida Statutes (2010).

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled "Petitioner's Exceptions to Proposed Recommended Order." Respondent subsequently filed a document entitled, "Motion to Strike Petitioner's Exceptions to Proposed Recommended Order."

Given our pronouncements in the "Findings of Fact" and "Conclusions of Law" sections of this Order, we conclude it is unnecessary for us to rule on these two documents.

Remand

This Order disposes of all motions pending before the Commission.

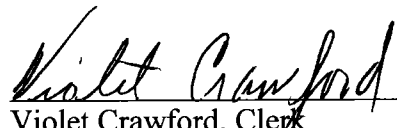
We find that discriminatory housing practices have occurred in this case as set out above.

The matter is REMANDED to the Administrative Law Judge for further proceedings to determine the appropriate relief for the discrimination found to have occurred and the issuance of a Recommended Order as to that relief.

DONE AND ORDERED this 2ND day of August, 2011.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Watson Haynes, II; and
Commissioner Mario M. Valle

Filed this 2ND day of August, 2011,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

Copies furnished to:

Florida Commission on Human Relations
on behalf of Bahiyih Watson
c/o Lawrence F. Kranert, Jr., Esq.
c/o John Chaves, Esq.
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301

Christina Viering
Post Office Box 141593
Orlando, FL 32814

R. Bruce McKibben, Administrative Law Judge, DOAH

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 2nd day of August, 2011.

By: Kialet Crawford
Clerk of the Commission
Florida Commission on Human Relations