

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FLORIDA COMMISSION ON HUMAN  
RELATIONS ON BEHALF OF  
BAHIYYIH WATSON,

Petitioner,

v.

CHRISTINA VIERING,

Respondent.

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HUD Case No. 04-09-0310-8

FCHR Case No. 2009H0066

DOAH Case No. 10-9371

FCHR Order No. 12-030

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

This matter is before the Commission for consideration of the Recommended Order on Remand, dated March 21, 2012, issued in the above-styled matter by Administrative Law Judge R. Bruce McKibben.

Findings of Fact and Conclusions of Law

We adopt the findings of fact and conclusions of law as set out in the Recommended Order on Remand only to the extent they are not inconsistent with the exceptions to the Recommended Order on Remand filed by Petitioner. (See our adoption of Petitioner's exceptions and their incorporation by reference into this Order, below.)

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled "Petitioner's Exceptions to Proposed Recommended Order." The document was filed with the Division of Administrative Hearings on April 5, 2012.

While the exceptions document was filed with the Division of Administrative Hearings instead of the Commission, the document was timely filed, and the Commission will consider the document even though it was filed in the wrong forum. Accord, generally, St. Louis v. Florida Physician Medical Group, FCHR Order No. 11-078 (October 6, 2011), Garcia v. Heart of Florida Medical Center, FCHR Order No. 10-061 (August 10, 2010) and Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), and cases cited therein.

We accept and adopt Petitioner's exceptions in their entirety and incorporate them by reference into this Final Order Awarding Affirmative Relief from a Discriminatory Housing Practice.

Affirmative Relief

Through our adoption of Petitioner's exceptions to the Recommended Order on Remand we have established the affirmative relief to remedy the discrimination found to have occurred by FCHR Order No. 11-067.

Respondent is hereby ORDERED:

(1) to cease and desist from engaging in the prohibited practice by which it has been found to have unlawfully discriminated against Petitioner (Section 760.35(3)(b), Florida Statutes (2011)); and


(2) to pay Petitioner \$6,697.90 as quantifiable damages resulting from the unlawful discrimination that occurred.

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 of appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 12 day of JUNE, 2012.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Billy Whitefox Stall, Panel Chairperson;  
Commissioner Gayle Cannon (dissenting to the \$5,720.00  
award for therapy sessions); and  
Commissioner Lizzette Romano

Filed this 12 day of JUNE, 2012,  
in Tallahassee, Florida.

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

Copies furnished to:

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Florida Commission on Human Relations  
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Christina Viering  
c/o Michael Edward Long, Esq.  
BrewerLong, PLLC  
237 Lookout Place, Suite 100  
Maitland, FL 32751

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 12 day of JUNE, 2012.

By:   
Clerk of the Commission  
Florida Commission on Human Relations

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA COMMISSION ON HUMAN RELATIONS  
ON BEHALF OF BAHIIYYIH WATSON

Petitioner

V.

CASE NO. 10-9371

CHRISTINA VIERING

Respondent

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PETITIONERS EXCEPTIONS TO PROPOSED RECOMMENDED ORDER

COMES NOW the Petitioner, the FLORIDA COMMISSION ON HUMAN RELATIONS ON BEHALF OF BAHIIYYIH WATSON, and files the following Exceptions to the Proposed Recommended Order entered by the Administrative Law Judge in this case pursuant to 28-106.217, Florida Rules of Administrative Procedure, and would state:

1. Exception is taken to paragraph 4 of the Preliminary Statement in the Proposed Recommended Order (PRO) from the Administrative Law Judge (ALJ). Petitioner's Counsel believed the two receipts mentioned had previously been provided to the court. As soon as it was discovered that the documents may not have been attached to the original Statement for Relief, Petitioner's Counsel re-filed the Statement for Relief and explained that it was meant as a correction. [T5-6 and T10] Additionally, the Commission never suggested that the two attachments would be offered as evidence at the final hearing. They were meant as supplementary evidence to Petitioner's testimony and were only provided per the ALJ's request.
2. Exception is taken to paragraph 6 of the Preliminary Statement as the PROs were due March 8, 2012, but the Respondent did not submit a PRO until March 9, 2012.
3. Exception is taken to paragraph 1.a. of the Findings of Fact as Petitioner requested \$600 alone for the apartment she tried to rent when Respondent tried to evict her. She did not claim an "unspecified amount of 'one month's rent'". [T18-19]
4. Exception is taken to 1.d. of the Findings of Fact as Petitioner explained exactly what she used in moving supplies to substantiate her claim for \$100 in moving expenses. [T21]

5. Exception is taken to paragraph 2 of the Findings of Fact as Petitioner testified under oath to the quantifiable amounts that she is claiming and explained how they were related to Viering's discrimination in the original hearing. As stated in Petitioner's PRO:
  - a. In October of 2008, Viering tried to evict Petitioner because of her race. Consequently, Petitioner spent \$600 on a non-refundable down payment and the first month of rent to a new apartment complex. [T18-19] Petitioner testified to this exact amount at the original hearing on discrimination. [Original T334]
  - b. Petitioner spent \$277.90 to stay at an Extended Stay Hotel for a week because the place she was renting was "surrounded by crosses" and she had "no guarantee of safety." A receipt for this expense was provided to the court before the hearing and Petitioner testified that it was the best receipt she had. [T19-20] Petitioner mentioned this cost at the original hearing on discrimination. [Original T335]
  - c. Petitioner incurred \$100 in moving expenses when she had to leave Viering's property prior to the agreement that she would leave in January. These moving expenses would not have been necessary if it were not for the discriminatory treatment by Viering. [T21] Petitioner mentioned this cost at the original hearing on discrimination. [Original T335]
  - d. Petitioner provided a receipt before the hearing on damages showing that she had fifty-two (52) therapy sessions, which cost \$110 per session, totaling \$5,720. Petitioner testified under oath with penalty of perjury regarding her need for therapy and the physical manifestation of her emotional trauma directly relating to Viering's discriminatory treatment. [T21-24 and T29-39] Petitioner also testified about her need for therapy at the original hearing on discrimination. [Original T332-333, and 337]
6. Exception is taken to paragraph 3 as Petitioner stated she had previously seen a therapist intermittently during the summer before she moved into Viering's property, but made it clear at the hearing that she needed 52 therapy sessions directly associated with Viering's discriminatory treatment of her. Additionally, the ALJ allowed Respondent to pry into specific content of Petitioner's sessions with her therapist in violation of the therapist-client privilege. Petitioner's counsel objected to this prying, but the objections were overruled. [T29-39]
7. Exception is taken to paragraph 4 as the ALJ misquoted the amount of damages that Petitioner is actually requesting. Petitioner's claim for \$600 in damages was all encompassing of both the down payment and the first month of rent. This expense was incurred when Viering tried to evict her in 2008. Petitioner claimed no moving expenses associated with this amount. The moving expenses she requested were for the move that actually occurred before the end of the month-to-month term ended. The ALJ does not mention these moving expenses at all and confuses the two incidents.
8. Exception is taken to paragraph 5 as the cost of the extended stay hotel was mentioned using a specific number from a receipt previously provided to the court and to opposing counsel. Both the ALJ and opposing counsel made reference to the receipt during the course of the hearing even though it was never entered as substantive evidence. [T20 and T27]
9. Exception is taken to paragraph 6 as evidence was provided both through testimony at the original hearing and at the remanded hearing as to damages incurred by Petitioner. The receipts provided to the court as supplementary evidence at the ALJ's request were also provided to Respondent's counsel.

10. Exception is taken to paragraph 9 in the Conclusions of Law. The Commission did not unilaterally switch the burden of proof from Petitioner to Respondent because there was no burden shifting required. As mentioned in the exceptions to the PRO from this ALJ in the original hearing, s. 760.37 of the Florida Statutes should be considered.
- a. Florida Statute 760.37 provides: 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.
  - b. It likewise has a federal counterpart, 42 USC 3617, which states: It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 [42 USCS § 3603, 3604, 3605, or 3606].
  - c. The corresponding Federal Administrative Rule is 24 C.F.R. 100.400, states:
    - i. (a) This subpart provides the Department's interpretation of the conduct that is unlawful under section 818 of the Fair Housing Act.
    - ii. (b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part.
    - iii. (c) Conduct made unlawful under this section includes the following:
      1. (1) Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, or national origin.
      2. (2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons.
  - d. There is no burden shifting requirement on a Petitioner / Complainant under this section of Florida and Federal law. A violation of section 3617 requires only that a person be coerced, intimidated, threatened, or interfered with in exercising or enjoying, or on account of having exercised or enjoyed, any right protected by these sections. [See *Johnson v. Smith*, 810 F. Supp. 235, 239 (N.D. Ill. 1992); *Stackhouse v. DeSitter*, supra]. This is consistent with HUD's regulation providing that the conduct made unlawful by § 3617 includes: Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons [see *US vs. Pospisil*, 127 F. Supp. 2d 1059, 2000 U.S. Dist. LEXIS 21685 (WD Mo 2000)].

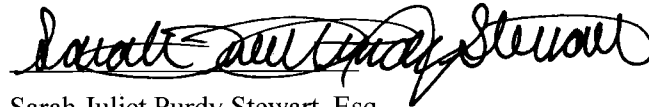
11. Exception is taken to paragraphs 10 and 11 of the Conclusions of Law as Petitioner was certain of the amount she quoted and she testified to these amounts under oath with the threat of perjury. She tied these costs to Respondent's discriminatory behavior at the previous hearing. Rehearing the traumatic events at the subsequent hearing solely on damages would have been redundant. The amount quantified by Petitioner at the hearing on damages totaled \$6,697.90.
12. Exception is taken to paragraph 12 as the case cited was not provided in support for the claim for psychological counseling payments. The PRO clearly indicated that this case was being provided in response to Respondent's counselor's proffer. Considering that the ALJ in this case stated that the receipts that Respondent objected to in the proffer were not being considered because they had not been entered into evidence [see paragraph 5 of the Preliminary Statement of the PRO], there is no reason to consider the cited case that was provided in response to that proffer.
  - a. However, even if the case is considered, it is not disingenuous to apply the standard presented for psychological damages in the current case even though the cited case had a different result. Additionally, copies of both of the cases that were cited were provided with the PRO for the ALJ to review, so there is no reason to believe that there was any intent to deceive the ALJ.
  - b. Petitioner's PRO stated: "Respondent's counsel argued that in order to receive damages for psychological trauma, there must be a physical manifestation of the psychological trauma. However, DOAH has determined in several different discrimination cases that the psychological damages must be quantified where the evidence supports a finding of emotional distress as long as there is sufficient proof of emotional damages caused by the unlawful discrimination committed by a Respondent. There is no requirement of a physical manifestation of the psychological trauma. (See *Florida Commission on Human Relations and Mr. and Mrs. Vincent Cina v. Ballynahinch Condominium Association, Inc., and Coral Condo Management, Inc.*, DOAH Case No. 97-4204 and *Marable v. Walker*, 704 F. 2d 1219.) In this case, Petitioner quantified her expense for emotional distress by testifying to a specific amount that she spent on therapy directly contributable to Viering's discriminatory treatment of her. Accordingly, Petitioner should be entitled to the quantifiable damages for therapy to which she testified."

## CONCLUSION

The totality of the facts and circumstances are such that the Petitioner did quantify the amount of damages owed to her by Respondent due to discriminatory treatment. The Proposed Recommended Order should be amended to indicate that fact and to enter a finding of \$6,697.90 in damages for Petitioner.

Respectfully submitted this 5<sup>th</sup> day of April, 2012.


Attorney for Petitioner



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Exceptions have been provided to Michael Edward Long, Esq., 237 Lookout Place, Suite 100, Maitland, Florida 32751 via US Mail this 5<sup>th</sup> day of April, 2012.



Sarah Juliet Purdy Stewart, Esq.