

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA COMMISSION ON HUMAN)
RELATIONS ON BEHALF OF)
BAHIYYIH WATSON,)
)
Petitioner,)
)
vs.) Case No. 10-9371
)
CHRISTINA VIERING,)
)
Respondent.)
_____)

RECOMMENDED ORDER ON REMAND

Pursuant to notice to all parties, a final hearing was conducted in this case on February 1, 2012, in Orlando, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Sarah Juliet Purdy Stewart, Esquire
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

For Respondent: Michael Edward Long, Esquire
BrewerLong, PLLC
237 Lookout Place, Suite 100
Maitland, Florida 32751

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner, Bahiyyih Watson, is entitled to relief, including quantifiable damages, reasonable attorney's fees, and costs.

PRELIMINARY STATEMENT

Petitioner, Florida Commission on Human Relations (the "Commission"), on behalf of Bahiyyih Watson ("Watson"), filed a Petition for Relief with the Division of Administrative Hearings ("DOAH") dated November 13, 2009. Upon motion by Respondent, Christine Viering, and no response thereto by Petitioner, the undersigned entered an Order Closing File dated June 10, 2010, stating that there appeared to be no disputed issues of material fact. Petitioner filed a Motion for Relief from Order contending that there were disputed issues of material fact to be addressed by DOAH. The Commission then entered an Order remanding the Petition for Relief to DOAH on September 10, 2010. The undersigned Administrative Law Judge ("ALJ") was assigned to the case, and a final hearing was held on December 14, 2010, and February 22, 2011, in Orlando, Florida.

On May 11, 2011, a Recommended Order was entered recommending dismissal of the Petition for Relief, because there had been no discrimination against Watson by Respondent. On August 2, 2011, the Commission entered an Order Finding that Discriminatory Housing Practices Occurred and Remanding Case to

the Administrative Law Judge for Issuance of Recommended Order Recommending Relief" (referred to herein as the "Order"). The Order found that the ALJ's Findings of Fact in the Recommended Order were supported by competent substantial evidence with the following clarifications:

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.

Pursuant to the Order, a hearing was held on the date and time set forth above to consider the relief, if any, which should be awarded to Watson in this case. Prior to the final hearing, the undersigned ALJ issued an Order requiring the Commission and Watson to "submit copies of all documentation and support for its claimed damages to Respondent at least seven days prior to the hearing." (emphasis added).

On August 26, 2011, the Commission filed Petitioner's Statement of Relief which set forth four line items of costs. On January 26, 2012 (five days prior to the final hearing), the Commission re-filed the statement of relief, attaching two supporting documents. The Commission suggested that the two attachments would be offered as evidence at the final hearing.

At the hearing, Watson testified on her own behalf. No exhibits were offered into evidence in support of her testimony. No other testimony or evidentiary evidence was presented. At final hearing, Viering objected to the introduction of Watson's two attachments on the basis that they had not been timely disclosed. However, the Commission never offered the exhibits into evidence, so Viering's motion is moot. The attachments are not evidence in this case.

The parties advised that a transcript of the final hearing would be ordered. The parties requested and were granted 20 days from the filing of the transcript to submit proposed recommended orders (PROs). The transcript was filed at DOAH on February 17, 2012; each party timely submitted a PRO, and each was duly considered in the preparation of this Recommended Order on Remand.

FINDINGS OF FACT

1. Watson claims four items of costs associated with the alleged discriminatory conduct of Respondent, as set forth in her Statement of Relief:

- (1) \$600 plus an unspecified amount of "one month's rent" for an apartment;
- (2) Cost of an extended stay hotel for one week;
- (3) Cost of psychological counseling; and
- (4) \$100 in unsubstantiated moving expenses.

2. At final hearing, Watson said that she incurred the aforementioned costs. She did not offer any documentary proof of the costs, neither as to the amounts, nor precisely how the costs were associated with the alleged discrimination by Respondent. Watson generally assigns all of her stated damages to Viering's actions, as set forth below.

3. As for her counseling sessions, Watson first testified that she had 52 sessions with a counselor, which were directly attributable to Viering's treatment of her. However, she also admitted that some of the sessions may have addressed other issues, but she could not quantify the number of such sessions. All of the sessions, she said, were related to "someone else's behaviors that I had no control over." That statement falls far short of proving her counseling sessions were a direct result of discrimination by Respondent. Watson did say that 52 sessions

with her counselor were related to "Miss Viering's treatment." Again, however, there is no evidence that the treatment she was referring to had anything to do with discrimination. Watson "generally" paid for her sessions in cash, but did not receive a receipt from her counselor.

4. Watson moved out of the house at some point in time. She sought out and made arrangements to lease an apartment. Thereafter, Watson and Viering resolved their differences and Watson moved back into Viering's house. As a result, Watson incurred the loss of her deposit (\$600.00) and first month's rent on the apartment that she had found. Her decision to reconcile with Viering at that time was made on her own volition. She realized, at that time, she would lose her deposit and rental payment if she reneged on the lease. Watson paid cash for the deposit, but cannot locate the receipt. Watson could not remember the name of the realty company to which she claims to have paid a cash down payment for the apartment. She could not remember the amount of the first month's rent. She did not remember exactly what she spent for moving expenses. Watson's contention that she was not concentrating on the amounts and on keeping records at that time due to her emotional state is reasonable and understandable. However, her failure to document the costs calls into question their accuracy and veracity.

5. Watson stayed at an extended stay hotel for one week during the term of her lease with Viering. She did so because, "the place that I was renting was surrounded by crosses. There was no guarantee of safety. And it was, to say the least, a difficult situation." Watson may have paid for that stay with a debit card, but cannot remember precisely. No receipts or other documentation of the costs associated with the extended stay hotel were presented at final hearing.

6. There was no persuasive evidence to support Watson's fractional, self-serving testimony concerning her costs in this matter. There was no evidence provided for which Respondent was given an opportunity to disprove or rebut. No evidence was presented concerning attorney's fees.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2011). Unless otherwise specifically stated herein, all references to Florida Statutes are to the 2011 version.

8. Florida's Fair Housing Act (the "Act") is codified in sections 760.20 through 760.37, Florida Statutes. Section 760.35(3) (b) of the Act reads, in pertinent part:

[I]f the administrative law judge finds that discriminatory housing practice has occurred or is about to occur, he or she shall issue a

recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs. The commission may adopt, reject, or modify a recommended order only as provided in s. 120.57(1). Judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment. (emphasis added).

9. In the present case, the administrative law judge did not find that a discriminatory housing practice had occurred. Rather, the Commission modified the Recommended Order to reverse the ALJ's ultimate decision as to whether discrimination had occurred. The Commission's modifications addressed facts which the evidence at final hearing did not show, i.e., things that were not proven. The Commission, therefore, unilaterally switched the burden of proof from Petitioner to Respondent. On that basis, there may be a question as to whether the ALJ now has jurisdiction to enter a Recommended Order granting relief.

10. Notwithstanding the question of jurisdiction, Watson failed to provide any persuasive evidence of quantifiable damages. Watson's testimony was not credible due to her lack of assurance as to amounts and her failure to sufficiently tie the costs to any discriminatory actions by Respondent. There was no documentary evidence from which to quantify the alleged damages.

Further, there was no mention whatsoever of attorney's fees or costs; thus, claims for those items must fail.

11. The burden of proof in this case is on Petitioners (the Commission and Watson) to quantify, by a preponderance of the evidence, the damages, attorney's fees and costs associated with the discrimination. Cf. Mason v. Highlands Cnty. Bd. of Cnty. Comm'rs., et al., 817 So. 2d 922 (Fla. 2d DCA 2002). Petitioners did not meet the burden of quantifying their damages.

12. In support of the claim for psychological counseling payments, the Commission stated in its PRO that "DOAH has determined in several different discrimination cases that psychological damages must be quantified [but no physical manifestation of the psychological trauma was necessary]." Only one such case was cited, i.e., Fla. Comm'n on Human Relations, et al. v. Ballynahinch Condo. Ass'n, Inc., et al. (Case No. 97-4202 (Fla. DOAH May 13, 1998; FCHR June 30, 2004). In that case, the ALJ, i.e., DOAH, did not find discrimination; rather, the recommendation was reversed by the Commission. The cited DOAH decision did not support the contention espoused in Respondent's PRO. It is disingenuous to suggest to the undersigned that the cited case constitutes precedent at DOAH for the relief Watson is seeking in the instant case. Neither the Commission, nor Watson, provided any legal authority for its

position that Watson's unsubstantiated testimony was sufficient to meet the burden of proof.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered by the Florida Commission on Human Relations dismissing the Petition for Relief filed by Bahiyyih Watson in its entirety.

DONE AND ENTERED this 21st day of March, 2012, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
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Filed with the Clerk of the
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this 21st day of March, 2012.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.