

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

BARBARA PORTER,

HUD Case No. 04-11-0914-8

Petitioner,

FCHR Case No. 2011H0307

v.

DOAH Case No. 11-4830

IMPERIAL EMBASSY  
CONDOMINIUM FOUR, INC.,

FCHR Order No. 12-020

Respondent.

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

Preliminary Matters

Petitioner Barbara Porter filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2010), alleging that Respondent Imperial Embassy Condominium Four, Inc., committed a discriminatory housing practice on the basis of Petitioner's disability / handicap by failing to make reasonable accommodation for Petitioner's service animal.

The allegations set forth in the complaint were investigated, and, on August 19, 2011, 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 New Port Richey, Florida, on January 25, 2012, before Administrative Law Judge R. Bruce McKibben.

Judge McKibben issued a Recommended Order of dismissal, dated February 17, 2012.

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, Mack v. Agency for Persons with Disabilities, FCHR Order No. 11-026 (March 17, 2011), Hall v. Villages of West Oaks HOA, FCHR Order No. 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 a 20-page document that could be viewed as an exceptions document, received by the Commission on or about February 22, 2012.

There is no indication on the document that it was 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 document to the Respondent, 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 February 23, 2012.

In our view, Petitioner's filing does not set out exceptions to the Recommended Order, but rather attempts to insert into the record evidence that was not presented to or received by the Administrative Law Judge at the January 25, 2012, hearing in this matter.

The Commission has declined to accept "exceptions" which seek to introduce evidence into the record that was not presented at the hearing before the Administrative Law Judge. See, e.g., Gantz, et al. v. Zion's Hope, Inc., d/b/a Holy Land Experience, FCHR Order No. 11-048 (June 6, 2011), Jennings v. Superior Optical Shop, FCHR Order No. 10-077 (October 26, 2010), Bobo v. First Student, Inc., FCHR Order No. 09-032 (April 9, 2009), and Hurtado v. North Florida Rehab and Specialty Care, FCHR Order No. 08-047 (July 29, 2008).

This filing is rejected.

Petitioner filed a 16-page document that could be viewed as an exceptions document, received by the Commission on or about March 16, 2012.

There is no indication on the document that it was 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 document to the Respondent, 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 March 20, 2012.

The statutory deadline for filing exceptions in this case is March 5, 2012.

Petitioner's filing is untimely. Accord, Barbagallo v. Ocean Park Condominium Association, FCHR Order No. 11-060 (July 13, 2011) in which a Commission Panel concluded that an exceptions document filed one day late was untimely.

This filing is 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 16<sup>th</sup> day of May, 2012.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;  
Commissioner Lizzette Romano; and  
Commissioner Billy Whitefox Stall

Filed this 16<sup>th</sup> day of May, 2012,  
in Tallahassee, Florida.

\_\_\_\_\_/s/\_\_\_\_\_  
Violet Crawford, Clerk  
Commission on Human Relations  
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Copies furnished to:

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R. Bruce McKibben, 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 16<sup>th</sup> day of May, 2012.

By: \_\_\_\_\_/s/\_\_\_\_\_  
Clerk of the Commission  
Florida Commission on Human Relations