

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

VERNON AND GLENDA SHAW,

HUD Case No. 04-11-1072-8

Petitioners,

FCHR Case No. 2012H0026

v.

DOAH Case No. 11-5105

EPI TOWNSEND, LLC AND EPOCH
PROPERTIES, INC.,

FCHR Order No. 12-068

Respondents.

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

Preliminary Matters

Petitioners Vernon and Glenda Shaw filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2010), alleging that Respondents EPI Townsend, LLC and Epoch Properties, Inc., committed discriminatory housing practices on the basis of Petitioners' race (African American) by refusing to renew Petitioners' apartment lease, and by subjecting Petitioners to different terms and conditions and discriminatory statements.

The allegations set forth in the complaint were investigated, and, on August 31, 2011, the Executive Director issued a determination finding that there was no reasonable cause to believe that a discriminatory housing practice had occurred.

Petitioners 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 Gainesville, Florida, on March 28 and May 17, 2012, before Administrative Law Judge W. David Watkins.

Judge Watkins issued a Recommended Order of dismissal, dated October 3, 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

The record as it exists before the Commission provides no basis for the overturning of the Administrative Law Judge's findings of fact.

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

After receiving an extension of time, Petitioners filed exceptions to the Administrative Law Judge's Recommended Order.

Petitioners' exceptions document takes issue with the findings of fact set out in the following paragraphs of the Recommended Order: 5, 7, 8, 9, 17, 18, 19, 21, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 49, 52, 53, 54, 55, 56, 58, 61, and 63. In each instance the exception takes issue with facts found, facts not found, credibility determinations made and / or inferences drawn from the evidence presented, and / or provides explanation and / or argument for the fact found at the designated paragraph.

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) and Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011).

In addition, it has been stated, "The ultimate question of the existence of discrimination is a question of fact." Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1209 (Fla. 1st DCA 1991). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010) and Eaves, supra.

Based on the foregoing, and noting that we have above adopted the Administrative Law Judge's findings of fact, Petitioners' exceptions 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 19th day of December, 2012.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Lizzette Romano; and
Commissioner Mario M. Valle

Filed this 19th day of December, 2012,
in Tallahassee, Florida.

_____/s/_____
Violet Crawford, Clerk
Commission on Human Relations
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W. David Watkins, 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 19th day of December, 2012.

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