

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

MATTIE LOMAX,

HUD Case No. 04-12-0250-8

Petitioner,

FCHR Case No. 2012H0128

v.

DOAH Case No. 12-1552

CITRUS HEALTH NETWORK, INC.,  
AND JOSE GARCIA, ADMINISTRATOR,

FCHR Order No. 12-047

Respondents.

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

Preliminary Matters

Petitioner Mattie Lomax filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2011), alleging that Respondents Citrus Health Network, Inc., and Jose Garcia, Administrator, committed a discriminatory housing practice on the bases of Petitioner's race (African American), sex (female) and handicap by denying Petitioner "last month" rent assistance for which Petitioner had applied through a program administered by Respondents.

The allegations set forth in the complaint were investigated, and, on April 4, 2012, 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 Miami, Florida, on June 7, 2012, before Administrative Law Judge June C. McKinney.

Judge McKinney issued a Recommended Order of dismissal, dated July 9, 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 exceptions to the Recommended Order in a document entitled, "Petitioner Submit Written Exceptions," received by the Commission on or about July 25, 2012.

Generally, the document excepts to the Recommended Order's conclusion that no discriminatory housing practice occurred.

In the absence of a transcript of the proceeding before the Administrative Law Judge, the Commission is bound by the facts found in the Recommended Order, since there is no way for the Commission to determine the extent to which the facts found are supported by the testimony presented. Gainey v. Winn Dixie Stores, Inc., FCHR Order No. 07-054 (October 12, 2007).

With regard to findings of fact set out in Recommended Orders, the Administrative Procedure Act states, "The agency may not reject or modify the findings of fact unless the agency first determines from a review of *the entire record*, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law [emphasis added]." Section 120.57(1)(1), Florida Statutes (2012). As indicated, above, 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., supra. Accord, Hall, supra, Jones v. Suwannee County School Board, FCHR Order No. 06-088 (September 11, 2006), Johnson v. Tree of Life, Inc., FCHR Order No 05-087 (July 12, 2005), Beach-Gutierrez, supra, and Waaser, supra.

Further, 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. 1<sup>st</sup> 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, Petitioner's 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 17<sup>th</sup> day of September, 2012.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner Onelia Fajardo; and  
Commissioner Michael Keller

Filed this 17<sup>th</sup> day of September, 2012,  
in Tallahassee, Florida.

\_\_\_\_\_/s/\_\_\_\_\_  
Violet Crawford, Clerk  
Commission on Human Relations  
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June C. McKinney, 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 17<sup>th</sup> day of September, 2012.

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