

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

RONALD NEY,

HUD Case No. 04-12-0364-8

Petitioner,

FCHR Case No. 2012H0158

v.

DOAH Case No. 12-1945

ROYAL HIGHLANDS PROPERTY
OWNERS' ASSOCIATION, INC.,

FCHR Order No. 13-002

Respondent.

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

Preliminary Matters

Petitioner Ronald Ney filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2011), alleging that Respondent Royal Highlands Property Owners' Association, Inc., committed discriminatory housing practices on the basis of Petitioner's handicap / disability by denying Petitioner the ability to have someone read comments on his behalf at a homeowners association meeting, and by subsequently adopting a rule that would make it difficult to do so.

The allegations set forth in the complaint were investigated, and, on May 14, 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 Leesburg, Florida, on September 11, 2012, before Administrative Law Judge E. Gary Early.

Judge Early issued a Recommended Order of dismissal, dated October 18, 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

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

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 Administrative Law Judge's Recommended Order in a 33-page document received by the Commission on or about October 28, 2012.

There is no indication on the document that it was provided to the 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 November 16, 2012.

Petitioner's exception document presents exception to the following numbered Recommended Order paragraphs: 1, 4, 5, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, and 24. In each instance, the exception presented takes issue with facts found, inferences drawn and / or witness credibility determinations made from the evidence presented.

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, 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 10th day of January, 2013.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Michael Keller; and
Commissioner Michell Long

Filed this 10th day of January, 2013,
in Tallahassee, Florida.

_____/s/_____
Violet Crawford, Clerk
Commission on Human Relations
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E. Gary Early, 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 10th day of January, 2013.

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