

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FLORIDA COMMISSION ON HUMAN
RELATIONS, ON BEHALF OF JOHN
AND KIMBERLY WHITT,

Petitioners,

vs.

HUD CASE NO.: 04-11-1118-8
FCHR CASE NO.: 2012H0038
DOAH CASE NO.: 12-2074
FCHR ORDER NO.: 13-035

BAYHEAD LANDINGS PROPERTY
OWNERS ASSOCIATION, INC.;
KIMBALL LEE; WILLIAM BARTHLE;
AND TONY KOLKA,

Respondents.

FINAL ORDER

THIS CAUSE came before the Florida Commission on Human Relations (Commission) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on April 30, 2013, by telephone conference hearing, for the purpose of considering the Administrative Law Judge's Recommended Order, Exceptions to the Recommended Order, and Response to Exceptions to the Recommended Order (copies of which are attached hereto as Exhibits A, B, and C, respectively) in the above-styled cause. Petitioners were represented by David A. Organes, Esquire. Respondents were represented by Gary M. Schaaf, Esquire, and Stuart J. Barks, Esquire.

Upon review of the Recommended Order, the argument of the parties, and after a review of the complete record in this case, the Commission makes the following findings and conclusions.

RULING ON EXCEPTIONS

The Commission reviewed and considered the Petitioner's Exceptions and the Respondent's Response to Exceptions to the Recommended Order and ruled as follows:

1. Paragraph 2 of Petitioner's Exceptions is denied because:

a. Petitioner failed to clearly identify the disputed portion of the Recommended Order by page number or paragraph, and failed to include appropriate and specific citations to the record (see Section 120.57(1)(k), Florida Statutes); and

b. Finding of Fact 10 of the Administrative Law Judge's Recommended Order addressed the bumper issue, and in Finding of Facts 17 and 18, the Administrative Law Judge found that Respondent had neither approved nor rejected the dock application and that it remains pending awaiting receipt of the requested information.

2. Paragraph 3 of Petitioner's Exceptions is denied because Finding of Fact 17 of the Administrative Law Judge's Recommended Order addressed the issue stating that the application is simply not complete without the requested information.

3. Paragraph 4 of Petitioner's Exceptions is denied because Finding of Fact 16 and Finding of Fact 2 of the Administrative Law Judge's Recommended Order addressed the issue.

4. Paragraph 5 of Petitioner's Exceptions is denied because:

a. Petitioner failed to clearly identify the disputed portion of the Recommended Order by page number or paragraph, and failed to include appropriate and specific citations to the record (see Section 120.57(1)(k), Florida Statutes); and

b. Findings of Fact 12 through 14, and 17 through 18, and Conclusion of Law 23 of the Administrative Law Judge's Recommended Order addressed the issue.

FINDINGS OF FACT

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 760, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

DISPOSITION

Upon a complete review of the record in this case, the Commission determines that the disposition recommended by the Administrative Law Judge be ACCEPTED. WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

The Petition for Relief filed on behalf of John and Kimberly Whitt is hereby DISMISSED.

DONE AND ORDERED this 2nd day of May, 2013.

FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Mario Valle, Panel Chairperson;
Commissioner Lizzette Romano; and
Commissioner Michell Long

Filed this 2nd day of May, 2013.

Violet Crawford
Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
(850) 488-7082

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U. S. Mail Gary M. Schaaf, Esquire, and Stuart J. Barks, Esquire, Becker & Poliakoff, P.A., 311 Park Place Boulevard, Suite 250, Clearwater, Florida 33759; to John and Kimberly Whitt, 18246 Hancock Bluff Road, Dade City, Florida 33523; to David A. Organes, Esquire, Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 200, Tallahassee, Florida 32301; to Lynne A. Quimby-Pennock, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; to Donna C. McNulty, Senior Assistant Attorney General, PL-01, The Capital, Tallahassee, Florida 32399-1050; and by interoffice delivery to

Cheyenne Costilla, Interim General Counsel, Florida Commission
on Human Relations, 2009 Apalachee Parkway, Suite 100,
Tallahassee, Florida 32301, this 2nd day of
May, 2013.

Violet Crawford