

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ROBERT PAGANO,

HUD Case No. 04-12-0590-8

Petitioner,

FCHR Case No. 2012H0236

v.

DOAH Case No. 12-2279

THE FOURTH BAYSHORE CONDOMINIUM
ASSOCIATION, INC., KARL
STEMMLER AND RICHARD GROVE,

FCHR Order No. 12-061

Respondents.

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

Preliminary Matters

Petitioner Robert Pagano filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2011), alleging that Respondents The Fourth Bayshore Condominium Association, Inc., Karl Stemmler and Richard Grove committed a discriminatory housing practice on the basis of Petitioner's handicap and on the basis of interference, coercion or intimidation, by refusing to rent an apartment to Petitioner.

The allegations set forth in the complaint were investigated, and, on June 6, 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 Bradenton, Florida, on August 23, 2012, before Administrative Law Judge R. Bruce McKibben.

Judge McKibben issued a Recommended Order of dismissal, dated September 5, 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 Administrative Law Judge's Recommended Order in a three-page document received by the Commission on or about September 20, 2012.

There is no indication on the document that it was provided to the Respondents 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 Respondents, 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 September 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. See, e.g., Gainey v. Winn Dixie Stores, Inc., FCHR Order No. 07-054 (October 12, 2007) and Herring v. Department of Corrections, FCHR Order No. 12-004 (February 21, 2012).

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. 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, 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 16th day of November, 2012.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Onelia Fajardo-Garcia; and
Commissioner James Johns

Filed this 16th day of November, 2012,
in Tallahassee, Florida.

_____/s/_____
Violet Crawford, Clerk
Commission on Human Relations
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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 16th day of November, 2012.

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

9-18-2012
CASE # 12-2279

Miss DENISE CRAWFORD

I DO NOT AGREE WITH THE FINDINGS AND DECISION IN THIS CASE. I'M SURE THAT JUDGE MCKIBBEN IS A FAIR AND HONEST JUDGE, BUT I THINK HE MISSED SOME KEY POINTS IN THIS CASE. HE SAID THAT I HAD NO PROOF OF WHAT MR. STEMMER SAID, THAT I WAS NOT MOVING IN BECAUSE I WAS UNDESIRABLE. WELL I SUBMITTED A WRITTEN STATEMENT FROM MR. SAGLIMBENE WHO WAS ALSO TOLD BY MR. STEMMER THAT HE WAS NOT MOVING IN EITHER. BUT MR. STEMMER DID NOT SAY MR. SAGLIMBENE WAS UNDESIRABLE BECAUSE HE IS NOT IN A WHEELCHAIR.

I DON'T KNOW IF MR. STEMMER REALIZED WHAT HE SAID WAS AGAINST THE LAW, OR SOMEONE TOLD HIM. SO NOW HE HAD TO COME UP WITH SOME LIES TO GET HIMSELF OUT OF THE SITUATION. SO HE CAME UP WITH DISCRIMINATING SLANDEROUS LIES ABOUT ME. HE SAID THAT I WAS BEHIND IN MY RENT, I DID DAMAGE TO MY APT. AND THAT I WAS GETTING EVICTED. ALL OF THEM WERE PROVEN TO BE LIES BY THE WRITTEN STATEMENT BY MY LANDLORD.

MR. STEMMER MADE UP ANOTHER LIE BY TELLING THE OWNER OF THE CONDO. THAT I WAS A HEAVY SMOKER, KNOWING THAT HE WOULDN'T RENT IT TO ME.

(2)
DENISE CRAWFORD

9-18-2012
CASE # 12-2279

THAT IS A BOLD FACE LIE, THAT I FIND TO BE DISCRIMINATING AND DEGRADING.

MR. STEMMER CALLING ME UNDESIRABLE STEMS FROM ME BEING IN A WHEELCHAIR AND REVENGE FROM A SIMILAR CASE

I HAD WITH THE SAME CONDO ASSN. 3 YEARS AGO, IN WHICH THEY LOST. HOW COULD SOMEONE I NEVER MET BEFORE CLAIM TO KNOW SO MUCH ABOUT ME. IT'S EASY JUST MAKE UP LIES, WHICH HE DID. THEY ALSO SAID MR. STEMMER HAD NO SAY IN THE RENTAL OF THE APT. BUT THE FIRST WORDS OUT OF HIS MOUTH, WAS THAT I DIDN'T NEED A KEY, BECAUSE I WAS NOT MOVING IN. WHAT GIVES HIM THE RIGHT TO SAY THAT.

IT SAYS THAT I DIDN'T SUBPOENA MR STEMMER. THAT'S BECAUSE I WAS LIED TO BY THEIR ATTORNEYS. THEY CALLED ME TWICE TO SEE IF IT WOULD BE OK FOR MR STEMMER TO TESTIFY BY PHONE. I SAID THAT WOULD BE FINE.. THEN WHILE IN COURT, MR STEMMER NEVER CALLED. SO HOW COULD I SUBPOENA HIM AFTER COURT WAS OVER. I WAS DENIED MY RIGHT TO QUESTION MR STEMMER AND EXPOSE HIM FOR THE LIAR THAT HE IS. THESE PEOPLE CALLED ME 2 OR 3 TIMES TO OFFER ME CASH TO SETTLE OUT OF COURT. IF THEY ARE SO INNOCENT WHY WOULD THEY DO THAT?

DENISE CRAWFORD

(3)

9-18-2012

CASE # 12-2279

I DON'T KNOW HOW THIS PROCESS WORKS, BUT I FIND IT HARD TO BELIEVE THAT 3 PEOPLE CAN CONSPIRE, AND MAKE UP A BUNCH OF LIES, AND ARE BELIEVED OVER SOMEONE WHO IS TELLING THE TRUTH AND PROVES THEIR LIES, TO BE JUST THAT, LIES.

I JUST HOPE THERE IS SOMEONE THAT CAN SEE THIS CASE AND THE FACTS IN A DIFFERENT LIGHT, THAN JUDGE Mc. KIBBEN DID.

Thank you
Robert Raymond

CASE # 12-2279