

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MCARTHUR AND MYRNA EDWARDS,)
)
 Petitioners,)
)
 vs.) Case Nos. 12-3491
) 12-3492
 HAMILTON GROUP FUNDING, INC.;)
 NICHOLAS HAMIC VENTURES, LLC;)
 BRISTOL GLOBAL MOBILITY; AND)
 RICHARD J. AND MICHELLE COFFEY,)
 PROPERTY OWNERS,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was convened in this case on February 28, 2013, via telephone, before Suzanne Van Wyk, duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: No appearance

For Respondent Hamilton Group Funding, Inc.:

No appearance^{1/}

For Respondent Nicholas Hamic Ventures, LLC:

Jaken E. Roane, Esquire
Guilday, Schwartz, Simpson,
West, Hatch and Lowe, P.A.
1983 Centre Pointe Boulevard, Suite 200
Tallahassee, Florida 32308

For Respondent Bristol Global Mobility:

Robert Beasley, Esquire
Litvak, Beasley and Wilson, LLP
226 East Government Street
Pensacola, Florida 32502

For Respondents Richard J. and Michelle Coffey:

No appearance

STATEMENT OF THE ISSUE

Whether this case should be dismissed based on Petitioners' failure to appear at the scheduled telephonic final hearing.

PRELIMINARY STATEMENT

On July 25, 2012, Petitioners McArthur and Myrna Edwards filed a Housing Discrimination Complaint with the Florida Commission on Human Relations ("Commission"), alleging that Respondent, Hamilton Group Funding ("Hamilton"), had discriminated against Petitioners by denying financing for the purchase of a home, as well as steering and redlining on the basis of Petitioners' race ("Case I").

On July 26, 2012, Petitioners filed a second Housing Discrimination Complaint with the Commission, alleging that Respondents, Nicholas Hamic Ventures, LLC (real estate agency, hereinafter "Hamic"), Bristol Global Mobility (property owner, hereinafter "Bristol"), and Richard J. and Michelle Coffey (property owners, hereinafter "Coffey"), discriminated against Petitioners by refusing to sell a home; discriminating in the

financing of a home; discriminating in the terms, conditions, and privileges of sale of a dwelling; steering; and redlining, based on Petitioners' race ("Case II").

After investigation, the Commission issued its Determination of No Cause in both cases on October 11, 2012, finding no reasonable cause to believe that a discriminatory housing practice occurred. Petitioners timely filed a separate Petition for Relief in each case seeking an administrative hearing to contest the Commission's determination. On October 23, 2012, both cases were forwarded to the Division of Administrative Hearings (Division) for assignment of an administrative law judge to conduct the hearings requested.

Upon receipt of the Petitions, Case II was initially assigned to Judge James H. Peterson, III, then transferred to Judge William F. Quattlebaum. Case I was assigned to the undersigned. By Order entered December 17, 2012, the cases were consolidated by the Division and assigned to the undersigned.

Due to the procedural nature of this decision, the remaining facts usually provided in a Preliminary Statement are set forth in the Findings of Fact.

FINDINGS OF FACT

1. Upon receipt of the Petitions for Relief at the Division, Initial Orders were issued on October 24, 2012, requiring Petitioners to coordinate a joint response to provide

certain information within seven days or to file a unilateral response if a joint response was not possible. Neither Petitioners nor Respondents responded to the Initial Order in either case.

2. Case I was initially set for final hearing on December 17, 2012, by video teleconference at sites in Pensacola and Tallahassee, Florida. Case II was initially set for final hearing on December 27, 2012, in Tallahassee, Florida.

3. Prior to consolidation of the cases, Respondent Hamilton requested a continuance of the final hearing scheduled in Case I. Hamilton's correspondence, which was taken as a motion, represented that Hamilton had attempted to contact Petitioners to determine whether they would agree to a continuance, that Hamilton had left a voice message with Petitioners, and that Petitioners had not responded.

4. At the direction of the undersigned, the Division also attempted to contact Petitioners to determine their position on the requested continuance. Division personnel also left voice messages with Petitioners.

5. On December 10, 2012, Michael Edwards contacted Division staff, identified himself as Petitioners' son, stated he had received the messages, and represented that Petitioners had no objection to a continuance. Further, Mr. Edwards explained that a continuation would be needed because Myrna

Edwards was recovering from major surgery and McArthur Edwards was suffering with complications from Post Traumatic Stress Disorder.

6. Having received confirmation that Petitioners did not oppose continuance, and would likely have been unable to attend the final hearing as scheduled, the undersigned entered an Order Canceling Hearing and Placing Case in Abeyance on December 10, 2012. The Order required Petitioners to confer with Respondents' counsel and advise as to the status of the matter no later than January 30, 2013. Further, Petitioners were required to include in the status report mutually-agreeable dates for scheduling the final hearing if Petitioners intended to pursue the matter. The cases were consolidated on December 17, 2012, thus the Order was binding in both cases.

7. Neither the original Notice of Hearing nor the Order Canceling Hearing and Placing Case in Abeyance mailed to Petitioners was returned as "undeliverable."

8. On January 30, 2013, Respondent Bristol filed a status report representing that Bristol had not been contacted by the Petitioners to coordinate the status report as directed in the Order. Further, Bristol represented that it had attempted to reach Petitioners by phone the previous day and had left a voice message, but had received no return call from Petitioners.

9. Despite the fact that Petitioners did not comply with the Order, the undersigned requested Division personnel to contact Petitioners to determine whether Petitioners intended to pursue the matter. Division staff called Petitioners' residence and left messages for Petitioners to contact the Division regarding this case. The Division received no return call.

10. In an abundance of caution, the undersigned scheduled the case for telephonic final hearing on February 28, 2013. Telephonic hearing was chosen to afford Petitioners, now residing out of state, every opportunity to be heard on their complaints.

11. The undersigned also issued an Order of Pre-hearing Instructions (Order) requiring the parties to confer no later than seven days prior to the final hearing to determine whether the matter could be resolved amicably and to exchange witness lists and copies of proposed exhibits.

12. Neither the Notice of Telephonic Hearing nor the Order mailed to Petitioners was returned "undeliverable."

13. On February 20, 2013, Respondent Hamic filed its witness list and served proposed exhibits on all other parties. On February 21, 2013, the same Respondents provided copies of proposed exhibits to the undersigned.

14. On February 21, 2013, Respondent Bristol filed its witness and exhibit lists and provided copies of proposed exhibits to the undersigned.

15. Petitioners filed neither a witness list nor an exhibit list and did not provide the undersigned with any proposed exhibits.

16. On February 21, 2013, Respondent Hamic filed a Notice of Attempt to Comply in response to the undersigned's Order. The Notice documents Respondents' unsuccessful attempts to reach Petitioners to confer and exchange witness lists and proposed exhibits.

17. On February 22, 2013, Respondent Hamic filed a Motion to Dismiss, or, Alternatively, to Close the Case. The Motion represented that Petitioners had not contacted Respondents as required by the Order to confer and exchange witness lists and exhibits. The Motion was denied.

18. The final hearing commenced as scheduled, via telephone, on February 28, 2013. Respondents Hamic and Bristol entered appearances. Petitioners did not appear.

19. The undersigned allowed 20 minutes from the noticed hearing time, 9:30 a.m., for Petitioners to make an appearance. None was made.

20. Respondent Hamic offered Exhibits 1 through 41 into evidence, which were received without objection.

21. Respondent Bristol offered Exhibits B-1 through B-8 into evidence, which were received without objection.

22. No witnesses were called.

23. The proceedings closed at approximately 10:00 a.m.

24. No transcript of the proceedings was made.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 760.35, Fla. Stat.^{2/}

26. Petitioners have the burden of proof in this proceeding. They must prove by a preponderance of the evidence their allegations that Respondents engaged in discriminatory housing practices based upon Petitioners' race.

27. Petitioners failed to appear at the time noticed for telephonic final hearing. In addition, Petitioners failed to provide notice, prior to or at the time the final hearing was scheduled to commence, that Petitioners would be unable to attend the scheduled hearing. Petitioners were required to appear at the scheduled hearing, with witnesses and evidence necessary to meet their burden of proof. As stated in the Notices of Hearing, Petitioners' failure to do so constitutes grounds for dismissal.

28. In Patterson v. Panama City Hous. Auth., Case No. 10-8861 (Fla. DOAH Oct. 21, 2010; Fla. FCHR Jan. 13, 2011),

the administrative law judge recommended, and FCHR agreed, "when a Petitioner fails to appear at the scheduled administrative hearing in their case, they fail to meet their burden of proof and the Petition for Relief should be dismissed." Patterson, Case No. 2011H0034, FO at 2. The FCHR Final Order provides a long list of citations to cases applying this principle. Id.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing Petitioners McArthur and Myrna Edwards' Petition for Relief.

DONE AND ENTERED this 6th day of March, 2013, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of March, 2013.

ENDNOTES

^{1/} Daniel R. Lucas, CPA, represented at the telephonic final hearing that he was appearing on behalf of Hamilton Group Funding, Inc. However, Mr. Lucas was not authorized by the undersigned to appear as a Qualified Representative of Hamilton Group Funding, Inc., pursuant to Florida Administrative Code Rule 28-106.106.

^{2/} Unless otherwise indicated, all references to the Florida Statutes are to the 2012 version.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.