

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

DOMINICK DAVIS,

HUD Case No. 04-15-0696-8

Petitioner,

FCHR Case No. 2015H0271

v.

DOAH Case No. 15-6002

JACKSONVILLE HOUSING AUTHORITY,

FCHR Order No. 16-019

Respondent.

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

This matter is before the Commission for consideration of the Recommended Order of Dismissal, dated January 29, 2016, issued in the above-styled matter by Administrative Law Judge W. David Watkins.

Findings of Fact and Conclusions of Law

Judge Watkins' Order recommends the Commission dismiss as untimely the Petition for Relief filed in this matter.

We agree that the Petition for Relief filed in this matter is untimely, but for reasons different than those set out by the Administrative Law Judge.

In concluding that the Petition for Relief was not timely filed, the Administrative Law Judge relied on a statement in the Notice of Determination of No Cause indicating that the Petition for Relief must be filed with the Commission "within 30 days of the date of service of this Notice..." See Recommended Order of Dismissal, ¶ 4. The Administrative Law Judge found that the Commission "served" the Notice of Determination of No Cause on September 3, 2015. Recommended Order of Dismissal, ¶ 5.

The Administrative Law Judge also relied on the Commission's rules, which state that a Petition for Relief may be filed "within 30 days of service of a Notice of Determination (No Cause) or Notice of Determination (Cause)..." See Recommended Order of Dismissal, ¶ 11, and Fla. Admin. Code R. 60Y-8.001(1).

Based on these provisions the Administrative Law Judge concluded that the Petition for Relief was untimely. The Administrative Law Judge found that the Notice of Determination of No Cause was "served" on the parties by the Commission on September 3, 2015; that because 30 days from September 3, 2015, was a Saturday, the deadline for filing the Petition for Relief was the following Monday, October 5, 2015; and that the Petition for Relief was filed on October 9, 2015. See Recommended Order of Dismissal, ¶ 13 through ¶ 16.

With regard to the time limit for filing a Petition for Relief in a housing discrimination case, the Fair Housing Act states, “The person aggrieved may request administrative relief under chapter 120 within 30 days *after receiving notice that the commission has concluded its investigation under s. 760.34* (emphasis added). Section 760.35(3)(a)2, Florida Statutes (2015).

Documents filed by Petitioner with the Division of Administrative Hearings on January 16, 2016, accompanying the filing entitled, “Petitioner Dominick Davis Responds to Motion to Show Cause,” reflect that Petitioner or his representative “received” the Notice of Determination of No Cause on September 8, 2015 and that the Petition for Relief was filed with the Commission 31 days later on October 9, 2015.

Since the Notice of Determination of No Cause was *received* by Petitioner on September 8, 2015, under the Fair Housing Act, Petitioner would have 30 days from that date to file his Petition for Relief. The Petition for Relief was filed on October 9, 2015, 31 days later, and therefore, in our view, was untimely. For use of this analysis by the Commission in determining the timeliness of housing discrimination complaints, see, generally, Lewis v. Arlen House East Condominium Association, FCHR Order No. 12-005 (February 21, 2012), Woods v. The Properties of the Village, Inc., FCHR Order No. 08-054 (August 15, 2008), Clark v. Homeq Servicing Corp., FCHR Order No. 08-050 (July 29, 2008), and Lee v. Emmer Development Corp., 20 F.A.L.R. 3132, at 3137, 3138 (FCHR 1998).

With regard to the Commission’s rule, indicating that the Petition for Relief must be filed within 30 days of “service” of the Notice of Determination of No Cause (Fla. Admin. Code R. 60Y-8.001(1)), this can be read consistently with the statute if the word “service” is interpreted to mean when the Petitioner actually receives the document. Lewis, supra, Woods, supra, and Clark, supra.

In modifying these conclusions of law of the Administrative Law Judge, we conclude: (1) that the conclusions of law being modified are conclusions of law over which the Commission has substantive jurisdiction, namely conclusions of law interpreting the Fair Housing Act’s requirements for filing a Petition for Relief and interpretation of the Commission’s rules regarding the filing of a Petition for Relief; (2) that the reason the modifications are being made by the Commission is that the conclusions of law as stated run contrary to previous Commission decisions on the issue; and (3) that in making these modifications the conclusions of law being substituted are as or more reasonable than the conclusions of law which have been rejected. See, Section 120.57(1)(l), Florida Statutes (2015).

With these comments and corrections, we adopt the Administrative Law Judge’s findings of fact and conclusions of law.

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge’s Recommended Order of Dismissal.

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 7 day of April, 2016.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Tony Jenkins; and
Commissioner Jay Pichard

Filed this 7 day of April, 2016,
in Tallahassee, Florida.

Tammy Barton
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W. David Watkins, 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 7 day of April, 2016.

By: Tammy Barton
Clerk of the Commission
Florida Commission on Human Relations