

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KENNETH AND LISA ANDUZE,

Petitioners,

vs.

Case No. 16-0342

FUND WATERFORD LAKES, LLC,

Respondent.

_____ /

RECOMMENDED ORDER AFTER REMAND AWARDING
ATTORNEY'S FEES AND COSTS

This Recommended Order After Remand Awarding Attorney's Fees and Costs is entered pursuant to sections 120.569, 120.57(1), and 760.35(3)(b), Florida Statutes (2016).

APPEARANCES

For Petitioners: David Stuart Cronin, Esquire
Alicia K. Magazu, Esquire
Community Legal Services of Mid Florida
128 Orange Avenue, Suite 300
Daytona Beach, Florida 32114

For Respondent: Leslie L. Tucker, Esquire
Theresa L. Kitay, Attorney at Law
6292 Vinings Vintage Drive
Mableton, Georgia 30126

STATEMENT OF THE ISSUE AFTER REMAND

The amount of attorney's fees and costs to which Petitioners are entitled in this proceeding, pursuant to section 760.35(3)(b).

PRELIMINARY STATEMENT

On January 21, 2016, Petitioners filed a Petition for Relief with the Florida Commission on Human Relations ("FCHR"), alleging that Respondent engaged in unlawful housing practices against them on the basis of race and retaliation in violation of the Florida Fair Housing Act, sections 760.20 through 760.37. The final hearing on the merits of Petitioners' unlawful housing practice claims was held on May 25, 2016. Petitioners represented themselves in the final hearing on the merits of their unlawful housing practice claims.

On August 31, 2016, the Administrative Law Judge ("ALJ") issued a Recommended Order, recommending that FCHR issue a final order finding that Respondent engaged in a discriminatory housing practice against Petitioners on the basis of retaliation in violation of section 760.37. On November 17, 2016, FCHR issued an Interlocutory Order Awarding Affirmative Relief from a Discriminatory Housing Practice and Remanding Case to Administrative Law Judge for Issuance of a Recommended Order Regarding Amounts of Quantifiable Damages and Costs Owed Petitioners ("First Interlocutory Order"), finding that Respondent had engaged in retaliation against Petitioners in violation of section 760.37, and directing the ALJ to conduct further proceedings to determine the amounts of quantifiable damages and costs owed to Petitioners.

Pursuant to the First Interlocutory Order, a final hearing was held on February 23, 2017, to determine the amounts of quantifiable damages and costs Respondent owed to Petitioners. Petitioners retained attorneys to represent them in this hearing. On July 18, 2017, the ALJ issued a Recommended Order After Remand, recommending that FCHR enter a final order awarding Petitioners \$2,221.80 in damages and costs to be paid by Respondent.

Because the parties did not present evidence at the hearing regarding the amount of attorney's fees and costs to which Petitioners were entitled, the ALJ retained jurisdiction to conduct further proceedings pursuant to sections 120.569 and 120.57(1), as necessary, to determine the amounts of reasonable attorney's fees and costs to which Petitioners were entitled.

On October 12, 2017, FCHR entered the Second Interlocutory Order Awarding Affirmative Relief from a Discriminatory Housing Practice and Remanding Case to Administrative Law Judge for Issuance of Recommended Order Regarding Amounts of Attorney's Fees and Costs Owed Petitioners ("Second Interlocutory Order"). The Second Interlocutory Order awarded Petitioners a total of \$2,671.16 in damages and costs, and remanded this proceeding to the ALJ for further proceedings to determine the amounts of attorney's fees and costs owed Petitioners.

On October 24, 2017, the ALJ issued an Order Regarding Request for Attorney's Fees and Costs, giving Petitioners 30 days from the date of that Order in which to file a motion, supported by specified documentation, regarding the amounts of attorney's fees and costs sought, and giving Respondent 30 days thereafter in which to file a response disputing the amounts of attorney's fees and costs sought.

On November 27, 2017, Petitioners timely filed a Stipulation and Order stating that the parties had entered into a stipulation regarding the amounts of attorney's fees and costs that would be paid by Respondent to Petitioners. On November 29, 2017, the parties filed an Amended Joint Stipulation to Amount of Attorney's Fees and Costs ("Joint Stipulation"), which supersedes the Stipulation and Order previously filed and reflects that the parties have jointly agreed to the amount of attorney's fees and costs that Respondent will pay to Petitioners in this proceeding.

This Recommended Order After Remand Awarding Attorney's Fees and Costs is entered pursuant to the Joint Stipulation.

FINDINGS OF FACT

1. As determined in the First Interlocutory Order, Respondents engaged in an unlawful housing practice against Petitioners on the basis of retaliation, in violation of section 760.37. As a result of this determination, Petitioners

are entitled, pursuant to section 760.35(3)(b), to an award of damages and costs and to reasonable attorney's fees and costs.

2. Subsequent to issuance of the First Interlocutory Order by FCHR, Petitioners retained counsel to represent them in their efforts to obtain an award of damages and costs in this proceeding.

3. Petitioners and Respondent have agreed, pursuant to the Joint Stipulation, that Respondent will pay to Petitioners the total amount of \$14,463.64 in attorney's fees and costs incurred by Petitioners in this proceeding.

4. The parties have further agreed that Respondent will pay the \$14,463.64 to Petitioners within 10 days of the date on which FCHR enters the final order regarding the award of attorney's fees and costs in this proceeding.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction over the parties to, and subject matter of, this proceeding pursuant to sections 120.569 and 120.57(1).

6. Section 760.35(3)(b) states:

Administrative hearings shall be conducted pursuant to ss. 120.569 and 120.57(1). The respondent must be served written notice by certified mail. If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending affirmative relief from the

effects of the practice, including quantifiable damages and reasonable attorney's fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1). Judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

§ 760.35(3)(b), Fla. Stat. (emphasis added).

7. Petitioners are entitled to an award of reasonable attorney's fees and costs in this proceeding, pursuant to section 760.35(3)(b).

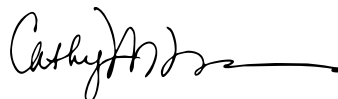
8. Because the parties have stipulated to the amount of attorney's fees and costs that Respondent will pay to Petitioners in this proceeding and have stipulated to the terms under which that amount will be paid, there are no disputed issues of material fact to be resolved that would require an evidentiary hearing under sections 120.569 and 120.57(1) to be conducted to determine the amounts of attorney's fees and costs owed to Petitioners.

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 awarding Petitioners the amount of \$14,463.64 in attorney's fees and costs in this proceeding, to

be paid by Respondent as provided in the Joint Stipulation filed by the parties on November 29, 2017.

DONE AND ENTERED this 30th day of November, 2017, in Tallahassee, Leon County, Florida.



CATHY M. SELLERS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of November, 2017.

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.