

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

KENNETH AND LISA ANDUZE,

HUD Case No. 04-15-1078-8

Petitioners,

FCHR Case No. 2016H0167

v.

DOAH Case No. 16-0342

FUND WATERFORD LAKES, LLC,

FCHR Order No. 17-080

Respondent.

**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**

Preliminary Matters

Petitioners Kenneth and Lisa Anduze filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2014), alleging that Respondent Fund Waterford Lakes, LLC, committed discriminatory housing practices on the basis of Petitioners' race (African American) by failing to address Petitioners' noise and disturbance complaints and on the basis of retaliation by not allowing Petitioners to renew their apartment lease.

The allegations set forth in the complaint were investigated, and, on December 22, 2015, the Executive Director issued a determination finding that there was no reasonable cause to believe that a discriminatory housing practice had occurred.

Petitioners 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 by video teleconference at sites in West Palm Beach and Tallahassee, Florida, on May 25, 2016, before Administrative Law Judge Cathy M. Sellers.

Judge Sellers issued a Recommended Order, dated August 31, 2016, recommending that the Commission find that a discriminatory housing practice occurred on the basis of retaliation when Respondent declined to renew Petitioners' lease, but concluding that no remedy was available from the discriminatory housing practice because no evidence of "quantifiable damages" was presented by Petitioners.

The Commission 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,” FCHR Order No. 16-057, dated November 17, 2016.

Judge Sellers issued a Recommended Order After Remand, dated July 18, 2017, awarding Petitioners \$2,221.80 in quantifiable damages and costs, and reserving jurisdiction as necessary to determine the amounts of attorney’s fees and costs owed Petitioners incurred after the case was remanded to the Division of Administrative Hearings by the Commission.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order After Remand.

Findings of Fact

With the below comments, we find the Administrative Law Judge’s findings of fact to be supported by competent substantial evidence.

In Recommended Order After Remand, ¶ 71, the Administrative Law Judge finds that Petitioners provided documentation substantiating that they had incurred \$71.58 in costs. Yet, at Recommended Order After Remand, ¶ 48, the Administrative Law Judge finds that Petitioners documented that they incurred \$71.79 in postage related expense. Adding up the components to reach the Administrative Law Judge’s recommendation that \$2,221.80 in quantifiable damages and costs be awarded would require the amount set out in Recommended Order After Remand, ¶ 71, to be \$71.79 rather than \$71.58, and we make that finding given the finding set out in Recommended Order After Remand, ¶ 48, as discussed above.

We note that the “finding of fact” at Recommended Order After Remand, ¶ 63, that Petitioners were not entitled to recover damages for their labor in moving is actually a conclusion of law. This conclusion of law is discussed in the “Conclusions of Law” section of this Order, below.

With these comments and clarifications, 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, with the exception of the Administrative Law Judge’s conclusion that Petitioners were not entitled to recover for their labor in moving.

The Fair Housing Act states, “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.” Section 760.35(3)(b), Florida Statutes (2017).

We conclude that the cost of a Petitioner's labor expended in moving as the result of being victimized by a discriminatory housing practice is "affirmative relief" that can be awarded under the Fair Housing Act.

In Recommended Order After Remand, ¶ 25, the Administrative Law Judge found that 85 hours was a "reasonable estimate" of the time spent by Petitioners and their daughter in moving as the result of the unlawful retaliation that occurred.

In Recommended Order After Remand, ¶ 26, the Administrative Law Judge found that Petitioners were seeking \$678 in labor costs for their move, derived by multiplying 85 hours times \$7.93, the minimum wage in Florida in 2014.

We note that the 85 hours time estimate includes time spent by Petitioners' daughter, an individual not a party to this proceeding. We also note that the 85 hours time estimate found to be reasonable, is computed on the assumption that Petitioners and their daughter all spent equal time participating in the move. See Recommended Order After Remand, ¶ 25.

We conclude that Petitioners are entitled to an award for their labor costs, but because Petitioners' daughter is not a party to this proceeding, Petitioners are not entitled to an award for their daughter's labor costs.

Thus, we conclude that Petitioners are entitled to an award for their "labor costs" in the amount of \$449.36 computed as follows: 85 hours times \$7.93 = \$674.05. \$674.05 divided by 3 = \$224.68. \$224.68 times 2 = \$449.36.

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 relating to the establishment of "quantifiable damages" and "costs" under the Fair Housing Act; (2) that the reason the modifications are being made by the Commission is that the conclusions of law as stated do not fulfill the directive of the Fair Housing Act that affirmative relief be provided from discriminatory housing practices; 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 (2017).

With the above correction, we adopt the Administrative Law Judge's conclusions of law.

Petitioners' Exceptions

Petitioners filed exceptions to the Administrative Law Judge's Recommended Order After Remand in a document entitled, "Petitioners' Exceptions to Recommended Order After Remand," received by the Commission on or about August 2, 2017.

Respondent filed a response to Petitioners' exceptions.

Petitioners' exceptions document contains 11 numbered exceptions.

Exceptions numbered 1, 2, and 3, do not affect the outcome of the case.

Exceptions numbered 1, 2, and 3 are rejected.

Exceptions numbered 4, 5, 7, 8, 9, 10 and 11, take issue with inferences drawn by the Administrative Law Judge from the evidence presented, credibility determinations made by the Administrative Law Judge and / or the weight given presented evidence by the Administrative Law Judge.

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), Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011) and Taylor v. Universal Studios, FCHR Order No. 14-007 (March 26, 2014).

Exceptions numbered 4, 5, 7, 8, 9, 10 and 11 are rejected.

Exception numbered 6 excepts to the Administrative Law Judge's conclusion that Petitioners were not entitled to an award for their labor costs expended in moving as the result of the unlawful retaliation of Respondent.

Exception numbered 6 is accepted as it applies to the labor costs of Petitioners, as discussed in the Conclusions of Law section of this Order, above.

Respondent's Exceptions

Respondent filed exceptions to the Administrative Law Judge's Recommended Order After Remand in a document entitled, "Respondent's Exceptions to Recommended Order," received by the Commission on or about August 1, 2017.

Petitioners filed a response to Respondent's exceptions.

Respondent excepts to the Administrative Law Judge's failure to offset the proposed award by \$1549.00 paid to Petitioners by Respondent pursuant to a Concession Addendum signed by the parties, arguing that failing to make such an offset would result in a double recovery for Petitioners.

Given the Administrative Law Judge's discussion of this transaction in the "Order Denying Motion to Dismiss," dated March 3, 2016, the record is insufficient to draw the conclusion that a "double recovery" would result from the award recommended by the Administrative Law Judge.

Respondent's exception is rejected.

Affirmative Relief and Remand

Through our adoption of the Administrative Law Judge's findings of fact and conclusions of law, with the indicated comments and corrections as set out above, we have adopted the Administrative Law Judge's recommendation for the amounts of quantifiable damages and costs owed Petitioner, awarding an amount additional to the recommended amounts for Petitioners' labor costs.

We have also adopted the Administrative Law Judge's recommendation as to Petitioners' entitlement to an award for attorney's fees and costs incurred by Petitioners since the Commission's remand of the case to the Division of Administrative Hearings.

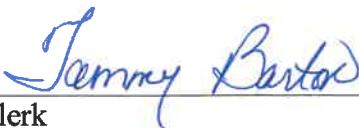
Noting that Respondent has already been ordered by FCHR Order No. 16-057 to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioners, Respondent is hereby ORDERED to pay Petitioners quantifiable damages and costs in the amount of \$2221.80 as recommended by the Administrative Law Judge, plus \$449.36 for labor costs as determined by this Order, for a total of \$2671.16.

This matter is REMANDED to the Administrative Law Judge for further proceedings to determine the amounts of "attorney's fees" and "costs" owed Petitioners and the issuance of a Recommended Order as to those amounts.

DONE AND ORDERED this 12 day of October, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner Latanya Peterson

Filed this 12 day of October, 2017,
in Tallahassee, Florida.



Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Kenneth and Lisa Anduze
c/o Alicia Magazu, Esq.
c/o David Cronin, Esq.
Community Legal Services of Mid-Florida
128 Orange Avenue
Daytona Beach, FL 32114

Fund Waterford Lakes, LLC
c/o Leslie L. Tucker, Esq.
Theresa L. Kitay, Attorney at Law
6292 Vinings Vintage Drive
Mableton, GA 30126

Cathy M. Sellers, 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 12 day of October, 2017.

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