

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. 16-057

Respondent.

**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
QUANTIFIABLE DAMAGES 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 panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We note that the "findings of fact" at Recommended Order, ¶ 74 and ¶ 75, are actually conclusions of law relating to the entitlement of Petitioners to damages for the discriminatory housing practice found to have occurred by the Administrative Law Judge. These conclusion of law paragraphs are discussed in the "Conclusion of Law" section of this Order, below.

With this comment and clarification, 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 as to the entitlement of Petitioners to quantifiable damages for the discriminatory housing practice found to have occurred.

The Administrative Law Judge concluded, "...Florida law expressly requires that damages sought under the [Fair Housing Act] be 'quantifiable.' Here, Petitioners did not provide any evidence on which their alleged damages may be quantified for purposes of determining how much, if any, damages to which they are entitled...Accordingly, although Petitioners have shown that Respondent engaged in unlawful retaliation in violation of the [Fair Housing Act] by not renewing their lease, they have not established that they are factually or legally entitled to an award of damages in this proceeding." Recommended Order, ¶ 74 and ¶ 75.

The Administrative Law Judge found, "Petitioners did not present evidence quantifying any physical or emotional damages alleged to have been suffered by Ms. Anduze as a result of Respondent's alleged discriminatory and retaliatory behavior. Petitioners did not present evidence quantifying the cost of obtaining alternative housing." Recommended Order, ¶ 54 and ¶ 55.

Ultimately, the Administrative Law Judge concluded, "...Petitioners did not present evidence regarding potentially quantifiable damages, such as the cost to them in securing alternative housing. Because such evidence was not presented at the hearing, there is no factual basis for awarding damages on that basis." Recommended Order, ¶ 127.

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* [emphasis added]." Section 760.35(3)(b), Florida Statutes (2016).

With regard to whether Petitioners have presented evidence to support quantifiable damages, in Dillard v. International House of Pancakes, FCHR Order No. 13-040 (May 8, 2013), an employment discrimination case in which the record contained insufficient evidence to determine the amount of back pay owed Petitioner, a Commission Panel stated the following: “In a case in which the Administrative Law Judge stated in the Recommended Order, ‘No recommendation is made as to affirmative relief as insufficient evidence was introduced to do the calculations in support of such relief,’ a Commission Panel remanded the case to the Administrative Law Judge ‘to conduct proceedings necessary to determine the amount of back pay, with interest, attorney’s fees, costs, and if no position exists into which Petitioner can be promoted, front pay, to which Petitioner is entitled.’ DeLeon v. Department of Health and Rehabilitative Services, 19 F.A.L.R. 4493, at 4495, 4496, and 4513 (FCHR 1996). Accord, Shuler v. The Pantry, Inc., FCHR Order No. 12-021 (May 16, 2012) and Ostrum v. A Unique Floor of the Gulf Coast I, FCHR Order No. 10-067 (September 7, 2010). But, cf., Davies v. Laidlaw Education Services, FCHR Order No. 04-143 (November 4, 2004), a termination case, in which the Recommended Order in DOAH Case No. 03-4666 indicates, ‘No evidence of economic damages suffered by Petitioner was presented,’ and the Commission’s order did not remand the case for determination of those damages, but instead ordered Respondent (1) to cease and desist from discriminating further; (2) to re-employ Petitioner; and (3) to promote Petitioner.” Based on the foregoing, the Commission Panel in Dillard remanded the case to the Administrative Law Judge for further proceedings to determine amounts owed Petitioner.

Likewise, we conclude that this matter should be remanded to the Administrative Law Judge for such further proceedings as are necessary to determine the “quantifiable damages” and “costs” owed Petitioners, pursuant to Section 760.35(3)(b), Florida Statutes (2016).

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 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 (2016).

Exceptions

After being granted an extension of time to file, Petitioners timely filed with the Commission exceptions to the Administrative Law Judge’s Recommended Order in a document entitled, “Exceptions to Recommended Order.”

Petitioners' exceptions document contains three numbered exceptions.

Petitioners' "Exception 1" takes issue with facts found and inferences drawn from the evidence presented.

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).

Petitioners' "Exception 1" is rejected.

Petitioners' "Exception 2" takes issue with the Administrative Law Judge's analysis of whether a discriminatory housing practice occurred. As noted in the Conclusions of Law section of this Order, we have found that a discriminatory housing practice has occurred in this matter as recommended by the Administrative Law Judge, but have additionally concluded that Petitioners are entitled to the "quantifiable damages" that have resulted from that discriminatory housing practice.

Petitioners' "Exception 2" is rejected.

Petitioners' "Exception 3" appears to except to the Administrative Law Judge's failure to award both "quantifiable damages" and "punitive damages."

As set out in the Conclusions of Law section of this Order, we have concluded that Petitioners are entitled to "quantifiable damages" for the discriminatory housing practice that has occurred and that the matter should be remanded to the Administrative Law Judge for the determination of the monetary amounts of those damages.

With regard to "punitive damages," in conclusions of law adopted by a Commission Panel, an Administrative Law Judge stated, "At hearing, Petitioner indicated that he was seeking, among other things, an award of five million dollars in punitive damages. The Commission, however, is without authority to award punitive damages in any amount. Only a court can make such an award. § 760.35(2), Fla. Stat." See Conclusion of Law at Recommended Order, ¶ 25, f.n. 3, in Powell v. Terem, DOAH Case No. 04-1352 (October 6, 2004), adopted by the Commission in FCHR Order No. 04-158 (November 30, 2004). In addition, in the Recommended Order in Sherlock v. Wedgewood at Pelican Strand Neighborhood Association, et al., DOAH Case No. 10-9940 (June 7, 2011), the Administrative Law Judge stated, "Next, on the issue of Ms. Sherlock's motion seeking punitive damages, the undersigned found that section 760.35(3)(b), Florida Statutes, did not provide statutory authority to award punitive

damages in an administrative hearing. Therefore, Ms. Sherlock's motion seeking punitive damages is denied."

We conclude that the Commission is without authority to award "punitive damages." Accord, Estate of Charles A. Tipton v. Whispering Oakes Estates HOA, Inc., FCHR Order No. 16-009 (February 17, 2016).

Petitioners' "Exception 3" is accepted to the extent it argues that Petitioners' should be entitled to demonstrate their "quantifiable damages" resulting from the discriminatory housing practice found to have occurred, but is rejected as to the argument that "punitive damages" should be awarded in this matter.

Affirmative Relief and Remand

Through our adoption of the Administrative Law Judge's findings of fact and conclusions of law, as set out above, we find that a discriminatory housing practice occurred in this matter in the manner found by the Administrative Law Judge. In accordance with our modifications to the conclusions of law of the Administrative Law Judge, set out above in the "Conclusions of Law" section of this Order, we conclude the case should be remanded to the Administrative Law Judge for determination of the "quantifiable damages" and "costs" owed Petitioners.

Respondent is hereby ORDERED:

(1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioners;

(2) to pay Petitioners the quantifiable damages they suffered as a result of the discriminatory housing practice found to have occurred; and

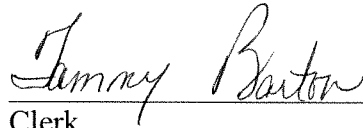
(3) to pay Petitioners the costs they have reasonably incurred in the bringing of this matter.

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

DONE AND ORDERED this 17 day of November, 2016.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Gilbert M. Singer

Filed this 17 day of November, 2016,
in Tallahassee, Florida.



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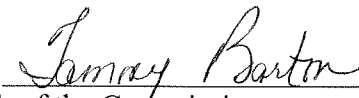
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Cathy M. Sellers, Administrative Law Judge, DOAH

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 17 day of November, 2016.

By: 
Clerk of the Commission
Florida Commission on Human Relations