

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

VIRGINIA AUSTIN AND LAURA TOMAYKO,	HUD Case No. 04-16-0166-8
Petitioners,	FCHR Case No. 2016H0223
v.	DOAH Case No. 16-1799
SADDLEBAG LAKE OWNERS ASSOCIATION, INC.,	FCHR Order No. 16-065
Respondent.	

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

Preliminary Matters

Petitioners Virginia Austin and Laura Tomayko filed an amended housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2015), alleging that Respondent Saddlebag Lake Owners Association, Inc., committed discriminatory housing practices on the basis of Petitioners' sex (female) by harassing Petitioners and by subjecting Petitioners to different terms and conditions because they were both female.

The allegations set forth in the complaint were investigated, and, on February 19, 2016, 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 (DOAH) for the conduct of a formal proceeding.

An evidentiary hearing was held by video teleconference at sites in Orlando and Tallahassee, Florida, on June 23, 2016, before Administrative Law Judge D. R. Alexander.

Judge Alexander issued a Recommended Order, dated September 15, 2016, recommending that the Commission dismiss the Petition for Relief with prejudice.

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, ¶ 4 and ¶ 9, contain conclusions of law interpreting the 365-day limitation for bringing complaints to the Florida Commission on Human Relations (FCHR) found in Section 760.34(2), Florida Statutes (2016). Our adoption of the conclusions of law found in these paragraphs is reflected in the "Conclusions 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.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioners timely filed with the Commission exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Petitioners' Exceptions to Recommended Order." Respondent filed a response to Petitioners' exceptions in a document entitled, "Saddlebag Lake Owners Association Response to Petitioners' Exceptions to Recommended Order."

Petitioners' exceptions document contains 13 exceptions, lettered a through m.

In their first eight exceptions, "Exceptions a-h," Petitioners except as to credibility determinations, inferences drawn from the evidence and testimony admitted during the DOAH hearing, and the weight assigned by the Administrative Law Judge to that evidence and testimony. We determine from a review of the entire record that the findings of fact excepted by Petitioners were based upon competent substantial evidence.

Petitioners' first eight exceptions, "Exceptions a-h," are rejected.

In their ninth exception, "Exception i," Petitioners except to the Administrative Law Judge's finding that there is no cause of action for discrimination based on sexual orientation in the Fair Housing Act, Sections 760.20-760.37, Florida Statutes (2016). We note that the Administrative Law Judge concluded at Recommended Order, ¶ 15:

[a]ssuming arguendo the charge is true and time-barred events can be considered, the more persuasive evidence supports a finding that the interactions were the result of the acrimonious relationship between the parties that arose

when the new home was installed, and not because of Petitioners' sexual orientation.

Petitioners' ninth exception, "Exception i," is rejected.

In their tenth and eleventh exceptions, "Exceptions j-k," Petitioners except to the Administrative Law Judge's finding that there is no cause of action under Chapter 760 for hostile housing environment. Petitioners cited one authority to prove the existence of a cause of action for hostile housing environment: a proposed rule by HUD found at 24 CFR Part 100.600(a)(2), found at Vol. 80 Federal Register 63720. Petitioners now note in their Notice of Supplemental Authority that, since they submitted their exceptions, the proposed rule has become a final rule adopted by HUD. Even if the cause of action does exist in Chapter 760, we again note that the Administrative Law Judge found that the conduct attributable to Respondent was a response to an acrimonious relationship between the parties and not because of Petitioners' status in any protected class. See Recommended Order at ¶ 15.

To the extent that Petitioners except to the Administrative Law Judge's finding at Recommended Order, ¶ 29, that there is no evidence that Petitioners reported Haven's use of the word "dykes" to Respondent, we determine from a review of the entire record that this finding of fact is based upon competent substantial evidence.

Petitioners' tenth and eleventh exceptions, "Exception j-k," are rejected.

In their twelfth and thirteenth exceptions, "Exceptions l-m," Petitioners essentially except to the Administrative Law Judge's entertainment of arguments to award attorney's fees to Respondent against Petitioners. To the extent that "Exceptions l-m" except to an award of attorney's fees by FCHR, we agree. FCHR does not have the authority to award attorney's fees and costs to a prevailing respondent in a case bought under the Fair Housing Act, Sections 760.20-760.37 (2016). Gross, et al. v. Royal Arms Villas Condominium, Inc., FCHR Order No. 15-030 (May 21, 2015).

Petitioners' twelfth and thirteenth exceptions, "Exceptions l-m," are accepted, to the extent discussed above.

Dismissal

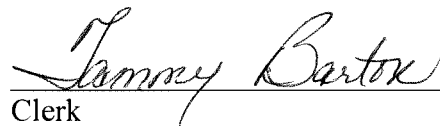
The Petition for Relief and Amended Housing Discrimination Complaint are DISMISSED with prejudice.

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 8 day of December, 2016.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner Gilbert M. Singer

Filed this 8 day of December, 2016,
in Tallahassee, Florida.



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D. R. Alexander, Administrative Law Judge, DOAH

Steven J. Zuilkowski, Esq., Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 8 day of December, 2016.

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