

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

REBEKAH WERTH,

HUD Case No. 04-16-4526-8

Petitioner,

FCHR Case No. 2017H0004

v.

DOAH Case No. 16-6144

ANN WITTMAN AND RONALD WITTMAN,

FCHR Order No. 17-017

Respondents.

**ORDER REMANDING PETITION FOR
RELIEF FROM A DISCRIMINATORY HOUSING PRACTICE**

This matter is before the Commission for consideration of the Recommended Order of Dismissal and Relinquishment of Jurisdiction, dated December 6, 2016, issued in the above-styled matter by Administrative Law Judge Robert L. Kilbride.

Findings of Fact and Conclusions of Law

Judge Kilbride's Recommended Order of Dismissal and Relinquishment of Jurisdiction finds that Petitioner failed to comply with several orders issued by Judge Kilbride. Notably, Petitioner failed to comply with the Pre-hearing Order and Notice of Telephonic Pre-hearing Conference entered on November 29, 2016, by failing to call in to the pre-hearing conference. In addition, Judge Kilbride found that Petitioner failed to comply with the Initial Order, dated October 20, 2016, and the Order of Pre-hearing Instructions, dated November 14, 2016. The Pre-hearing Order and Notice of Telephonic Pre-hearing Conference specifically required the attendance of the parties at the pre-hearing conference and stated, "The failure of either party to attend the telephone conference may be deemed a default or withdrawal of the petition, as the case may be, resulting in appropriate sanctions, including dismissal of the case with prejudice."

Based on the foregoing, Judge Kilbride recommended that the Commission issue a final order dismissing Petitioner's case with prejudice.

We are not yet ready to adopt the Administrative Law Judge's conclusion that the case be dismissed.

We are concerned that Petitioner might not have been served with the orders with which she has not complied.

The most recent document in the record filed by Petitioner containing her address is the Petition for Relief, filed with the Commission on October 12, 2016. This document identifies Petitioner's address as 5459 **SE** Celestial Circle, Stuart, FL 34997 (emphasis added).

The memo created by the Commission transmitting the case to the Division of Administrative Hearings appears to incorrectly identify Petitioner's address as 5459 **SW** Celestial Circle, Stuart, FL 34997 (emphasis added).

Thereafter, the Order of Pre-hearing Instructions, dated November 14, 2016, and the Pre-hearing Order and Notice of Telephonic Pre-hearing Conference, dated November 29, 2016, both with which Petitioner was found to have failed to comply, indicate that they were served on Petitioner at 5459 **Southwest** Celestial Circle, Stuart, FL 34997 (emphasis added).

The Initial Order, dated October 20, 2016, contains no addresses for the parties on which it was served.

None of these orders indicate that Petitioner was e-served with the document.

The Recommended Order of Dismissal and Relinquishment of Jurisdiction, currently before the Commission, indicates service on Petitioner at 5459 **Southwest** Celestial Circle, Stuart, FL 34997 (emphasis added). The document does not indicate that it was e-served on Petitioner.

The record of the case as it exists before the Commission does not contain any "returned" pieces of mail that had been initially mailed to Petitioner.

Nevertheless, it appears to us likely that the orders with which the Administrative Law Judge found Petitioner had failed to comply, might have been sent to the wrong address, utilizing "Southwest" instead of "SE" Celestial Circle.

We conclude that this matter should be remanded to the Administrative Law Judge for a determination of whether Petitioner was correctly served with the orders with which she was found to have failed to comply, and for such other proceedings as are necessary based on that determination.

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge's Recommended Order of Dismissal and Relinquishment of Jurisdiction, although as indicated, above, it is possible Petitioner was not correctly served with that order.

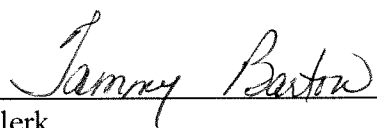
Remand

This matter is REMANDED to the Administrative Law Judge for a determination of whether Petitioner was correctly served with the orders with which she was found to have failed to comply, and for such other proceedings as are necessary based on that determination.

DONE AND ORDERED this 2 day of March, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

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

Filed this 2 day of March, 2017,
in Tallahassee, Florida.



Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
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Copies furnished to:

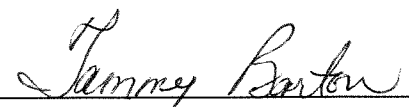
Rebekah Werth
5459 SE Celestial Circle
Stuart, FL 34997

Ann Wittman
Ronald Wittman
1490 Southeast Legacy Cove Circle
Stuart, FL 34997

Robert L. Kilbride, 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 2 day of March, 2017.

By: 

Clerk of the Commission
Florida Commission on Human Relations