

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

LOURDES ALMONTE,

HUD Case No. 04-18-0119-8

Petitioner,

FCHR Case No. 2017H0998

v.

DOAH Case No. 18-2531

SCOTTISH HIGHLANDS CONDOMINIUM
ASSOCIATION, INC.,

FCHR Order No. 19-009

Respondent.

**FINAL ORDER AWARDING AFFIRMATIVE RELIEF
FROM A DISCRIMINATORY HOUSING PRACTICE**

Preliminary Matters

Petitioner Lourdes Almonte filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2016), alleging that Respondent Scottish Highlands Condominium Association, Inc., committed a discriminatory housing practice on the basis of Petitioner's handicap by failing to make reasonable accommodation for Petitioner by denying her a garden bed and trellises.

The allegations set forth in the complaint were investigated, and, on April 19, 2018, the Executive Director issued a determination finding that there was no reasonable cause to believe that a discriminatory housing practice had occurred.

Petitioner 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 in Tavares, Florida, on September 27, 2018, before Administrative Law Judge Garnett W. Chisenhall.

Judge Chisenhall issued a Recommended Order, dated November 26, 2018, recommending that the Commission enter a final order upholding the Petition for Relief and requiring Respondent to provide Petitioner with a reasonable accommodation.

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 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

Respondent filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Respondent's Written Exceptions to the Recommended Order."

Respondent's exceptions document contains two numbered exceptions.

The Administrative Procedure Act establishes the extent to which the Commission can modify or reject a finding of fact or conclusion of law contained in a Recommended Order. It states, "The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and the interpretation of administrative rules over which it has substantive jurisdiction... Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law." Section 120.57(1)(l), Florida Statutes (2018).

Respondent's exception number 1 excepts to inferences drawn from the evidence presented and / or credibility determinations made by the Administrative Law Judge. Respondent asserts that the relevant time period for analyzing Petitioner's claim that Respondent failed to provide a reasonable accommodation is on or before September 29, 2016 (Petitioner's complaint of discrimination filed with the Commission alleges discrimination occurred on September 29, 2016 and was continuing); however, the Administrative Law Judge found that Respondent learned that Petitioner desired a reasonable accommodation during an arbitration proceeding initiated by Respondent's Petition for Mandatory Non-Binding Arbitration filed with the Florida Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, three days earlier on September 26, 2016. Specifically, the Administrative Law Judge found that Respondent was on notice that Petitioner desired a reasonable accommodation when Petitioner filed her answer to Respondent's petition for arbitration. See Recommended Order, ¶ 20. Petitioner's answer was filed in or around October 2016 (See Hr'g Tr., 29:5-23), well within 365 days of Petitioner's complaint of discrimination filed with the Commission. Thus, Petitioner's request for a reasonable accommodation, and Respondent's failure to approve it, are timely. Furthermore,

Respondent states that it was “maybe” on Notice when Petitioner filed her answer in October 2016 to Respondent’s petition for arbitration. See Respondent’s Written Exceptions to the Recommended Order, ¶ 10. Respondent also claims there is “insufficient evidence” that Petitioner requested a reasonable accommodation “prior to her complaint being receive[d] by HUD and the Commission in August 2017” (See Id. at ¶ 9); however, as previously stated, the Administrative Law Judge found that Respondent was notified of Petitioner’s request for a reasonable accommodation when Petitioner filed her answer to Respondent’s petition for arbitration almost a year earlier. In conclusion, the Administrative Law Judge’s finding of fact was based upon competent substantial evidence in accordance with section 120.57(1)(l), Florida Statutes (2018).

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).

In addition, it has been stated, “The ultimate question of the existence of discrimination is a question of fact.” Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1209 (Fla. 1st DCA 1991). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010), Eaves, supra, and Taylor, supra.

Respondent’s exception number 1 is rejected.

Respondent’s exception number 2 argues that the Administrative Law Judge erred in his application of the law to the facts. Specifically, Respondent claims that Petitioner’s requested accommodation “does not ameliorate a protected ‘major life activity.’” The Administrative Law Judge found that Petitioner is a disabled individual who requested a reasonable accommodation that was necessary to afford her an opportunity to enjoy her dwelling, and that Respondent refused to provide the requested accommodation without articulating a legitimate, nondiscriminatory reason for not doing so. See Recommended Order, ¶¶ 32-48.

Respondent’s exception number 2 is rejected.

Affirmative Relief

Through our adoption of the Administrative Law Judge’s findings of fact and conclusions of law, as set out above, we find that unlawful discrimination occurred in this

matter in the manner found by the Administrative Law Judge and have adopted the Administrative Law Judge's recommendation for the remedy of the discrimination. Accord, Botero v. Calusa Club Village, P.O.A., FCHR Order No. 06-004 (January 6, 2006).

The Administrative Law Judge found that Petitioner requested a reasonable accommodation. See Recommended Order, ¶¶ 44-45. Specifically, Petitioner sought the possession and use of raised planter beds in her backyard. See Id. at ¶¶ 9-12. The Administrative Law Judge found the planter beds to be a "reasonable and necessary accommodation." See Id. at ¶ 47.


Respondent is hereby ORDERED to permit Petitioner to possess and use raised planter beds in her backyard.

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 6 day of February, 2019.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Jay Pichard

Filed this 6 day of February, 2019,
in Tallahassee, Florida.


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G.W. Chisenhall, Administrative Law Judge, DOAH

Stanley Gorsica, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 6 day of February, 2019.

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