

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

TAL SIMHONI,

HUD Case No. 04-17-9760-8

Petitioner,

FCHR No. 2018-03214

v.

DOAH No. 18-4442

MIMO ON THE BEACH I CONDOMINIUM,
ASSOCIATION, INC.,

FCHR Order No. 19-035

Respondent.

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

Preliminary Matters

On September 27, 2017, Petitioner, Tal Simhoni, filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2015), alleging that Mimo on the Beach I Condominium Association, Inc. ("Mimo"), committed discriminatory housing practices on the bases of her religion and national origin.

The allegations set forth in the complaint were investigated, and, on August 7, 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 on August 22, 2018, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

A final evidentiary hearing took place on November 5, 2018, before Administrative Law Judge John G. Van Laningham by videoconference in Tallahassee and Miami, Florida.

A supplemental hearing occurred by telephone on November 27, 2018, to take testimony from two additional witnesses with participants in multiple locations.

On February 26, 2019, Judge Van Laningham issued a Recommended Order of dismissal.

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

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order on March 27, 2019, after the Commission granted her an extension of time to file her exceptions.

The Administrative Procedure Act states that, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2018); see, also Taylor v. Universal Studios, FCHR Order No 14-007 (March 26, 2014), McNeil v. HealthPort Technologies, FCHR Order No. 12-026 (June 27, 2012), and Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

Petitioner addressed issues that she had with the hearing procedure and the Administrative Law Judge's actions in the consideration of evidence, but the explanation of these issues did not comport to the requirements for exceptions in that they did not include appropriate and specific citations to the record. Therefore, it is not possible to issue an explicit ruling on these portions of the exceptions document.

However, Petitioner took specific exception to ¶s 5, 14, 20-22, 25, 27, 31, and the Endnote, of the Administrative Law Judge's Recommended Order. Petitioner's specific exceptions provide her explanation of the facts and her interpretation of how the law should apply to the facts. Petitioner essentially takes issue with inferences drawn from the evidence presented.

With regard to findings of fact set out in Recommended Orders, the Administrative Procedure Act states, "The agency may not reject or modify the 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 on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law [emphasis added]." Section 120.57(1)(l), Florida Statutes (2017).

Further, 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) and Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011).

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) and Eaves, supra.

With regard to the conclusions of law set out in the Administrative Law Judge's Recommended Order, as stated above, we accept the Judge's conclusions of law.

Petitioner's exceptions are rejected.

Lastly, this Final Order disposes all motions in this case pending before the Commission, including "Complainant's Motion to Re-open FCHR Investigation to Compel Respondent's Production of Evidence," filed by Petitioner with the Commission on March 11, 2019. Petitioner excepts to the way the Commission conducted its investigation and requests that the Commission reopen its investigation to "compel" the "production of items" allegedly favorable to Petitioner's case. In response, we note the manner in which the Commission conducted its investigation was not an issue before the Division of Administrative Hearings, since the proceedings at the Division of Administrative Hearings are *de novo*. See section 120.57(1)(k), Florida Statutes (2018). Petitioner's exception is rejected.

Dismissal

The Petition for Relief and 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 16 day of May, 2019.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Latanya Peterson, Panel Chairperson;
Commissioner Mario Garza; and
Commissioner Jay Pichard

Filed this 16 day of May, 2019, in Tallahassee, Florida.



Clerk

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John G. Van Laningham, Administrative Law Judge, DOAH

Sarah Stewart, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 16 day of May, 2019.

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