

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

APRIL WILLIAMS,

Petitioner,

v.

ORION REAL ESTATE SERVICES, AND,
HOUSING AUTHORITY OF THE CITY OF
WINTER PARK

Respondents.

HUD Case No. 04-20-9620-8

FCHR No. 202022546

DOAH No. 20-2125

FCHR Order No. 21-034

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

Preliminary Matters

On November 20, 2019, Petitioner, April Williams, filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2019), alleging that Respondents, Orion Real Estate Services and the Housing Authority of the City of Winter Park, committed discriminatory housing practices against Complainant due to her race.

The allegations set forth in the complaint were investigated, and, on February 26, 2020, the Executive Director issued a determination finding that there was no reasonable cause to believe that a discriminatory housing practice had occurred.

On April 3, 2020, 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.

On July 16, 2020, Administrative Law Judge Hetal Desai conducted a telephonic pre-hearing conference with the parties.

A final evidentiary hearing took place on July 23, 2020, before Judge Desai via video teleconferencing in Altamonte Springs and Tallahassee, Florida.

On August 21, 2020, Judge Desai issued a Recommended Order, which would result in a dismissal of the Petition for Relief.

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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. In the absence of a transcript of the proceeding before the Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988). Accord, Coleman v. Daytona Beach, Ocean Center Parking Garage, FCHR Order No. 14-034 (September 10, 2014), Gantz, et al. v. Zion's Hope, Inc., d/b/a Holy

Land Experience, FCHR Order No. 11-048 (June 6, 2011), and Hall v. Villages of West Oaks HOA, FCHR Order No. 08-007 (January 14, 2008).

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 with the Commission in a document titled "Petitioner's Exceptions to Administrative Law Judge's Recommended Order" on September 5, 2020. Petitioner took exception to Paragraphs 13, 14, and 17 under the Findings of Fact section of the Administrative Law Judge's Recommended Order. Petitioner also took exception to the Administrative Law Judge's Recommendation in the Recommended Order.

In the absence of a transcript of the proceeding before the Administrative Law Judge, the Commission is bound by the facts found in the Recommended Order, since there is no way for the Commission to determine the extent to which the facts found are supported by the testimony presented. See, e.g., Gainey v. Winn Dixie Stores, Inc., FCHR Order No. 07-054 (October 12, 2007), Herring v. Department of Corrections, FCHR Order No. 12-004 (February 21, 2012) and Holloman v. Lee Wesley Restaurants, d/b/a Burger King, FCHR Order No. 14-041 (October 9, 2014).

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 (2019). As indicated, above, in the absence of a transcript of the proceeding before the Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See, National Industries, Inc., supra. Accord, Hall, supra, Jones v. Suwannee County School Board, FCHR Order No. 06-088 (September 11, 2006), Johnson v. Tree of Life, Inc., FCHR Order No 05-087 (July 12, 2005), Coleman, supra, and Gantz, supra.

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.

Therefore, Petitioner’s exceptions are 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 23 day of June, 2021.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Darrick McGhee, Panel Chairperson;
Commissioner Larry Hart; and
Commissioner Jay Pichard

Filed this 23 day of June, 2021, in Tallahassee, Florida.

Tammy Barton

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Hetal Desai, 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 23 day of June, 2021.

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