

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

DARLENE GRAY-JEMAL AND ELIOT JEMAL,

HUD Case No. 04-20-0348-8

Petitioner,

FCHR Case No. 202023409

v.

DOAH Case No. 20-2978

BAREFOOT BAY RECREATION DISTRICT, ET AL,

FCHR Order No. 21-021

Respondents.

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

This matter is before the Commission for consideration of the Recommended Order of Dismissal, dated July 27, 2020, issued in the above-styled matter by Administrative Law Judge Brittany O. Finkbeiner.

**Findings of Fact and Conclusions of Law**

Judge Finkbeiner's Order recommends the Commission dismiss as untimely the Petition for Relief filed in this matter.

We agree that the Petition for Relief filed in this matter is untimely, but for reasons different than those set out by the Administrative Law Judge.

This case is a housing discrimination case brought pursuant to the Fair Housing Act, sections 760.20 – 760.37, Florida Statutes (2019).

In concluding that the Petition for Relief was not timely filed, the Administrative Law Judge found that the Petition for Relief was not filed by Petitioners within 30 days of May 20, 2020, the date the Commission's Notice of Determination of No Cause was filed and mailed to the Petitioners. However, the 30-day period for filing a Petition for Relief commences from the date of receipt of the Notice by a Petitioner, not 30 days from the date of its mailing.

The Notice of Determination of No Cause indicates that it was mailed to the Petitioners and Respondents on May 20, 2020.

With regard to the time limit for filing a Petition for Relief in a housing discrimination case, the Fair Housing Act states, "The person aggrieved may request administrative relief under chapter 120 within 30 days *after receiving notice that the commission has concluded its investigation under s. 760.34* (emphasis added)." Section 760.35(3)(a)2, Florida Statutes (2019).

The Commission's rules state that, in a housing discrimination case, a Petition for Relief may be filed "within 30 days of service of a Notice of Determination (No Cause) or Notice of Determination (Cause)." Fla. Admin. Code R. 60Y-8.001(1).

With regard to the Commission's rule, indicating that the Petition for Relief must be filed within 30 days of "service" of the Notice of Determination of No Cause (Fla. Admin. Code R.

60Y-8.001(1)), this can be read consistently with the statute if the word “service” is interpreted to mean when the Petitioner receives the document. See, Davis v. Jacksonville Housing Authority, FCHR Order No. 16-019 (April 7, 2016), and cases cited therein.

In “Respondents’ Reply to Petitioners’ Response to Show Cause Order,” filed with the Division of Administrative Hearings on July 23, 2020, Respondents claim that the Commission’s Notice of Determination of No Cause (filed May 20, 2020 and mailed to the Petitioners on that same date, as noted by Judge Finkbeiner) was, according to United States Postal Service tracking information, delivered and left with an individual on May 27, 2020, at 12:44 p.m. The Commission’s record of this matter is in agreement. Thus, Petitioners had 30 days from May 27, 2020 to file a Petition for Relief with the Commission. Thirty days from May 27, 2020 was June 26, 2020. The Petitioners’ Petition for Relief, filed with the Commission on June 29, 2020, is untimely.

Since the Petition for Relief is untimely, it should be dismissed. See Davis, supra, and Section 120.569(2)(c), Florida Statutes (2020).

In modifying these conclusions of law of the Administrative Law Judge, we conclude: (1) that the conclusions of law being modified are conclusions of law over which the Commission has substantive jurisdiction, namely conclusions of law interpreting the Fair Housing Act’s requirements for filing a Petition for Relief and interpretation of the Commission’s rules regarding the filing of a Petition for Relief; (2) that the reason the modifications are being made by the Commission is that the conclusions of law as stated run contrary to previous Commission decisions on the issue; and (3) that in making these modifications the conclusions of law being substituted are as or more reasonable than the conclusions of law which have been rejected. See, Section 120.57(1)(1), Florida Statutes (2020).

With these comments and corrections, we adopt the Administrative Law Judge’s findings of fact and conclusions of law.

#### Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge’s Recommended Order of Dismissal.

#### 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 31 day of March, 2021.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario Garza, Panel Chairperson;  
Commissioner Libby Farmer; and  
Commissioner Larry Hart

Filed this 31 day of March, 2021,  
in Tallahassee, Florida.

*Jammy Barton*

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Brittany O. Finkbeiner, 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 31 day of March, 2021.

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