

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MARISSA MUSTO,
Petitioner,

HUD Case No. 04-20-9517-8

FCHR Case No. 202022452

v.

DOAH Case No. 20-3091

KNIGHTS CROSSING STUDENT HOUSING
LLC, Et Al ,
Respondent.

FCHR Order No. 21-004

**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 October 20, 2020, issued in the above-styled matter by Administrative Law Judge John D.C. Newton, II.

Findings of Fact and Conclusions of Law

Petitioner filed a Petition for Relief from a Discriminatory Housing Practice on July 10, 2020. The case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding. Judge Newton's order reflects that Petitioner failed to comply with orders of the Administrative Law Judge relating to Respondents' motions to dismiss. Recommended Order, ¶ 4 through ¶ 7. Specifically, Respondent, Knights Crossing, moved to dismiss the Petition for Relief on August 5, 2020. Recommended Order, ¶ 2. The basis of Knights Crossing's motion was that it does not own or manage the housing project that Petitioner alleges unlawfully discriminated against her. Id. Judge Newton found the motion asserted that Knights Crossing is simply the lessor of the land upon which the housing project is located. Id. Judge Newton also found documents attached to the motion supported the motion's assertions. Id. On August 21, 2020, Judge Newton rendered an Amended Order to Show Cause Why Motion to Dismiss Should Not be Granted requiring a response no later than August 28, 2020. Recommended Order, ¶ 3. The Amended Order to Show Cause Why Motion to Dismiss Should Not be Granted stated, "Failure to timely respond to this Order will be treated as agreement that the Motion should be granted." Id. Petitioner did not file a response. Id. On September 4, 2020, Judge Newton rendered an Order Dismissing Petition (against Knights Crossing) With Leave to Amend that allowed Petitioner to file and serve an amended petition on or before September 15, 2020. Recommended Order, ¶ 4. The Order Dismissing Petition with Leave to Amend stated, "Failure to timely file and serve an amended petition will result in dismissal of the petition and relinquishment of jurisdiction to the Florida Commission on Human Relations." Id. Petitioner did not file an amended petition for relief. Id. Respondent, Braxton, also moved to dismiss Petitioner's Petition for Relief. Recommended Order, ¶ 5. Judge Newton found merit in the

ground relating to Petitioner's failure to state when Petitioner received notice of the Determination of No Cause of the Florida Commission on Human Relations, which Petitioner challenges in this proceeding. *Id.* Although only Braxton raised the issue, it applied equally to the action against Knights Crossing. *Id.* On August 26, 2020, Judge Newton rendered an Order Dismissing Petition for Relief (against Braxton) With Leave to Amend and Canceling Hearing. Recommended Order, ¶ 6. The Order allowed Petitioner to file and serve an amended petition within 15 days of the date of the Order. *Id.* The Order Dismissing Petition for Relief With Leave to Amend and Canceling Hearing stated, "Failure to timely file and serve an amended petition shall result in dismissal of the petition without leave to amend." *Id.* Petitioner did not file an amended petition for relief. *Id.* The above-described events resulted in Judge Newton issuing the Recommended Order of Dismissal, dated October 20, 2020. Recommended Order, ¶ 7.

We note that, generally, Commission panels have concluded that a Petitioner's failure to respond to orders of an Administrative Law Judge amounts to a voluntary dismissal of the Petition for Relief. See, generally, *Herard v. MasTec, Inc.*, FCHR Order No. 13-034 (May 1, 2013), *Cawley v. Primrose Center, Inc.*, FCHR Order No. 12-009 (February 21, 2012), *Roundtree, et al. v. Advenir at Stonelake, LLC*, FCHR Order No. 11-069 (August 30, 2011), *Biggers v. Rooms To Go*, FCHR Order No. 09-045 (May 12, 2009), *Shook v. Riverside National Bank*, FCHR Order No. 08-029 (May 6, 2008), *Clifton v. Krys, et al.*, FCHR Order No. 07-062 (November 7, 2007), *Bordonaro v. The Green at the Heather Condominium Association, Inc.*, FCHR Order No. 07-010 (February 14, 2007), *Butler v. The Pepsi Bottling Group*, FCHR Order No. 06-107 (December 4, 2006), *Castellanos v. Express Net Airlines Pilots Association*, FCHR Order No. 05-061 (June 15, 2005), *Mayfield v. Karl's Haberdashery of Florida, Inc.*, FCHR Order No. 04-020 (March 10, 2004), and *Kenny v. Florida Department of Corrections*, FCHR Order No. 02-020 (June 3, 2002).

Based on the foregoing, we conclude that the Petition for Relief should be dismissed.

Exceptions

Neither party 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 7 day of January, 2021.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario Garza, Panel Chairperson;
Commissioner Darrick McGhee; and
Commissioner Jay Pichard

Filed this 7 day of January, 2021,
in Tallahassee, Florida.


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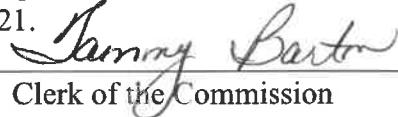
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John D.C. Newton, II, Administrative Law Judge, DOAH

John Scotese, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed
addressees this 7 day of January, 2021.

By: _____



Clerk of the Commission
Florida Commission on Human Relations