

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

JIMMY AND GELENE STEWART,

Petitioners,

vs.

Case No. 21-0389

US GROWTH INVESTMENT, INC.,<sup>1</sup>

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (“DOAH”) conducted an evidentiary hearing by Zoom conference on May 28, 2021, from Tallahassee, Florida.

APPEARANCES

For Petitioners: No Appearance

For Respondent: Richard W. Withers, Esquire  
Ward & Ketchersid, P.A.  
1241 Airport Road, Suite H  
Destin, Florida 32541

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<sup>1</sup> The documentation provided by the Florida Commission of Human Relations, specifically the Notice of Determination of No Cause and the Determination (No Cause), does not reflect who or what entity comprises the “ET AL.” Although the original complaint provides “US Growth Investment Inc, c/o Yunfeng XU, Registered Agent,” the registered agent should not be elevated to an “ET AL” status. Therefore, the “ET AL” has been removed from the style of this case.

## STATEMENT OF THE ISSUES

Whether Respondent, US Growth Investment, Inc., discriminated against Petitioners Jimmy and Gelene Stewart,<sup>2</sup> on the basis of race in violation of the Florida Fair Housing Act (“the Act”), chapter 760, part II, Florida Statutes (2019),<sup>3</sup> and, if so, the relief to which Petitioners are entitled.

## PRELIMINARY STATEMENT

The Florida Commission on Human Relations (“FCHR” or “Commission”) and the United States Department of Housing and Urban Development (“HUD”) administer the Act. In August 2020, Petitioners filed a housing discrimination complaint with FCHR alleging Respondent discriminated against them based upon their race (African American), in violation of the Act. FCHR investigated the complaint. On December 30, 2020, FCHR issued a “Notice of Determination of No Cause” (“Notice”). The Notice was sent to Petitioners via certified mail, and provided in part, the following:

Based on the evidence obtained during the investigation, the FCHR has determined that reasonable cause does not exist to believe that a discriminatory housing practice has occurred. Accordingly, the above-referenced complaint is hereby dismissed.

Further, FCHR’s “DETERMINATION (NO CAUSE)” statement provided the results of its analysis of the facts as follows:

Complainants identify as African Americans. Thus, Complainants belong to a class of persons whom the Florida Fair Housing Act protects from unlawful discrimination, based on race.

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<sup>2</sup> Petitioners will collectively be referred to as Petitioners, however, individually they will be referred to as Mr. Stewart or Mrs. Stewart.

<sup>3</sup> All references to Florida Statutes are to the 2019 codification, unless otherwise stated.

Although Complainants provided Respondent two paycheck stubs for Mr. Stewart, both Complainants' drivers' licenses, background checks on both Complainants, and their 2018 Tax Return, Complainants failed to provide a second year of tax return, an additional month of paycheck stubs for Mr. Stewart, and proof of employment and two months of paycheck stubs for Ms. Stewart. Complainants further did not submit the pre-application on Zillow. Thus, Complainant did not make a bonified offer to rent. Complainant contends in the allegations he believes Respondent denied the ability to rent this house because of his race, African American, however, Respondent provided Drivers' Licenses for her tenants and a copy of the leases showing she rents to African Americans. Thus, the allegation of discrimination based on race was not supported by the evidence reviewed during the investigation.

**Therefore, based on the foregoing, the Commission finds that there is not reasonable cause to believe that a discriminatory housing practice occurred in violation of Section 760.23(1), Florida Statutes.**

On January 8, 2021, Petitioners executed a Petition for Relief ("Petition").<sup>4</sup> In response to the Petition's numeral "5" ("THE FOLLOWING IS A CONCISE STATEMENT OF THE ULTIMATE FACTS ALLEGED, INCLUDING THE SPECIFIC FACTS PETITIONER CONTENDS WARRANT REVERSAL OR MODIFICATION OF THE COMMISSION'S DETERMINATION"), an additional page to the Petition was provided where Petitioners alleged:

We received the Notice of Determination of No Cause and we noticed several issues with it.

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<sup>4</sup> Petitioners completed a form: "STATE OF FLOIRDA FLORIDA COMMISSION ON HUMAN RELATIONS PETITION FOR RELIEF" which provided an outline of the requisite information needed.

Under Section IV - Findings & Conclusions – Section 760.23(1), FL Statutes the issues are as follows:

-We stated in our initial conversations with the Respondent that we wanted to rent the property, thus the reason for sending the documentation the Respondent requested.

-During our conversations with the Respondent we made it known that we were ready, willing, qualified, and able to rent the property consistent with Respondent's terms and conditions.

-Respondent ceased communications with us after we sent the requested initial documentation and then the property was no longer available online.

Under the Results of the Analysis of Facts Section the issues are as follows:

-The check stubs that were sent to the Respondents were those of Mrs. Stewart, not Mr. Stewart. Mr. Stewart does not receive check stubs thus the reason for sending the 2018 & 2019 tax returns.

-After sending the background checks, IDs, recent check stubs, and tax returns, we were never asked to submit an additional two months of check stubs for Mrs. Stewart.

-Upon Respondent's receipt of backgrounds, IDs, recent check stubs, and tax returns, we were never asked by Respondent to proceed with completing any type of application. During Mr. Stewart's conversations with Respondent, he asked her to send over the application which was never received.

We are requesting that this information be sent up to a Supervisor and have them give us a call at [phone number redacted].

In response to the Petition’s numeral “6” (“RESPONDENT HAS VIOLATED THE FOLLOWING FLORIDA STATUTE (Check One)”):

Petitioners checked the “Florida Fair Housing Act, as Amended” and alleged:

All requested information was submitted to the Respondent in a timely manner. The Respondent ceased all communication with us after receiving requested information which showed we were more than qualified to rent the property. The facts that were stated in the Determination letter were not laid out as they happened. Respondent’s receipt of requested information, which made her aware of our race, was when communication was stopped on Respondent’s part.

On February 3, 2021,<sup>5</sup> FCHR referred the case to DOAH requesting the assignment of an administrative law judge to conduct proceedings required by law and to submit a recommended order to the Commission. Although an Initial Order was issued on February 4, 2021, seeking input to facilitate scheduling a hearing, neither party provided any of the requested information. On February 15, 2021, a Notice of Hearing by Zoom Conference (“Hearing Notice”) and an Order of Pre-hearing Instructions (“OPI”) were issued to both parties.

On March 11, 2021, Petitioners filed a letter asking for a continuance of the hearing scheduled for March 16, 2021. A telephonic motion hearing was held on March 15, 2021. During the telephonic hearing, Petitioners expressed they had consulted with an attorney to represent them in this case. However, the attorney would not commit to the representation unless Petitioners secured additional time for the attorney to conduct discovery and prepare for the hearing. At the conclusion of the telephonic hearing, the parties were

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<sup>5</sup> Although FCHR’s “CERTIFICATE OF TRANSMITTAL” provides that the referral was transmitted on February 1, 2021, the referral was received and filed at DOAH at 8:36 a.m. on February 3, 2021.

advised the March 16, 2021, hearing was cancelled. Further, they were directed to communicate with each other and file a status report by March 22, 2021, with no less than three mutually agreeable dates prior to May 28, 2021, for the hearing to be held. The Order Rescheduling Hearing<sup>6</sup> by Zoom Conference was issued on March 23, 2021, rescheduling the hearing to May 28, 2021.<sup>7</sup>

The Zoom Conference hearing took place on May 28, 2021. Petitioners did not attend the Zoom hearing. The undersigned verified with her judicial assistant that Petitioners had not contacted her to report difficulty with the Zoom connection. After waiting a sufficient amount of time, the undersigned commenced the hearing.

Respondent's counsel requested its Composite Exhibit 1 be received in evidence, and it was admitted. Although a court reporter was present for the duration of the hearing, a transcript was not ordered. At the end of the hearing, the undersigned instructed that any proposed recommended orders ("PROs") should be filed within ten days of the hearing or by the close of business on June 7, 2021.<sup>8</sup> To date no PROs have been filed.

#### FINDINGS OF FACT

1. Petitioners did not attend the Zoom Conference hearing or provide any direct evidence to support their claim of discrimination.
2. Respondent's counsel introduced Respondent's representative.

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<sup>6</sup> The parties sent email communications to the undersigned's judicial assistant regarding possible dates for a hearing, but failed to timely file the status report with the requested information.

<sup>7</sup> Petitioners requested a 60-day continuance. The length of the actual continuance: 74 days. Further, no attorney entered a Notice of Appearance on behalf of Petitioners.

<sup>8</sup> The tenth day after the hearing fell on a weekend; thus, the PROs were to be filed on the next business day, Monday, June 7, 2021.

## CONCLUSIONS OF LAW

3. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 760.35(3)(b), Florida Statutes.

4. The Act is codified in sections 760.20 through 760.37, and prohibits discriminatory housing practices. A “discriminatory housing practice” means an act that is unlawful pursuant to section 760.23(2), (8), and (9).

5. Section 760.23(2) provides:

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, or religion.

6. Section 760.34(5) provides:

(5) In any proceeding brought pursuant to this section or s. 760.35, the burden of proof is on the complainant.

7. Petitioners have the burden of proving by a preponderance of the evidence that Respondent violated the Act by discriminating against them based on their race.

8. The preponderance of the evidence standard requires proof by “the greater weight of the evidence,” *Black's Law Dictionary*, 1201 (7th ed. 1999), or evidence that “more likely than not” tends to prove a certain proposition. *See Gross v. Lyons*, 763 So. 2d 276, 289 n.1 (Fla. 2000).

9. Petitioners did not attend the Zoom Conference hearing or present any direct evidence supporting their allegation. Therefore, Petitioners did not meet their burden of proof that Respondent discriminated against them based on their race.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief filed by Petitioners in its entirety.

DONE AND ENTERED this 10th day of June, 2021, in Tallahassee, Leon County, Florida.



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LYNNE A. QUIMBY-PENNOCK  
Administrative Law Judge  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of June, 2021.

COPIES FURNISHED:

Tammy S. Barton, Agency Clerk  
Florida Commission on Human Relations  
4075 Esplanade Way, Room 110  
Tallahassee, Florida 32399-7020

Richard W. Withers, Esquire  
Ward & Ketchersid, P.A.  
1241 Airport Road, Suite H  
Destin, Florida 32541

Jimmy Stewart  
Box 700  
7862 West Irlo Bronson Highway  
Kissimmee, Florida 34747

Gelene Stewart  
Box 700  
7862 West Irlo Bronson Highway  
Kissimmee, Florida 34747

Cheyenne Costilla, General Counsel  
Florida Commission on Human Relations  
4075 Esplanade Way, Room 110  
Tallahassee, Florida 32399-7020



NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.