

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

APRIL DUKES,

Petitioner,

vs.

Case No. 21-0859

BRENNAN REALTY, INC., JOSEPH P.
BRENNAN, KATHLEEN BRENNAN, AND
THOMAS BRENNAN,

Respondents.

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings (“DOAH”) for final hearing by Zoom conference on May 10, 2021.

APPEARANCES

For Petitioner: April Denise Dukes, pro se
937 Southwest 5th Street, Apartment 4
Miami, Florida 33130

For Respondent: Vanessa Marie Bertran, Esquire
Vanessa M. Bertran, P.A.
55 Alhambra Plaza, Suite 800
Coral Gables, Florida 33134

STATEMENT OF THE ISSUES

The issues for determination are: (1) whether Petitioner’s housing discrimination complaint alleging handicap discrimination against Respondents in violation of the Florida Fair Housing Act (“FFHA”), chapter 760, part II, Florida Statutes (2020), was timely filed with the Florida Commission on Human Relations (“FCHR”); and (2) whether Petitioner’s Petition for Relief was timely filed with FCHR.

PRELIMINARY STATEMENT

Petitioner, April Dukes (“Petitioner”), filed a fair housing discrimination complaint with FCHR on October 29, 2020. FCHR is a state agency charged with investigating fair housing discrimination complaints. After its investigation, FCHR issued a “Notice of Determination (No Cause)” and “Determination (Lack of Jurisdiction).” The determination for lack of jurisdiction concluded that Petitioner’s housing discrimination complaint was untimely filed with FCHR; and, therefore, FCHR did not have jurisdiction over Petitioner’s complaint.

Dissatisfied with FCHR’s determinations, Petitioner filed a Petition for Relief. On February 26, 2021, FCHR referred this matter to DOAH to assign an administrative law judge to conduct the final hearing.

On March 18, 2021, the undersigned entered an Order setting the final hearing for May 10, 2021. The final hearing was held on May 10, 2021, with all parties present. Petitioner testified on her own behalf. Petitioner’s Exhibits 1 and 2 were received into evidence. Respondents did not present any witnesses. Respondents’ Composite Exhibits 1 through 3 and Exhibit 4 were received into evidence. At the hearing, Petitioner made an ore tenus motion for continuance, which was opposed by Respondents. The undersigned denied the motion at the hearing.

The one-volume final hearing Transcript was filed at DOAH on June 2, 2021. The parties timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order. Unless otherwise indicated, citations to the Florida Statutes and Florida Administrative Code Rules are to the 2020 versions.

FINDINGS OF FACT

1. On October 29, 2020, Petitioner filed a fair housing discrimination complaint with FCHR, alleging that Respondents, Brennan Realty, Inc., Joseph P. Brennan, Kathleen Brennan, and Thomas Brennan, discriminated against her based on a handicap.

2. According to her housing discrimination complaint, Petitioner rents an apartment at 937 Southwest 5th Street, Apartment 4, Coral Gables, Florida, 33134, “which is subject to rules and regulations of Respondent[,] Brennan Realty, Inc., owned by Respondent[,] Thomas Brennan, and Respondent Registered Agent Joseph P. Brennan, and landlord Respondent[,] Kathleen Brennan.” Petitioner alleged that Respondent Brennan Realty, Inc., sent notices for her to vacate the premises after she made a maintenance request to property owners Kathleen and Joseph Brennan for repairs and a reasonable modification to install grab bars inside of her shower to assist her and prevent falls. Petitioner further alleged “she provided medical documentation to the Respondents which also stated that it is medically necessary for [her] to have the grab bars installed as well.” Petitioner further alleged Respondents Kathleen Brennan and Joseph Brennan “still [have] not installed the grab bars and [are] requesting for her to vacate the premises.” As such, “[Petitioner] believes that Respondents subjected her to discriminatory terms and conditions based on her physical disability.”

3. In May 2019, July 2019, and August 2019, Petitioner received notices informing her that her lease would expire on September 1, 2019; that the lease would not be renewed; and that she needed to vacate and surrender the premises by no later than September 1, 2019.

4. On September 9, 2019, an eviction complaint was filed against Petitioner in Miami-Dade County Court. On September 12, 2019, Petitioner was served with the eviction complaint.

5. The persuasive and credible evidence adduced at hearing demonstrates that the alleged discriminatory housing practice occurred, at the latest, on

September 12, 2019, when Petitioner was served with the eviction complaint. Accordingly, Petitioner had one year from September 12, 2019, in which to file her housing discrimination complaint with FCHR. However, Petitioner did not file her complaint with FCHR until October 29, 2020. Therefore, Petitioner's housing discrimination complaint was untimely.

6. Even if Petitioner's housing discrimination complaint was timely filed with FCHR, her Petition for Relief was not timely filed.

7. At hearing, Petitioner acknowledged she received FCHR's no cause determination on January 13, 2021. The no cause determination expressly provides that if Petitioner "does not agree with this determination, [she] may request an administrative hearing by filing a Petition for Relief with the FCHR within 30 days of the date of service of this Notice." However, Petitioner's Petition for Relief was not filed with FCHR until February 26, 2021. Therefore, Petitioner's Petition for Relief was untimely.

CONCLUSIONS OF LAW

8. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

9. The FFHA makes it 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." § 760.23(2), Fla. Stat.

10. The FFHA expressly requires that a complaint alleging a violation of the FFHA must be filed within one year after the alleged discriminatory housing practice occurred:

Any person who files a complaint under subsection (1) must do so within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory

housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her answer at any time. Both the complaint and the answer must be verified.

§ 760.34(2), Fla. Stat.

11. Petitioner has the burden to demonstrate, by a preponderance of the evidence, that she complied with the time requirements in section 760.34(2). § 760.34(5), Fla. Stat.; *Fla. Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981).

12. A "preponderance of the evidence" means the "greater weight" of the evidence, or evidence that "more likely than not" tends to prove the fact at issue. *Gross v. Lyons*, 763 So. 2d 276, 289 n.1 (Fla. 2000).

13. As detailed above, the evidence adduced at hearing demonstrates that Petitioner did not file her discriminatory housing complaint with FCHR until October 29, 2020, more than one year after the alleged discriminatory housing practice occurred. Therefore, her complaint is untimely.

14. Nevertheless, Petitioner argues she "filed" her housing discrimination complaint with U.S. Housing and Urban Development ("HUD") Intern Sarah Malkin on September 25, 2019, which, therefore, constitutes a timely filing of her housing discrimination complaint with FCHR. However, Petitioner failed to present persuasive and credible evidence that she, in fact, filed a discriminatory housing complaint with HUD. Moreover, no evidence was presented at hearing establishing that HUD notified Respondents of any such purported "complaint" or that HUD forwarded any such purported complaint to FCHR. Even if Petitioner had, in fact, filed a housing discrimination complaint with HUD on September 25, 2019, which the evidence does not establish, Petitioner cites no authority to support the proposition that such a

filing, standing alone, would constitute a timely filed discriminatory housing complaint with FCHR.

15. Even if Petitioner had timely filed her housing discrimination complaint with FCHR, she failed to timely file her Petition for Relief with FCHR. “A complainant may file a Petition for Relief from a Discriminatory Housing Practice within 30 days of service of Notice of Determination (No Cause) or Notice of Determination (Cause).” Fla. Admin. Code R. 60Y-8.001(1). As detailed above, Petitioner received FCHR’s no cause determination on January 13, 2021, but her Petition for Relief was not filed with FCHR until February 26, 2021.

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.

DONE AND ENTERED this 7th day of June, 2021, in Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
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 7th 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

Vanessa Marie Bertran, Esquire
Vanessa M. Bertran, P.A.
55 Alhambra Plaza, Suite 800
Coral Gables, Florida 33134

April Denise Dukes
937 Southwest 5th Street, Apartment 4
Miami, Florida 33130

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.