

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

CARLOS CORDOVA,

HUD Case No. 04-21-4411-8

Petitioner,

FCHR No. 202127487

v.

DOAH No. 21-1302

SOLABELLA CONDO. ASSOCIATION INC.,
ET AL.; MIGUEL QUINTERO; AND
RELIABLE PROPERTY MANAGEMENT
SERVICES, INC.,

FCHR Order No. 21-065

Respondents.

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

Preliminary Matters

On November 28, 2020, Petitioner filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2020), alleging that Respondents committed discriminatory housing practices against Petitioner due to his mother's disability.

The allegations set forth in the complaint were investigated, and, on March 10, 2021, the Interim Executive Director issued a determination finding that there was no reasonable cause to believe that a discriminatory housing practice had occurred.

On April 12, 2021, Petitioner filed a Petition for Relief from a Discriminatory Housing Practice, and, on April 14, 2021, the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

A final evidentiary hearing took place on June 17, 2021, before Administrative Law Judge Mary Li Creasy, via Zoom conference.

On July 16, 2021, Judge Creasy 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 to the Recommended Order" with the Commission on July 28, 2021. Petitioner's exceptions provide his explanation of the facts and essentially take issue with inferences drawn from the evidence presented by the Administrative Law Judge in the Recommended Order.

As indicated, above, no transcript of the proceeding before the Administrative Law Judge was filed with the Commission.

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.

Finally, the Administrative Procedure Act states that, “The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Section 120.57(1)(k), Florida Statutes (2018); see, also Taylor v. Universal Studios, FCHR Order No 14-007 (March 26, 2014), McNeil v. HealthPort Technologies, FCHR Order No. 12-026 (June 27, 2012), and Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

Petitioner’s document does not identify the legal basis for the exception or include appropriate and specific citations to the record, because no transcript was filed with the Commission.

As stated above, we adopt the Administrative Law Judge’s findings of fact.

Therefore, Petitioner’s exceptions are rejected.

Respondents filed “Respondents’ Exceptions to Recommended Order and Motion for Attorneys’ Fees” with the Commission on July 26, 2021. Respondents take exception to the Recommended Order because the Administrative Law Judge did not award Respondents damages or attorneys’ fees against the Petitioner, or retain jurisdiction to conduct a hearing to determine the amount of fees and costs to be awarded as requested by Respondents’ Proposed Recommended Order. Respondents also move for attorneys’ fees and costs against Petitioner, alleging that Petitioner filed his claim for an improper purpose.

In conclusions of law adopted by a Commission panel, it has been stated that a prevailing Respondent may be awarded attorney’s fees by the Commission, under the Florida Civil Rights Act of 1992, “if it is determined that an action was ‘frivolous, unreasonable, or without foundation,’ or ‘that the plaintiff continued to litigate after it clearly became so.’ Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421-422 (1978).” Tadlock v. Westinghouse Electric Corporation, d/b/a Bay County Energy Systems, Inc., 20 F.A.L.R. 776, at 777 (FCHR 1997), citing Wright v. City of Gainesville, 19 F.A.L.R. 1947, at 1959 (FCHR 1996). Accord, generally, Asher v. Barnett Banks, Inc., 18 F.A.L.R. 1907 (FCHR 1995).

In conclusions of law adopted by a Commission panel, this pronouncement is given explanation: “It is within the discretion of a district court to award attorney’s fees to a prevailing defendant in a Title VII action upon a finding that the action was ‘frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.’ Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421, 98 S.Ct. 694, 700, 54 L.Ed.2d 648 (1978). The standard has been described as a ‘stringent’ one. Hughes v. Rowe, 449 U.S. 5, 14, 101 S.Ct. 173, 178, 66 L.Ed.2d 163 (1980). Moreover, the Supreme Court has cautioned that in applying these criteria, the district court should resist the temptation to conclude that because a plaintiff did not ultimately prevail, the action must have been unreasonable or without foundation. Christianburg Garment, 434 U.S. at 421-22, 98 S.Ct. at 700-01. Therefore, in determining whether a prevailing defendant is entitled to attorney’s fees under Title VII, the district court must focus on the question of whether the case is seriously lacking in arguable merit. See Sullivan v. School Board of Pinellas County, 773 F.2d 1182, 1188 (11th Cir. 1985).” Doshi v. Systems and Electronics, Inc., f/k/a Electronics and Space Corp., 21 F.A.L.R. 188,

at 199 (FCHR 1998). Accord, *Quintero v. City of Coral Gables*, FCHR Order No. 07-030 (April 20, 2007), and *Haynes v. Putnam County School Board*, FCHR Order No. 04-162 (December 23, 2004).

We conclude, as is our discretion (see, Section 760.11(7), Florida Statutes (2016)), the record as it exists does not reflect entitlement to attorney's fees and costs under the standards set out above. Accord, generally, *Floyd-Trinowski v. Northeast Florida Health Services*, FCHR Order No. 13-018 (March 11, 2013), *Boland, et al. v. Division of Emergency Management*, FCHR Order No. 12-032 (June 27, 2012), *Carter v. City of Pompano*, FCHR Order No. 12-013 (March 27, 2012), *Perry v. Embry-Riddle Aeronautical University*, FCHR Order 08-020 (March 13, 2008), *Quintero, supra*, and *Waaser v. Streit's Motorsports*, FCHR Order No. 04-157 (November 30, 2004).

Additionally, Respondents' document does not include appropriate and specific citations to the record, because no transcript was filed with the Commission.

As previously stated, we adopt the Administrative Law Judge's findings of fact and conclusions of law.

Accordingly, Respondent's exceptions are rejected.

Dismissal

This Order disposes of all motions pending before the Commission.

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 30 day of Sept., 2021.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Darrick McGhee, Panel Chairperson;
Commissioner Jay Pichard; and
Commissioner Angela Primiano

Filed this 30 day of Sept., 2021, in Tallahassee, Florida.



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Mary Li Creasy, 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 30 day of Sept., 2021.

By: 
Clerk of the Commission
Florida Commission on Human Relations