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PAGE. 2

STATE OF FLORIDA
FLORIDA COMMISSION ON HUMAN RELATIONS
BEFORE THE DIVISION OF ADMINISTRATIVE HEARINGS

MARIA THORNHILL,

FCHR No. 99-W191H
HUD No. 04-99-3047-8
DOAH No. 00-3014 *PJM*

Claimant/Petitioner,

(Administrative Judge MALONO)

v.

ADMIRAL FARRAGUT
CONDOMINIUM ASSOCIATION, INC.,

Respondent.

**MOTION FOR RECONSIDERATION OF RESPONDENT'S
MOTION TO DISMISS**

Respondent ADMIRAL FARRAGUT CONDOMINIUM ASSOCIATION, INC. ("Association"), through undersigned counsel, moves for reconsideration of the Department of Administration's Order Denying Motion to Dismiss the petition for relief filed by Maria Thornhill, asserting the following in support of reconsideration, and dismissal.

I. Five of the six grounds raised by Respondent in its Motion to Dismiss were matters of law, not "disputed issues of fact." Issue A — failure of the FCHR to serve Respondent with the petition — itself was a violation of the most basic due process rights to notice. Issues C, D, E, and F are all matters of record with the FCHR; see Transmittal of Petition from FCHR to DOAH: "Copies of all pleadings and jurisdictional papers heretofore filed in this [FCHR No. 99-W191H] proceeding are attached to this Notice." Each of the issues is adequate to support an order of dismissal. As well,

Grounds A, C, D, E, and F were legal issues, related, *inter alia*, to due process (failure to serve Respondent), jurisdiction, and statutes of limitation.

Date: 9/11/00

Time: 8 PM

Page: 1

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PAGE 3

DOAH No. 00-3014

because none has been rebutted or contradicted, there remains no basis for the DOAH to deny the motion to dismiss.

2. Dismissal is also required *now* because, *after the instant petition was filed with DOAH, Thornhill has had a judicial determination of her "fair housing discrimination" claims against Respondent.* The court in *Admiral Farragut Condominium Assn., Inc. v. Thornhill*, Case No. 99-15567 (CA 22), Eleventh Judicial Circuit of Florida, on August 24, 2000, granted Respondent's Motion for Summary Judgment as to Thornhill's counterclaim, and dismissed it, with prejudice. The counterclaim asserted *only* a claim under the Florida Fair Housing Act, §760.35, Fla. Stat.; a copy of the court's order is attached hereto as Exhibit 1. Now, *in addition to the issues raised by the Respondent's initial motion to dismiss*, the doctrines of collateral estoppel and res judicata bar the instant petition.

3. As well, however, for the agency to proceed would violate *both* the Fair Housing Act itself (which controls the time limits for both an administrative action or a civil suit, *see* §760.34 (4), Fla. Stat.; *see* Issues C and E of Respondent's Motion to Dismiss) and applicable administrative precedent. *See Hernandez v. Transpo Electronics, Inc.*, 2000 WL 784090 (Fla. Div. of Admin. Hearings, June 6, 2000) (Recommended Order of Dismissal) (petition filed too late; petitioner had 35 days after the 180-day statutory investigatory period elapsed to file; waiting until FCHR completed its investigation did not toll filing time). Thornhill has repeatedly admitted that she failed to file her initial complaint claim timely (that is, within one year of the first act of discrimination; *see, e.g.*, ¶3, Petition: "steps had been there *for 4 years*" at time she purchased the unit she had previously leased). Thus, the instant petition was untimely *ab initio*; *see* Issue D of Respondent's Motion to Dismiss.

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Time: 8 PM

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PAGE 4

DOAH No. 00-3014

"An administrative agency cannot enlarge, modify, or contravene the provisions of a statute"; in the event of conflict between rule and statute, "the statute controls." *DeMario v. Franklin Mortgage & Investment Co., Inc.*, 648 So. 2d 210, 214 (Fla. 4th DCA 1995) (internal citations omitted).

4. The instant petition has been filed in bad faith, in order "to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of the litigation." §120.569(2)(e), Fla. Stat. (actions brought for an "improper purpose"). The FCHR previously found that there was no reasonable cause to believe that Thornhill was the victim of housing discrimination, on any basis. *See Friends of Nassau County, Inc. v. Nassau County*, 752 So. 2d 42 (Fla. 1st DCA 2000) (majority opinion; imposing sanctions on the party which had failed to make reasonable inquiry regarding pertinent facts and applicable law). The instant petition makes no secret of Thornhill's intention to use *the investigative logs of the FCHR investigation* as her chief support, although those logs rebut every one of her claims, and the investigation resulted in a ruling against her. *See, e.g.*, ¶ 3(1), (5); 4(1), (3); 5, Petition. Thornhill demonstrated that she has an "improper purpose" by failing to dismiss the petition herself, on receipt of the court's order in the Miami-Dade Circuit Court case, aware that dismissal of her counterclaim would operate as a judicial determination of the same issues she is seeking to litigate *for a third time* before the DOAH. Thornhill has had her "day in court," and she has access to appellate remedies, if she chooses to use them. As well, Thornhill's bad faith is shown by the fact that she made no attempt at rebuttal or contradiction of *any* of the legal arguments made in the motion to dismiss.

5. Further administrative proceedings are fundamentally unfair to Respondent, which is neither taxpayer-supported nor a business organization which has access to capital to fund litigation.

Date: 9/11/00

Time: 8 PM

Page: 1

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PAGE 5

DOAH No. 00-3014

To be forced to litigate this matter *a third time* is an unfair burden to impose on Respondent's 26 members. The DOAH, in "fulfill[ing] its legislative mandate to provide accessible and inexpensive due process for *everyone* at odds with a governmental entity,"² has a duty to Respondent, a small condominium association. As such, Respondent is a "citizen" which is as entitled as Thornhill is to both "accessible" and "inexpensive" due process. By refusing to grant the motion to dismiss, the DOAH has made a "finding" that, despite the *record before it*, which is un rebutted in any respect by Petitioner, Thornhill gets yet another bite at the apple.

6. Thornhill has lived in the same unit since 1989; any right she had to complain about alleged "housing discrimination" existed as fully for her as a tenant as it did when she later bought the unit. Respondent has accepted her statement, reiterated over and over again, that she installed the steps on October 7, 1997. Thus, her "fair housing" complaint filed on April 16, 1999, could not be timely, as a matter of law. Respondent is at a loss to understand how DOAH, which admittedly has "copies of all pleadings and jurisdictional papers heretofore filed in this [FCHR No. 99-W191H] proceeding" could nevertheless deny a motion to dismiss based on the seminal and undisputed point that Thornhill's initial complaint with FCHR, filed on April 16, 1999, was filed too late.

7. No case or rule has been found that supports continuation of this controversy in an administrative forum, even if the court had not dismissed Thornhill's counterclaim. In view of the judicial determination, however, Respondent submits that continued litigation would operate to deprive its members of their right to due process, equal protection, and the speedy and inexpensive

² Ella Jane P. Davis, *Thoughts on the "Emperor Complex," the "Scorched Earth Policy," and Lawyer Professionalism*, 73 Fla. Bar J. 30, 37 (February 1999) (emphasis added).

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PAGE. 6

DOAH No. 00-3014

resolution which is supposed to be at the heart of administrative proceedings.

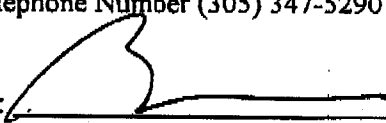
WHEREFORE, Respondent respectfully requests reconsideration of its Motion to Dismiss, oral argument on the motion, dismissal of Thornhill's Petition for Relief, and an award to the Respondent Association of its incurred attorneys' fees and costs.

CERTIFICATE OF SERVICE

WE CERTIFY that a copy of the foregoing was furnished by facsimile (850) 921-6847 and via U.S. Mail to Patricia H. Malono, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; via U.S. Mail to Clerk of the Commission, The Florida Commission on Human Relations, 325 John Knox Road, Suite 240, Building F, Tallahassee, Florida 32303-4149 and to Maria Thornhill, 6815 Edgewater Drive, Unit 105, Coral Gables, Florida 33133, this 11 day of September, 2000.

PATRICK C. BARTHET, P.A.
Attorneys for Respondent Association
200 South Biscayne Boulevard, Suite 1800
Miami, Florida 33131
Telephone Number (305) 347-5290

By:



PATRICK C. BARTHET
Florida Bar No. 294012
GARY E. DAVIDSON
Florida Bar No. 069094

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PAGE. 7

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ADMIRAL FARRAGUT CONDOMINIUM
ASSOCIATION, INC., a Florida not for
profit corporation,

GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO. 99-15567 CA 22

v.

MARIA THORNHILL,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AS TO DEFENDANT'S COUNTERCLAIM AND ORDER OF DISMISSAL OF
COUNTERCLAIM WITH PREJUDICE**

THIS CAUSE came before the Court on August 21, 2000 upon Plaintiff's Motion for Summary Judgment as to Defendant MARIA THORNHILL's Counterclaim, and the Court having reviewed the pleadings, heard argument from Plaintiff's counsel and the Defendant, *pro se*, this Court orders as follows:

Plaintiff's Motion is hereby GRANTED. Defendant's Counterclaim is therefore Dismissed With Prejudice.

DONE and ORDERED in Chambers at Miami, Miami-Dade County, Florida, this _____ day of August, 2000.

Gerald D. Hubbard, Circuit Court Judge

cc: Gary Davidson
Maria Thornhill, *pro se*

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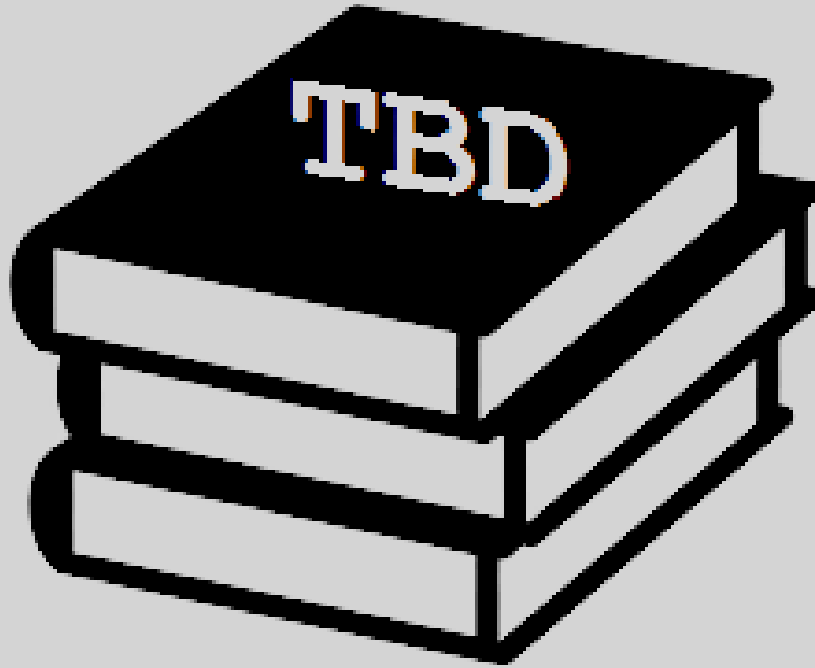
Gerald D. Hubbard
Circuit Court Judge

EXHIBIT 1

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