

6-28-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

02 OCT 11 PM 2:13
RECEIVED

VICTOR BARRETT,

AT

HUD Case no. 04-01-0249-8

Petitioner,

FCHR Case no. 21-90249H

v.

DOAH Case no. 02-1708

FHP BREVARD HOUSING & COMMUNITY
DEVELOPMENT AGENCY, n/k/a BREVARD
COUNTY BOARD OF COUNTY COMMISSIONERS
DEPARTMENT OF HOUSING AND HUMAN SERVICES

FCHR Order no. 02-056

Dmk-clw

Respondent.

**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 June 28, 2002, issued in the above-styled matter by Administrative Law Judge Daniel M. Kilbride.

Findings of Fact and Conclusions of Law

Judge Kilbride's order states that Petitioner failed to appear at a formal hearing that he requested under Section 120.57(1), Florida Statutes. Diligent search and inquiry was made to discover the current whereabouts of Petitioner; however, he could not be located. Respondent moved to dismiss on the grounds that Petitioner, who has the burden of proof and the burden of going forward with the evidence, had voluntarily abandoned his request for any relief at issue in the proceeding by not appearing at the hearing and had, thereby, withdrawn his request.

With regard to the steps necessary for establishing that an unlawful act of housing discrimination has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination." See conclusions of law adopted by a Commission panel in Spratlin vs. Washington Mutual Bank, d/b/a Great Western. 23 F.A.L.R. 3359, at 3364, 3365 (FCHR 201), citations from the quoted statement omitted.

We adopt the Administrative Law Judge's finding as to the fact that the Petitioner did not wish to pursue the complaint and further conclude the Petitioner has failed to carry his burden of proof.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's recommended order.

Dismissal

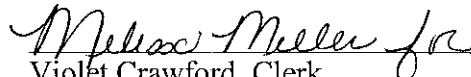
The Request for Relief and Housing Discrimination Complaint are DISMISSED with prejudice.

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 9th day of October, 2002.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Rita Craig, Panel Chairperson
Commissioner Roosevelt Paige
Commissioner Billy Whitefox Stall

Filed this 9th day of October, 2002
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
(850) 488-7082

Copies furnished to:

Victor Barrett
1959 Thomasville Avenue, SE
Palm Bay, FL 32909

Terri Jones, Esquire
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Viera, FL 32940

Daniel M. Kilbride, Administrative Law Judge

Jim Tait, Counsel to the Commission Panel