

1-30-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

03 JUL 28 AM 9:22

JANICE AYERS PETTY,

AT

DIVISION OF ADMINISTRATIVE HEARINGS
HUD Case No. 04-02-0604-8/4

Petitioner,

FCHR Case No. 22-90304H

v.

DOAH Case No. 02-4051

TERRY HAMMER, d/b/a PARK DRIVE
APARTMENTS,

FCHR Order No. 03-056

Respondent.

JBC-CWS

03 JUL 23 PM 2:12

FLORIDA COMMISSION ON HUMAN RELATIONS

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

Preliminary Matters

Petitioner Janice Ayers Petty filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (2001), alleging that Respondent Terry Hammer, d/b/a Park Drive Apartments committed a discriminatory housing practice on the basis of Petitioner's disability by failing to provide Petitioner a handicapped parking space.

The allegations set forth in the complaint were investigated, and, on September 13, 2002, the Commission issued its determination finding that there was no reasonable cause to believe that a discriminatory housing practice occurred.

Petitioner filed a Petition for Relief from a Discriminatory Housing Practice and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Viera, Florida, on December 18, 2002, before Administrative Law Judge Jeff B. Clark.

Judge Clark issued a Recommended Order of dismissal, dated January 30, 2003.

Pursuant to notice, public deliberations were held on July 9, 2003, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Petition for Relief.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

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 Administrative Law Judge's Recommended Order in the form of a letter to Commission Chief Legal Counsel, Cecil Howard, and accompanying exhibits.

A review of this document leads to the conclusion that Petitioner excepts to the Administrative Law Judge's conclusion that a reasonable accommodation was provided Petitioner by Respondent.

Admittedly, the testimony in the record appears to present a conflict on this issue.

Nevertheless, 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).

We reject Petitioner's exceptions.

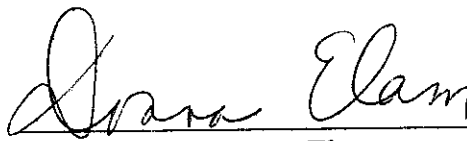
Dismissal

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 10 day of July, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS
JUL 23 PM 2:12



Commissioner Donna Elam,
Panel Chairperson;
Commissioner Mario M. Valle; and
Commissioner P. C. Wu

Filed this 24th day of July, 2003,
in Tallahassee, Florida.



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

Copies furnished to:

Janice Ayers Petty
1337 South Patrick Drive
Satellite Beach, FL 32937

Terry Hammer, d/b/a Park Drive Apartments
c/o Wayne L. Allen, Esq.
700 North Wickham Road, Suite 107
Melbourne, FL 32935-8865

Jeff B. Clark, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

03 JUL 23 PM 2:12

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed
addressees this 24th day of July, 2003.

By: 
Clerk of the Commission
Florida Commission on Human Relations