

12-1-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

FLORIDA COMMISSION ON HUMAN
RELATIONS ON BEHALF OF SHEILA
SWASEY,

Petitioner,

DOAH Case No. 03-2845
FCHR Case No. 23-91018H
FCHR Order No. 04-084

vs.

CELINA HILLS PROPERTY OWNER'S
ASSOCIATION, INC.,

Respondents.

DWD - C WS

FINAL ORDER AWARDING RELIEF FOR DISCRIMINATORY HOUSING PRACTICE

Preliminary Matters

Sheila and Fred Swasey (hereinafter referred to as the "Swaseys"), filed a Housing Discrimination Complaint on February 20, 2003, with Petitioner, the Florida Commission on Human Relations (hereinafter referred to as the "FCHR") pursuant to the Fair Housing Act, Sections 760.22 - 760.37, Florida Statutes (2002), alleging that Respondents, Celina Hills Property Owner's Association, Inc. (hereinafter referred to as "Respondent"), committed a discriminatory housing practice on the basis of their son's disability.

Following its investigation of the matter, on or about June 19, 2003, the FCHR issued a Notice of Determination: Cause and Administrative Charge, charging Respondent with engaging in discriminatory housing practices in violation of the Fair Housing Act.

The Swaseys elected to have the FCHR resolve the charge in an administrative proceeding pursuant to Section 760.35(3)(a)(1), Florida Statutes (2002), and the matter was transferred to the Division of Administrative Hearings to conduct a formal proceeding.

On October 16, 2003, The Honorable Don W. Davis, Administrative Law Judge, presided over an evidentiary hearing. Judge Davis issued a Recommended Order finding that a discriminatory housing practice had occurred.

Petitioner filed Petitioner's Exceptions to Recommended Order on December 16, 2003, disputing that recovery of damages for "frustration of agency mission" required a showing that Respondent acted egregiously. On March 12, 2004, Respondent filed Celina Hill's Motion to Strike Petitioner's Exceptions.

Pursuant to notice, public deliberations concerning Petitioner's Exceptions to the Recommended Order and Adoption of the Administrative Law Judge's Order were held on Tuesday, June 22, 2004, by means of Communications Media Technology (namely, telephone) before a 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.

The panel of Commissioners entered an Order Finding Discriminatory Housing Practice and Remanding Case to Administrative Law Judge for Determination of reasonable attorney's fees and costs.

Findings of Fact

We find the Administrative Law Judge's findings of fact outlined in his Recommended Order dated December 1, 2003, to be supported by competent evidence. We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We approve the Administrative Law Judge's conclusion that Celina Hills committed a discriminatory housing practice against the Swaseys in violation of Section 760.23 (7) and (9), Florida Statutes (2002). The Swaseys were not permitted to install a fence in their front yard to provide a safe and secure environment for Brad Swasey to use and enjoy his dwelling. We find the Administrative Law Judge's application of the law to the facts to result in the correct disposition of this matter and we adopt the Administrative Law Judge's conclusion of law as it relates to this matter.

Exceptions

Petitioner filed one Exception to the Recommended Order. Petitioner's Exceptions to the Recommended Order was filed on December 16, 2004. Respondent filed its Motion to Strike the Petitioner's Exceptions on March 12, 2004. On March 17, 2004, Petitioner filed Petitioner's Response to Celina Hill's Motion to Strike the Petitioner's Exceptions.

The hearing on Petitioner's Exceptions was conducted on June 22, 2004. We reject Petitioner's Exception to the Administrative Law Judge's Order. Petitioner is not entitled to receive damages for "frustration of agency mission." This was the only Exception filed by Petitioner. Further Attorney William J. Tait, Jr., advised that Petitioner, waived its claim that Respondent's Response to Petitioner's Exceptions were untimely.

Conclusion

For the reasons set forth in this Final Order, we conclude that the Administrative Law Judge's Order should be adopted in part, rejected in part, and remanded in part. The Administrative Law Judge's finding that a discriminatory housing practice occurred should be adopted. Petitioner's Exception to the Administrative Law Judge's Order should be rejected because Petitioner is not entitled to damages for "frustration of agency mission." Petitioner is entitled to reasonable attorney's fees and cost. This issue should be remanded to the Administrative Law Judge for the determination of the amount Petitioner should be awarded for attorney's fees and costs.

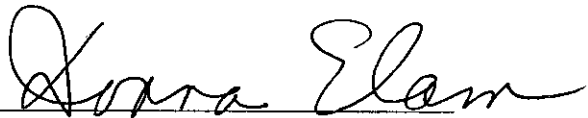
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within thirty (30) days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in

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Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

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DONE AND ORDERED this 12th day of July, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:


Commissioner Donna Elam, Panel Chairperson

Filed this 12th day of July, 2004,
in Tallahassee, Florida.


Violet Crawford, Clerk
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Judge Don W. Davis, Administrative Law Judge, DOAH