

**STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS**

<b>NIDIA CRUZ,</b>	)	HUD Case No. 04-03-1339-8
<b>Petitioner,</b>	)	FCHR Case No. 24-90150H
	)	DOAH Case No. 04-002304
<b>vs.</b>	)	FCHR Order No. <u>05-002</u>
	)	
<b>TABITHA B. LEGG,</b>	)	
<b>Respondent</b>	)	

**ORDER REMANDING PETITION FOR RELIEF FROM A DISCRIMINATORY  
HOUSING PRACTICE**

This matter is before the Commission for consideration of the Recommended Order of Dismissal, dated November 12, 2004, issued in the above-styled matter by Administrative Law Judge Fred L. Buckine.

Findings of Facts and Conclusions of Law

Judge Buckine’s order reflects that Petitioner failed to appear at the scheduled administrative hearing in the matter. Consequently, Judge Buckine recommended the Commission issue a final order dismissing the matter based on Petitioner’s failure to appear and failure to “carry the initial burden of making a prima facie case of discriminatory acts and/or interference with her exercise or enjoyment of fair housing rights as alleged in her Petition for Relief...”

The Commission typically adopts the recommendation of the Administrative Law Judge that the Petition for Relief and Complaint of Discrimination be dismissed when the Petitioner has failed to appear at the scheduled final hearing of the case. See, e.g., *Elam v. Flagler County*, FCHR Order No. 04-062 (June 25, 2004), *Collins v. Tallahassee Housing Authority*, FCHR Order No. 03-080 (December 26, 2003), *Peterson v. Pep Boys*, FCHR Order No. 03-047 (August 11, 2003), and *Knotts v. Department of Corrections*, FCHR Order No. 03-052 (August 11, 2003).

However, a review of the record in this case raises some questions with regard to the adequacy of the notice of hearing to the Petitioner.

The Uniform Rules governing administrative proceedings state, “The presiding officer shall set the time and place for all hearings and shall serve written notice on all parties at their address of record. No less than 14 days notice shall be given for the hearing on the merits of the petition unless otherwise agreed by the parties or unless otherwise provided by law.” Fla. Admin. Code R. 28-106.208.

The Administrative Procedure Act states that, in reviewing Recommended Orders of Administrative Law Judges, “[t]he 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 upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.” Section 120.57(1)(l), Florida Statutes (2003).

Applying this to the instant case, we note that the notice of hearing for the scheduled October 26, 2004, administrative hearing in the matter was sent to Petitioner at both, 45 Emanuel Road, Lot 3, Brunswick Georgia, 31525, and 145 Emanuel Road, Lot 3, Brunswick, Georgia, 31525. Petitioner's Petition for Relief indicates a different address for Petitioner, namely 145 Emanuel Farm Road, Lot 3, Brunswick, Georgia, 31525. The Commission's file also contains a Notice of Ex-Parte Communication in which the content of the ex-parte communication, received by the Administrative Law Judge from Petitioner, suggests that Petitioner had not received a notice of hearing originally scheduling the administrative hearing for this matter on September 7, 2004, and this notice indicates that it had been sent to Petitioner at 45 Emanuel Road, Lot 3, Brunswick, Georgia, 31525. The ex-parte communication also reflects that Petitioner's address is 145 Emanuel Farm Road, Lot 3, Brunswick, GA, 31525.

In our view, the record as it currently exists, as described above, raises a question as to whether Petitioner received notice of the hearing at which she failed to appear. It appears that the proceeding, on which the finding that Petitioner did not appear is based, may not have complied with the essential requirements of law, since the notice of hearing for the October 26, 2004, administrative hearing does not appear to have been sent to Petitioner at her address of record.

#### Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order of Dismissal.

#### Remand

The Petition for Relief and Housing Discrimination Complaint are REMANDED to the Administrative Law Judge for further findings on whether Petitioner received notice of the October 26, 2004, administrative hearing that complied with the legal requirements for being provided notice, and if Petitioner did not, for further proceedings on the Petition for Relief.

DONE AND ORDERED this 31st day of January, 2005  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Dominique B. Saliba; and  
Commissioner Gayle Cannon; and  
Commissioner Roosevelt Paige;

Filed this 31st day of January, 2005,  
in Tallahassee, Florida

/s/

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Violet Crawford, Clerk  
Commission on Human Relations  
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Copies furnished to:

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Fred L. Buckine, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

By: /s/  
Violet Crawford,  
Clerk of the Commission  
Florida Commission on Human Relations