

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KRISTEN NEWMAN,
Charging Party,

-v-

ALL REAL ESTATE SERVICES IN
MONTANA, LLC and JACLYN KATZ,
Respondent.

HRB CASE NO.0160051 & 0160052

FINAL AGENCY DECISION

Charging Party, Kristen Newman, filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination in housing on the basis of retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence supported Newman's allegations. The case went before the Office of Administrative Hearings of the Department of Labor and Industry, which held a contested case hearing, pursuant to § 49-2-505, MCA. The hearings officer issued a Decision on December 27, 2016. The hearings officer determined that Newman's complaint was untimely filed, since it was filed more than 180 days after the counterclaim giving rise to the complaint was filed and because there is no applicable provision to have tolled the running of the limitations period.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on March 23, 2017. Timothy C. Kelly, attorney, appeared and presented oral argument on behalf of Newman. David Gallik, attorney, appeared and presented oral argument on behalf of All Real Estate Services in Montana, LLC and Jaclyn Katz.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete 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. *Admin. Rules of Mont. 24.9.123(4)*. A factual finding is clearly erroneous if it is not supported by substantial evidence in the record, if the fact-finder misapprehended the effect of the evidence, or if a review of the record leaves the Commission with a definite and firm conviction that a mistake has been made. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3rd 284, ¶ 39. The Commission reviews conclusions of law to determine whether the hearing officer's interpretation and application of the law is correct. *See, Denke*, 39.

DISCUSSION

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the hearing officer's conclusion of law, that the charge was untimely filed, was correct for the reasons set forth in his Order Dismissing Complaint.

ORDER

IT IS HEREBY ORDERED, that order of the Hearing Officer is **AFFIRMED**.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA*. This review must be requested within 30 days of the date of this order. A party must promptly serve copies of a petition for judicial review upon the Human Rights Commission and all parties of record. *Section 2-4-702(2), MCA*.

DATED this 30th day of March, 2017.



Dennis M. Taylor, Chair
Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 30th day of March, 2017.

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