

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LYNDA DIANNE McCLOUD,)
)
 Petitioner,)
)
 vs.) Case No. 98-1925
)
 BARBARA S. JONES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Upon due notice, William R. Cave, an Administrative Law Judge for the Division of Administrative Hearings, held a formal hearing in this matter on July 13, 1998, in Dade City, Florida.

APPEARANCES

For Petitioner: Lynda Dianne McCloud, pro se
Post Office Box 2050
Zephyrhills, Florida 33539-2050

For Respondent: William A. Kebler, Esquire
Fowler, White, Gillen, Boggs,
Villareal and Banker, P.A.
Post Office Box 210
St. Petersburg, Florida 33731

Laura Jones, Esquire
Hill, Ward and Henderson, P.A.
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Tampa, Florida 33601

STATEMENT OF THE ISSUE

Did Respondent Barbara S. Jones deny Petitioner Lynda Dianne McCloud housing because of her race (black) in violation of the Fair Housing Act, Sections 760.20 through 760.37, Florida Statutes?

PRELIMINARY MATTERS

On February 14, 1997, Petitioner filed a Housing Discrimination Complaint against Respondent alleging that Respondent had refused to rent Petitioner an apartment because of her race (black) and her sex (female). Petitioner further alleged that Respondent had falsely denied that housing was available. On March 31, 1998, the Florida Commission on Human Relations (Commission) entered its Determination Of No Reasonable Cause, as to Petitioner's previously filed Housing Discrimination Complaint against Respondent. Thereafter, Petitioner filed an unsigned Petition For Relief (Petition) with the Commission. The record indicates that the Petition was filed with the Commission on April 16, 1998. The Petition alleges that Petitioner was denied housing by Respondent because of her race (black). By a Transmittal of Petition date April 22, 1998, the Petition was referred to the Division of Administrative Hearings (Division) for the assignment of an Administrative Law Judge and for the conduct of a hearing.

At the hearing, Petitioner testified in her own behalf and presented the testimony of Mary Reese and Barbara Jones. Petitioner's Composite Exhibit 1 and Exhibit 2 were received as evidence. Respondent presented the testimony of Candice Whitworth, Deanna Stamper, Lewis Tanno and Lynda McCloud. Respondent's Exhibits 1 - 4, Composite Exhibits 5 - 6, and Exhibits 7 - 14 were received as evidence.

A transcript of this proceeding was filed with the Division on July 27, 1998. Respondent timely filed her proposed findings of fact and conclusions of law. Petitioner elected not to file any proposed findings of fact and conclusions of law.

FINDINGS OF FACT

Upon consideration of the oral and documentary evidence adduced at the hearing, the following relevant findings of fact are made:

1. Petitioner is an African-American (black) female who alleges that Respondent denied her housing because of race (black) in violation of the Fair Housing Act, Sections 760.20 through 760.37, Florida Statutes.
2. Respondent is the owner of nine rental duplexes located on Scottsdale Court, in Zephyrhills, Florida, which Respondent built in 1982. Since owning and managing these units, Respondent has never previously been accused of violating the Fair Housing Act.
3. Respondent derives her primary income from the rental of the units located on Scottsdale Court.
4. When vacancies occur in the apartments on Scottsdale Court, Respondent regularly advertises the availability in the Pasco Shopper.
5. In February 1997, Petitioner, in response to an advertisement in the Pasco Shopper, first contacted Respondent about an apartment. Respondent advised Petitioner that there

were no apartments currently available but that one would probably become available later.

6. On or about February 26, 1997, Respondent advertised the availability of a two-bedroom, one-bath apartment located at 38547 Scottsdale Court.

7. On Saturday, March 1, 1997, Petitioner contacted Respondent by leaving a telephone message in response to the advertisement in the Pasco Shopper for the apartment located at 38547 Scottsdale Court.

8. On Saturday, March 1, 1997, Respondent returned the telephone call to Petitioner, discussed the apartment located at 38547 Scottsdale Court, and set an appointment for 2:00 p.m. the next day to personally show the unit to Petitioner.

9. On Sunday, March 2, 1997, when Respondent returned home from church, she received a telephone message from Petitioner advising Respondent that Petitioner would not be able to make the meeting scheduled for 2:00 p.m. that day and asking that Respondent call Petitioner.

10. On Sunday, March 2, 1997, at approximately 1:30 p.m., Respondent returned the call to Petitioner and rescheduled the appointment for 7:00 p.m. that evening.

11. On Sunday, March 2, 1997, Respondent traveled from her home in Dade City, Florida, to the apartment in Zephyrhills, Florida, to attend the meeting to show Petitioner the apartment

at 38547 Scottsdale Court. Petitioner failed to attend that meeting.

12. At approximately 8:00 a.m. the next morning, Monday, March 3, 1997, Respondent received a telephone call from Petitioner advising that Petitioner had missed the appointment because she had to take someone to the emergency room at East Pasco Medical Center for treatment. Petitioner expressed her continued interest in the apartment and an appointment to see the unit was rescheduled for 10:15 a.m. that morning.

13. On Monday, March 3, 1997, Respondent showed the apartment located at 38547 Scottsdale Court to Petitioner.

14. After showing Petitioner the apartment, Respondent verbally explained the details regarding the rental rate and deposits, and confirmed those details in writing on a document provided to Petitioner. Petitioner offered no objection to the manner in which Respondent required payment of rent and security deposits.

15. The manner in which Respondent described the payment of rent and security deposits for the apartment located at 38547 Scottsdale Court to Petitioner is the same manner in which Respondent requires the payment of rent and security deposits on other units. It is also the same manner in which Respondent required payment for the apartment located at 38547 Scottsdale Court when rented to the current tenant, Deanna Stamper.

16. On the morning of March 3, 1997, Respondent also provided Petitioner with a tenant application. This tenant application was the same form used by Respondent for all of the units at Scottsdale Court.

17. Petitioner did not complete the tenant application or provide any deposit to Respondent on March 3, 1997, while meeting with Respondent. Respondent advised Petitioner that she did not hold apartments for any prospective tenant until he or she had completed an application and returned it to Respondent with a deposit. Despite these instructions, Petitioner advised Respondent that Petitioner would take the application with her, complete it at home, and return the application by mail with a deposit.

18. When Respondent returned to her home after showing the apartment to Petitioner, she received a telephone message from another prospective tenant, Deanna Stamper, requesting an opportunity to see the apartment.

19. Respondent returned to the apartment at approximately 12:15 p.m. on Monday, March 3, 1997, and showed the apartment to Deanna Stamper. Respondent provided Deanna Stamper with a tenant application which Deanna Stamper completed while at the apartment, and provided Respondent with a deposit.

20. Respondent returned to her home after showing the apartment to Deanna Stamper, verified the information provided on her application, and approved Deanna Stamper as the tenant for

apartment located at 38547 Scottsdale Court. At the time Respondent approved Deanna Stamper as the tenant for the apartment, Respondent had received neither a completed application nor a deposit from Petitioner.

21. After approving Deanna Stamper as the tenant for the apartment located at 38547 Scottsdale Court, Respondent telephoned Petitioner at approximately 3:00 p.m. on Monday, March 3, 1997, to advise Petitioner that the unit at 38547 Scottsdale Court was no longer available but that another unit two doors away, at 38553 Scottsdale Court, would become available in the near future but Respondent was not sure of the date that it would be available.

22. When Respondent advised Petitioner that the apartment was no longer available, Petitioner hung up the telephone. Later that afternoon, Petitioner called Respondent back by telephone, and was verbally abusive toward Respondent, and claimed that Respondent had discriminated against her because she was black.

23. In the rental application process, Respondent uses the same application form for all tenants and all apartments.

24. Respondent provided the same information regarding payment of rent and deposits to Petitioner that she provides to all other prospective tenants.

25. Respondent uses the same method of processing and approving all applications for prospective tenants.

26. Prior to showing the apartment to Petitioner, Respondent had approved other African-American tenants. Currently, Respondent has African-American tenants.

27. Based on Petitioner's past history and her record, it is clear that Petitioner would not have qualified to rent the apartment at 38547 Scottsdale Court even if she had filed the application with Respondent.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.57(1), Florida Statutes.

29. Section 760.23(1), Florida Statutes, provides as follows:

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.

30. Section 760.34(5), Florida Statutes, provides as follows:

(5) In any proceeding brought pursuant to this section or s. 760.35, the burden of proof is on the complainant.

31. As the complainant, Petitioner has the burden of establishing facts to prove a prima facie case by a preponderance of the evidence. U.S. Department of Housing and Urban Development v. Blackwell, 908 F. 2d 864 (11th Cir. 1990). For Petitioner to prove her prima facie case, she must establish that: (a) she is a member of a racial minority; (b) she applied for and was qualified to rent the apartment owned by Respondent; (c) Respondent rejected Petitioner; and (d) the apartment remained available thereafter. McDonnell Douglas Corp. V. Green, 411 U.S. 792 (1973); Hill v. Seaboard Coast Line R.R., 885 F. 2d. 804 (11th Cir. 1989); Selden Apartments v. U.S. Dept of Housing and Urban Development, 785 F. 2d 152 (6th Cir. 1986). While Petitioner has proven that she is a member of a racial minority, she has failed to prove the other necessary elements to establish a prima facie case. Therefore, Petitioner has failed to

establish a prima facie case. Since Petitioner has failed to establish a prima facie case, the burden does not shift to Respondent to articulate a legitimate, nondiscriminatory reasons or her actions. Texas Dept. Of Community Affairs v. Burdine, 450 U.S. 248 (1981).

32. Respondent argues that she is entitled to attorney's fees because she was the prevailing party. Without question, Respondent was the prevailing party in this proceeding. However, in order to award attorney's fees, there must be some authority for the award of attorney's fees. In the instant case, Section 57.111, Florida Statutes, does not apply because a state agency did not initiate this proceeding. Likewise, Section 760.35(3)(b), Florida Statutes, does not apply because there was no finding that a discriminatory housing practice had occurred. While the provisions of Section 120.595, Florida Statutes, are supplemental to, and do not abrogate, other provisions allowing the award of attorney's fees in administrative proceedings, there has been no showing that Petitioner participated in this proceeding for an improper purpose.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Commission enter a final order dismissing Petitioner's Petition For Relief and denying Respondent's request for attorney's fees.

DONE AND ENTERED this 26th day of August, 1998, in
Tallahassee, Leon County, Florida.

WILLIAM R. CAVE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of August, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.