

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHARLES TIEN,)
)
 Petitioner,)
)
 vs.) Case No. 02-0551
)
 AL SOTO and THE CONTINENTAL)
 GROUP,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Miami, Florida, on April 16, 2002.

APPEARANCES

For Petitioner: Steven E. Petrou
12611 Jones Road, Suite 101
Houston, Texas 77070

For Respondents: Lisa K. Berg, Esquire
Stearns Weaver
150 West Flagler Street, Suite 2200
Miami, Florida 33130

STATEMENT OF THE ISSUE

The issue is whether Respondents committed an unlawful act of housing discrimination against Petitioner based on his national origin, in violation of Section 760.23(2), Florida Statutes.

PRELIMINARY STATEMENT

On January 25, 2002, the Florida Commission on Human Relations issued a Determination of No Reasonable Cause.

By Petition for Relief filed February 7, 2002, Petitioner alleged that Respondent The Continental Group, which is the management company for Petitioner's condominium building, and Respondent Al Soto, the Executive Vice President of The Continental Group, committed various acts of housing discrimination against Petitioner based on his Chinese national origin. On April 15, 2002, Petitioner filed an Amended Petition for Relief.

At the hearing, Petitioner called four witnesses and offered into evidence 34 exhibits: Petitioner Exhibits 2-6, 10, 13, 15, 21-32, 34-35, 40-41, 44, 46, 57, 59-60, 62-65, and 68. Respondent called five witnesses and offered into evidence three exhibits: Respondent Exhibits 1-3. All exhibits were admitted except Petitioner Exhibit 10 was not admitted for the truth of its contents.

The court reporter filed the transcript on May 15, 2002. The parties filed their proposed recommended orders by May 30, 2002.

FINDINGS OF FACT

1. Petitioner was born in Shanghai, China, in 1948, and is of Chinese national origin. He moved to the United States at 12

years of age. He speaks Chinese and English, as well as other languages. He has substantial financial expertise.

2. Petitioner has resided at the Brickell Townhouse for eight years. He owns the fee simple to Unit 6P. Respondent The Continental Group (Continental Group) is a property management company that provides services to a large number of condominium, homeowner, and co-op associations, especially in Dade and Broward counties. Respondent Al Soto is an executive vice president of Continental Group and has served in this capacity for five years.

3. Brickell Townhouse comprises 360 condominium units. Continental Group has been the property manager for Brickell Townhouse for 10 years. Continental Group provides management, administrative, and maintenance services to Brickell Townhouse through several employees assigned to the condominium. Mr. Soto oversees 44 properties managed by Continental Group. Continental Group has assigned Carlos Rodriguez to serve as the property manager of Brickell Townhouse. Mr. Rodriguez is one of 40 managers whom Mr. Soto supervises.

4. For several years, Petitioner has been critical of the management provided by the Board of Directors of the condominium association and Continental Group. The directors are elected by the condominium owners to operate the condominium association.

Petitioner has run for election as a director several times, but has never been elected.

5. The condominium owners and condominium association have been subject to unusual stress for several years, as they have been undertaking substantial repairs and pursuing insurance claims arising from considerable damage that Brickell Townhouse sustained from Hurricane Andrew. Petitioner often makes important points in questioning or confronting directors or employees of Continental Group, but these encounters often deteriorate to heated exchanges between Petitioner, on the one hand, and individual directors or an employee, on the other hand.

6. At one meeting, Petitioner made an ethnically derogatory remark to a Jewish attorney, who was serving as a director at the time. Petitioner often resorted to profanity during the meetings when he received unsatisfactory answers to the questions that he had asked. Petitioner often uttered "fuck" and "shit" and once referred to the wives of some of the directors as "bitches." Some of the female unitowners became concerned about their security at the meetings, so the Board of Directors had to provide security at the meetings.

7. In a heated exchange during a meeting of the Board of Directors on January 4, 2001, Petitioner approached a director and loudly called him an "asshole." Pushing Mr. Rodriguez, who

was trying to keep the approaching Petitioner from reaching the director, the director shouted, "get away from me, you fucking Chink."

8. The Board of Directors employs Continental Group, which employs Mr. Soto. Neither Continental Group nor Mr. Soto is responsible for the statements of any member of the Board of Directors, and the record does not suggest that Continental Group or Mr. Soto in any way condoned or endorsed the ethnic epithet directed against Petitioner.

9. Since the January 4 incident, the director and Petitioner have mended their relationship. At the time of the hearing, they were the parties to a pending contract for the purchase and sale of a unit at Brickell Townhouse.

10. On May 7, 2001, Petitioner attended a two-and-one-half-hour meeting of the Board of Directors. Mr. Soto was also in attendance. Over 50 other residents were present at the meeting, during which Petitioner asked a half dozen questions.

11. Unhappy with the responses that he had received from Mr. Soto, Petitioner approached him as soon as the meeting concluded and tried to ask more questions. Mr. Soto informed Petitioner that he had had his chance to ask questions and now the meeting was over. Petitioner replied, "you're an asshole." Mr. Soto walked away from Petitioner, who followed him and pushed Mr. Soto into a wall. A couple of other employees of

Continental Group separated Petitioner from Mr. Soto, who was then able to leave the room.

12. By letter dated May 21, 2001, attorneys for Continental Group warned Petitioner that he had acted in an "aggressive, threatening and abusive" way toward Mr. Soto, and Petitioner's actions constituted civil assault and battery. The letters ordered Petitioner to cease and desist from this behavior, or else Continental Group would pursue all available civil and criminal remedies. Petitioner has construed these warnings as coercive and threatening misconduct.

13. In July 2001, another incident took place when Petitioner or his longterm companion, who also resides at Brickell Townhouse, received an invoice for an elevator fee in connection with the occupancy of a first-floor unit by a new tenant of theirs. In the past, the condominium association had not assessed this fee because the occupancy of a first-floor unit did not require the use of an elevator.

14. Immediately upon receiving the invoice, Petitioner telephoned the management office and spoke with one of Continental Group's employees, who told him that the Board of Directors had changed the rules to require that all unitowners pay this fee. Petitioner immediately visited the management office where he found two young female employees of Continental Group. Referring to these employees as "airheads," Petitioner

demanded to speak to Mr. Rodriguez. When Mr. Rodriguez appeared, Petitioner shouted to him that he was a "criminal gangster."

15. The record describes other intense confrontations and angry exchanges between Petitioner, on the one hand, and various directors, Continental Group, and employees of Continental Group, on the other hand--more insults, more animosity, and more perceptions of unfairness, but no evidence whatsoever suggests the presence of discrimination against Petitioner based on his Chinese origin.

16. The sole mention of Petitioner's Chinese origin is from a director, not one of the Respondents, and even Petitioner does not suggest that the person uttering this epithet has committed a discriminatory act against Petitioner. The sole act clearly linked to the conditions of occupancy of a unit--the changed fee schedule--involves only the Board of Directors and not the Respondents. The record affords no basis for an inference of ethnic discrimination in housing.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the subject matter. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes.)

18. Section 760.23(2) provides:

It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, national origin, sex, handicap, familial status, or religion.

19. Petitioner has failed to prove any housing discrimination whatsoever in this case.

RECOMMENDATION

It is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 2nd day of July, 2002, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of July, 2002.

COPIES FURNISHED:

Cecil Howard, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Charles Tien
2451 Brickell Avenue, Unit 6P
Miami, Florida 33129

Lisa K. Berg, Esquire
Stearns Weaver
150 West Flagler Street, Suite 2200
Miami, Florida 33130

Steven E. Petrou, Esquire
12611 Jones Road, Suite 101
Houston, Texas 77070

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 must be filed with the agency that will issue the final order in this case.