

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GLENN E. WHITENER,)	
)	
Petitioner,)	
)	
vs.)	Case No. 02-3070
)	
LOUTITT MANOR,)	
)	
Respondent.)	
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RECOMMENDED ORDER

Administrative Law Judge Don W. Davis of the Division of Administrative Hearings held a formal hearing in this cause in Daytona Beach, Florida, on September 24, 2002.

APPEARANCES

The following appearances were entered:

For Petitioner: Glenn E. Whitener, pro se
229 South Ridgewood Avenue, Unit 316
Daytona Beach, Florida 32114

For Respondent: Robert Robins, Esquire
Post Office Box 1649
Daytona Beach, Florida 32114

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner has been subjected to an unlawful housing practice in violation of Section 760.23, Florida Statutes.

PRELIMINARY STATEMENT

On June 24, 2002, the Florida Commission on Human Relations (FCHR) issued a ruling of Determination of no reasonable cause with regard to Glenn Whitener's (Petitioner) complaint of commission of an unlawful housing practice by Loutitt Manor Inc., (Respondent).

On July 26, 2002, Petitioner requested a formal administrative hearing from FCHR following that agency's determination of no reasonable cause to believe that illegal discrimination had occurred.

Subsequently, on August 1, 2002, the case was forwarded to the Division of Administrative Hearings (DOAH) for formal proceedings.

During the final hearing, Petitioner presented one composite exhibit and the testimony of one witness, himself. Respondent presented the testimony of one witness. No transcript of the proceedings was provided.

The parties filed Proposed Recommended Orders which have been reviewed and considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times pertinent to these matters, Respondent operated an apartment building, Loutitt Manor, encompassing 177 apartments. The facility caters exclusively to elderly tenants.

2. On August 3, 2001, Petitioner filed a Charge of Discrimination with FCHR alleging that Respondent discriminated against Petitioner in violation of the Florida Fair Housing Act, Part II, Chapter 760, Florida Statutes, and appropriate federal regulation. Allegedly, the discrimination was based on Respondent's failure to make reasonable accommodation for Petitioner's handicap.

3. Following FCHR's Determination of no reasonable cause, dated June 24, 2002, Petitioner filed a Petition for Relief on July 26, 2002. The case was subsequently transferred to DOAH.

4. The testimony of Respondent's facility manager establishes that there are only 100 parking spaces for the 177 apartments in the building. The 100 parking spaces are assigned to specific tenants who are expected to park in their assigned space. Petitioner has an assigned space.

5. A priority list is maintained for persons who need to park closer to the building. Respondent's rules require that anyone desiring to have their name placed on the list for such accommodation must first provide a written request to Respondent's office. Secondly, if the need for closer parking is a personal disability, then the name and address of a third party professional must be provided and the tenant must sign appropriate documentation (medical releases, etc.) to permit Respondent to obtain the medical information necessary to make a

reasonable accommodation. Respondent does not place tenants on the priority parking list simply because they possess a handicapped parking placard issued by the State of Florida because 80 percent of the tenants in the facility possess such placards.

6. Petitioner has never specifically complied with Respondent's rule requirements, maintaining that he cannot supply third-party documentation from medical personnel regarding his medical need for a closer parking space, because he is treated by the Veterans Administration (VA) and such personnel are constantly moving to other locations.

7. By a note dated November 2, 2001, Petitioner did provide what he alleges are medical records from the VA clinic that were used by him to obtain a handicapped parking permit. While Petitioner maintains that he suffers from an episodic arthritic condition that impedes his walking the 200 feet from the building to his parking space, the records provided by him to Respondent details that Petitioner "should walk as much as possible" and that a disabled parking permit should be used only in "extreme circumstances."

8. As established by Petitioner's testimony at final hearing, he has not been the subject of illegal discrimination by Respondent.

9. The parties concede that Respondent has one disabled parking space closer to the facility than tenant parking. That space is designated as a handicapped space and bears signage stating that the space may only be used by visitors to the facility. Petitioner initiated this proceeding after he was warned on one occasion that he must move his car from the space or the car would be towed. Petitioner told Respondent's representative he would only be in the space for 15 minutes or less.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

11. Chapter 760, Florida Statutes, the "Florida Civil Rights Act of 1992", provides security from discrimination based upon race, color, religion, sex, national origin, age, handicap, or marital status.

12. Specifically, Section 760.23(2), Florida Statutes, provides:

(2) 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, color, national origin, sex, handicap, familial status, or religion.

13. The burden of proof rests with Petitioner to show a prima facie case of discrimination. After such a showing by

Petitioner, the burden shifts to Respondent to articulate a nondiscriminatory reason for the adverse action. If Respondent is successful and provides such a reason, the burden shifts again to Petitioner to show that the proffered reason for adverse action is pre-textual. School Board of Leon County v. Hargis, 400 So. 2d 103 (Fla. 1st DCA 1981). In the instant case, Petitioner has failed to make that initial showing with his own admission that he has not been discriminated against by Respondent on the basis of handicap.

14. Further, Respondent has articulated a nondiscriminatory reason for refusal to grant Petitioner's parking request. Petitioner has not complied with Respondent's procedures requiring provision of third-party medical personnel identity and medical releases necessary to obtaining required documentation. Petitioner's own testimony that he has not been the subject of discrimination by Respondent bolsters Respondent's reason for failure to provide handicap accommodation in this case.

15. The controversy in this matter finds its antecedents in a previous argument had between Petitioner and Respondent's representative about Petitioner's attempt to use the handicapped space for 15 minutes. In sum, Petitioner has alleged discrimination by Respondent in the absence of other

alternatives. Both parties are directed to Section 316.1955(4)(a), Florida Statutes, which provides:

(4)(a) A vehicle that is transporting a person who has a disability and that has been granted a permit under s.320.0848(1)(a) may be parked for a maximum of 30 minutes in any parking space reserved for persons who have disabilities.

Accordingly, although Petitioner has failed to offer any credible evidence that he has been the subject of unlawful discrimination, Respondent's position that no tenant may park for any length of time in the one available handicapped parking space appears to be incorrect.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law it is

RECOMMENDED:

That a final order be entered dismissing the Petition for Relief.

DONE AND ENTERED this 18th day of October, 2002, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of October, 2002.

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.