

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JANICE AYERS PETTY,)
)
 Petitioner,)
)
 vs.) Case No. 02-4051
)
 TERRY HAMMER, d/b/a PARK DRIVE)
 APARTMENTS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a formal administrative hearing in this case on December 18, 2002, in Viera, Florida.

APPEARANCES

For Petitioner: Janice Ayers Petty, pro se
1337 South Patrick Drive
Satellite Beach, Florida 32937

For Respondent: Wayne L. Allen, Esquire
700 North Wickham Road
Suite 107
Melbourne, Florida 32935-8865

STATEMENT OF THE ISSUE

Whether Respondent, Terry Hammer d/b/a Park Drive Apartments, violated the Fair Housing Act, Chapter 760.20-760.37, Florida Statutes, by failing to provide a handicapped parking space for Petitioner, Janice Ayers Petty.

PRELIMINARY STATEMENT

On February 6, 2002, Petitioner filed a Housing Discrimination Complaint with the Florida Commission on Human Relations alleging that Respondent had discriminated against her by failing to make reasonable accommodations for her disability. On September 15, 2002, a "Notice of Determination: No Cause" was filed as a result of the Florida Commission on Human Relations' investigation of the Housing Discrimination Complaint.

On October 15, 2002, Petitioner filed a Petition For Relief with the Florida Commission on Human Relations essentially alleging the same act of discrimination by Respondent. On October 18, 2002, the Division of Administrative Hearings received a Transmittal of Petition from the Florida Commission on Human Relations forwarding the Petition For Relief requesting the assignment of an Administrative Law Judge to conduct all necessary proceedings required under the law.

On October 18, 2002, an Initial Order was directed to the parties. On November 5, 2002, the case was scheduled for final hearing on December 18, 2002, in Viera, Brevard County, Florida. The final hearing was conducted as scheduled on December 18, 2002. Petitioner presented two witnesses: herself and her husband, John E. Petty, Jr. No exhibits were offered by Petitioner. Respondent presented six witnesses: Terry Hammer, Susan M. Heiland, Tina Butts, James Hammons, Ester Thurman, and

Karen Haxel. Respondent presented nine exhibits which were received into evidence and marked Respondent's Exhibits 1 through 9.

The proceedings were not transcribed. Respondent submitted a Proposed Recommended Order.

FINDINGS OF FACT

1. Respondent, in her Proposed Recommended Order, concedes that Petitioner is "a person with a disability." While there is scant actual evidence to support the determination that Petitioner meets the definition of "handicap" in Subsection 760.22(7)(a), Florida Statutes, Petitioner attended the final hearing in a wheelchair and testified that her automobile license plate indicated that she was handicapped; it appears that Petitioner does qualify as a definitional person who "has a physical or mental impairment which substantially limits one or more major life activities"

2. Respondent is the owner of a 30-unit apartment complex in Indian Harbour Beach, Brevard County, Florida. The apartment complex was built in 1963.

3. In late December 2000, Petitioner and her husband, entered into a 12-month lease with Respondent for a ground floor apartment, unit number 24.

4. It is unclear whether Petitioner requested a disabled parking place as an accommodation for her disability when she

entered into the lease or shortly thereafter. Petitioner believed that a disabled parking place required a light blue outline and a sign indicating that the parking place was reserved for disabled permit parking.

5. Respondent responded to Petitioner's request for accommodation by notifying residents of the apartment complex that the parking space immediately in front of Petitioner's unit number 24 was reserved for Petitioner. It is a measured 16 feet from the front of the parking space to Petitioner's front door and is the closest parking space to Petitioner's apartment.

6. The parking space immediately in front of Petitioner's unit, while unpainted and without a sign, was generally available for Petitioner.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction of the parties to and the subject of this proceeding. Subsections 120.57(1) and 760.35(3)(b), Florida Statutes.

8. Petitioner seeks relief pursuant to the provisions of Sections 760.20-37, Florida Statutes, denominated as the "Fair Housing Act" (hereinafter "the Act"). The Act is patterned after 42 U.S.C. Section 12181 et seq. (Title III of the Americans With Disabilities Act). Title III of the Americans With Disabilities Act prohibits discrimination on the basis of

disability in public accommodations and services offered by private entities and requires reasonable accommodations of disabled individuals to allow them the benefits of employment, governmental services and public accommodations. It is appropriate to look to decisions decided in Federal courts interpreting the Americans With Disabilities Act for guidance.

9. Subsection 760.23(8), Florida Statutes, provides:

(8) 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 with such dwelling, because of a handicap of:

(a) That buyer or renter; . . .

10. Subsection 760.23(9), Florida Statutes, provides:

(9) For purposes of subsections (7) and (8), discrimination includes:

* * *

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

11. Pursuant to Subsection 760.34(5), Florida Statutes, the burden of proof is on Petitioner to establish the allegations supporting her claim of discrimination.

12. Petitioner has the burden of showing that a requested accommodation is reasonable; this burden is one of production

and is not a heavy burden. It is enough for Petitioner to suggest the existence of a plausible accommodation, the costs of which, facially, do not clearly exceed its benefits. U.S. Airways, Inc. v. Barnett, 122 S.Ct. 1516, 1523 (2002); Borkowski v. Valley Central School District, 63 F.3d 131, 138 (2nd Cir. 1991). Petitioner, by suggesting that Respondent establish a disabled parking place, painting it with the familiar light-blue paint and installing a disabled parking sign, has met the burden of proof and has made out a prima facie case. She is disabled and has suggested a plausible accommodation.

13. Once Petitioner has established a prima facie case, the burden of persuasion shifts to Respondent. Typically, Respondent must prove that the suggested accommodation will present an "undue burden" on Respondent. That is, that the suggested accommodation is too expensive or for some other reason is impractical and, as such, presents an undue burden on Respondent which exceeds the benefits of the accommodation.

14. Neither applicable statutes or case law has established that Plaintiff can dictate the specifics of "reasonable accommodation." That is, while a disabled parking place may be a reasonable accommodation, it is not the only reasonable accommodation. In the instant case, Petitioner has provided an alternative, reasonable accommodation.

15. The evidence clearly established that in response to Petitioner's request for a specific parking place to accommodate her disability, Respondent provided a parking place 16 feet from her front door. This was the closest parking place to Petitioner's apartment. It was also clearly demonstrated that other residents of the apartment complex knew, as a result of Respondent's efforts, that the particular parking place was reserved for Petitioner as a result of her disability. Further, notwithstanding the lack of light-blue paint and a disabled parking sign, the particular parking place was generally available to Petitioner. Respondent demonstrated that a reasonable accommodation was made to afford Petitioner the opportunity to use and enjoy her apartment.

RECOMMENDATION

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

RECOMMENDED that Petitioner has failed to prove that Respondent did not make reasonable accommodations for her handicapped condition; Petitioner's Petition for Relief should be dismissed.

DONE AND ENTERED this 30th day of January, 2003, in
Tallahassee, Leon County, Florida.

JEFF B. CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of January, 2003.

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.