

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LOURDES GUZMAN,)
)
 Petitioner,)
)
 vs.) Case No. 02-4581
)
 CHARLES HARRIS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on March 17, 2003, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: Lourdes Guzman, pro se
2843 Sheridan Avenue
Apartment 7
Miami Beach, Florida 33140

For Respondent: Mark Horn, Esquire
18800 Northwest 2nd Avenue, Suite 211
Miami, Florida 33169

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent unlawfully discriminated against Petitioner by refusing to rent her an apartment because she is legally blind and relies upon a service dog to ambulate independently.

PRELIMINARY STATEMENT

In a Housing Discrimination Complaint apparently filed with the U.S. Department of Housing and Urban Development in or around August 2002 and subsequently investigated by the Florida Commission on Human Relations ("FCHR"), Petitioner Lourdes Guzman, who is legally blind and relies upon a service dog for assistance, alleged that Respondent Charles Harris, who owns a residential apartment building, had unlawfully discriminated against her by refusing to rent her an available unit in his rental property. The FCHR investigated Petitioner's claim and, on October 21, 2002, issued a notice setting forth its determination that reasonable cause did not exist to believe that a discriminatory housing practice had occurred. Thereafter, Petitioner filed a Petition for Relief, which the FCHR transmitted to the Division of Administrative Hearings on November 25, 2002.

At the final hearing on March 17, 2003, Petitioner testified on her own behalf and called two additional witnesses: Paul Karolyi and José Robert. Petitioner moved five exhibits, identified as Petitioner's Exhibits 1 through 5, into evidence. During his case, Respondent testified on his own behalf and presented no other witnesses. Respondent also introduced one exhibit, numbered 1, into evidence.

Neither party ordered the final hearing transcript, which therefore was not filed. Each party timely submitted a proposed recommended order, which the undersigned considered in preparing this Recommended Order.

FINDINGS OF FACT

1. Petitioner Lourdes Guzman ("Guzman") is legally blind and relies upon a service dog (also referred to as a guide dog or "seeing eye" dog) to ambulate independently.

2. Respondent Charles Harris ("Harris") owns an eight-unit apartment building (the "Property") located in Bay Harbor Islands, Florida. Harris, who is retired, holds the Property for investment purposes and lives on the rental income it generates.

3. In or around April of 2002, Harris placed an advertisement in the newspaper seeking a tenant for one his rental units. Guzman saw this ad, was interested, and made an appointment to see the Property.

4. A short time later, Guzman and her live-in boyfriend José Robert ("Robert") met Harris and Paul Karolyi ("Karolyi") late one afternoon at the Property. (Karolyi is a tenant of Harris's who helps out at the Property; Guzman and Robert viewed him as the "building manager," which was apparently a reasonable perception.) During their conversation, the prospective renters mentioned that they owned a dog. Upon hearing this, Harris

explained that he had just finished renovating the advertised unit because the previous tenant's dog had destroyed the rug and caused other damage to the premises. Thus, Harris told Guzman and Robert, he was not interested in renting this unit to someone with a dog.

5. Robert then informed Harris that: (a) Guzman's sight was impaired; (b) the dog in question was a service dog; and (c) Harris was legally obligated to let Guzman bring the dog into the unit, should she become Harris's tenant, as a reasonable accommodation of her handicap. Once he understood the situation, Harris acknowledged that a service dog was different and stated that he would not refuse to rent the unit to someone with a service dog. Accordingly, Harris gave Guzman and Robert a rental application, which Guzman later completed and returned to Harris.

6. After receiving Guzman's application, Harris checked her references and discovered that Guzman's two most recent landlords considered her to be a poor tenant. While Guzman disputes the veracity of some of the information that was provided to Harris, at hearing she admitted that much of what he learned was true. The following rental history is based on Guzman's admissions.

a. Town & Country Apartments. From October 2001 until January 24, 2002, Guzman lived at the Town & Country Apartments in Bay Harbor Islands, Florida. Her landlord was T & C Associates, Ltd. ("T & C").

b. At least six times during this 16-month period, Guzman failed to timely pay her rent and was required to pay a late fee. She also received at least five statutory "three-day notices" warning that her failure to pay the overdue monthly rent within 72 hours would trigger an eviction proceeding.¹

c. T & C sued to evict Guzman after she failed to pay the rent due for December 2001. Consequently, when Guzman vacated the Town & Country Apartments on January 24, 2002, she did so pursuant to a writ of possession. Guzman claims that she chose to be evicted as an expedient means of breaking her lease with T & C.

d. The Sahara. After being evicted from the Town & Country Apartments, Guzman moved into a unit at the "Sahara"—which Guzman described at hearing as a "motel"—pursuant to a short-term lease. Guzman's landlord at the Sahara was Allen L. Kaul ("Kaul").

e. Guzman lived at the Sahara for about two months.² Guzman had some sort of dispute with Kaul, and when she moved out of the Sahara she took the keys to the unit she was vacating

and the remote control device that opened a gate to the premises; these items were never returned to Kaul.

7. These facts convinced Harris that Guzman was not an acceptable risk. He notified Guzman that he would not rent to her due to her "poor credit history."

Ultimate Factual Determinations

8. Harris rejected Guzman's rental application, not because of her handicap or service dog, but because he discovered, through a reasonable process of checking references, that Guzman had recently been evicted from one apartment and vacated another under suspicious (or at least questionable) circumstances, taking with her some personal property of the landlord's that she never returned.

9. There is no credible, competent evidence that Harris rented his apartments to non-handicapped persons having rental histories similar to Guzman's. Nor does the evidence support a finding that Harris invoked Guzman's negative rental history (the material aspects of which were undisputed) as a pretext for discrimination.

10. In short, Harris did not discriminate unlawfully against Guzman; rather, he rejected her rental application for a legitimate, nondiscriminatory reason.

CONCLUSIONS OF LAW

11. Under Florida's Fair Housing Act ("Act"), Sections 760.20 through 760.37, Florida Statutes, it is unlawful to discriminate in the sale or rental of housing. Among other prohibited practices:

(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.

* * *

(7) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

- (a) That buyer or renter;
- (b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- (c) Any person associated with the buyer or renter.

Section 760.23(1), (7), Florida Statutes.

12. For purposes of subsection (7) above, the term "discrimination" includes:

- (a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; or
- (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.

Section 760.23(9), Florida Statutes.

13. In the instant case, Guzman has alleged, in effect, that Harris discriminated against her by declining to rent to her rather than making a reasonable accommodation with respect to her service dog.

14. In cases involving a claim of rental housing discrimination on the basis of handicap, such as this one, the complainant has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. A prima facie showing of rental housing discrimination can be made by establishing that the complainant applied to rent an available unit for which he or she was qualified, the application was rejected, and, at the time of such rejection, the complainant was a member of a class protected by the Act. See Soules v. U.S. Dept. of Housing and Urban Development, 967 F.2d 817, 822 (2d Cir. 1992).³ Failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1012 n.6 (Fla. 1st DCA), aff'd, 679 So. 2d 1183 (1996)(citing Arnold v. Burger Queen Systems, 509 So. 2d 958 (Fla. 2d DCA 1987)).

15. If, however, the complainant sufficiently establishes a prima facie case, the burden then shifts to the respondent to

articulate some legitimate, nondiscriminatory reason for its action. If the respondent satisfies this burden, then the complainant must establish by a preponderance of the evidence that the reason asserted by the respondent is, in fact, merely a pretext for discrimination. See Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc., 3 F.3d 1472, 1476 n.6 (11th Cir. 1993), cert. denied, 513 U.S. 808, 115 S.Ct. 56, 130 L.Ed.2d 15 (1994) ("Fair housing discrimination cases are subject to the three-part test articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973)."); Secretary, U.S. Dept. of Housing and Urban Development, on Behalf of Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990) ("We agree with the ALJ that the three-part burden of proof test developed in *McDonnell Douglas* [for claims brought under Title VII of the Civil Rights Act] governs in this case [involving a claim of discrimination in violation of the federal Fair Housing Act].").

16. In this case, Guzman failed to make a prima facie showing of discrimination. Although she is handicapped and thus protected by the Act, and although Harris rejected her application to rent an available unit, Guzman's own testimony established that she was a risky tenant who, in the recent past, had been evicted from one apartment for nonpayment of rent and vacated another on less-than-friendly terms, taking with her

some of the landlord's personal property. Thus, she was not qualified to rent from Harris under the latter's objectively reasonable criteria.

17. But even if Harris had made a prima facie showing of discrimination, Harris satisfied his burden to articulate a legitimate, nondiscriminatory reason for rejecting Guzman's application, namely, her spotty rental history. Guzman failed to present persuasive evidence that this stated ground for refusing to rent to her was merely a pretext for discrimination.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the FCHR enter a final order dismissing Guzman's Petition for Relief.

DONE AND ENTERED this 1st day of May, 2003, in Tallahassee, Leon County, Florida.

JOHN G. VAN LANINGHAM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of May, 2003.

ENDNOTES

^{1/} Notwithstanding Guzman's record of poor compliance with the rental obligation, however, T & C had renewed her lease in October 2001 for an additional 12 months.

^{2/} Her daughter stayed there a bit longer, although the circumstances surrounding this arrangement are unclear.

^{3/} Alternatively, the complainant's burden may be satisfied with direct evidence of discriminatory intent. See Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121, 105 S.Ct. 613, 621, 83 L.Ed.2d 523 (1985)("[T]he McDonnell Douglas test is inapplicable where the plaintiff presents direct evidence of discrimination" inasmuch as "[t]he shifting burdens of proof set forth in *McDonnell Douglas* are designed to assure that the 'plaintiff [has] his day in court despite the unavailability of direct evidence.'").

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.