

9-26-03

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED  
04 FEB 27 AM 9:19  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

Emil Nunez and Celestina Nunez,

AT

HUD Case No. 04-02-07618

Petitioner,

FCHR Case No. 22-91292H

v.

DOAH Case No. 02-4807

JVL-CLOS

Les Montellier Apartments,

FCHR Order No. 04-003

Respondent.

**FINAL ORDER DISMISSING PETITION FOR  
RELIEF FROM A DISCRIMINATORY HOUSING PRACTICE**

Petitioners, EMIL NUNEZ AND CELESTINA NUNEZ, filed a complaint of discrimination pursuant to Florida Fair Housing Act, Sections 760.20-760.37, Florida Statutes, alleging that Respondent, LES MONTELLIER APARTMENTS, committed an unlawful act of housing discrimination based on their familial status. The allegations set forth in the complaint were investigated and on September 3, 2002, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred. The Petitioner filed a Petition for Relief and was granted a formal evidentiary hearing that was held by video teleconference at sites in Tallahassee and Miami, Florida, on May 21, 2003, before Administrative Law Judge John G. Van Laningham. A transcript of the proceeding was originally filed July 25, 2003 with a corrected final copy filed August 22, 2003.

Judge Van Laningham issued a Recommended Order of Dismissal dated September 26, 2003.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

**Findings of Fact and Conclusions of Law**

The Petitioners alleged that they were discriminated by the respondent due to their family status. They alleged that the respondent's policy of two persons per bedroom unlawfully prevented them from renting a one-bedroom apartment in which the father, mother and 4-year old daughter could reside. The Judge found that the policy was uniformly applied, that two bedroom apartments existed in the complex (although one was not available at the time) and that Respondent had rented to families in the complex. He further found that the policy was consistent with HUD's (and local housing authority's) policy on occupancy standards. The Petitioners failed to present persuasive evidence that the policy, as applied to the unit in question, was unreasonable. The ALJ determined that it was a legitimate, non-discriminatory reason for

declining to rent to the Nunez family a one-bedroom unit and, uniformly applied, did not constitute discrimination against familial units.

We adopt the Administrative Law Judge's findings of fact and his conclusion that the Petitioner failed to carry their burden of proof and that the Respondent provided legitimate, non-discriminatory business reasons for its actions.

Exceptions

Neither party filed any exceptions to the Recommended Order.

Dismissal


The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 26<sup>th</sup> day of February, 2004.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Billy Whitefox Stall, Chairperson  
Commissioner Gilbert M. Singer  
Commissioner P.C. Wu

Filed this 26<sup>th</sup> day of February, 2004  
in Tallahassee, Florida.

  
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Violet Crawford, Clerk  
Commission on Human Relations  
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Judge John G. Van Laningham, Administrative Law Judge (DOAH)

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 26<sup>th</sup> day of February, 2004.

BY: *Viola Crawford*  
Clerk of the Commission  
Florida Commission on Human Relations