

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DONA M. BURGESS,)
)
 Petitioner,)
)
 vs.) Case No. 03-1523
)
 LEMAY BUILDING COMPANY, d/b/a)
 RIDGEWOOD MOBILE HOME PARK,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On June 10, 2003, a formal administrative hearing in this case was held in Sarasota, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Elizabeth M. Boyle, Esquire
Gulfcoast Legal Services, Inc.
1750 17th Street, Building 1
Sarasota, Florida 34234

For Respondent: Kimberly P. Walker, Esquire
Kevin Bruning, Esquire
Williams, Parker, Harrison,
Dietz & Getzen
200 South Orange Avenue
Sarasota, Florida 34236-6802

STATEMENT OF THE ISSUE

The issue in the case is whether the Petitioner has been the subject of a discriminatory housing practice by the

Respondent through the alleged failure of the Respondent to provide a reasonable accommodation for a disability.

PRELIMINARY STATEMENT

By Complaint dated February 15, 2002, and filed with the Florida Commission on Human Relations (FCHR), Dona M. Burgess (Petitioner) alleged that she was disabled and that the Lemay Building Company d/b/a Ridgewood Mobile Home Park (Respondent) had committed a discriminatory housing practice. Specifically, the Petitioner alleges that the Respondent refuses to permit a caregiver under the age of 55 (the Petitioner's son) to reside with the Petitioner in her mobile home.

The Respondent operates an age-restricted mobile home park where residents (with certain exceptions) are aged 55 and older. The Respondent asserts that the Petitioner is not disabled, and that even if she is, her son's behavior in the mobile home park establishes that he is not an appropriate caregiver and should be removed from the mobile home park.

By Determination of No Reasonable Cause dated February 27, 2003, the FCHR dismissed the Petitioner's complaint. By Petition for Relief, the Petitioner requested a formal administrative hearing. The FCHR forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing the Petitioner presented the deposition testimony of two witnesses. The Respondent presented the deposition testimony of two witnesses and the live testimony of three witnesses. Joint Exhibits numbered 1 through 14 were admitted into evidence. No transcript of the hearing was filed. Both parties filed Proposed Recommended Orders.

FINDINGS OF FACT

1. At all times material to the case, the Respondent operated an age-restricted mobile home park in Sarasota, Florida. With limited exceptions, residents of the mobile home park are 55 years of age and older.

2. In September 2000, the Petitioner, a woman over 55 years of age, purchased a mobile home located within the Ridgewood Mobile Home Park.

3. The mobile home was purchased through a real estate broker. The mobile home park apparently identifies itself through signage as a community for persons 55 years of age and older. Prior to the purchase the Petitioner had no communication with the Respondent and made no inquiry of the Respondent as to whether her son, who is under 55 years of age, would be allowed to live in the mobile home park.

4. Within a few days of the purchase, the Petitioner was advised that residence in the mobile home park was limited, with certain exceptions, to persons 55 years of age and older. The

Respondent advised the Petitioner that her son, who is under 55 years of age, could remain with her only for a period of up to two months to help her "settle in."

5. By lease application dated October 1, 2000, the Petitioner advised the Respondent that her son would remain with her for a period of two months.

6. In November 2000, after the two months had passed, the manager of the mobile home park (Mr. Cobb) informed the Respondent that her son would have to leave the residence. At that time, the Petitioner's son asserted that he was his mother's full-time, live-in caregiver. Prior to this point, the Petitioner had not indicated to the Respondent that she suffered from a handicap or required the services of a full-time, live-in caregiver

7. The evidence fails to establish that, either at the time of the Petitioner's initial residence at the Respondent's mobile home park or by November 2000, the Petitioner suffered from a handicap or from any condition that substantially limited any major life activity, or that the Petitioner required the assistance of a full-time, live-in caregiver.

8. At the time the Petitioner moved into the Respondent's mobile home park, the Petitioner was able to accomplish all major life activities. Although diabetic, the Petitioner was able to walk, drive, and shop for food or other necessities.

Her son assisted in house cleaning and in other routine activities, but there is no credible evidence that, prior to August 2002, such assistance was required for performing major life activities.

9. In August 2002, shortly after a medical procedure on the Petitioner's carotid artery, the Petitioner suffered a stroke. She was hospitalized for a period of approximately ten days and then transferred into a rehabilitation hospital for a period of approximately six weeks.

10. Letters submitted from medical professionals involved with the Petitioner's case at the time of her stroke suggest that assistance was needed during the period of incapacity related to the stroke.

11. There is no credible evidence that, subsequent to rehabilitation, the Petitioner needed the services of a full-time, live-in caregiver. After rehabilitation, the Petitioner recovered from the stroke sufficiently to regain her ability to perform major life activities, including driving an automobile. A subsequent automobile accident wherein she ran down a stop sign in the mobile home park after going shopping suggests that driving at night may be inappropriate.

12. Following post-stroke rehabilitation, the Petitioner's son continued to reside with his mother, to assist in household duties and in assuring that the Petitioner followed a medication

regimen, but the evidence fails to establish that she currently requires a full-time, live-in caregiver.

13. At the time of the hearing, neither the Petitioner nor her son was residing in the Respondent's mobile home park.

14. The evidence establishes that disabled or handicapped persons in the mobile home park who require full-time, live-in caregivers are accommodated without regard to the age of the caregiver or to the mobile home park's age-related restrictions.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

16. In relevant part, Section 760.23, Florida Statutes, provides as follows:

760.23 Discrimination in the sale or rental of housing and other prohibited practices.-

* * *

(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;

(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.

(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.

17. The Petitioner asserts that the Respondent has discriminated against the Petitioner by failing to make a reasonable accommodation to the age-restrictions at the Respondent's mobile home park so that her son could reside in the mobile home park.

18. To establish a prima facie case of failure to make a reasonable accommodation, the Petitioner must show: a) that she suffers from a handicap; b) that the Respondent knew of the handicap; c) that an accommodation of the handicap was necessary to afford Petitioner an equal opportunity to use and enjoy the housing in question; and d) that the Respondent refused to make such an accommodation. See Schanz v. Village Apartments, 998 F.Supp. 784 (E.D. Mich. 1998). In this case, the Petitioner has failed to establish a prima facie case of discrimination.

19. As set forth herein, the Petitioner has failed to establish that she has a handicap as the term is defined by statute. The relevant portion of Section 760.22(7)(a), Florida

Statutes, defines "handicap" to mean that "[a] person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment."

20. The evidence fails to establish that, other than during the period of rehabilitation following her stroke, the Petitioner suffers from a handicap or from an inability to perform a major life activity. There is no credible evidence that at the time of her initial residence in the mobile home park, the Petitioner's diabetes resulted in any inability to perform a major life activity.

21. The Respondent has asserted that even if the Petitioner needed a caregiver, the behavior of the Petitioner's son during his residence in the mobile home park is inappropriate and requires that he be removed from the mobile home park. At the time of the hearing, an eviction case by the Respondent against the Petitioner's son was pending in Sarasota County Court.

22. The evidence fails to establish that the Petitioner's son's behavior makes him an inappropriate caretaker for his mother. Issues related to whether the Petitioner's son's behavior warrants his eviction from the mobile home park for violations of the mobile home park rules are a separate matter

being addressed in the Respondent's eviction proceedings and are outside the jurisdiction of this dispute.

RECOMMENDATION

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

RECOMMENDED that the Florida Commission on Human Relations enter a Final Order dismissing the complaint of Dona M. Burgess against the Respondent.

DONE AND ENTERED this 29th day of July, 2003, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of July, 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.