

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

YOUNCY CARTER,)
)
 Petitioner,)
)
 vs.) Case No. 03-2662
)
 MAJESTIC GARDENS CONDOMINIUM)
 "C" CORPORATION and MAJESTIC)
 GARDENS CONDOMINIUM)
 ASSOCIATION, INC.,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Miami, Florida, on August 7, 2003.

APPEARANCES

For Petitioner: Stewart Lee Karlin
Stewart Lee Karlin, P.A.
315 Southeast 7th Street, Second Floor
Fort Lauderdale, Florida 33301

For Respondent Majestic Gardens Condominium
"C" Corporation:

Roosevelt Walters
Qualified Representative
1509 Northwest 4th Street
Fort Lauderdale, Florida 33311

For Respondent Majestic Gardens Condominium
Association, Inc.:

No appearance

STATEMENT OF THE ISSUE

The issue is whether Respondents are guilty of housing discrimination against Petitioner based on disability, in violation of Section 760.23, Florida Statutes (2003).

PRELIMINARY STATEMENT

On May 29, 2002, Petitioner filed a Housing Discrimination Complaint with the Florida Commission on Human Relations. The complaint alleges that Florida Donaldson and Majestic Gardens Condominium Association denied Petitioner a parking space for his exclusive use, due to his disability following a stroke. On July 24, 2002, the Florida Commission on Human Relations entered a Determination of No Reasonable Cause.

By Petition for Relief filed August 29, 2002, Petitioner alleged that "Florida Donaldson/Majestic Gardens Condominium" discriminated against him, as a stroke victim with decreased mobility, by refusing to designate a parking space for his exclusive use, in addition to the parking space already designated for his wife's exclusive use.

After the Florida Commission on Human Relations transmitted the file to the Division of Administrative Hearings to conduct an evidentiary hearing, the parties consented to a remand to the Commission to allow them to identify the correct respondents. After doing so, the Commission retransmitted the file to the

Division of Administrative Hearings, pursuant to the above-stated style.

At the hearing, each party called one witness. Petitioner offered into evidence two exhibits: Petitioner Exhibits 1-2. Respondent offered into evidence no exhibits. By stipulation, the parties agreed to the admission seven photographs, which are designated Joint Composite Exhibit 1. All exhibits were admitted.

The court reporter filed the transcript on October 24, 2003. The parties filed their Proposed Findings of Fact by the same date.

FINDINGS OF FACT

1. Petitioner suffered a stroke in September 1997 and was consequently disabled. His right side was impaired. Petitioner's right foot drags when he walks, and his right arm is of limited use. Petitioner is unable to walk long distances or stand for a significant period of time. To walk at all, Petitioner requires the use of a cane or a walker. Petitioner has been in this condition from September 1997 through the date of the final hearing. At all material times, Petitioner has possessed a handicapped parking sticker due to these disabilities.

2. For many years, Petitioner's wife has lived in unit 102 at the Majestic Gardens Condominium, Building "C," Lauderhill,

Florida. Petitioner married his wife shortly before suffering the stroke and moved into her condominium unit at Majestic Gardens in December 1997. Petitioner and his wife resided together at unit 102 until April 2001, when they rented the unit and moved to a house in Miramar.

3. All of the buildings at Majestic Gardens Condominiums comprise 238 units. Building "C" is a three-story building with 41 units. Each unit in Building "C" is assigned one parking space. The assigned parking spaces are in close proximity to the entrances of the units. Building "C" provides nine guest parking spaces, but the parking is limited at Majestic Gardens, and these spaces are routinely unavailable.

4. In the case of Petitioner's unit, the assigned space is less than 15 feet from the front door to the ground-floor unit. At all material times, Petitioner's wife has parked her car in this space. The two spaces to the left of Petitioner's assigned space, as one faces the unit, are slightly closer to Petitioner's unit and are designated as guest spaces.

5. Both Respondents are jointly responsible for operating and assigning the parking spaces immediately adjacent to Building "C." From 1998 through 2001, Petitioner and his wife tried unsuccessfully to convince Respondents to designate a parking space in front of their unit as handicapped, so that Petitioner, who can still drive, could park his car directly in

front of his unit. Respondents refused to designate a handicapped space because the effect of such a designation would have been that Petitioner and his wife would have had two spaces in front of their unit, when all of the other unitowners had only one space.

6. Respondents have not designated any handicapped parking adjacent to Building "C." They have designated three handicapped spaces at a nearby clubhouse, but, after Petitioner started parking his car in one of these spaces, Respondent Majestic Gardens Condominium Association, Inc., informed Petitioner that these spaces were reserved for use by persons using the recreation facilities. Because Petitioner was not using the recreation facilities, he could not park in one of these handicapped spaces. Later, Respondent Majestic Gardens Condominium Association, Inc., painted over the blue lines and removed the handicapped-parking sign, thus allowing all users of the recreation facilities to park in the three spaces previously reserved for handicapped users of the recreation facilities. At that point, the entire eight-building Majestic Gardens complex lacked any parking designated exclusively for handicapped use.

7. Relations between the condominium management and Petitioner and his wife became strained at times. Petitioner received cautionary notes and threats of towing whenever he parked his car in a guest space. However, Respondents gave

Petitioner's wife the names of persons who might be willing to rent their assigned parking spaces. Despite several efforts, Petitioner and his wife were unable to secure another space by this means.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the subject matter. § 120.57(1), Fla. Stat.

9. Section 760.23, Florida Statutes (2003), provides in relevant part:

(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.

(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:

(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.

10. In Dornbach v. Holley, 854 So. 2d 211 (Fla. 2d DCA 2002), the court held that the Florida Fair Housing Act, which includes Section 760.23, Florida Statutes, is similar to the federal Fair Housing Act in that a petitioner may establish liability in one of three ways: intentional discriminatory conduct toward a handicapped person, incidental discrimination, or failure to make a reasonable accommodation that would allow a handicapped person to enjoy his or her chosen residence. 854 So. 2d at p. 213.

11. As is clear from Petitioner's proposed recommended order, his theory of the case is that respondents failed to make a reasonable accommodation by assigning him a handicap-only parking space in close proximity to the condominium unit that he and his wife occupied.

12. A similar factual scenario existed in Sporn v. Ocean Colony Condominium Association, 173 F. Supp. 2d 244 (D.N.J. 2001), where the court held that the condominium association had not denied the plaintiff a reasonable accommodation. The condominium association offered the plaintiff an assigned space

close to his unit, but only if he deeded the space that was assigned to the unit by the condominium documents. Identifying the plaintiff's request as a request essentially for two spaces, the court stated: "[plaintiff's] request for 'reasonable accommodation' was really a request for accommodation coupled with a demand for special treatment." Citing the discussion in Jankowski Lee & Associates v. Cisneros, 91 F.3d 891, 896 (7th Cir. 1996), the Sporn court noted that the federal Fair Housing Act "only creates a right to a 'reasonable accommodation'; it 'does not create a right to an assigned handicapped space.'" 173 F. Supp. 2d at p. 250. The Sporn court held that the claim of denial of reasonable accommodation was without merit.

13. Likewise, Petitioner's claim that he was denied a reasonable accommodation is without merit. Petitioner's unit had a single parking space, as did the other units in the complex, and Petitioner's space was extremely convenient to his unit. Petitioner is essentially seeking a second space for his unit, but the law does not entitle him to such preferential treatment, relative to the other unitowners.

RECOMMENDATION

It is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 19th day of November, 2003, in
Tallahassee, Leon County, Florida.

S

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of November, 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 must be filed with the agency that will issue the final order in this case.