

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA COMMISSION ON HUMAN)
RELATIONS, ON BEHALF OF DERRICK)
BHAYAT,)
)
Petitioner,)
) Case No. 04-0816
vs.)
)
ONE WATERGATE ASSOCIATION,)
INC.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on June 23 and 24, 2004, in Sarasota, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Vicki D. Johnson, Esquire
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301-4857

For Respondent: Harry W. Haskins, Esquire
Mary R. Hawk, Esquire
Porges, Hamlin, Knowles & Prouty, P.A.
3400 South Tamiami Trail, Suite 201
Sarasota, Florida 34239

STATEMENT OF THE ISSUES

The issues presented for decision are whether Respondent discriminated against Derrick Bhayat on the basis of his race or

national origin by failing to approve his application to purchase a condominium unit in Respondent's building, and, if so, what are the damages to which Mr. Bhayat is entitled.

PRELIMINARY STATEMENT

On July 19, 2002, Derrick Bhayat filed a Housing Discrimination Complaint (the "Complaint") with the Florida Commission on Human Relations (the "Commission") against Respondent One Watergate Association, Inc. ("One Watergate"). The Complaint was also filed with the Federal Department of Housing and Urban Development pursuant to 42 U.S.C. Subsection 3610(a)(1)(A). The Complaint alleged that One Watergate discriminated against Mr. Bhayat on the basis of national origin and color in violation of Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988, and of the Florida Fair Housing Act, Sections 760.22 through 760.37, Florida Statutes (2003) (the "Fair Housing Act"). The alleged discrimination concerned the failure of One Watergate's Board of Directors (the "Board") to approve Mr. Bhayat's application to purchase a unit in the One Watergate building.

The Commission conducted an investigation of the Complaint. By letter dated November 14, 2003, the Commission notified Mr. Bhayat of its determination that reasonable cause existed to believe that a discriminatory housing practice had occurred and that as the Complainant, Mr. Bhayat could elect to have the

Attorney General bring a court action in the name of the state on his behalf to enforce the provisions of the Fair Housing Act or to have the Commission petition the Division of Administrative Hearings ("DOAH") for an administrative hearing and seek relief on his behalf. Mr. Bhayat elected to have the Commission pursue an administrative remedy.

The Commission first attempted to conciliate the matter pursuant to Florida Administrative Code Rule 60Y-7.005. The Commission issued a Notice of Failure of Conciliation on March 10, 2004, and filed a Petition for Relief at DOAH on March 12, 2004. The matter was referred to the undersigned and scheduled for hearing on June 3 and 4, 2004. By Order dated April 12, 2004, Respondent's Motion to Continue was granted, and the hearing was re-scheduled for June 23 and 24, 2004, when it was held.

At the final hearing, the Commission presented the testimony of Mr. Bhayat and of the following persons: Gary McDonald, a home mortgage consultant; Janey Hess, the owner of the unit in One Watergate that Mr. Bhayat attempted to purchase; and Jan Gillett, a former resident and Board member of One Watergate. The Commission also presented rebuttal testimony by Mr. Bhayat and Julie Horstkamp, Mr. Bhayat's attorney in the condominium purchase. The Commission's Exhibits 1 through 5, 7 through 16, and 18 through 21 were admitted into evidence.

Respondent presented the testimony of Carolyn Collins, a resident and former Board member of One Watergate; Douglas Carpenter, a resident and former vice-president of the Board of One Watergate; Adele Kurtz, an attorney for One Watergate; Kathie Srur, a resident of One Watergate; Larry Farr, building superintendent of One Watergate; John J. Wilhelm, a resident and current president of the Board of One Watergate; Janis Farr, the resident manager of One Watergate; Richard A. Bouchard, a resident of One Watergate who was president of the Board during the time relevant to this case; and Warren Plant, president of Renters Reference of Florida, Inc. Respondent's Exhibits 1 through 13, 16 through 27, 29, 30, 33 through 37, and 39 were admitted into evidence.

A four-volume Transcript of the final hearing was filed at DOAH on July 21, 2004. At the close of the hearing, the parties agreed that their proposed recommended orders would be filed 20 days after the transcript was filed at DOAH. Respondent's Proposed Recommended Order was filed on August 6, 2004. The Commission's Proposed Recommended Order was filed on August 9, 2004.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing and the entire record in this proceeding, the following findings of fact are made:

1. The Commission is the state agency charged with investigating complaints of discriminatory housing practices and enforcing the Fair Housing Act, Sections 760.20 through 760.37, Florida Statutes (2003). The Commission is charged with investigating fair housing complaints filed with the Commission and with the federal Department of Housing and Urban Development ("HUD") under the Federal Fair Housing Act, 42 U.S.C. Section 3601, et. seq.

2. For the past ten years, Derrick Bhayat has been a realtor with Michael Sanders and Company in Sarasota. Before that, Mr. Bhayat worked for the United States Department of Defense in Europe. Mr. Bhayat is originally from Capetown, South Africa, where he was considered "colored." His ancestry is Malaysian, Zulu, and French. It is undisputed that Mr. Bhayat is a person of color.

3. Respondent, One Watergate, is the duly-incorporated owners' association for the One Watergate condominium building in Sarasota. The Board is the governing body of One Watergate and is responsible for the approval or denial of potential residents and purchasers of units in the One Watergate building.

4. Prior to May 2002, prospective buyers or residents at One Watergate were required to complete an application that asked for character references but did not require the applicant to provide bank references or other financial information. In

early 2001, the Board commenced a search process to find a third-party investigative firm to conduct more detailed screenings of potential residents and purchasers at One Watergate. In April 2002, then-president Richard Bouchard provided the Board with detailed information regarding one such firm, Renters Reference of Florida, Inc. ("Renters Reference"), an investigative consumer reporting agency operating under the Federal Fair Credit Reporting Act. Renters Reference performs background checks of potential residents, employees, and contractors for such residential entities as condominiums, homeowner associations, and mobile home parks.

5. On April 16, 2002, the Board met in a duly-noticed, regularly scheduled meeting. On the motion of Board member John Wilhelm, the Board voted to pursue a contract with Renters Reference to conduct applicant screenings. On May 2, 2002, One Watergate and Renters Reference entered into an "Agreement for Service" for the conduct of confidential background checks, credit checks, and other screenings of potential One Watergate residents.

6. In cooperation with the Board, Renters Reference established a form "Application for Occupancy/Approval" to be completed by potential residents and a form "Application for Purchase, Transfer, Gift, Devise or Inheritance Approval" to be completed by potential unit purchasers. The forms required

applicants to sign an authorization to release their banking, credit, residence, employment, and police record information to Renters Reference. The forms also required applicants to disclose their Social Security numbers to Renters Reference, which would allow Renters Reference to obtain credit reports directly from the three national credit reporting agencies, Trans Union, Experian, and Equifax. The Application for Purchase form also contained a hold harmless provision requiring the applicant to assent to the following:

I understand that the Board of Directors of One Watergate Association, Inc. may cause to be instituted an investigation of my background as the Board may deem necessary. Accordingly, I specifically authorize the Board of Directors, Management and Renters Reference of Florida, Inc. to make such investigation and agree that the information contained in this and the attached application may be used in such investigation, and that the Board of Directors, Officer and Management of the One Watergate Association, Inc, itself shall be held harmless from any action or claim by me in connection with the use of the information contained herein or any investigation by the Board of Directors.

7. Both forms advised applicants that a failure to complete any portion would result in the application being "returned, not processed and not approved." Renters Reference advised One Watergate to strictly enforce the requirement that applicants complete all portions of the forms on the ground that a waiver of application requirements for any one applicant would

necessitate such a waiver for any subsequent applicant or else invite a discrimination claim by the subsequent applicant.

8. Applicants complete the forms and submit them to Janis Farr, the resident manager of One Watergate, who forwards the materials to Renters Reference for the conduct of its background investigation. After completing the investigation, Renters Reference sends a report to One Watergate with its findings. The Renters Reference report is purely informational. Renters Reference is not authorized to approve or deny the application, and it makes no recommendations as to approval of the application.

9. The Board has established a screening committee to act upon the applications. The screening committee consists of Ms. Farr and the sitting Board president. The screening committee's decision to approve or disapprove the application is later subject to a ratification vote by the full Board.

10. On May 16, 2002, potential unit purchaser Marcia Lang submitted a completed form Application for Occupancy/Approval and a completed form Application for Purchase. The application was forwarded to Renters Reference, which performed a background screening that included obtaining a Trans Union credit report dated May 24, 2002. Renters Reference completed its investigation on May 29, 2002, and made its report to One Watergate. The screening committee, consisting of Ms. Farr and

then-president of the Board, Richard Bouchard, approved the application and issued an undated Certificate of Approval. Ms. Lang closed on her unit in One Watergate in August 2002. Because the Board does not meet during the months of May through August, the Board did not ratify the screening committee's approval until its October 15, 2002, meeting.

11. On May 29, 2002, Mr. Bhayat entered into a contract with Janey and Paul Hess to purchase their One Watergate unit for \$315,000. On May 30, 2002, Mr. Bhayat telephoned Ms. Farr and requested that he not be required to complete the application forms. Mr. Bhayat explained that he had always been cautious about providing personal information, such as his Social Security number to businesses. This general cautiousness became alarm in 2001 when his wife, Nancy Bhayat, was the victim of an identity theft. The thief used Mrs. Bhayat's Social Security number to obtain a Visa card and make \$12,000 worth of purchases.

12. Ms. Farr responded that the application would not be accepted unless all the requested information was provided. Nevertheless, on May 31, 2002, Mr. Bhayat submitted to the One Watergate office an Application for Occupancy/Approval and an Application for Purchase. On these applications, Mr. Bhayat did not provide his or his wife's Social Security number. He did not sign the authorization to release his banking, credit,

residence, employment, and police record information to Renters Reference. Mr. Bhayat also struck through the hold harmless provision on the Application for Purchase.

13. The applications were accompanied by a cover letter from Julie Horstkamp, Mr. Bhayat's attorney. The letter repeated Mr. Bhayat's concerns about disclosure of personal information and stated that the Bhayats did not want to release any more information than necessary to process their application. The letter stated that Ms. Horstkamp was enclosing, in addition to the two applications, a "credit report prepared by MSC Mortgage." Ms. Horstkamp also included attestations concerning the Bhayats' background that were intended to obviate the need for Renters Reference to perform a criminal records check.

14. After receiving this package of materials from Mr. Bhayat, Ms. Farr consulted with Warren Plant, the president of Renters Reference, who again advised her that it would be in the best long-term interest of One Watergate to insist that the applications be completed in full. Ms. Farr then sent a letter to Ms. Horstkamp, dated May 31, 2002, and received by Ms. Horstkamp on June 3, 2002, that stated as follows:

We are in receipt of the packet delivered from your office on behalf of Derrick & Nancy Bhayat. While we can appreciate the angst felt by the Bhayat's [sic] as the result of her identity theft, we must adhere

to the stipulations of our new policy. The Board of Directors of One Watergate at a duly posted meeting in April 2002 approved a contract with Renters Reference Inc. to handle the investigation of prospective purchasers and lessees. they felt to best serve the security of all One Watergate owners, the approval process needed to be utilized to it [sic] fullest.

You may inform your clients they can rest assured that all the information disclosed in this application will be held in complete confidence by both One Watergate Association and Renters Reference Inc., as we are bound by both [the] Federal Fair Credit Act and Florida Statutes Chapter 718. These laws apply to both the application as well as any reports received from them.

Therefore we are returning the package to be completed in full. We cannot accept or approve this sale based on the incomplete information submitted.

15. By letter dated June 4, 2002, Ms. Farr informed One Watergate's law firm of the situation with the Bhayats. With her letter, Ms. Farr enclosed correspondence received by Mr. Bouchard and other members of the Board from Janey Hess, owner of the unit that the Bhayats were attempting to purchase. Ms. Hess had written at least three letters to the Board on June 3 and 4, 2002, demanding an emergency meeting of the full Board to consider waiving the requirements of the new application forms, which sought "invasive and unnecessary information" from the Bhayats. Ms. Hess and Mr. Bouchard were also having conversations about the issues, but these took a

turn toward personal animosity on the part of Ms. Hess.

Ms. Hess' letters became progressively less concerned with the Bhayats' situation than with Mr. Bouchard's status as the owner of several One Watergate units and his alleged manipulation of rules restricting the rental of those units. Mr. Bouchard testified that his own lawyer advised him to cease communications with Ms. Hess.

16. One Watergate's lawyer, Stephen Thompson, wrote a letter to both the Bhayats and the Hesses dated June 6, 2002, that stated as follows, in relevant part:

In order to help facilitate the approval process, One Watergate has contracted with Renters Reference for applicant screening. The information necessary to process the Application for [sic] includes, but is not limited to the applicant's date of birth and social security number. It is my understanding that the application submitted by Mr. and Mrs. Bhayat did not include the required social security numbers for each of the applicants. While it is Mr. and Mrs. Bhayat's right to refuse to release this information to the Association, it is the Association's duty and responsibility to conduct thorough credit and criminal background checks on potential owners and tenants. Without the applicable social security numbers, such background checks cannot be conducted by Renters Reference and therefore such applications cannot be approved by One Watergate Association.

While the Association is required to either approve or disapprove an application within thirty (30) days after receipt of such application, in the present situation the thirty (30) day time frame will not begin to

run until a complete application is submitted, including the applicants' social security numbers. If Mr. and Mrs. Bhayat decide to submit a completed application, One Watergate Association will use their best efforts to obtain a complete background check and render a decision prior to the anticipated June 28, 2002, closing date.

17. Negotiations commenced between Ms. Horstkamp, the Bhayats' attorney, and Adele Kurtz, Mr. Thompson's co-counsel, on behalf of One Watergate. On June 11, 2002, Ms. Kurtz wrote a letter to Ms. Horstkamp that stated as follows, in relevant part:

Pursuant to our conversation yesterday, the Board of Directors of One Watergate Association had agreed to accept Mr. and Mrs. Bhayat's Application to purchase Unit 5-D so long as said Application was complete and accompanied by copies of their current driver's license and up to date credit reports for both purchasers. This action was taken for the sole purpose of alleviating any confusion there may have been by the Seller as related to the contract between One Watergate and Renters Reference. This action did not constitute a waiver or modification of the Application requirements and One Watergate retained the right to require complete and accurate applications be submitted to the Board for review.

18. Ms. Kurtz went on to note that an application submitted by the Bhayats on June 10, 2002, was unacceptable because it did not include the Bhayats' driver's licenses, and the hold harmless clause was again stricken from the Application for Purchase. On June 12, 2002, Ms. Horstkamp responded that

the Bhayats "are okay" with including the hold harmless provision, that they had submitted their driver's license information to One Watergate, and that the credit report covering both Mr. and Mrs. Bhayat had also been submitted.

19. On June 14, 2002, Ms. Kurtz wrote a letter to Ms. Horstkamp that stated, in relevant part:

It has come to my attention that the credit report submitted by Mr. and Mrs. Bhayat is not a credit report from a national credit reporting bureau but, in fact, is a consumer report which apparently is used quite often by mortgage brokers and realtors to compile only the positive aspects of an individual's credit reports. As a result of Mr. and Mrs. Bhayat's misrepresentation and attempt to deceive the Association, at this point only a complete and accurate application will be accepted by One Watergate Association. A complete and accurate application shall include both applicant's [sic] date of birth and social security numbers, as well as all other information requested on the application. . . .

20. The credit report in question had been obtained by Mr. Bhayat through Gary McDonald, a home mortgage consultant with MSC Mortgage, a joint venture of Wells Fargo Bank, and Mr. Bhayat's employer, Michael Sanders and Company. Mr. Bhayat gave his Social Security number to Mr. McDonald, who ordered a report from RELS Reporting Services, a Wells Fargo-affiliated company that gathers information from the major credit reporting services. The report that Mr. McDonald generated for Mr. Bhayat is called a "tri-merge" report, because it combined information

from all three major reporting services into a single report. The full report was 11 pages long.

21. At the hearing, there was a dispute as to whether Mr. Bhayat submitted the full 11-page report to One Watergate, or whether he only submitted the first two pages summarizing the information in the full report. Mr. Bhayat insisted that he submitted the full report. Ms. Farr and Mr. Bouchard both testified that they had only ever seen the two-page summary. Mr. Plant testified that One Watergate forwarded to Renters Reference only the two-page summary, not the full 11-page report.

22. The weight of the credible evidence leads to the finding that Mr. Bhayat submitted only the two-page summary of the RELS credit report, not the full 11 pages.

23. In any event, the result would have been the same had Mr. Bhayat submitted the full RELS report, because Mr. Plant testified that even the full report did not meet Renters Reference's criteria for a credit report. Mr. Plant stated that Renters Reference deals directly with the credit reporting bureaus and will accept only a full report from one of the three major bureaus. He termed the RELS document a "concocted report," meaning that it is the product of a third party that bought information from a credit reporting bureau, then prepared its own report.

24. Mr. Plant testified that he has found such "concocted reports" to be unreliable because their authors may make mistakes in transcribing the information from the credit reporting bureau and, more significantly, because their authors may downplay or hide negative information to assist the potential homebuyer in obtaining a loan.

25. Mr. Plant further testified that his company does not "mess around" with the Fair Housing Act and that he would have immediately canceled the contract with One Watergate if he had had the least suspicion that the Board was basing its actions on Mr. Bhayat's race, color, or national origin. Mr. Plant has been the president of Renters Reference throughout its 25-year existence, and his long experience in these matters is credited.

26. The Bhayats made no further attempts to submit applications to One Watergate. Neither the screening committee, nor the full Board, ever took official action because the application was never deemed complete. The Bhayats' purchase of the Hesses' unit fell through. The Hesses ultimately leased their unit to another person.

27. The record indicates that several subsequent purchasers completed their applications and were approved to buy and reside in units in One Watergate without incident.

28. The record indicates that, while the majority of One Watergate's residents are white, persons of color and of varying

national origins own units and reside in One Watergate. No evidence was produced of strained relations among One Watergate's residents relating to their race, color, national origin, sex, handicap, familial status, or religion.

29. The only direct evidence of any discriminatory intent behind the actions of One Watergate toward Mr. Bhayat came from the testimony of Ms. Hess. On June 14, 2002, before she was aware that the Board considered the Bhayats' second application incomplete, Ms. Hess went to the One Watergate office to give written permission for Mr. Bhayat's housepainter to come into her unit and commence work. She spoke to Larry Farr, the building superintendent and husband of Janis Farr.

30. Ms. Hess testified that she asked Mr. Farr whether he had any news of Mr. Bhayat's status. Mr. Farr stated that he had not heard anything, but that "I knew the minute I saw that guy he was going to be trouble." Having never seen Mr. Bhayat, Ms. Hess asked Mr. Farr what he meant. Mr. Farr stated, "Just wait till you see him. You'll know." Ms. Hess testified that she pictured Mr. Bhayat as some large, frightening man, then learned that he was neither large nor frightening. Once she learned of Mr. Bhayat's heritage, she assumed that it was his color and/or national origin to which Mr. Farr was referring.

31. Ms. Hess testified that Larry Farr "is a great guy . . . but he is the most uninhibited speaker of anyone on

the premises . . . [S]ometimes, when he says things, I feel they reflect the opinion of the group. And so when he said that, I was just . . . shocked and thought, 'Well, this must be what they all thought.' That's the feeling I got."

32. Mr. Farr vigorously denied making those statements to Ms. Hess and denied making any statements to anyone regarding Mr. Bhayat's race or national origin. It is noted that Ms. Hess made no contemporaneous mention of this conversation during the course of her correspondence with Mr. Bouchard and the Board; rather, she first mentioned it in a letter to the Board dated July 26, 2002, more than a month after Mr. Farr allegedly made the discriminatory remarks to her and after Mr. Bhayat had filed his Complaint with the Commission.

33. Even if Ms. Hess' version of the conversation with Mr. Farr were to be credited, along with her assumption that Mr. Farr was referring to Mr. Bhayat's race or national origin, her intuitive leap in concluding that Mr. Farr's words reflected the opinion of anyone else would be unsupported. Contrary to Petitioner's assertion, Mr. Farr was not part of One Watergate's "management team." He was the maintenance man. Mr. Farr did not attend Board meetings, had no role in the process of accepting or rejecting applications, and did not discuss Mr. Bhayat with any Board members. There was no evidence

presented that Mr. and Mrs. Farr ever talked about Mr. Bhayat, other than in regard to the aforementioned housepainter.

34. There was no evidence that any member of the Board or the screening committee discriminated against Mr. Bhayat due to his race, national origin, or for any other reason. Most of them never met Mr. Bhayat and were unaware of his race or national origin during the period in dispute. Mr. Bhayat, for reasons of his own, simply declined to submit a complete application to One Watergate, which, in turn, declined to consider his incomplete application.

CONCLUSIONS OF LAW

35. The Division of Administrative Hearings has jurisdiction in this proceeding pursuant to Subsection 120.57(1), Florida Statutes (2004).

36. Subsection 760.23(1), Florida Statutes (2003), provides:

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.

37. 42 U.S.C. Subsection 3604(a) provides that it shall be unlawful

[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or

otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

38. In cases involving a claim of housing discrimination on the basis of race, color, or national origin, the complainant has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973).

39. A prima facie showing of housing discrimination can be made by establishing that Mr. Bhayat was a member of a protected class; that he applied for and was qualified to purchase an available unit; that One Watergate rejected him; and that the unit remained available, thereafter, or was sold or rented to a person not in a protected class. United States Department of Housing and Urban Development v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990); Selden Apartments v. United States Department of Housing and Urban Development, 785 F.2d 152, 159 (6th Cir. 1986).

40. Under the McDonnell Douglas test, once the complainant has made a prima facie case, the burden shifts to the respondent to establish a legitimate, nondiscriminatory reason for the challenged action. The burden then shifts back to the claimant to prove that the articulated nondiscriminatory reason is mere

pretext for the respondent's discriminatory intent. See Blackwell, 908 F.2d at 870.

41. Pretext can be shown by untruths, inconsistencies, and/or contradictions in testimony by a respondent as to the reasons for his or her actions. Woodard v. Fanboy, L.L.C., 298 F.3d 1261, 1265-66 (11th Cir. 2002). See also Combs v. Plantation Patterns, 106 F.3d 1519, 1538 (11th Cir. 1997), quoting Sheridan v. E. I. DuPont de Nemours and Co., 100 F.3d 1061, 1072 (3rd Cir. 1996) (Pretext may be shown through "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence").

42. "Discriminatory intent may be established through direct or indirect circumstantial evidence." Johnson v. Hamrick, 155 F. Supp. 2d 1355, 1377 (N.D. Ga. 2001). "[D]irect evidence of intent is often unavailable." Shealy v. City of Albany, Ga., 89 F.3d 804, 806 (11th Cir. 1996). For this reason, those who claim to be victims of discrimination "are permitted to establish their cases through inferential and circumstantial proof." Kline v. Tennessee Valley Authority, 128 F.3d 337, 348 (6th Cir. 1997). However, proof that, in essence, amounts to no more than mere speculation and self-serving belief on the part of the complainant concerning the motives of the

respondent is insufficient, standing alone, to establish a prima facie case of intentional discrimination. See Lizardo v. Denny's, Inc., 270 F.3d 94, 104 (2d Cir. 2001) ("The record is barren of any direct evidence of racial animus. Of course, direct evidence of discrimination is not necessary. . . . However, a jury cannot infer discrimination from thin air. Plaintiffs have done little more than cite to their mistreatment and ask the court to conclude that it must have been related to their race. This is not sufficient.") (citations omitted); Coleman v. Exxon Chemical Corp., 162 F. Supp. 2d 593, 622 (S.D. Tex. 2001) ("Plaintiff's conclusory, subjective belief that he has suffered discrimination by Cardinal is not probative of unlawful racial animus."); Lo v. F.D.I.C., 846 F. Supp. 557, 563 (S.D. Tex. 1994) ("Lo's subjective belief of race and national origin discrimination is legally insufficient to support his claims under Title VII.").

43. In the instant case, the Commission failed to establish a prima facie case of discrimination either through direct or indirect circumstantial evidence. It was established that Mr. Bhayat is a member of a protected class of persons. However, it was not established that Mr. Bhayat applied for and was qualified to purchase the Hesses' unit at One Watergate or that One Watergate "rejected" an application that was never completed. Mr. Bhayat never completed the form applications

that One Watergate required of all potential purchasers and/or residents after May 2, 2002. The record established that One Watergate attempted to adjust its application process enough to satisfy Mr. Bhayat's privacy concerns, without altogether abandoning its rationale for hiring Renters Reference and establishing a screening process in the first place. It was ultimately Mr. Bhayat's choice not to complete the applications and, thereby, forfeit his opportunity to purchase a unit in One Watergate.

44. Even assuming for the sake of argument that the Commission did establish a prima facie case, One Watergate presented credible evidence of a nondiscriminatory reason for its failure to consider Mr. Bhayat's application: Mr. Bhayat refused to complete One Watergate's application forms. One Watergate began its search for a firm to conduct applicant investigations more than one year prior to Mr. Bhayat's application. Mr. Bhayat was neither the first, nor the last applicant, required to complete the Renters Reference application forms. Renters Reference strongly advised strict compliance with its application procedures, both to ensure a thorough investigation of applicants and to ensure that One Watergate could not be accused of discrimination in its application process. Despite Renters Reference's advice, One Watergate attempted to work out a compromise with Mr. Bhayat.

When Mr. Bhayat submitted an unsatisfactory credit report, One Watergate reasonably abandoned its efforts to mollify Mr. Bhayat and demanded that he complete the application in the same manner as any other potential purchaser. Mr. Bhayat declined to complete the application.

45. The Commission failed to demonstrate that One Watergate's nondiscriminatory reason for failing to consider Mr. Bhayat's application was pretextual. Aside from a single, somewhat ambiguous remark by One Watergate's maintenance man, who stoutly denied ever making it, there is no direct evidence of any racial animus by anyone at One Watergate, nor any indirect evidence that would allow a factfinder to draw an inference of discrimination.

RECOMMENDATION

Upon 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 Petition for Relief.

DONE AND ENTERED this 3rd day of November, 2004, in
Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of November, 2004.

COPIES FURNISHED:

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Derrick Bhayat
101 South Gulfstream Avenue, No. 7E
Sarasota, Florida 34236

Vicki D. Johnson, Esquire
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301-4857

Harry W. Haskins, Esquire
Mary R. Hawk, Esquire
Porges, Hamlin, Knowles & Prouty, P.A.
One Watergate Association, Inc.
3400 South Tamiami Trail, Suite 201
Sarasota, Florida 34239

Cecil Howard, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

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.