

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES W. TRAVIS,)
)
 Petitioner,)
)
 vs.) Case No. 06-0943
)
 GEORGE P. RANCE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge Don W. Davis of the Division of Administrative Hearings conducted a final hearing in this case on May 18, 2006, in Tallahassee, Florida.

APPEARANCES

For Petitioner: James W. Travis, pro se
Post Office Box 95
Istachatta, Florida 34636-0095

For Respondent: No Appearance

STATEMENT OF THE ISSUE

The issue is whether Respondent has engaged in an unlawful housing practice in violation of the Fair Housing Act (Act), Sections 760.20-760.37, Florida Statutes, through discrimination against a former tenant, Petitioner, on the basis of Petitioner's handicap.

PRELIMINARY STATEMENT

On October 11, 2005, Petitioner filed a housing discrimination complaint with the United States Department of Housing and Urban Development (HUD).

The Act is administered jointly in the State of Florida by the Florida Commission on Human Relations (FCHR) and HUD. FCHR completed the investigation of the complaint and, on February 13, 2006, entered a Notice of Determination of No Reasonable Cause.

On February 22, 2006, Petitioner filed a Petition for Relief with FCHR. The matter was subsequently transferred to the Division of Administrative Hearings for formal proceedings. Neither Petitioner nor Respondent replied to the Initial Order entered in the case by the undersigned on March 17, 2006, and, consequently, venue for the proceeding was presumed waived and the matter set for final hearing in Tallahassee, Florida.

During the final hearing, Petitioner testified on his own behalf and presented two exhibits. Respondent did not appear and no appearance was entered on his behalf.

No transcript of the proceeding was provided. Neither party filed a proposed recommended order. All references to Florida Statutes are to the 2005 edition, unless otherwise noted.

FINDINGS OF FACT

1. Petitioner moved to Respondent's rental house trailer on August 27, 2004, where he and his wife resided until September 1, 2005. The house trailer was located in Respondent's trailer park in Istachatta, Florida.

2. Petitioner has suffered bouts of mental illness since his youth. He was hospitalized in the 1980's for depression. Additionally, Petitioner entered into a rehabilitation program for alcohol and drug addiction during the period of 1989 to 1990.

3. Petitioner served in the United States Naval forces during "Desert Storm" when military action was initiated against Iraq in the 1991.

4. Upon his return, Petitioner was incarcerated and evaluated in 1992 for depression in Norfolk, Virginia, as a result of his striking a superior officer without reason. Petitioner was subsequently discharged from the United States military forces with an "OTH" (other than honorable) discharge.

5. Petitioner is considered 100 percent disabled by the Social Security Administration and (as of January 26, 2004) receives approximately \$897 per month from that agency. Additionally, all of his medications for seizures, depression and a back ailment are provided to him free in the form of Medicaid benefits. Respondent was informed by Petitioner of

Petitioner's health status and income at the time of
Petitioner's entry into Respondent's trailer park in 2004.

6. As a result of his special needs, Petitioner keeps and feeds five cats. Three of the cats are "outside cats" and basically come up to be fed. When Petitioner tried to cage the three cats, they dug their way out of the pen in which he placed them. Two of the cats are permitted into Petitioner's living quarters; a solid black cat and a Siamese cat. The cats help sooth Petitioner's "nerves."

7. Respondent refused to provide adequate maintenance of the trailer rented to Petitioner, although Petitioner requested such maintenance. Floors rotted to the point that Petitioner's wife fell through the bathroom floor at one point, requiring that paramedics be summoned to rescue her. Photographs submitted into evidence at the final hearing also corroborate Petitioner's testimony with regard to the sad state of the disrepair of the dwelling rented to Petitioner. It is Respondent's practice to repair trailers only when they are vacant.

8. Petitioner requested that Respondent provide him with information regarding Respondent's insurer after Petitioner's wife fell through the bathroom floor. Respondent refused to provide the requested information.

9. Contrary to allegations of Petitioner's Petition for Relief, dated February 22, 2006, in which Petitioner alleged he was forced to move out as a result of Respondent's failure to make accommodations for Petitioner's handicap, Petitioner failed to pay required rent on the premises and Respondent proceeded to file for eviction of Petitioner from the premises promptly after Petitioner's inquiry seeking information regarding Respondent's insurer. By Petitioner's own admission, Respondent's request for eviction of Petitioner was granted by the local courts. Petitioner and his wife vacated the premises on September 1, 2005.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case. §§ 120.569 and 120.57(1), Fla. Stat.

11. Pursuant to 42 U.S.C. 3604(f)(3)(B) and Section 760.23(9)(b), Florida Statutes, it is discriminatory to refuse a request for reasonable accommodations in rules, policies and practices, when such accommodations are needed to afford a disabled person an equal opportunity to use and enjoy a dwelling. 42 U.S.C. 3604(f)(3)(A) and § 760.23(9)(a), Fla. Stat. It is also considered discriminatory to refuse to permit, at the expense of the handicapped person, reasonable

modifications, if such modifications are necessary to afford such person full enjoyment of the premises.

12. To establish discrimination, Petitioner must prove the following elements: 1) He has a handicap or is a person associated with a handicapped person; 2) Respondent knows of the handicap or should be reasonably expected to know of the handicap; 3) Modification of the existing premises or accommodation of the handicap is necessary to afford the Petitioner an equal opportunity to use and enjoy a dwelling; and 4) Respondent refused permission for such modifications, or refused to make such accommodation. HUD v. Ocean Sands, Inc., Fair Housing-Fair Lending Reporter ¶ 25,055 (HUDALJ, September 3, 1993).

13. Once Petitioner has demonstrated the above elements, Respondent has the burden of proving the requested modification/accommodation is unreasonable. See United States v. Freer, 864 F. Supp. 324 at 326 (W.D.N.Y. 1994); Hovsons, Inc. v. Township of Brick, 89 F.3d 1096 at 1103 (3rd Cir. 1996); United States v. California Mobile Home Park Management Co., 29 F.3d 1413 at 1421 (9th Cir. 1994).

14. Unfortunately, an analysis of the instant case does not proceed to the point of determining whether Respondent subjected Petitioner to discriminatory action because Petitioner

did not pay the required rent and was then, by Petitioner's own admission, evicted from the trailer park.

15. Petitioner's unsupported, subjective belief that he has been the subject of discrimination is not sufficient to meet his burden. Earley v. Champion International Corporation, 907 F.2d 1077 (11th Cir. 1990); William v. Hager Hinge Co., 916 F. Supp. 1163 (M.D. Ala. 1995).

16. Even assuming arguendo that Petitioner is correct in his supposition that he was denied accommodation for his handicap and subjected to eviction proceedings where Respondent prevailed, Petitioner's testimony constituting his opinion that he was singled out because of his handicap does not constitute preponderant evidence, standing alone, sufficient to establish discrimination. William v. Hager Hinge Co., supra.

In summary, the entire body of circumstantial evidence adduced in this case, fails to constitute preponderant evidence that Respondent has subjected Petitioner to an unfair housing practice.

RECOMMENDATION

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

RECOMMENDED:

That FCHR enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 16th day of June, 2006, in
Tallahassee, Leon County, Florida.

Don W. Davis

DON W. DAVIS
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 16th day of June, 2006.

COPIES FURNISHED:

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

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

George P. Rance
Post Office Box 11
Istachatta, Florida 34636

James W. Travis
Post Office Box 95
Istachatta, Florida 34636-0095

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.