

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANNA AND ALLAN KANGAS,)
)
 Petitioners,)
)
 vs.) Case No. 06-2822
)
 HATCHETT CREEK MOBILE HOME)
 PARK CONDOMINIUM ASSOCIATION,)
 INC., ET AL.,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the formal hearing of this case on December 8, 2006, in Sarasota, Florida for the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners: Sheldon Kangas (POA for Anna Kangas)
Allan Kangas
4578 County Manor Drive
Sarasota, Florida 34233

For Respondents: David G. Muller, Esquire
Becker & Poliakoff, P.A.
630 South Orange Avenue, Third Floor
Sarasota, Florida 34236

STATEMENT OF THE ISSUE

The issue is whether Respondent engaged in a discriminatory housing practice, within the meaning of and in violation of the Florida Fair Housing Act, Sections 760.20 through 760.37, Florida Statutes (2005), by requiring Petitioners to submit a second application for the approval of a condominium purchase.

PRELIMINARY STATEMENT

On January 27, 2006, Petitioners filed a Housing Discrimination Complaint with the Florida Commission on Human Relations (Commission). The Commission issued a Notice of Determination of No Cause (No Cause Determination) on June 23, 2006. Petitioners requested an administrative hearing by filing a Petition for Relief with the Commission on July 24, 2006. The Commission referred the Petition to DOAH to conduct the hearing.

At the hearing, Petitioner presented the testimony of two witnesses and submitted 22 exhibits for admission into evidence. Respondent presented the testimony of four witnesses and submitted seven exhibits for admission into evidence.

The identity of the witnesses and exhibits, and the rulings regarding each, are reported in the record of the hearing. Neither party requested a transcript of the hearing.

Respondent filed its proposed recommended order with DOAH on a date sometime in December 2006 that is not reported in the DOAH docket. Petitioner did not file a proposed recommended order.

FINDINGS OF FACT

1. It is undisputed that Petitioner, Allan Kangas, has no handicap and is not a disabled person. At the conclusion of Petitioners' case-in-chief, Mr. Kangas testified that he has no handicap. The undersigned, sua sponte, entered an ore tenus order on the record dismissing the case brought by Mr. Kangas.

2. Petitioner, Anna Kangas, is an elderly female and the mother of Mr. Allan Kangas and Mr. Sheldon Kangas, the latter

being the representative in this proceeding for the named Petitioners. It is undisputed that Mr. Sheldon Kangas is not handicapped, but that Mrs. Kangas is handicapped, within the meaning of Section 760.22(7), Florida Statutes (2005), because of Alzheimer's disease.

3. Respondent is a condominium association lawfully incorporated as a Florida corporation (Association). Respondent must operate in accordance with the Articles of Incorporation, By-Laws, and Declaration of Condominium (condominium documents). The condominium documents require the Association to approve each purchase of a condominium.

4. On December 8, 2005, Mr. Sheldon Kangas and Mrs. Anna Kangas contracted with Ms. Mary Cox to purchase condominium unit 15, located at 23 Hatchett Creek Road. Ms. Cox is a real estate agent and a co-owner of unit 15.

5. Ms. Cox notified Ms. Pat Williamson, Association Secretary, of the prospective purchase. For the reasons stated herein, Respondent did not discriminate against the prospective purchasers, but approved the purchase of condominium unit 18 in a timely manner after the purchasers changed their purchase contract from unit 15 to unit 18.

6. The prospective purchasers completed an application for approval of the purchase of unit 15 sometime between December 8 and 10, 2005. The Association conducted a meeting to approve the proposed purchase on December 10, 2005.

7. During the meeting on December 10, 2005, the purchasers informed the Association that they wished to purchase unit 18,

located at 29 Hatchett Creek Road, rather than unit 15. Unit 18 was owned by Mr. Brian Isaac. Ms. Cox did not object to releasing the purchasers from the contract for the purchase of unit 15.

8. The Association informed the purchasers that a new application for unit 18 would be required. The purchasers completed a new application under protest.

9. At a meeting conducted on January 3, 2006, the Association approved the application for the purchase of unit 18. The purchase of unit 18 closed on January 25, 2006.

10. The purchasers seek reimbursement of living expenses incurred for hotel rooms and meals during the delay caused by the requirement for a second application. The purchasers are not entitled to reimbursement.

11. The purchase of unit 18 was the first time the Association had required a second application. However, it was also the first time a purchaser had changed his or her choice of units after submitting an application.

12. The Association did not discriminate against Mrs. Kangas because of her handicap. The record evidence contains no justifiable issue of law or fact to support the alleged discrimination.

CONCLUSIONS OF LAW

13. DOAH has jurisdiction over the subject matter and the parties in this proceeding. §§ 760.20 through 760.37, and 120.569 and 120.57(1), Fla. Stat. (2005). DOAH provided the parties with adequate notice of the formal hearing.

14. Petitioners have the burden of proof in this proceeding. Petitioners must submit evidence sufficient to establish a prima facie case of discrimination. Once Petitioners establish a prima facie case, the burden shifts to Respondent to articulate some legitimate, nondiscriminatory intent or reason for requiring a second application for approval. See Massaro v. Mainlands Section 1 and 2 Civic Association, Inc., 3 F.3d 1472, 1476 n.6 (11th Cir. 1993)(fair housing discrimination is subject to the three-part test articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)); Secretary of the United States Department of Housing and Urban Development on Behalf of Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990)(three-part burden of proof test in McDonnell governs claims brought under Title VII of the Civil Rights Act).

15. A prima facie showing of housing discrimination simply requires Petitioners to show they applied to purchase an available unit for which they were qualified, their application had been rejected, and, at the time of such rejection, they had been members of a class protected by the Act. See Soules v. United States Department of Housing and Urban Development, 967 F.2d 817, 822 (2d Cir. 1992). Alternatively, Petitioners may satisfy the requirement for a prima facie showing of discrimination by presenting direct evidence of discrimination. See Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121, 105 S. Ct. 613, 621, 83 L. Ed. 2d 523 (1985).

16. Petitioners did not present a prima facie case of discrimination. Petitioners submitted no evidence that

Respondent refused to approve the sale of unit 18 to Petitioners within the meaning of Subsections 760.23(1) and (7), Florida Statutes (2005).

17. A preponderance of evidence shows that Respondent had legitimate non-discriminatory reasons for requiring Petitioners to submit a second application for approval after Petitioners changed the prospective purchase from unit 15 to unit 18. Moreover, the evidence shows that Respondent required a second application solely for legitimate non-discriminatory reasons.

RECOMMENDATION

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

RECOMMENDED that the Commission enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 2nd day of January 2007, in Tallahassee, Leon County, Florida.

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DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of January 2007.

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.