

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VINCENT HALL,)
)
 Petitioner,)
)
 vs.) Case No. 08-4497
)
 MIAMI-DADE HOUSING AGENCY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by telephone conference call between sites in Tallahassee, Miami, and West Palm Beach, Florida, on October 17, 2008.

APPEARANCES

For Petitioner: Vincent Hall, pro se
2315 Waburton Terrace, No. C
Wellington, Florida 33414

For Respondent: Terrence A. Smith, Esquire
Miami-Dade County Attorney
111 Northwest First Street, Suite 2810
Miami, Florida 33128

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent unlawfully discriminated against Petitioner on the basis of his race, sex, or handicap in violation of the Florida Fair Housing Act.

PRELIMINARY STATEMENT

In a Housing Discrimination Complaint filed with the U.S. Department of Housing and Urban Development in July 2008, and subsequently investigated by the Florida Commission on Human Relations ("FCHR"), Petitioner Vincent Hall, who is a black man with an alleged (albeit unspecified) disability, charged that Respondent Miami-Dade Housing Agency had unlawfully discriminated against him by refusing to rent and failing to make a reasonable accommodation. The FCHR investigated Petitioner's claim and, on August 19, 2008, issued a notice setting forth its determination that reasonable cause did not exist to believe that a discriminatory housing practice had occurred. Thereafter, Petitioner filed a Petition for Relief, which the FCHR sent to the Division of Administrative Hearings on September 15, 2008.

At the final hearing on October 17, 2008, Mr. Hall testified on his own behalf and offered no additional evidence. Respondent offered Respondent's Exhibits 1 through 7 during its cross-examination of Mr. Hall, and these documents were received in evidence. Respondent did not otherwise present a case.

The final hearing transcript was filed on December 9, 2008. Thereafter, Respondent filed a proposed recommended order before the previously established deadline of December 19, 2008. Petitioner has not submitted a proposed recommended order.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2008 Florida Statutes.

FINDINGS OF FACT

1. Petitioner Vincent Hall ("Hall") is a middle-aged black man. Although he alleges that he is handicapped, Hall failed to produce any evidence during the final hearing concerning his alleged disability—or even to identify it.¹

2. Respondent Miami-Dade Housing Agency ("Housing Agency") is a department within Miami-Dade County (the "County"), which is a political subdivision of the State of Florida.² The County is the public housing authority ("PHA") within its territorial jurisdiction. As the PHA, the County, through its Housing Agency, administers several federally funded housing programs, including the Section 8 Housing Choice Voucher Program ("Section 8").

3. The County is subject to, and must comply with, the Ann-Marie Adker Consent Decree ("Consent Decree"), which the U.S. District Court for the Southern District of Florida entered in 1998. The Consent Decree requires the County to give certain preferences in housing programs to eligible black public housing residents who qualify as "mobility pool members."

4. Hall is a former resident of Smathers Plaza, one of the County's public housing developments. (Hall lived in Smathers Plaza for a period of time in 2000, leaving voluntarily in

November of that year, at which time he relocated to Palm Beach County, where he continued to reside as of the final hearing.) As a former public housing resident, Hall is a mobility pool member.

5. On December 3, 2007, Hall executed a form called an "Application for Assistance Under the Ann-Marie Adker, Et. Al. Vs. United States Department of Housing and Urban Development and Miami-Dade County Consent Decree," whose purpose is evident from its title. Hall submitted this application to the Housing Agency's Applicant and Leasing Center.

6. By letter dated May 2, 2008, the Housing Agency instructed Hall to appear at the Applicant and Leasing Center on May 15, 2008, for an appointment intended to begin the process of verifying Hall's eligibility for assistance under the Consent Decree. Hall attended this meeting, during which he completed additional paperwork, including a form entitled "Change of Address/Family Size or Special Unit Requirements." One of the questions on this document asked: "Does the Head of Household or other member of the family have a disability?" Hall answered, "No." By signing the document, which Hall did on May 15, 2008, Hall declared "that the information presented [herein] is true and accurate."

7. Despite having disclaimed the existence of any disability, Hall requested that he be provided a live-in aide.

Hall was furnished the documents necessary to apply for "reasonable accommodations" such as an aide, which documents included a certificate to be signed by a physician attesting to the disability, but Hall never returned the completed forms. Accordingly, the Housing Agency could not provide Hall a reasonable accommodation and had not done so as of the final hearing.

8. The Housing Agency did, however, authorize the issuance of a Section 8 voucher for Hall, which he picked up on August 21, 2008. The voucher gave Hall 60 days (extendible to a maximum of 120 days) within which to locate an owner willing to participate in Section 8. As of the final hearing, Hall had not found a unit. The County's fair housing center, operated by Housing Opportunities Project for Excellence, Inc. ("HOPE, Inc.") stood ready to assist Hall if he sought help in returning to Miami-Dade County to live. Unfortunately for him, Hall had not taken advantage of the counseling available through HOPE, Inc.

9. There is no competent, persuasive evidence in the record, direct or circumstantial, upon which a finding of any sort of unlawful housing discrimination could be made. Ultimately, therefore, it is determined that the County and, specifically, its Housing Agency, did not commit any prohibited act vis-à-vis Hall.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to Sections 120.569, and 120.57(1), Florida Statutes.

11. Under the Florida Fair Housing Act ("FFHA"), it is unlawful to discriminate in the sale or rental of housing. Although Hall has not identified the particular provisions of the FFHA under which he purports to travel, it is reasonably clear that he is attempting to assert discrimination claims pursuant to Section 760.23, Florida Statutes.

12. Upon examination of the specific acts of unlawful discrimination and other prohibited practices enumerated in Section 760.23, it is concluded that the following provisions are or might be implicated by Hall's allegations:

(1) 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.

(2) 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 therewith, because of race, color, national origin, sex, handicap, familial status, or religion.

* * *

(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.

13. For purposes of subsections (7) and (8) above, the term "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.

§ 760.23(9), Fla. Stat.

14. The term "handicap" is defined to mean:

(a) 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; or

(b) A person has a developmental disability as defined in s. 393.063.

§ 760.22(7), Fla. Stat.

15. In cases involving a claim of housing discrimination, the complainant has the initial burden of proving a prima facie case of discrimination by a preponderance of the evidence. Generally speaking, a prima facie case comprises circumstantial evidence of discriminatory animus, such as proof that the charged party treated persons outside of the protected class, who were otherwise similarly situated, more favorably than the complainant was treated.³ Failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1012 n.6 (Fla. 1st DCA), aff'd, 679 So. 2d 1183 (1996)(citing Arnold v. Burger Queen Systems, 509 So. 2d 958 (Fla. 2d DCA 1987)).

16. If, however, the complainant sufficiently establishes a prima facie case, the burden then shifts to the charged party to articulate some legitimate, nondiscriminatory reason for its

action. If the charged party satisfies this burden, then the complainant must establish by a preponderance of the evidence that the reason asserted by the charged party is, in fact, merely a pretext for discrimination. See Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc., 3 F.3d 1472, 1476 n.6 (11th Cir. 1993), cert. denied, 513 U.S. 808, 115 S. Ct. 56, 130 L. Ed. 2d 15 (1994)("Fair housing discrimination cases are 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, U.S. Dept. of Housing and Urban Development, on Behalf of Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990)("We agree with the ALJ that the three-part burden of proof test developed in *McDonnell Douglas* [for claims brought under Title VII of the Civil Rights Act] governs in this case [involving a claim of discrimination in violation of the federal Fair Housing Act].").

17. To make out a prima facie case of discrimination, Hall needed to show that he: (1) belongs to a protected class; (2) is qualified to rent an available apartment or receive the services in question; (3) was denied the apartment or services by the Housing Agency; and (4) was treated less favorably by the Housing Agency than were similarly situated persons outside of the protected class. See, e.g., Jackson v. Comberg, 2006 U.S. Dist. LEXIS 66405, *15 (M.D.Fla. Aug. 22, 2006).

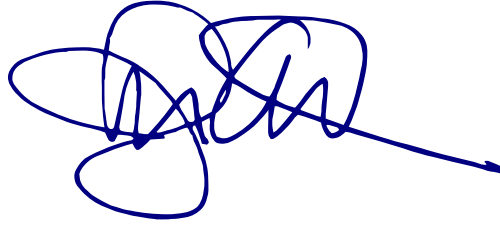
18. It is undisputed that Hall is a black man eligible for housing preferences under the Consent Decree. Beyond that, Hall failed to prove any of the facts required to establish a prima facie case of discrimination on the basis of race or sex. Hall alleged, but failed to adduce any competent evidence establishing, that he is handicapped. Thus, he necessarily failed to make out a prima facie case of discrimination on the basis of handicap. Even if Hall had proved that he is disabled, however, he still would not have prevailed, because the other elements of a prima facie case of discrimination on the basis of handicap were not established.

19. Hall's failure to establish a prima facie case of discrimination ended the inquiry. Because the burden never shifted to the Housing Agency to articulate a legitimate, nondiscriminatory reason for its conduct, it was not necessary to make any findings of fact in this regard.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the FCHR enter a final order finding the Housing Agency not liable for housing discrimination and awarding Hall no relief.

DONE AND ENTERED this 8th day of January, 2009, in
Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of January, 2009.

ENDNOTES

^{1/} The undersigned suspects that Hall actually does have some sort of physical or mental impairment. This suspicion is based on the undersigned's impression (which the final hearing transcript bears out) that Hall is unable consistently to communicate logical thoughts. Much of what he said at the final hearing might even be described as schizophrenic, but no expert opinion on this—or the etiology of Hall's disorganized speech—was introduced. Due to the lack of competent evidence, the undersigned cannot find that Hall is disabled.

^{2/} The County argues persuasively that the Housing Agency is not an independent legal entity and therefore cannot sue or be sued in its own right. On this premise the County urges, under several theories, that this cases should be dismissed for Hall's failure to sue the proper party, namely the County. While the County's position is not without merit, the undersigned declines to dismiss Hall's case on this basis. In this particular instance, where the County has mounted a competent and complete defense to the charges, avoiding a determination on the merits

would serve no useful purpose. In contrast, a final disposition of the disputed issues should be beneficial for both parties, without causing undue prejudice to either.

^{3/} Alternatively, the complainant's burden may be satisfied with direct evidence of discriminatory intent. See Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121, 105 S. Ct. 613, 621, 83 L. Ed. 2d 523 (1985)("[T]he McDonnell Douglas test is inapplicable where the plaintiff presents direct evidence of discrimination" inasmuch as "[t]he shifting burdens of proof set forth in *McDonnell Douglas* are designed to assure that the 'plaintiff [has] his day in court despite the unavailability of direct evidence.'").

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.