

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

NANCY E. CRONK, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 09-0037  
 )  
BROADVIEW MOBILE HOME PARK AND )  
LAMONT GARBER, )  
 )  
Respondents. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of this case for the Division of Administrative Hearings (DOAH) on April 28, 2009, in Palm Bay, Florida.

APPEARANCES

For Petitioner: Richard W. Riehl, Esquire  
Deratany, Goldfarb, Riehl, & Reid  
503 Fifth Avenue, Suite 105  
Indialantic, Florida 32903

For Respondents: Lamont Garber, pro se  
Broadview Mobile Home Park, LLC  
140 Orlando Boulevard, Suite 250  
Winter Park, Florida 32789

STATEMENT OF THE ISSUES

The issues are whether the respondents engaged in a discriminatory housing practice, in violation of the Florida Fair Housing Act, Sections 760.20 through 760.37, Florida Statutes (2007),<sup>1</sup> by discriminating against Petitioner, on the

basis of her alleged disability, and by harassing Petitioner and retaliating against her.

PRELIMINARY STATEMENT

Petitioner dual-filed housing discrimination complaints with United States Housing and Urban Development (HUD) and the Florida Commission on Human Relations (the Commission). HUD issued a determination on October 22, 2008, finding that the respondents did not engage in an unlawful housing practice. The Commission issued a similar determination on December 11, 2008. Petitioner did not pursue the HUD determination, but requested an administrative hearing in the state proceeding by filing a Petition for Relief (Petition) with the Commission on January 6, 2009. The Commission referred the Petition to DOAH to conduct an administrative hearing.

At the hearing, Petitioner testified, called one other witness, and submitted 11 exhibits for admission into evidence. The respondents called seven witnesses and submitted 17 exhibits.

The identity of the witnesses and exhibits, and the rulings regarding each, are reported in the record of the hearing. Neither party ordered a transcript of the hearing. The parties timely filed their respective Proposed Recommended Orders on May 11, 2009.

FINDINGS OF FACT

1. Petitioner is a former resident of Broadview Mobile Home Park (Broadview), located at 1701 Post Road, Melbourne, Florida. Petitioner resided in Broadview for approximately six years from an undisclosed date in 2002 through September 8, 2008.

2. Mr. Lamont Garber holds an ownership interest in Broadview. The record does not quantify the ownership interest of Mr. Garber. Mr. Garber manages Broadview with his brother, Mr. Wayne Garber.

3. Broadview rents sites within the mobile home park to residents who own mobile homes. Each site has access to water and electric service. Each resident arranges his or her water and electric service directly with the respective utility provider.

4. Sometime in 2005, Petitioner purchased a mobile home for approximately \$6,500.00 and moved within Broadview to Lot 24. The rental agreement for Lot 24 required rent to be paid on the first day of each month. The rent for July 2008 was due on July 1, 2008.

5. Petitioner failed to pay the rent payment that was due on July 1, 2008. On July 9, 2008, Broadview served Petitioner, by certified mail, with a notice that she had five business days in which to pay the rent due (the five-day notice).

6. Petitioner received the five-day notice on July 10, 2008. The five-day period expired on July 17, 2008, with no rent payment from Petitioner. Petitioner had paid rent late in the past, but Petitioner had never been more than four or five days late.

7. After July 17, 2008, Broadview initiated eviction proceedings. Petitioner tendered the rent payment on July 20, 2008, but Broadview proceeded with the eviction.

8. Petitioner did not appear and defend the eviction proceeding. On August 26, 2008, the County Court for Brevard County, Florida, issued a Final Default Judgment of Eviction awarding possession of Lot 24 to Broadview. Law enforcement officers thereafter executed the Court's order and evicted Petitioner from Broadview on or about September 8, 2008.

9. After Petitioner received the notice of eviction, she filed a complaint with the Florida Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (DBPR). DBPR is the state agency responsible for regulating mobile home parks, including Broadview.

10. The allegations in the complaint that Petitioner filed with DBPR were substantially similar to the claims of discrimination, retaliation, harassment, and unlawful rent increases Petitioner asserts in this proceeding. DBPR rejected

Petitioner's allegations and found that Broadview lawfully evicted Petitioner for non-payment of rent.

11. The final agency action of DBPR is substantially similar to that of HUD and the Commission's proposed agency action in this proceeding. Each agency found that Broadview lawfully evicted Petitioner for non-payment of rent and rejected the allegations of discrimination, harassment, and retaliation. The DOAH proceeding is a de novo consideration of the proceeding before the Commission.

12. A preponderance of the evidence does not establish a prima facie showing that Petitioner is disabled or handicapped. Petitioner has cancer and is receiving chemotherapy and radiation treatment. A preponderance of evidence does not show that the medical condition substantially limits one or more major life activities of Petitioner.

13. Petitioner also alleges that she is disabled and handicapped by a mental condition. Petitioner submitted no medical evidence of the alleged disability or handicap. A preponderance of evidence does not establish a prima facie showing that, if such a mental condition exists, the condition substantially limits one or more major life activities of Petitioner.

14. Assuming arguendo that a preponderance of the evidence showed that Petitioner were disabled or handicapped, a

preponderance of evidence does not establish a prima facie showing that either of the respondents discriminated against Petitioner, harassed her, or evicted her in retaliation for Petitioner's disability or handicap.

15. It is undisputed that Petitioner conducted neighborhood organization efforts to protest a rent increase at Broadview and repeatedly called law enforcement officials to report alleged drug and prostitution activity in Broadview.<sup>2</sup> However, Broadview did not evict Petitioner for those activities, and Petitioner's testimony to the contrary is neither credible nor persuasive.

16. Rather, Petitioner engaged in other activities that the respondents found objectionable. Petitioner baby sat for one or more dogs in violation of Broadview's prohibition against pets. Some of the dogs were dangerous to other residents. Petitioner also verbally abused Mr. Wayne Garber when he attempted to mediate with Petitioner concerning the presence of dogs and Petitioner's conduct toward management at Broadview.

17. On July 1, 2008, Broadview served Petitioner with a seven-day notice concerning Petitioner's compliance with lease requirements. The notice, in relevant part, alleged that Petitioner harassed management and impaired the ability of management to perform its duties. The testimony of respondents

describing the activities of Petitioner that precipitated the seven-day notice is credible and persuasive.

18. A preponderance of the evidence shows that the respondents had legitimate non-discriminatory reasons for requiring Petitioner to comply with the terms of the seven-day notice and for requiring Petitioner to comply with the requirement for rent to be paid on July 1, 2008. Petitioner failed to comply with either requirement, and Broadview evicted Petitioner for legitimate, non-discriminatory reasons. The respondents did not harass or retaliate against Petitioner.<sup>3</sup>

#### CONCLUSIONS OF LAW

19. DOAH has jurisdiction over the subject matter of and the parties to this proceeding. §§ 760.20 through 760.37, 120.569, 120.57(1), and 120.595, Fla. Stat. (2008). DOAH provided the parties with adequate notice of the final hearing.

20. Petitioner has the burden of proof in this proceeding. Petitioner must submit evidence sufficient to establish a prima facie case of discrimination. 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). For reasons stated in the Findings of Fact, Petitioner did not present a prima facie case of discrimination, harassment, or retaliation.

RECOMMENDATION

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

RECOMMENDED that the Commission enter a final order finding that the respondents did not engage in an unlawful housing practice and dismissing the Petition for Relief.

DONE AND ENTERED this 20th day of May, 2009, in Tallahassee, Leon County, Florida.



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DANIEL MANRY  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of May, 2009.



ENDNOTES

<sup>1/</sup> References to subsections, sections, and chapters are to Florida Statutes (2007), unless otherwise stated.

<sup>2/</sup> Petitioner submitted no evidence of criminal convictions that resulted from her complaints to police.

<sup>3/</sup> Petitioner testified that the respondents turned off her electric and water prior to the eviction date and prevented Petitioner from removing all of her belongings from the mobile home unless Petitioner agreed to sell the mobile home to the respondents for \$500.00. Most of that testimony pertains to alleged damages, which is a moot issue in the absence of a finding of discrimination, but, apart from its relevancy, the fact-finder does not find Petitioner's testimony on this point to be credible and persuasive.

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.