

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEWIS CORE,)
)
 Petitioner,)
)
 vs.) Case No. 09-0567
)
 EMBASSY HOUSE ASSOCIATION,)
 INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of this case for the Division of Administrative Hearings (DOAH) on May 13, 2009, in Sarasota, Florida.

APPEARANCES

For Petitioners: Lewis Core, pro se
770 Palm Avenue, No. 1002
Sarasota, Florida 34236

For Respondents: Yueling E. Lee, Esquire
Cole, Scott & Kissane, P.A.
Bridgeport Center, Suite 750
5201 West Kennedy Boulevard
Tampa, Florida 33609

STATEMENT OF THE ISSUE

The issue is whether Respondent engaged in a discriminatory housing practice, in violation of the Florida Fair Housing Act, Sections 760.20 through 760.37, Florida Statutes (2008),¹ by revoking an accommodation which allowed Petitioner to have a

support dog in his condominium on the alleged ground that the support dog presents a health hazard for Petitioner's neighboring condominium resident.

PRELIMINARY STATEMENT

On October 26, 2008, Petitioner 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 January 16, 2009. Petitioner requested an administrative hearing by filing a Petition for Relief (Petition) with the Commission on January 29, 2009. The Commission referred the Petition to DOAH to conduct an administrative hearing.

At the hearing, Petitioner testified, presented the testimony of one other witness, and submitted no exhibits for admission into evidence. Respondent called one witness and submitted no exhibits for admission into evidence.

The identity of the witnesses and the rulings regarding each are reported in the Transcript of the hearing filed with DOAH on May 28, 2009. Respondent filed its Proposed Recommended Order (PRO) on June 9, 2009. Petitioner did not file a PRO.

FINDINGS OF FACT

1. Petitioner is a resident owner of a condominium in Embassy House Condominiums (Embassy House). Embassy House is a covered, multifamily dwelling unit within the meaning of

Subsection 760.22(2). Petitioner's condominium is a dwelling defined in Subsection 760.22(4).

2. Respondent is the entity responsible for implementing the rules and regulations of the condominium association. Relevant rules and regulations prohibit residents from keeping dogs in their condominiums.

3. Sometime after July 17, 2008, Respondent granted Petitioner's written request to keep a support dog in his condominium as an accommodation based on Petitioner's handicap. Respondent does not dispute that Petitioner is a handicapped person within the meaning of Subsection 760.22(7). Petitioner's handicap includes cancer and depression.

4. After Respondent granted permission for Petitioner to keep a support dog in his condominium, Petitioner purchased a small dog that weighs less than 15 pounds. Respondent now proposes to revoke permission for Petitioner to keep the support dog.

5. The sole grounds for the proposed revocation is that the female resident of the condominium adjacent to Petitioner's, identified in the record as Ms. Madeline O'Connell, allegedly is allergic to pet dander. A preponderance of the evidence does not support a finding that the support dog presents a health hazard to Ms. O'Connell.

6. Neither Ms. O'Connell nor her physician, who is not identified in the record, testified. The admitted "sole basis" of Respondent's position is a note from an unidentified, alleged physician that Respondent did not submit for admission into evidence. Respondent identified the note through the testimony of a lay witness, but never submitted the note for admission into evidence.

7. The lay witness for Respondent identified the note as the note provided to him by Ms. O'Connell. The remainder of the testimony of the lay witness consists of statements by Ms. O'Connell to the lay witness concerning the alleged allergy of Ms. O'Connell.

8. If the evidence were to show that Ms. O'Connell is allergic to pet dander, the support dog is a breed that does not have dander. The support dog is hypoallergenic.

9. If the evidence were to show that the support dog were not hypoallergenic, adequate measures have been implemented to protect Ms. O'Connell from any threat to her health. The air conditioning vents that feed cool air from Petitioner's condominium into the common lobby for the two condominium units have been sealed. The interior of the condominium units are cooled by separate air conditioning units.

10. The trier of fact finds the paucity of testimony concerning the alleged health hazard to Ms. O'Connell to be less

than credible and persuasive. Ms. O'Connell makes no effort to protect herself from exposure to the support dog. On at least three occasions, Ms. O'Connell voluntarily exposed herself to the support dog to make confrontational comments to Petitioner about the support dog.

CONCLUSIONS OF LAW

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

12. 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).

13. For reasons stated in the Findings of Fact, Petitioner presented a prima facie case that the proposed revocation of an accommodation is an unfair housing practice. It is undisputed

that Petitioner is handicapped within the meaning of Subsection 760.22(7).

14. Respondent did not show by a preponderance of the evidence that the proposed revocation of the accommodation is reasonable. The alleged allergy of Ms. O'Connell is not supported by a preponderance of the evidence.

15. Respondent admittedly relies solely on a note allegedly obtained by Ms. O'Connell from an unidentified person said to be a physician. The failure of Respondent to submit the note for admission into evidence deprived Petitioner of the opportunity to object to its admissibility and to cross-examine the document. Even if Respondent were to have submitted the document for admission into evidence, Petitioner would have been deprived of the opportunity to cross-examine any conclusions reached by the author of the note.

16. The lay witness for Respondent identified the note as the note that Ms. O'Connell had given to the witness. There is no evidence that the lay witness conferred with the author of the note or has any first-hand knowledge of the alleged allergy of Ms. O'Connell.

17. Neither Ms. O'Connell nor the author of the note was present at the final hearing for Petitioner to cross-examine. Hearsay evidence is not sufficient to support a finding of fact. § 120.57(1)(c).

RECOMMENDATION

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

RECOMMENDED that the Commission enter a final order upholding the Petition for Relief and dismissing the proposed revocation of the accommodation for Petitioner to keep a support dog in his condominium.

DONE AND ENTERED this 25th day of June, 2009, in Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of June, 2009.

ENDNOTE

^{1/} References to subsections, sections, and chapters are to Florida Statutes (2008), unless otherwise stated.

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.