

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WIKINDSON PHILIPPE,)
)
 Petitioner,)
)
 vs.) Case No. 09-0979
)
 COUNTRYWIDE HOME LOANS, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on October 22, 2009, in Kissimmee, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Wikindson Phillippe, pro se
2413 Country Pond Court
Saint Cloud, Florida 34771-8868

For Respondent: Robert C. Graham, Esquire
Akerman Senterfitt
50 North Laura Street
Suite 2500
Jacksonville, Florida 32202

STATEMENT OF THE ISSUE

Whether Respondent, Countrywide Home Loans, Inc. (Respondent), discriminated against Petitioner, Wikindson Philippe (Petitioner) in the origination of Petitioner's mortgage loan on the basis of race and national origin in

violation of the Florida Fair Housing Act, and, if so, what remedy is available.

PRELIMINARY STATEMENT

On February 19, 2009, the Florida Commission on Human Relations (FCHR) forwarded a Petition for Relief filed by Petitioner. Petitioner claimed that Respondent violated the provisions of the Florida Fair Housing Act (found at Sections 760.20 through 760.37, Florida Statutes (2009)) by fixing the amount of, the interest rate, and duration of a mortgage loan (loan number 171654270) to disfavor him because of his race, color or national origin. Respondent denied the allegations.

The case was promptly scheduled for hearing for April 30, 2009. Thereafter, the case was rescheduled on two occasions. The hearing was ultimately conducted on October 22, 2009. At the hearing, Petitioner testified in his own behalf and offered testimony from Immacula Philippe, his wife; Lydia Lapotaire, a loan consultant; and William Carlisle, document custodian for KB Home. Petitioner's Exhibits identified as A-1, A-2, A-3, A-6, B, C, D, E, H, I, J, and L were admitted into evidence. Respondent presented testimony from Barry Thompson, the AVP branch manager for KB Home Mortgage. Respondent's Exhibits numbered 1-9 were also received in evidence. A transcript of the proceeding was filed with the Division of Administrative Hearings on November 6, 2009. The parties were

granted ten days from the filing within which to file their proposed recommended orders. Both parties timely filed proposed orders that have been fully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Wikindson Philippe, is a black male of Haitian origin. He filed a Housing Discrimination Complaint against Respondent on November 5, 2008.

2. At all times material to the allegations of the complaint, Respondent was a lender in partnership with KB Home, a construction entity developing a residential community described in the record as Blackstone.

3. On May 20, 2007, Petitioner and his wife ventured forth to look at homes for purchase. They initially went to a KB Home development to inquire about homes but were told it was sold out. They proceeded to a nearby development, Blackstone, and met with a salesman who Petitioner described as "aggressive." The salesman showed Petitioner various lots and Petitioner and his wife were impressed by the community.

4. In order to get "pre-qualified" for a loan to purchase a home, the KB Home salesman referred the couple to Lydia Lapotaire, a loan consultant who was located in Respondent's sales center.

5. Mrs. Lapotaire was employed by Countrywide KB Home Loans, the preferred lender for KB Home residential properties.

6. Working in tandem, KB Home the builder/developer and Countrywide KB Home Loans, the preferred lender, sought to accommodate Petitioner's interest in purchasing the Blackstone home. Both entities had a financial interest in securing Petitioner's business.

7. Despite his concerns that he was being inappropriately pressured to purchase a home, Petitioner signed a contract to acquire a lot and single-family dwelling to be constructed on the lot. The purchase agreement recognized that the final purchase price could be stated in an addendum to the initial contract. Based upon the purchase agreement Petitioner planned to acquire a home with a total sales price of \$302,490.00.

8. At all times material to the negotiation of the purchase agreement, Petitioner had advised the salesman and Mrs. Lapotaire that he could not afford to pay more than \$1,600.00 per month for a mortgage payment. Petitioner was not concerned regarding the amount of the loan so long as the total monthly payment did not exceed his cap. Because he relied on the representations of the salesman and the lender's consultant and wanted to have the home, Petitioner deposited \$5,000.00 down on the purchase agreement.

9. At all times material to the purchase, both Mrs. Lapotaire and the salesman assured Petitioner that the lender would work with him to allow him to acquire the home. Nevertheless, when Petitioner consulted a friend who had more experience in the purchase of homes, Petitioner became concerned that the home he desired could not be acquired for the amount he could pay. When Petitioner brought these concerns to the salesman's attention he was advised that he would lose his deposit if he attempted to cancel the contract. Petitioner believed that the only way he could recover his deposit money was to be denied for the loan.

10. To that end, Petitioner and his wife selected upgrades from the base price of the home. In so doing, Petitioner was required to make additional deposits. In accordance with the time lines specified by the builder, Petitioner deposited a total of \$20,000 toward the purchase price of the home.

11. As evidenced by Petitioner's Exhibit B (also admitted into the record as Respondent's Exhibit 7), Petitioner's loan application for the Blackstone home was not approved. The Notice of Action Taken specified several reasons Countrywide KB Home Loans was unable to approve the loan. Petitioner claimed he did not receive the notice; it was sent to an incorrect address. Instead of being addressed to apartment 772, it was addressed to apartment 72.

12. In the meanwhile, the lender continued to seek financing for Petitioner's purchase. At that time, Respondent had an affiliated company called Full Spectrum Lending that worked as a subprime unit. By going that route it was presumed the buyer was still actively seeking to purchase the home and that various lending scenarios could be explored to determine whether Petitioner might qualify.

13. It is undisputed that Petitioner did not qualify for a loan under the standard loan scenario.

14. None of the lending procedures used by Respondent, Countrywide KB Home Loans, or Full Spectrum Lending required Petitioner to disclose his race or ethnic origin. In fact, Petitioner did not prove that any of the loan processors or underwriters knew Petitioner's race or ethnic origin. There is no evidence that Petitioner's race and ethnic origins were considered in the decision to approve or not approve the loan.

15. The motivations of Respondent and KB Home were likely similar. As joint venture partners, they would have wanted Petitioner to be approved for a loan and to close on it. KB Home would not likely decline to sell to Petitioner nor want to refund his deposit. Respondent would not likely profit from not approving the loan. None of the business reasons for wanting the loan and sale to be consummated were based upon Petitioner's race or ethnic origin. In short, financial interests and not a

desire to harm a person of Petitioner's race or ethnic origin were the key reasons for the seller and lender to work in concert to achieve the closing on Petitioner's home.

16. After an extended amount of time, Petitioner did close on the home. He claimed that he was pressured into closing due to the fear that his deposit would be lost but he nevertheless signed all of the closing documents necessary to own and finance the home. It was undoubtedly too expensive for Petitioner.

17. Petitioner has not been able to keep current on his mortgage obligation. Facing foreclosure, he now asserts that Respondent's actions were to take advantage of him based upon his race or ethnic origin. Respondent and KB Home may have unduly pressured Petitioner to purchase a home he could not afford, but there is no evidence they did so based upon his race or ethnic origin.

18. Petitioner is an articulate person. Through out these proceedings he has stated his position on the issues of the case in a well-reasoned and cogent manner. He is understandably disenchanted with the financial results of his home purchase. He has, however, continued to enjoy the residence and his wife likes the home.

19. Petitioner's purchase agreement provided, in pertinent part:

5.5 Failure to Obtain Commitment. Prior to the Loan Approval Deadline, if Buyer's loan application is denied or Buyer obtains an unsatisfactory loan approval (in Buyer's reasonable discretion) Buyer may cancel this Agreement with written notice to Seller and receive a refund of all Deposits.

20. Based upon the Notice of Action Taken (dated July 13, 2007); Petitioner could have canceled the purchase agreement. He chose to close on the transaction. If Petitioner was not approved for a loan or if the terms of a loan were unreasonable, Petitioner did not have to accept the terms of the loan. Petitioner erroneously presumed he would not receive a refund of his deposit.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. §§ 120.569 and 120.57(1), Fla. Stat. (2009).

22. Petitioner bears the burden of proof in this cause to establish by a preponderance of the evidence that Respondent committed the violation alleged. See § 760.34(5), Fla. Stat. (2009). More specifically, Petitioner must establish a prima facie case that Respondent committed an unlawful act constituting a violation of Section 760.25, Florida Statutes (2009).

23. Section 760.25, Florida Statutes (2009), provides:

Discrimination in the financing of housing or in residential real estate transactions.

(1) It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the race, color, national origin, sex, handicap, familial status, or religion of such person or of any person associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the race, color, national origin, sex, handicap, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(2)(a) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, handicap, familial status, or religion.

(b) As used in this subsection, the term "residential real estate transaction" means any of the following:

1. The making or purchasing of loans or providing other financial assistance:

- a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - b. Secured by residential real estate.
2. The selling, brokering, or appraising of residential real property.

24. Petitioner presented no direct or statistical evidence to support a claim of discrimination based upon race or ethnic origin. The record is devoid of evidence that Petitioner did not receive a loan comparable to others not within a protected class. The terms of the loan as to percent of down payment, term, and interest rate were accepted by Petitioner. There is no evidence that those items were unreasonable or that others not within Petitioner's protected class received more favorable terms. In short, Petitioner made an unfortunate business decision that Respondent and KB Home were willing to let him make.

25. In claims of housing discrimination the three-part test articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) is applicable. 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 (1994). In essence, the claimant must first establish that he is a member of a protected class and that others outside his protected class were treated more favorably than he in the housing transaction. If the initial burden is met, the burden then shifts to the charged party to

articulate some legitimate, non-discriminatory reason for its action. Should the charged party satisfy that burden, the claimant may then assert and prove that the alleged legitimate reasons for the actions were merely a pretext for discrimination. In this case, Petitioner proved that he is a member of a protected class but little else. Respondent was not required to prevent Petitioner from making a poor financial decision. Lenders may be more than willing to loan money a debtor cannot repay. In this instance the initial denial and subsequent approval of Petitioner's loan had nothing to do with Petitioner's race or ethnic origin.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the complaint of discrimination filed by Petitioner.

DONE AND ENTERED this 2nd day of February, 2010, in Tallahassee, Leon County, Florida.



J. D. PARRISH
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 February, 2010.

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.