

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DIANE SCOTT,)
)
 Petitioner,)
)
 vs.) Case No. 09-1240
)
 MONROE COUNTY HOUSING)
 AUTHORITY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on June 22, 2009, in Marathon, Florida.

APPEARANCES

For Petitioner: Diane Scott, pro se
637 92nd Street Ocean
Marathon, Florida 33050

For Respondent: Franklin D. Greenman, Esquire
Greenman & Manz
5800 Overseas Highway, Suite 40
Marathon, Florida 33050

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Monroe County Housing Authority, unlawfully discriminated against Petitioner, Diane Scott, on the basis of her race 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 January 2009, and subsequently investigated by the Florida Commission on Human Relations (hereinafter referred to as the "Commission"), Petitioner, who is a black female, charged that Respondent had unlawfully discriminated against her by refusing to renew her lease. The Commission investigated Petitioner's claim and, on February 17, 2009, issued a notice setting forth its determination that reasonable cause did not exist to believe that a discriminatory housing practice had occurred.

In response to the Commission's determination, Petitioner filed a Petition for Relief, which the Commission filed with the Division of Administrative Hearings on March 10, 2009. The Petition for Relief was designated DOAH Case No. 09-1240, and was assigned to the undersigned.

By Notice of Hearing issued March 23, 2009, the matter was scheduled to be heard on May 27, 2009. The final hearing was subsequently rescheduled for June 22, 2009, by Order Re-Scheduling Hearing entered April 1, 2009. The hearing was re-scheduled in order to reduce the costs of travelling to Marathon.

At the final hearing, Petitioner testified on her own behalf and presented the testimony of Arlene Heller, a former

neighbor of Petitioner, and Kenneth Scott, Petitioner's husband. Petitioner also had 39 Exhibits admitted without objection. Respondent presented the testimony of Jesus Manuel Castillo, Sr., Respondent's Executive Director. Respondent also had admitted Respondent's Exhibits 1 through 13, 15 through 27, 35, and 52 through 63.

No court reporter was provided by the Commission. Therefore, no final hearing transcript has been filed.

At the conclusion of the hearing, the parties were given ten days to file post-hearing argument. Petitioner filed a Proposed Recommended Order on July 1, 2009. Counsel for Respondent represented that Respondent would not be filing any post-hearing submittal. Petitioner's submittal has been fully considered.

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

FINDINGS OF FACT

1. Petitioner Diane Scott is a black women. Her husband, Kenneth Scott, who lives with her, is a black man.

2. Respondent Monroe County Housing Authority (hereinafter referred to as the "Housing Authority") is responsible for providing low income and affordable rental apartments in Monroe County, Florida (hereinafter referred to as the "County"), a political subdivision of the State of Florida. The Housing

Authority is responsible for the Section 8 Housing Choice Voucher Program.

3. Ms. Scott and her husband (hereinafter referred jointly as the "Scotts"), are former residents of apartment number 23 (hereinafter referred to as the "Apartment"), Tropical Isle Apartments, one of the Housing Authority's housing developments, located at 260 41st Street, Marathon, Florida. The Scotts rented the Apartment pursuant to an Affordable Housing Residential Lease Agreement entered into on March 1, 2007 (hereinafter referred to as the "Lease"). The Lease provided for a one-year rental period.

4. As the Scotts readily admitted at hearing, Ms. Scott has raised numerous complaints with the Housing Authority concerning matters ranging from drug sales and use at Tropical Isle Apartments, which door maintenance personnel should utilize to enter the Apartment, and, most recently, the employment of an individual with a criminal record at Tropical Isle Apartments. Ms. Scott's complaints, which were made in person, by telephone, and by email, were numerous and extremely time-consuming to deal with by personnel of the Housing Authority. Efforts to respond to Ms. Scott's complaints more often than not did not satisfy her.

5. By letter dated January 23, 2008 (hereinafter referred to as the "Notice of Violation"), the Scotts were informed that

Ms. Scott's conduct constituted a violation of the Lease and that if it continued, could result in termination of the Lease (why the letter was signed by Charla Rodriguez, Director of Operations, The Housing Authority of the City of Key West, Florida, was not explained at hearing).

6. Jesus Manuel Castillo, Sr., Executive Director of the Housing Authority, met with the Scotts on February 28, 2008, to discuss the Notice of Violation and determined that the Notice had been properly issued.

7. Ms. Scott's behavior did not improve. Consequently, by letter dated October 30, 2008, Susan E. Vogt, Housing Manager for Tropical Isle Apartments, informed the Scotts that their Lease would not be renewed and that, therefore, their Lease would expire effective January 12, 2009. Ms. Vogt's more than four-page letter described in some detail the events which had led to the decision to not renew the Scotts' Lease.

8. The decision to not renew the Scotts' Lease was made by Mr. Castillo, Sr. Mr. Castillo had met with Ms. Scott on more than one occasion and had been the recipient of her emails and telephone calls and was well aware of the time and effort staff had to expend dealing with Ms. Scott's complaints.

9. Mr. Castillo, on behalf of the Housing Authority, decided to not renew the Scotts' lease, rather than evicting

them so that the Scotts would be able to continue to receive a Section 8 voucher.

10. 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. Even the Scotts admitted at hearing that their lease was not renewed primarily because of Ms. Scott's continuous complaints, adding that they "believed it was also because of their race." Even Ms. Scott's Proposed Recommended Order fails to mention how her race played any part in her treatment by the Housing Authority. Ultimately it is determined that the Housing Authority did not commit any prohibited act vis-à-vis Ms. Scott.

CONCLUSIONS OF LAW

11. 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.

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

13. 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 Ms. Scott'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.

. . . .

14. 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. 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)).

15. 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].").

16. To make out a prima facie case of discrimination, Ms. Scott needed to show that she: (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 Authority; and (4) was treated less favorably by the Housing Authority 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).

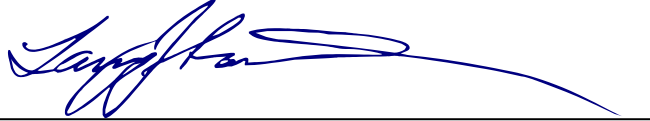
17. It is undisputed that Ms. Scott met the first three elements of a prima facie case. She failed to prove, however, that she was treated less favorably by the Housing Authority than similarly situated persons outside her protected class.

18. Had Ms. Scott presented a prima facie case of discrimination, which she did not, the Housing Authority met its burden by proving that the refusal to renew the Scotts' Lease was based upon a legitimate, nondiscriminatory reason. The Housing Authority's proof was not countered by Ms. Scott with evidence that the reason asserted by the Housing Authority for refusing to renew the Scotts' Lease was, in fact, merely a pretext for discrimination.

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 finding the Monroe County Housing Authority not liable for housing discrimination and awarding Ms. Scott no relief.

DONE AND ENTERED this 14th day of July, 2009, in
Tallahassee, Leon County, Florida.



LARRY J. SARTIN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of July, 2009.

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.