

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SUSAN WALTERS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 09-2805  
 )  
 STERLING BALDWIN, B.A. AND )  
 BLACKWATER HOUSING CORPORATION, )  
 ET AL., )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to Notice, a formal hearing was conducted in this proceeding before Administrative Law Judge Diane Cleavinger of the Division of Administrative Hearings in Pensacola, Florida, on August 4, 2009.

APPEARANCES

For Petitioner: Susan Walters, pro se  
112 Bartow Avenue  
Pensacola, Florida 32507

For Respondent: Sterling Baldwin, B.A., pro se  
Lakeview Center  
1813 North J Street, Building L  
Pensacola, Florida 32501

For Respondent: Dan D'Onofrio  
Blackwater Housing Corporation,  
Progressive Management of Milton and  
Boardwalk Apartments  
205 Brooks Street, Southeast, Suite 305  
Fort Walton Beach, Florida 32548

STATEMENT OF THE ISSUE

Whether Petitioner was the subject of discrimination based on her race, sex or handicap in leasing her apartment from Respondents in violation of Sections 804d and 804f of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988 and the Florida Fair Housing Act and Section 760.23(2)(4), Florida Statutes (2008).

PRELIMINARY STATEMENT

Petitioner filed a complaint with the U.S. Department of Housing and Urban Development (HUD) and the Florida Commission on Human Relations (FCHR), alleging that she was discriminated against based on her race, sex or handicap by the Respondents when the Respondents leased an apartment to her and imposed discriminatory terms, conditions, privileges, or services on Petitioner's lease.

An investigation of the complaint was made by FCHR. The Commission issued its determination that there was no reasonable cause to believe that a discriminatory housing practice had occurred in violation of Section 760.23(1), Florida Statutes (2008), or Sections 804d and 804f of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988. Petitioner disagreed with FCHR's determination and filed a Petition For Relief. The case was forwarded to the Division of

Administrative Hearings to conduct a formal hearing on the matter.

Contrary to clearly established law, FCHR did not make arrangements to preserve the testimony at the final hearing, either by sending a court reporter or a recording device with someone to operate it. See § 120.57(1)(g), Fla. Stat.; Fla. Admin. Code R. 28-106.214; North Dade Security Ltd. Corp. v. Dept. of State, 530 So. 2d 1040 (Fla. 1st DCA 1988) and Poirer v. Dept. of Health & Rehab. Servs., 351 So. 2d 50 (Fla. 1st DCA 1977). The parties were informed of the agency's policy to not provide an official means of preserving the testimony at the final hearing. Neither party hired a court reporter to preserve the hearing. At the hearing all parties elected to proceed with the hearing without preservation of the record. Therefore, there is no record of the final hearing, except for exhibits, if any, received into evidence and this Recommended Order.

During the hearing, Petitioner testified on her own behalf. Respondent, Sterling Baldwin, testified on his own behalf and presented the testimony of one witness. Respondents, Blackwater Corporation, Progressive Management of Milton, Inc., and Boardwalk Apartments, were dismissed as parties.

After the hearing, Petitioner filed a letter on August 4, 2009 and a formal Proposed Recommended Order on September 9,

2009. Respondent, Baldwin, did not file a proposed recommended order.

#### FINDINGS OF FACT

1. Petitioner is a white female with a mental impairment. As such, she is a member of a protected class.

2. Boardwalk Apartments (Boardwalk) is a large apartment complex owned by Blackwater Housing Corporation (Blackwater) and managed by Progressive Management of Milton, Inc. (Progressive). Boardwalk leases 6 apartments to Lakeview Center. Neither Blackwater, Progressive nor Boardwalk had any substantial contact with Petitioner. Nor were any of these Respondents involved in the lease arrangement Petitioner had with Lakeview Center. Because of this lack of involvement, Blackwater, Progressive and Boardwalk were dismissed as parties at the close of Petitioner's case in chief.

3. Lakeview Center leases its Boardwalk Apartments to its clients who qualify for services in its Independent Living Program. In order to qualify to lease an apartment under the Independent Living Program, a person must have a major mental illness and be homeless. The program is a therapeutic program with a housing component that is intended to help homeless, mentally-ill clients of Lakeview learn and attain independent living skills. If a person qualifies for the program, he or she enters into a contract and a lease with Lakeview Center that

requires the tenant to clean and maintain the apartment he or she leases. All the apartments at Boardwalk could be leased to two clients at one time.

4. During the time relevant to this proceeding, the Lakeview apartments at the Boardwalk Apartment complex were leased to six tenants. Like Petitioner, all six tenants were female, White, and had a mental disability. In fact, the only tenants that Lakeview can provide housing to under its Independent Living Program are homeless individuals with a mental impairment.

5. On November 7, 2008, Petitioner applied to rent a unit through the Lakeview Center Independent Living Program and was accepted. She entered into the standard contract and lease used by Lakeview Center in its Independent Living Program. As with all of Lakeview's tenants, the contract required Petitioner to clean and maintain the apartment.

6. The apartment at the Boardwalk Apartment complex assigned to Petitioner was newly renovated and relatively clean. One other Lakeview client was living in the apartment.

7. Petitioner did not provide any credible evidence to support that the apartment was filthy or that she was given or held to different terms and conditions than other residents of the Independent Living Program based on her race, sex, color or disability. Indeed, her roommate lived in the apartment under

the same terms and conditions that Petitioner lived in the apartment. Petitioner did not present any evidence regarding any of the other tenants' terms and/or conditions relative to their apartments.

8. Petitioner, simply, did not like the condition of her apartment, refused to clean the apartment and, the next day, declined to stay in the apartment.

9. Petitioner's other complaint was that she did not like the way she was treated by Mr. Baldwin, who coordinates Lakeview's Independent Living Program. She thought he was extremely rude to her. However, there was no evidence that demonstrated Petitioner was treated differently than any of the other Lakeview clients in the Independent Living Program with whom Mr. Baldwin works.

10. Given the lack of evidence in this case and the fact that all of Lakeview's tenants at the Boardwalk apartments were mentally handicapped and the same race and sex as Petitioner, Petitioner has failed to demonstrate that Respondent discriminated against her on the basis of her race, sex or handicap. Therefore, the Petition for Relief should be dismissed.

## CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2009).

12. Under Florida's Fair Housing Act ("Act"), Sections 760.20 through 760.37, Florida Statutes (2008), it is unlawful to discriminate in the sale or rental of housing. Section 760.23 states, in part:

(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.

13. In cases involving a claim of rental housing discrimination, the complainant has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. A prima facie showing of rental housing discrimination can be made by establishing that the complainant applied to rent an available unit for which he or she was qualified, the application was rejected, and, at the time of such rejection, the complainant was a member of a class protected by the Act. See Soules v. U.S. Dept. of Housing and Urban Development, 967 F.2d 817, 822 (2d Cir. 1992). Failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1013 n.7 (Fla. 1st DCA

1996), aff'd, 679 So. 2d, 1183 (Fla. 1996)(citing Arnold v. Burger Queen Systems, 509 So. 2d 958 (Fla. 2d DCA 1987)).

14. If, however, the complainant sufficiently establishes a prima facie case, the burden then shifts to the Respondent to articulate some legitimate, nondiscriminatory reason for its action. If the Respondent satisfies this burden, then the complainant must establish by a preponderance of the evidence that the reason asserted by the Respondent 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]."). Pretext can be shown by inconsistencies and/or contradictions in testimony. Blackwell, supra; Woodward v. Fanboy, L.L.C., 298 F.3d 1261 (11th Cir. 2002); Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S. Ct.



2097, 147 L. Ed. 2d 105 (2000). "Discriminatory intent may be established through direct or indirect circumstantial evidence." Johnson v. Hamrick, 155 F. Supp. 2d 1355, 1377 (N.D. Ga. 2001).

15. "Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to inference or presumption." King v. La Playa-De Varadero Restaurant, No. 02-2502, 2003 WL 435084 (Fla. DOAH 2003)(Recommended Order).

16. However, "[D]irect evidence of intent is often unavailable." Shealy v. City of Albany, Ga., 89 F.3d 804, 806 (11th Cir. 1996). For this reason, those who claim to be victims of discrimination "are permitted to establish their cases through inferential and circumstantial proof." Kline v. Tennessee Valley Authority, 128 F.3d 337, 348 (6th Cir. 1997). On the other hand, proof that, in essence, amounts to no more than mere speculation and self-serving belief on the part of the complainant concerning the motives of the Respondent is insufficient, standing alone, to establish a prima facie case of intentional discrimination. See Lizardo v. Denny's, Inc., 270 F.3d 94, 104 (2d Cir. 2001)("The record is barren of any direct evidence of racial animus. Of course, direct evidence of discrimination is not necessary . . . . However, a jury cannot infer discrimination from thin air. Plaintiffs have done little more than cite to their mistreatment and ask the court to

conclude that it must have been related to their race. This is not sufficient.")(citations omitted.); Reyes v. Pacific Bell, 21 F.3d 1115 (Table), 1994 WL 107994 \*4 n.1 (9th Cir. 1994)("The only such evidence [of discrimination] in the record is Reyes's own testimony that it is his belief that he was fired for discriminatory reasons. This subjective belief is insufficient to establish a prima facie case."); Little v. Republic Refining Co., Ltd., 924 F.2d 93, 96 (5th Cir. 1991)("Little points to his own subjective belief that age motivated Boyd. An age discrimination plaintiff's own good faith belief that his age motivated his employer's action is of little value."); Elliott v. Group Medical & Surgical Service, 714 F.2d 556, 567 (5th Cir. 1983)("We are not prepared to hold that a subjective belief of discrimination, however genuine, can be the basis of judicial relief."); Jackson v. Waguespack, No. 1-2972, 2002 U.S. Dist. LEXIS 20864, 2002 WL 31427316 (E.D. La. 2002)("[T]he Plaintiff has no evidence to show Waguespack was motivated by racial animus. Speculation and belief are insufficient to create a fact issue as to pretext nor can pretext be established by mere conclusory statements of a Plaintiff that feels she has been discriminated against. The Plaintiff's evidence on this issue is entirely conclusory, she was the only black person seated there. The Plaintiff did not witness Defendant Waguespack make any racial remarks or racial epithets."); Coleman v. Exxon

Chemical Corp., 162 F. Supp. 2d 593, 622 (S.D. Tex. 2001)("Plaintiff's conclusory, subjective belief that he has suffered discrimination by Cardinal is not probative of unlawful racial animus."); Cleveland-Goins v. City of New York, No. 99-Civ. 1109, 1999 U.S. Dist. LEXIS 13255, 1999 WL 673343 (S.D. N.Y. 1999)("Plaintiff has failed to proffer any relevant evidence that her race was a factor in defendants' decision to terminate her. Plaintiff alleges nothing more than that she 'was the only African-American man [sic] to hold the position of administrative assistant/secretary at Manhattan Construction.' (Compl. ¶ 9.) The Court finds that this single allegation, accompanied by unsupported and speculative statements as to defendants' discriminatory animus, is entirely insufficient to make out a prima facie case or to state a claim under Title VII."); Umansky v. Masterpiece International Ltd., No. 96-Civ. 2367, 1998 U.S. Dist. LEXIS 11775, 1998 WL 433779 (S.D. N.Y. 1998)("Plaintiff proffers no support for her allegations of race and gender discrimination other than her own speculations and assumptions. The Court finds that plaintiff cannot demonstrate that she was discharged in circumstances giving rise to an inference of discrimination, and therefore, has failed to make out a prima facie case of race or gender discrimination."); and Lo v. F.D.I.C., 846 F. Supp. 557, 563 (S.D. Tex. 1994)("Lo's

subjective belief of race and national origin discrimination is legally insufficient to support his claims under Title VII.").

17. In order to establish the elements of a case of discrimination involving the terms, conditions or privileges related to the lease of an apartment, the following must be proven:

- 1) Petitioner belongs to a protected class;
- 2) Petitioner was qualified, ready, willing and able to continue occupancy consistent with the terms and conditions offered by Respondent;
- 3) the apartment was not leased to the Petitioner, and
- 4) Respondent entered into leases with other similarly-situated people who were not members of Petitioner's protected class.

18. In order to prove the elements of a case of discrimination in the provision of services or facilities, the following must be proven:

- 1) Does the Petitioner belong to a protected class
- 2) Was the Petitioner qualified, ready, willing, and able to receive services or use facilities consistent with the terms and conditions offered by the Respondent
- 3) Did the Respondent receive services, or attempt to use facilities consistent with the terms and conditions applicable to all person who were qualified or eligible for services or use of facilities
- 4) Did the Respondent willfully fail or refuse to provide services, or permit use of the facilities under the same terms and conditions to the Petitioner that were applicable to all person who were qualified or eligible for services or use of facilities

5) After the Petitioner was denied the services or facilities, did the Respondent provide similar services or facilities to similarly-situated persons who were not members of Petitioner's protected class.

19. In this case, Petitioner provided no evidence that she was discriminated against on the basis of her race, sex or handicap. Indeed, the evidence demonstrated that other tenants that leased apartments at Boardwalk from Lakeview Center were the same race, sex and handicap as Petitioner. The evidence, also, demonstrated that Petitioner was not denied an apartment, but did lease an apartment from Respondent under the same terms and conditions as Lakeview's other tenants. Moreover, there was an utter lack of evidence regarding the comparative living conditions in Lakeview's other apartments. There was also an utter lack of evidence that Petitioner's interactions with Mr. Baldwin were discriminatory. Petitioner's firm belief that she was discriminated against is insufficient to establish a prima facie case of discrimination in housing. Therefore, the Petition for Relief should be dismissed.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a Final Order dismissing the Petition of Relief.

DONE AND ENTERED this 28th day of September, 2009, in  
Tallahassee, Leon County, Florida.

*Diane Cleavinger*

---

DIANE CLEAVINGER  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of September, 2009.

COPIES FURNISHED:

Susan Walters  
112 Bartow Avenue  
Pensacola, Florida 32507

Sterling Baldwin, B.A.  
Lakeview Center  
1813 North J Street, Building L  
Pensacola, Florida 32501

Dan D'Onofrio  
Blackwater Housing Corporation,  
Progressive Management of Milton, Inc.  
And Boardwalk Apartments  
205 Brooks Street, Southeast, Suite 305  
Fort Walton Beach, Florida 32548

Denise Crawford, Agency Clerk  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

Larry Kranert, General Counsel  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

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.