

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARIA THORNHILL,)
)
 Petitioner,)
)
 vs.) Case No. 09-4715
)
 ADMIRAL FARRAGUT CONDOMINIUM)
 ASSOCIATION, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on December 8, 2009, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: Maria T. Thornhill, pro se
6815 Edgewater Drive, No. 105
Coral Gables, Florida 33133

For Respondent: John R. Sutton, Esquire
Jose R. Bejel, Esquire
Sutton Law Group, P.A.
7721 Southwest 62nd Avenue, Suite 101
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STATEMENT OF THE ISSUES

The issues in this case are, one, whether Respondent unlawfully discriminated against Petitioner on the basis of her alleged handicap in violation of the Florida Fair Housing Act; and, two, whether Respondent subjected Petitioner to acts of

coercion or retaliation as a result of Petitioner's exercise, or attempted exercise, of a protected housing right.

PRELIMINARY STATEMENT

In a Housing Discrimination Complaint filed with the U.S. Department of Housing and Urban Development on March 9, 2009, and subsequently investigated by the Florida Commission on Human Relations ("FCHR"), Petitioner Maria Thornhill alleged that Respondent Admiral Farragut Condominium Association, Inc., had unlawfully discriminated against her by (a) refusing to let her make a reasonable modification to her property to accommodate an alleged disability, and (b) using coercion or other means to interfere with her exercise of protected housing rights. The FCHR investigated Petitioner's claims and, on July 21, 2009, issued a notice setting forth its determination that reasonable cause did not exist to believe that a discriminatory housing practice had occurred. Thereafter, Petitioner filed a Petition for Relief, which the FCHR transmitted to the Division of Administrative Hearings ("DOAH") on August 25, 2009.

At the final hearing on December 8, 2009, Petitioner testified on her own behalf and called two other witnesses: Carlos Flores and Nancy Morgan. Petitioner moved four exhibits, identified as Petitioner's Exhibits 1, 3, 4, and 7, into evidence. Respondent presented one witness, namely Raymond Khachab, and introduced Respondent's Exhibits 1, 2, 7, and 8

into evidence. Official recognition was taken of Respondent's Exhibits 3-6 and 9.¹

The final hearing was not recorded because the FCHR declined to provide a court reporter, and neither party elected to retain one, despite being afforded an opportunity to do so. The parties were directed to file their respective Proposed Recommended Orders no later than December 18, 2009. Respondent timely submitted its "Proposed Findings of Fact, Conclusions of Law & Recommendations for Final Disposition." Petitioner submitted a similar document, albeit after the deadline had passed. The undersigned considered both submissions.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2009 Florida Statutes.

FINDINGS OF FACT

1. Petitioner Maria Thornhill ("Thornhill") owns and lives in a unit in the Admiral Farragut Condominium Apartments.

2. Respondent Admiral Farragut Condominium Association, Inc. ("AFCA"), manages the property of which Thornhill's condominium is a part.

3. This case continues a dispute between Thornhill and AFCA which began in 1997, when Thornhill—without first securing AFCA's permission—installed three wooden steps leading from her rear balcony down to a patio located about 30 inches below.

AFCA disapproved of the steps and directed Thornhill to remove them, which was done long ago.

4. In the past, Thornhill has alleged, among other things, that AFCA and its individual directors unlawfully discriminated against her in denying her many requests to reinstall the steps, which she claims are needed as a reasonable accommodation for her handicap.² Consequently, the parties have been pitted against each other for years in one legal proceeding after another, in various forums including DOAH. Thornhill has lost many battles in this protracted litigation—and consequently been ordered to pay tens of thousands of dollars in sanctions, court costs, and attorney's fees. Still, she presses on.

5. In this case, Thornhill argues, as she has for more than a decade, that she needs to attach steps to her rear balcony because she is physically unable to traverse the 30 inches which separate the balcony from the ground and hence would be trapped if a fire were to block both of the unit's two doors to the outside. Not for the first time, Thornhill alleges here that AFCA discriminated against her on the basis of handicap when it denied her request(s), the most recent of which was made in January 2004, for approval of the steps.

6. In addition to her claim involving the steps, Thornhill alleges that AFCA has discriminated or retaliated against her, in some unspecified way(s), in connection with a boat slip,

which she is, evidently, "next in line" to rent, once the lease expires under which another unit owner currently enjoys the right to use the slip. Finally, Thornhill contends that, in its efforts to collect the various money judgments it has been awarded, AFCA has retaliated against her unlawfully.

Determinations of Ultimate Fact

7. With regard to the steps, Thornhill presented no evidence suggesting that such a modification is reasonable, nor any proof that installation of such steps is necessary to ameliorate the effects of her particular handicap.

8. There is no evidence that any of AFCA's decisions concerning the boat slip were motivated in any way by discriminatory animus directed toward Thornhill.

9. There is likewise no evidence that AFCA ever undertook to execute or otherwise enforce the judgments it has obtained against Thornhill because of discriminatory animus.

10. In sum, there is not a shred of competent, persuasive evidence in the record, direct or circumstantial, upon which a finding of any sort of unlawful housing discrimination, coercion, or retaliation could possibly be made. Ultimately, therefore, it is determined that AFCA did not commit any prohibited act.

CONCLUSIONS OF LAW

11. DOAH 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 ("FFHA"), it is unlawful to discriminate in the sale or rental of housing. Although Thornhill 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, and retaliation or coercion claims in accordance with Section 760.37, 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 implicated by Thornhill's claim of handicap-based housing discrimination:

(8) 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 with such dwelling, because of a handicap of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

§ 760.23(8), Fla. Stat.

14. For purposes of subsection (8) above, the term "discrimination" includes:

(a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; or

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

§ 760.23(9), Fla. Stat.

15. A reasonable accommodation or modification claim comprises four elements: request, refusal, reasonableness, and necessity. Schwartz v. City of Treasure Island, 544 F.3d 1201, 1219 (11th Cir. 2008); Colon-Jimenez v. GR Management Corp., 218 Fed.Appx. 2, 3 (1st Cir. 2007)("the plaintiff must show that a special accommodation of a disability was, in fact, requested.").

16. To be legally sufficient, the request for an accommodation must explain how the special consideration being sought is linked to a particular disability. Colon-Jimenez, 218 Fed.Appx. at 3. While there is no question that Thornhill has

requested AFCA's permission to attach steps to her balcony as a means of accommodating a handicap, it is debatable whether she ever made clear how the installation of such steps was made necessary by her disability. On the other hand, Thornhill has notified AFCA unambiguously of her desire to be allowed a special fire escape, which she has justified as a means of accommodating her lack of agility or mobility. It is concluded that Thornhill has requested an accommodation.

17. That AFCA has refused Thornhill's requests to attach steps to her rear balcony is undisputed. Therefore, this element, too, is met.

18. Whether the requested accommodation is reasonable is another matter. Thornhill, as the claimant, has the burden of proving that the proposed accommodation or modification is reasonable. See Loren v. Sasser, 309 F.3d 1296, 1302 (11th Cir. 2002), cert. denied, 538 U.S. 1057 (2003). She failed to meet this burden.

19. Indeed, the proposed accommodation strikes the undersigned as unreasonable on its face, assuming the purpose thereof is—as Thornhill insists—to provide an emergency exit in case of a fire. Although neither party introduced any evidence about this, the undersigned cannot help but think that Thornhill could accomplish the same purpose by purchasing a folding step stool or stepladder, which could be quickly placed

behind the balcony were it necessary to escape from the building in an emergency. (The balcony, remember, is only 30 inches above the ground.) While a step stool might not be Thornhill's preference, it would nevertheless accommodate her stated need. Cf. id. at 1303 (chain link fence around backyard, though not the front-yard fence plaintiffs prefer, would reasonably accommodate their needs).

20. Likewise, Thornhill failed to meet her burden to prove that the accommodation is necessary to address the needs created by her handicap. See Schwarz, 544 F.3d at 1226. In fact, Thornhill's explanation of the need for the steps, if taken at face value, demonstrates that this modification is unnecessary unless an emergency, such as a fire, requires that she escape from her home through the rear balcony, instead of exiting through one of the two front doors. Were such an exigent situation to arise, however, the need for a way out would be created, not by Thornhill's handicap, but by the fire or other emergency. Because the FFHA does not require that an accommodation be made to address a problem caused by something other than a person's handicap (e.g. the problem of escaping from a burning building, whose direct cause is the fire)³, Thornhill's explanation is self-defeating.

21. Besides that, Thornhill adduced no persuasive evidence establishing that she would be unable, in a life-or-death,

emergency situation, to lower herself two-and-a-half feet from the balcony to the ground. Thus, even if Thornhill's handicap were found to be the direct cause of the alleged problem (inability to escape in the event of fire), there is still no persuasive proof of the *problem* itself. For this alternative reason, the evidence is insufficient to establish necessity.

22. Turning to Thornhill's claim under Section 760.37, Florida Statutes, which "regulates discriminatory conduct before, during, or after a sale or rental of a dwelling," liability would exist only if Thornhill could demonstrate that, because of discriminatory animus,

[AFCA] coerced, intimidated, threatened, or interfered [with: (a) her] exercise of a right under [the FFHA]; (b) [her] enjoyment of a housing right after exercise of that right; or (c) [her] aid or encouragement to a protected person to exercise or enjoy a housing right[.]

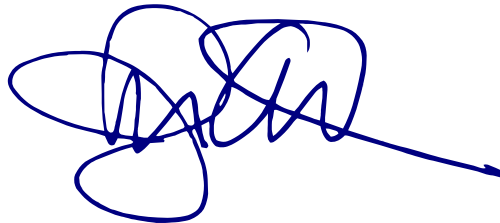
Delawter-Gourlay v. Forest Lake Estates Civic Ass'n of Port Richey, Inc., 276 F. Supp. 2d 1222, 1235 (M.D.Fla.

2003)(citation and footnote omitted), vacated because of settlement, 2003 U.S. Dist. LEXIS 26080 (M.D.Fla. Sept. 16, 2003). Thornhill, however, proved none of the foregoing elements. Thus, AFCA is not liable under Section 760.37, Florida Statutes.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the FCHR enter a final order finding AFCA not liable for housing discrimination and awarding Thornhill no relief.

DONE AND ENTERED this 20th day of January, 2010, in Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of January, 2010.

ENDNOTES

^{1/} Each of the five documents so recognized is an order of the Circuit Court of the Eleventh Judicial Circuit of Florida. Respondent's Exhibit 9, which is entitled, "Order on Plaintiff's Emergency Motion to Hold Defendant Maria Thornhill in Civil Contempt," and dated October 23, 2001, was erroneously marked as Exhibit "10" before being delivered to the undersigned. (Respondent did not offer an Exhibit 10 at hearing.) This exhibit has been renumbered for the record.

^{2/} Thornhill claims to experience disabling back pain as the result of an injury suffered in an accident which occurred in 1988. While the undersigned believes that Thornhill does, in fact, have back problems, he is unable to find much competent evidence in the record, if any, in support of Thornhill's contention that she is legally handicapped. Despite the paucity of proof, the undersigned has elected to proceed as if Thornhill had established that she is handicapped.

^{3/} A reasonable accommodation is required only when necessary to address a problem directly caused by a person's handicap because, otherwise, the handicapped person might receive an accommodation with regard to a matter unrelated to his handicap, thereby placing him in a better position (vis-à-vis that matter) than similarly situated nonhandicapped persons. See Schwarz, 544 F.3d at 1226.

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.