

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CAMEKCO WEBB,)
)
 Petitioner,)
)
 vs.) Case No. 09-6379
)
 THE COMMUNITY MERCY CENTER,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on January 8, 2010, in Lake City, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Camekco Webb, pro se
910 Southeast 6th Street
Lake City, Florida 32054

For Respondent: Lloyd Peterson, Jr. Esquire
905 Southwest Baya Drive
Lake City, Florida 32025

STATEMENT OF THE ISSUE

The issue is whether Petitioner was the subject of housing discrimination based on her race in violation of Sections 760.20 through 760.37, Florida Statutes (2009), Florida Fair Housing Act ("the Act").

PRELIMINARY STATEMENT

On or about August 12, 2009, Petitioner Camekco Webb (Petitioner), an African-American female, filed a housing complaint with the Florida Commission on Human Relations (FCHR). According to the complaint, on May 26, 2009, The Community Mercy Center (Respondent) moved Petitioner's personal property out of one apartment and into a smaller apartment without prior notice or Petitioner's knowledge and then moved a family of five Caucasian individuals into Petitioner's former apartment.

On or about November 9, 2009, FCHR issued a Notice of Determination of No Cause. On November 13, 2009, Petitioner filed a Petition for Relief with FCHR, seeking an administrative hearing to challenge the Determination of No Cause.

On November 19, 2009, FCHR referred the petition to the Division of Administrative Hearings. That same day, the undersigned issued an Initial Order.

On December 10, 2009, the undersigned issued a Notice of Hearing, scheduling the hearing for January 8, 2010.

When the hearing commenced, one of Respondent's directors, Lloyd Peterson, Esquire, made an appearance on behalf of Respondent.

During the hearing, Petitioner testified on her own behalf and presented the testimony of one additional witness. Petitioner offered no exhibits for admission into evidence.

Respondent presented no witnesses and offered no exhibits for admission into evidence.

FCHR did not arrange for the appearance of a court reporter. Therefore, a copy of the hearing transcript is not available.

On January 21, 2010, Petitioner filed an ex-parte statement, which is accepted here as a proposed recommended order. On January 25, 2010, the undersigned issued a Notice of Ex-Parte Communication relative to Petitioner's statement.

As of the date that this Recommended Order was issued, Respondent has not filed proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. Petitioner is an African-American female. At all times relevant here, Petitioner was a single mother with a one-year-old child. Petitioner is unemployed but receives disability benefits from the Social Security Administration.

2. At all times relevant here, Respondent was a Florida non-profit corporation. In April 2009, Respondent operated an apartment complex located in Lake City, Florida.

3. In April 2009, Petitioner signed a lease for Unit No. 203 in the apartment complex. She gave Respondent a \$400 money order for the first month's rent on the one-bedroom apartment. Petitioner was not required to pay any other deposit. At that

time, Respondent's office was located on or near the apartment complex premises.

4. The lease stated that three individuals could occupy the premises. It also prohibited the use or possession of any illegal controlled substance.

5. Petitioner bought some furniture for the apartment. She also bought a 52-inch television.

6. After paying her rent in May 2009, Petitioner began letting a male friend named Von Powell live with her in the apartment. Petitioner testified that Mr. Powell, who was mentally challenged, had just been expelled from a group home.

7. Mr. Powell had been living with Petitioner for about two weeks when he took the keys to a car belonging to Petitioner's sister. Because Mr. Powell was driving recklessly in the apartment complex, someone called 911. When the police arrived, Mr. Powell ran back upstairs to Petitioner's apartment.

8. The police followed Mr. Powell to Unit No. 203. When they arrived, they asked if they could search the apartment because they said that they smelled marijuana and believed Mr. Powell was dealing drugs.

9. Petitioner denied that they could smell marijuana in her home. She denied that there were any illegal drugs in the apartment. However, she allowed the police to perform a search. The police left after not finding any illegal drugs.

10. Harley Saradini, a Caucasian, was in charge of maintenance for the apartment complex. Mr. Saradini told Petitioner that Mr. Powell would have to move out of the apartment. Petitioner subsequently took Mr. Powell to his grandmother's home Gainesville, Florida.

11. A few days later, Mr. Saradini came back to talk to Petitioner, asking her to move out for not following the rules relating to the use and/or possession of illegal drugs. Petitioner refused, stating that she had paid her rent and wanted to talk to the landlords, Samuel Taylor and Anthony Raburn, both of whom were Caucasian.

12. On or about May 26, 2009, Petitioner and her son went to an out-of-town doctor's appointment. While she was gone, Mr. Saradini and two other men entered Petitioner's locked apartment and started removing her personal property.

13. A neighbor named Bernard Owens, an African-American male, told Mr. Saradini that he should not be in Petitioner's apartment when she was not at home. Mr. Saradini replied that Petitioner did not live there anymore and that he was just following orders. Mr. Saradini also stated that a family of five needed the larger apartment.

14. Mr. Owens then watched as Mr. Saradini and the men gave some of Petitioner's food away and shoved her furniture, including the television, down one flight of stairs to the

ground floor. Petitioner's belongings were piled in Unit No. 104, a smaller, one-bedroom apartment that had never been cleaned after the last residents vacated it.

15. During this moving process, Petitioner's couch lost a leg. Additionally, her 52-inch television was dented and damaged, resulting in a diminished picture.

16. When Petitioner returned home, she could not get in her old apartment, she also had no key to Unit No. 104, and she and her child became hysterical.

17. Petitioner eventually called the police who talked to Mr. Saradini. After that conversation, Petitioner was told that she could leave her belongings in Unit No. 104 for the night.

18. The next day, Respondent's office staff apologized to Petitioner, telling her that she could stay and pay rent to live in Unit No. 104. Petitioner then began cleaning up the new apartment.

19. Respondent subsequently moved the Caucasian family into Petitioner's former apartment, Unit No. 203.

20. Petitioner did not pay rent after the May 2009 payment. When Petitioner asked Respondent's staff about paying her rent, she was told to hold it. Petitioner understood that she could pay her rent in cash only and that someone would be coming to collect it.

21. Respondent's staff told Mr. Owens and another neighbor to take their rent, cash only, to Respondent's new office located in another part of town. When Mr. Owens and the neighbor took money orders to pay their rent at Respondent's new office, Respondent's staff would not accept the money orders. Instead, Mr. Owens and the neighbor were told that the staff had to leave and would be back in a few minutes. Mr. Owens and the neighbor left when the staff did not return in a reasonable amount of time.

22. In August 2009, the same people who had worked for Respondent told the tenants that everyone would have to sign new leases because Respondent was going out of business and the apartment complex was starting over with a clean slate. The record is not clear as to the name of the alleged new landlord(s) in August 2009.

23. Petitioner signed a new lease for Unit No. 104, but paid no rent. This was the last time that Petitioner had contact with Respondent's staff. Petitioner admitted during the hearing that she never felt that Respondent's staff was prejudiced against her.

24. In August 2009, Petitioner and her child began living in another county with the father of Petitioner's child. She left her personal belongings in Unit No. 104 and kept the door locked.

25. After the tenants signed new leases, several unnamed people came to collect rent in cash. Even the man that ran the carwash business across the street claimed to have authority to collect rent.

26. In November 2009, Petitioner and her child returned to live in Unit No. 104. She paid to have the utilities turned back on, but paid no rent.

27. In December 2009, Respondent's former staff informed the tenants that Respondent no longer existed and that everyone would have to move out. Petitioner moved out around the second week in December 2009. She moved into an apartment at another location in Lake City.

28. While Petitioner lived in the apartment complex, three of the eight units were occupied by African-Americans, including Petitioner and Mr. Owens. Five of the apartments were occupied by Caucasians, including Mr. Saradini and the family of five.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to Sections 120.569, 120.57(1), and 760.35, Florida Statutes (2009).

30. Discrimination in the sale or rental of housing is prohibited in Section 760.23, Florida Statutes, as follows in relevant part:

760.23 Discrimination in the sale or rental of housing and other prohibited practices.--

(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.

31. In interpreting and applying the Act, FCHR and Florida courts regularly seek guidance from federal court decisions interpreting similar provisions of federal fair housing laws. See Robert Cowen v. Charles Clotfelter and King's Gate Club, Inc., Case No. 07-0498, para. 14 (DOAH June 5, 2007).

32. 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. See §§ 120.57(1)(j) and 760.34(5), Fla. Stat.

33. A prima facie showing of rental housing discrimination may be established by direct evidence, statistical evidence or circumstantial evidence. This case presents no direct or statistical evidence of housing discrimination.

34. A prima facie case usually 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, 1013 n.7 (Fla. 1st DCA), aff'd, 679 So. 2d 1183 (Fla. 1996).

35. If, however, the complainant sufficiently establishes a prima facie case, the burden then shifts to the charged party to articulate some legitimate, non-discriminatory 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 (1994) ("Fair housing discrimination cases are subject to the three-part test articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)").

36. In order to present a prima facie case of racial discrimination based on disparate treatment, Petitioner needed to show the following: (a) she is a member of a protected class; (b) she was qualified to rent an available apartment; (c) she was removed from Unit No. 203; and (d) she was treated less favorably by Respondent than were similarly situated persons

outside the protected class. See, e.g., Jackson v. Comberg, 2006 U.S. Dist. LEXIS 66405, *15 (M.D. Fla. Aug. 22, 2006).

37. Petitioner, an African-American, is a member of a protected class. She was qualified to rent Unit No. 203 and was renting it when Respondent moved her into a smaller dirty apartment without notice. Petitioner was treated less favorably than the Caucasian family that moved into Unit No. 203. Accordingly, Petitioner has met her prima facie burden.

38. During the hearing, Petitioner admitted that Respondent wanted her to leave the apartment complex because Respondent believed she violated the rules by letting Mr. Powell, a suspected drug dealer, live with her. She also admitted that she was moved because Respondent wanted to put a larger Caucasian family in Unit 203.

39. Petitioner has not proved that these reasons for Respondent's actions were a pretext for discrimination. Instead, Petitioner admits that her claims are based on assumptions relative to Respondent's reason for moving her into Unit 104.

40. The greater weight of the evidence indicates that Respondent mismanaged the apartment complex in general and that Petitioner was evicted without notice from Unit No. 203. However, there is no persuasive evidence that Respondent's

mistreatment of Petitioner was based on intentional racial 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 dismissing the Petition for Relief.

DONE AND ENTERED this 3rd day of February, 2010, in Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 3rd 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.