

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DANIEL W. MCMAHON,)
)
 Petitioner,)
)
 vs.) Case No. 10-0327
)
 SUNCOAST SCHOOLS FEDERAL CREDIT)
 UNION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on November 17, 2010, and February 23, 2011, in Naples, Florida, before Susan B. Harrell, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Daniel W. McMahon, pro se
2311 Woodland Estates Road
Naples, Florida 34117

For Respondent: Ashley Nicole Richardson, Esquire
McConnaughay, Duffy, Coonrod
Pope & Weaver, P.A.
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent discriminated against Petitioner based on Petitioner's disability.

PRELIMINARY STATEMENT

On October 12, 2009, the Florida Commission on Human Relations (Commission), received a Housing Discrimination Complaint from Petitioner, Daniel W. McMahon (Mr. McMahon), alleging that Respondent, Suncoast Schools Federal Credit Union (Suncoast), had discriminated against him based on his disability when seeking a mortgage loan. On December 16, 2009, the Commission issued a Notice of Determination of No Cause to believe that a discriminatory housing practice had occurred.

On January 10, 2010, Mr. McMahon filed a Petition for Relief (Petition), alleging that Suncoast had discriminated against him because of his disability. The case was forwarded to the Division of Administrative Hearings on January 20, 2011, for assignment to an Administrative Law Judge to conduct the final hearing. The case was originally assigned to Administrative Law Judge Carolyn S. Holifield, but was transferred to Administrative Law Judge Susan B. Harrell.

The final hearing was continued four times. On November 17, 2010, the final hearing was commenced, but was not concluded. The final hearing was reconvened on February 23, 2011.

At the final hearing, Mr. McMahon testified on his own behalf and called Carolyn Stepp and Jack Behling as his witnesses. Petitioner's Exhibits 1, 2, 4, 5, and 7 through 13

were admitted in evidence. At the final hearing, Suncoast called the following witnesses: Jacqueline Gilbert, Linda Fales, and Ben Felder. Respondent's Exhibits 1 through 6 were admitted in evidence.

Volume I of the two-volume Transcript was filed on February 25, 2011. Volume II of the Transcript was filed on March 18, 2011. The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. On March 16, 2011, Suncoast filed an Unopposed Motion for Extension of Time to File Proposed Recommended Order. By Order dated March 16, 2011, the time for filing proposed recommended orders was extended to April 4, 2011. Suncoast timely filed its Proposed Recommended Order, which has been considered in the preparation of this Recommended Order. As of the date of this Recommended Order, Mr. McMahon has not filed a post-hearing submittal.

FINDINGS OF FACT

1. Mr. McMahon was a member of Suncoast beginning in approximately 1986. In 2008 and 2009, Mr. McMahon had a checking account, a VISA card, a savings account, and a loan with Suncoast.

2. Mr. McMahon claims that he is disabled and that he suffers from personality disorders, post-traumatic stress, passive aggression, and obsessive compulsive disorder. No

medical evidence was presented to substantiate his claims. He has been receiving benefits from the Social Security Administration based on a personality disorder since approximately 1996. Suncoast perceived Mr. McMahon as having a disability, based on his repeated assertions that he was disabled.

3. In November 2008, Mr. McMahon filed a complaint with the Better Business Bureau of West Florida, Inc. (BBB), alleging that Suncoast was discriminating against him by not accommodating his communication disability. The BBB investigated and found that Suncoast had blocked access to Mr. McMahon's accounts because he was delinquent on a loan. The BBB contacted Suncoast concerning the complaint, and Suncoast provided Mr. McMahon a three-month payment due date extension on the loan, lowered his monthly payments, and unblocked his account.

4. In January 2009, Mr. McMahon was delinquent on his loan. Again Suncoast tried to help Mr. McMahon with his delinquent account. At some point, Mr. McMahon's loan payments were put on automatic payments in order to reduce his delinquencies. Money would automatically be taken out of his account to make the monthly loan payments. Mr. McMahon had a direct deposit for his Social Security benefits payments. After the loan payments began being deducted automatically,

Mr. McMahon canceled his direct deposits into the account from which his payments were automatically being deducted. Thus, there was no money in the account to make the monthly payments on his loan, and Mr. McMahon ceased making payments on the loan and again became delinquent on his loan.

5. When one of Suncoast's members becomes overdrawn with regards to either a checking or savings account or credit card, or is delinquent in making payments on any credit card or loan obligation, that member loses access to his or her services, including use of all internet services, ATM cards, ATM machines, credit cards, and debit cards. The member would also be unable to access his or her account balance or make deposits into overdrawn accounts if the member attempted to make a deposit via ATM, as those services are suspended. These restrictions are typically automatically placed upon the accounts of any member with a delinquent loan account after 60 days of delinquency, and within 30 days of any overdrawn share draft account.

6. Any member with a delinquent or overdrawn account, where services were suspended would be prevented from applying for a mortgage loan. If the member contacted Suncoast staff to apply for a mortgage loan or to utilize any other services, the member would be directed to the loss mitigation section of Suncoast, and loss mitigation would attempt to collect the debt or rectify the delinquency.

7. Because Mr. McMahon again became delinquent on his loan payments after stopping the direct deposits, his accounts were restricted, meaning that he could not access the accounts. Mr. McMahon began a campaign of making repeated calls to Suncoast, screaming and yelling at Suncoast representatives, talking over the representatives, making vulgar statements, and using profanity. Mr. McMahon attributes his behavior to his communication disability and requested on numerous occasions that Suncoast accommodate his disability with "patience and understanding." A note was placed in the loss mitigation's note system and in Suncoast's host system, so that all employees of Suncoast who were working with Mr. McMahon could see and accommodate his request for patience and understanding.

8. Suncoast representatives did provide Mr. McMahon with an abundance of patience and understanding. However, nothing seemed to appease Mr. McMahon, and his repeated calls were unproductive. Because of the repeated nature of Mr. McMahon's calls and his behavior during the telephone calls, there were numerous complaints by Suncoast's representatives to management. Jacqueline Gilbert (Ms. Gilbert), vice president of loss mitigation, determined that in order to protect Suncoast's representatives from Mr. McMahon's harassing behavior that all calls should be directed to her; Linda Fales (Ms. Fales), vice president of risk management, cardholder disputes, and DSA

compliance for Suncoast; or Ben Felder (Mr. Felder), Suncoast's general counsel.

9. Suncoast's representatives were advised that Mr. McMahon's calls should be transferred to Ms. Gilbert, Ms. Fales, or Mr. Felder. When the representatives would tell Mr. McMahon that they could not help him and that his call would have to be transferred, Mr. McMahon was verbally abusive to the representatives. Many times, if Mr. McMahon was going to be transferred, he would hang up and call right back to speak with a different representative. Sometimes, Mr. McMahon would call and hang up when a representative answered the call.

10. At different times, Ms. Gilbert, Ms. Fales, and Mr. Felder talked with Mr. McMahon to attempt to discuss the reasons that his account was restricted. However, they had little success in communicating with Mr. McMahon because of his behavior. Although Mr. Felder was not able to service Mr. McMahon's account, he decided to handle all Mr. McMahon's requests and assign any work to be done to the appropriate employee because Mr. McMahon's behavior toward Ms. Gilbert and other Suncoast employees was unacceptable.

11. Mr. McMahon did not make any loan payments between May 2009 and August 2009. During this same time period, Mr. McMahon's VISA credit card was well overdrawn. Carolyn Stepp (Ms. Stepp) had cosigned on Mr. McMahon's loan. On or

about September 4, 2009, Suncoast exercised its "right of offset" and used funds in both Mr. McMahon's and Ms. Stepp's accounts to pay off the loan. There was still an outstanding balance of \$1,046.86 on his VISA credit card.

12. On September 10 and 14, 2009, Mr. McMahon asked to apply for a mortgage loan by telephone. He was not sure that Suncoast would give him a loan because of his delinquent accounts, but he felt that he should have the opportunity to apply because the loan had been satisfied when Suncoast exercised its right of offset. Although the loan was satisfied, Mr. McMahon still had an outstanding balance on his VISA credit card, which he had not been able to use for several months because his accounts had been restricted. He was advised that he would have to contact Mr. Felder to discuss the status of his account.

13. On September 11, 2009, Mr. Felder and Mr. McMahon discussed his account. Part of the discussion concerned Suncoast's writing off Mr. McMahon's loan and VISA credit card balance, returning the offset amounts to Mr. McMahon's and Ms. Stepp's accounts, disbursing the remaining amounts in Mr. McMahon's account to him, and closing Mr. McMahon's accounts. At the conclusion of the conversation, Mr. Felder understood that Mr. McMahon was in favor of this solution and began to take steps to accomplish the tasks.

14. Mr. Felder advised Mr. McMahon by telephone on September 17, 2009, that the tasks had been completed and that Mr. McMahon's accounts with Suncoast were closed, meaning that services at Suncoast were terminated and that Mr. McMahon's access to information was no longer available. Mr. Felder followed up the telephone conversation with a letter dated September 17, 2009, confirming the telephone conversation.

15. Individuals who are not members of Suncoast are not qualified to apply for a mortgage loan with Suncoast. At the time that Mr. McMahon applied for a mortgage loan on September 14, 2009, his accounts at Suncoast were in the process of being closed.

16. Mr. McMahon's requests to apply for a mortgage with Suncoast were not denied because Mr. McMahon was disabled. They were denied because Mr. McMahon had various account delinquencies.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2010).

18. Mr. McMahon has alleged that Suncoast discriminated against him related to an application for a mortgage loan. Section 760.25, Florida Statutes (2009),^{1/} provides:

(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.

19. Because the Florida Fair Housing Act, sections 760.20 through 760.37, is patterned after the federal Fair Housing Act, 45 U.S.C. sections 3601 through 3631, federal case law dealing with the federal Fair Housing Act is applicable. See Fla. Dep't of Cmty. Aff. v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

20. Discrimination claims under the Florida Fair Housing Act are subject to the McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) burden-shifting analysis. Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc., 3 F.3d 1472, 1476 n. 6 (11th Cir. 1993). Under that analysis, Mr. McMahon has the burden of

establishing a prima facie case of discrimination by a preponderance of the evidence. § 760.34(5). If he sufficiently establishes a prima facie case, the burden shifts to Suncoast to articulate some legitimate, nondiscriminatory reason for its actions. The burden then shifts to Mr. McMahon to show that the reason asserted by Suncoast was pretextual.

21. To establish a prima facie case of housing discrimination, Mr. McMahon must prove that: (1) he is a member of a protected class; (2) he attempted to apply for a mortgage loan and met all relevant qualifications for doing so; (3) Suncoast denied him the opportunity to apply despite his qualifications; and (4) Suncoast allowed similarly-qualified persons outside of Mr. McMahon's protected class to apply for mortgage loans. Alcegueire v. EMC Mortgage Corp., Case No. 03-2153, 2003 Fla. Div. Adm. Hear. LEXIS 1086, at ¶ 16 (Fla. DOAH Dec. 17, 2003) (quoting Hickson v. Home Fed. of Atlanta, 805 F. Supp. 1567, 1571-72 (N.D. Ga. 1992)), adopted, Order No. 04-001 (FCHR Feb. 26, 2004). Accord, Sec'y, Hous. & Urban Dev. ex. Rel. Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990).

22. Mr. McMahon has failed to establish a prima facie case of discrimination. He has established that Suncoast perceived him as having a disability. He established that he did verbally request to apply for a mortgage loan. Mr. McMahon did not establish that he was qualified to apply for a loan. It is

clear that, when a member of Suncoast is delinquent on an account, the member's services are curtailed until the account is brought up to date. This would include being able to apply for a loan. At the time that Mr. McMahon requested to apply for a loan on September 10, 2009, he had a delinquent, over-drawn VISA credit card account, and his account was still restricted. Additionally, his loan account had been delinquent for so long, that Suncoast had to exercise its right of setoff to get the loan paid. When Mr. McMahon requested to apply for a mortgage loan on September 14, 2009, his accounts were in the process of being closed, and his delinquent loan and VISA account were being written off pursuant to the agreement reached with Mr. Felder. Mr. McMahon failed to establish that Suncoast allowed members who were not disabled to apply for mortgages when their accounts were in arrears or when their accounts were in the process of being closed.

23. Suncoast has established that Mr. McMahon was not allowed to apply for a loan because of his delinquent loan account and his overdrawn, delinquent VISA credit card. These reasons are legitimate business reasons and have nothing to do with Mr. McMahon's disability.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding

that Suncoast did not commit an unlawful housing practice and dismissing Mr. McMahon's Petition.

DONE AND ENTERED this 27th day of April, 2011, in Tallahassee, Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of April, 2011.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2009 version.

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.