

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHRISTOPHER CASTELLIO, SR.,)
)
 Petitioner,)
)
vs.) Case No. 10-1848
)
ALACHUA COUNTY HOUSING)
AUTHORITY,)
)
 Respondent.)

)

RECOMMENDED ORDER

A final hearing was conducted in this case on October 4, 2010, in Gainesville, Florida, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Christopher Castellio, Sr., pro se
3910 Northeast First Terrace
Gainesville, Florida 32609

For Respondent: Gary S. Edinger, Esquire
305 Northeast First Street
Gainesville, Florida 32601

STATEMENT OF THE ISSUES

I. Whether Respondent discriminated against Petitioner based upon Petitioner's race or handicap in providing housing assistance.

II. Whether Respondent, in providing housing assistance, failed to make reasonable accommodations for Petitioner's physical disability.

PRELIMINARY STATEMENT

On or about December 11, 2009, Petitioner filed a discrimination complaint (Complaint) as set forth in a letter dated November 24, 2009, addressed to the United States Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity.

The Florida Commission on Human Relations (Commission or FCHR) investigated the Complaint, which was assigned FCHR Number 2010H0157. Following completion of its investigation, the Commission issued a Determination dated February 16, 2010, finding no cause. On March 3, 2010, the Commission issued a Notice of Determination of No Cause (Notice) on the Complaint finding that "the FCHR has determined that reasonable cause does not exist to believe that a discriminatory housing practice has occurred."

The Notice advised Petitioner of his right to file a Petition for Relief for a formal administrative proceeding on his Complaint within 30 days. Petitioner timely filed a Petition for Relief with the Commission reiterating the allegations of his Complaint.

On April 8, 2010, the Commission filed a Transmittal of Petition with the Division of Administrative Hearings (DOAH) for assignment of an administrative law judge to conduct an administrative hearing on Petitioner's Petition for Relief.

At the administrative hearing in this matter held on October 4, 2010, Petitioner presented the testimony of his wife, Ethelyn Reese-Castellio, and testified on his own behalf. Petitioner offered eight exhibits which were received into evidence without objection as Exhibits P-1 through P-8.

Respondent presented the testimony of three witnesses: Respondent's Housing Administrator and representative, Gail Monahan; Respondent's Housing Manager, Cathy Scott; and Respondent's Section 8 Coordinator, Karen Webster. Respondent offered two exhibits which were received into evidence without objection as Respondent's Exhibits R-1 and R-2. In addition, during the hearing, Respondent played the recording of a 911 call placed by Johnetta Slay to the Alachua County Sheriff's Office on May 19, 2010.

The evidentiary portion of the hearing concluded on October 4, 2010. No transcript was ordered. The parties were given until October 14, 2010, to file their respective Proposed Recommended Orders. Respondent filed its Proposed Recommended Order on October 14, 2010. Petitioner did not file a Proposed

Recommended Order. Respondent's Proposed Recommended Order has been considered in rendering this Recommended Order.

FINDINGS OF FACT

1. Petitioner and his family have been in subsidized housing for many years. Most recently, housing assistance has been provided by the Alachua County Housing Authority, first through the Tenant Based Rental Assistance (TBRA) program and, currently, through Section 8 subsidized housing.

2. At the time of the administrative hearing, Petitioner and his family were still in Section 8 housing administered by Respondent.

3. Under the TBRA program, the Castellio family was required to meet regularly with Housing Authority staff and their affiliates. They also had to meet certain performance standards relative to employment searches and maintenance of the household. Petitioner's family was often unable to meet those performance standards--particularly with respect to employment and payment of electrical bills.

4. Because of his interactions with Respondent's staff, Petitioner had earned the reputation of being loud, demanding, and physically imposing.

5. In one incident, Petitioner tried to prevent one of Respondent's workers from mowing his yard by physically blocking the lawn mower, even though such maintenance was required under

the government program and was also an issue of local code enforcement. More than one of Respondent's staff reported that Petitioner would raise his voice when he was in Respondent's Housing Authority office.

6. Some of Respondent's staff were intimidated by Petitioner. Because of this, the director of the Alachua Housing Authority, Gail Monahan, was tasked with dealing with Petitioner and the Castellio family.

7. The pertinent part of Petitioner's Complaint states:

My name is Christopher S.A. Castellio.
My wife's name is Ethelyn L. Reese-Castello.
We are the proud parents of five children
which ages are 5, 7, 9, 11, and 16. Our 16
year old is living in Bend, Oregon with his
uncle who has more resources to provide for
him.

Approximately for two years now, my family
and I have lived on Section 8 through the
Alachua County Housing Authority here in
Gainesville, Florida. We have to report to
the Executive Director of the Alachua County
Housing Authority, Ms. Gail Monahan, every
Wednesday of every week in order to report
progress of trying to become self supporting
and financial independent. During this time
I have been humiliated in front of my wife,
Ms. Monahan's office staff, other customers
and patrons and, most humiliating, in front
of my own kids. Ms. Gail Monahan has
absolutely no compassion, professionalism,
or moral conduct.

Ms. Gail Monahan has called me everything
but a child of God. In front of my kids,
she has called me a lying sack of s-t, a
sorry son of a b--h, a con artist, a--hole,
and an f--wad. One day I just walked into
her office and the first thing she said was,

"hay you little s--tbird, what have you done s--ted out today."

I served 6 years in the United States Marine Corps during Desert Storm from 1986 until 1992. While serving I injured my knee in Kuwait. I returned to the states where I underwent knee surgery. I was honorably discharged several months later.

Ms. Monahan says I'm lying about my service, despite my service and medical records.

Right now I am in constant pain in both my knees and my back. I have taken two MRI's for both knees and my doctor says that I desperately need a total right knee replacement and a basic left knee operation based on my MRI's. Ms. Monahan also says that's a lie. And she refuses to look at any doctor's reports. She said I probably faked them.

Ever since I've been meeting with Ms. Monahan she has always had something discriminatory [sic], degrading, intimidating, and threaten [sic] to say to me. She always threatens to take our housing away from us, like she's doing right now, if we don't do exactly what she says to do. I do believe that she is prejudice [sic] against me because I am a very, very light-skinned black man with red hair and freckles. I do look like a white man to most people and my wife is very dark skinned African American. We have done everything she has told us to do but still she says that we have done nothing. She does not take into consideration the bad economy and that jobs are very hard to come by and that more and more people are being laid off every day. So she is going to make a family with 4 small children become homeless just because I can't work because of my back and my knees and because my wife couldn't find a job in today's economy. By the way, my wife has finally found a job working at Wal-mart.

We finally received a letter from Ms. Monahan informing us of the termination of tenant based rental assistance. In the allotted time of seven working days, I have answered her letter in writing, requesting a hearing to appeal her decision. As of the date of this letter, I have not received anything or any notice of any hearing from Ms. Monahan. I will fax you a copy of both letters. Our move out date has been set as December 31st, 2009.

8. Consistent with his Complaint, Petitioner testified that Ms. Monahan, the director of the Alachua County Housing Authority treated him badly, believed he was lazy, and questioned whether he suffered from a physical disability.

9. In further support of the allegations, Petitioner's wife, Ms. Reese-Castellio, testified that Gail Monahan was "mean" to their family. According to Ms. Reese-Castellio, Ms. Monahan called Petitioner a liar, said that he "didn't give a damn" about his family, and suggested to her that she should consider leaving Petitioner.

10. At the final hearing, Ms. Monahan admitted that she did not respect Mr. Castellio because he did not appear to be making any effort to support his family. She denied, however, that she cursed at him, and testified that she never discriminated against Petitioner or his family.

11. While it is clear that there was personal animosity between Petitioner and Ms. Monahan, the evidence was

insufficient to show that either Ms. Monahan or Respondent discriminated against Petitioner or his family.

12. On cross-examination, Ms. Reese-Castellio disclosed that Ms. Monahan's remarks were only directed toward Petitioner, and that Ms. Monahan did not use racial epithets or otherwise give any indication that she was discriminating against Petitioner or his family because of race, handicap, or any other impermissible factor. Petitioner's wife further testified that she had no complaints about any of the other staff members at the Housing Authority.

13. Likewise, Petitioner failed to provide evidence that either Ms. Monahan or Respondent has ever acted in a discriminatory manner toward him or his family based on race, ethnicity, handicap, or any other impermissible basis.

14. Further, the evidence presented at the final hearing did not show that either Petitioner or his family have ever been denied housing assistance by Respondent. In fact, the evidence revealed that Petitioner and his family's housing benefits administered by Respondent have never been interrupted or denied, and that the Castellio family has been treated at least as well, if not better, than other housing clients served by Respondent.

15. In addition to administering basic housing benefits under TBRA and the Section 8 program, Respondent arranged to pay

over \$1,300 to repair Petitioner's family car, paid for utilities when the Castellios were unable to do so, and provided bus vouchers and other transportation for the family on a regular basis. Respondent's decision to provide these additional benefits was made by Ms. Monahan.

16. At the final hearing, both Petitioner and his wife confirmed that Respondent had provided additional assistance and that Gail Monahan had control over these additional benefits. Neither Petitioner nor Ms. Reese-Castellio offered an explanation for why Ms. Monahan would go "above and beyond" the requirements of subsidized housing in order to assist the Castellio family.

17. Ms. Monahan, in her credible testimony, explained that she had considerable compassion for Ethelyn Castellio and the Petitioner's children, and that her compassion led her to offer extensive support for the Castellio family beyond simple housing assistance.

18. Although Petitioner testified that the family was rejected as potential tenants at an apartment complex known as "Eden Park" after initially being accepted by the private landlord, and said that he believed that Gail Monahan had something to do with the rejection, Petitioner offered no evidence to support that belief.

19. Ms. Monahan stated that neither she nor anyone from the Housing Authority spoke to anyone at Eden Park regarding the Petitioner or his family. She explained that tenants are responsible for locating suitable housing which is then inspected and approved by the Housing Authority.

20. The credible testimony of Ms. Monahan, together with Petitioner's own testimony and admissions, demonstrated that Respondent did not interfere in the Eden Park situation, and never delayed inspections or unreasonably rejected any housing benefits for the Castellio family.

21. In addition, while indeed, as alleged in the Complaint, Respondent issued a letter informing Petitioner that his family's rental assistance was scheduled to be terminated, the evidence adduced at the final hearing showed that the letter was issued in error, and that it was withdrawn.

22. Finally, while the Commission states on page 5 of its Determination of no cause dated February 16, 2010, that "Complainant alleged he requested a reasonable accommodation, and Respondents denied his request," a plain reading of the Complaint, quoted in paragraph 7, above, does not reveal that Petitioner ever alleged that Respondent failed to accommodate his disability.

23. Moreover, the applications Petitioner and his family filed in 2008 and 2009 to obtain housing assistance from the

Respondent state that the family was not seeking any accommodations on account of disability and that no one in the family suffered from any physical handicap.

24. At the final hearing, Petitioner confirmed that the family never asked Respondent for accommodation based on any physical disability and reported in their applications that no member of the family was handicapped or required an accommodation.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. See §§ 120.569, 120.57(1), and 760.20-760.37, Fla. Stat. (2010); see also Fla. Admin. Code R. 60Y-4.016 and 60Y-8.001.

26. Florida's Fair Housing Act (Act) is codified in Sections 760.20 through 760.37, Florida Statutes (2009).^{1/}

27. Among other things, the Act makes certain acts "discriminatory housing practices" and gives the Commission the authority, if it finds (following an administrative hearing conducted by an administrative law judge) that a "discriminatory housing practice" has occurred. If such a finding is made, the Act further authorizes the Commission to issue an order "prohibiting the practice" and provides "affirmative relief from the effects of the practice, including quantifiable damages and

reasonable attorney's fees and costs." § 760.35(3)(b), Fla. Stat.

28. The "discriminatory housing practices" prohibited by the Act include those described in Section 760.23(2), Florida Statutes, which provides:

(2) It is unlawful to discriminate against any person in 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. (Emphasis added.)

29. The language in Section 760.23(2), Florida Statutes, is identical to the prohibition in 42 U.S.C. Section 3604(b), a provision in the federal Fair Housing Act. Since Section 760.23(2), Florida Statutes, is patterned after a federal law on the same subject, "it [should] be accorded the same construction as in federal courts to the extent the construction is harmonious with the spirit of the Florida legislation."

Cf. Winn-Dixie Stores, Inc. v. Reddick, 954 So. 2d 723, 728 (Fla. 1st DCA), rev. denied, 967 So. 2d 198 (Fla. 2007)

(discussing the same rule of construction in the context of the Florida Civil Rights Act of 1992, §§ 760.01-760.11, Fla. Stat.).

30. Petitioner has the burden of establishing facts to prove a prima facie case of discrimination. U.S. Department of

Housing and Urban Development v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990).

31. The three-part "burden of proof" pattern developed in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973), applies. Blackwell, 908 F.2d at 870. Under that test:

First, [Petitioner] has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if [Petitioner] sufficiently establishes a prima facie case, the burden shifts to [Respondent] to "articulate some legitimate, nondiscriminatory reason" for its action. Third, if [Respondent] satisfies this burden, [Petitioner] has the opportunity to prove by a preponderance that the legitimate reasons asserted by [Respondent] are in fact mere pretext.

Id., citing Pollitt v. Bramel, 669 F. Supp. 172, 175 (S.D. Ohio 1987) (federal Fair Housing Act claim) (quoting McDonnell Douglas, 411 U.S. at 802, 804, 93 S. Ct. at 1824, 1825).

32. In order to establish a prima facie case in this matter, Petitioner must have shown by a preponderance of the evidence: 1) that he was a member of a protected class or that he was handicapped; 2) that he applied for and was qualified to receive services from Respondent; 3) that he was rejected from or discriminated against in receiving the services; and 4) that the services were available to non-minorities or those without a handicap. See § 760.23(2), Fla. Stat., supra; cf. Blackwell, 908 F.2d at 870 (listing elements establishing a prima facie

case under the federal Fair Housing Act in the context of refusing to rent).

33. The evidence supported only the first two elements required to establish a prima facie case. As an African-American, Petitioner is a member of a protected class. In addition, the Petitioner showed that he applied for and was qualified to receive services under Respondent.

34. Petitioner failed, however, to provide evidence that that he was rejected from receiving housing assistance or that Respondent otherwise discriminated against him in providing, or failing to provide, housing assistance to Petitioner or his family.

35. In addition, other than his speculation and belief, Petitioner submitted no evidence to support his contention that Respondent discriminated against him or his family based upon his race or handicap. Mere speculation or self-serving belief on the part of a complainant concerning motives of a 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) ("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.").

36. In sum, Petitioner failed to present a prima facie case. Failure to establish a prima facie case of race discrimination ends the inquiry. Ratliff v. State, 666 So. 2d, 1008, 1013 n.6 (citations omitted).

37. Even if Petitioner had established a prima facie case, Respondent's evidence presented at the final hearing refuted Petitioner's argument that Respondent's actions were discriminatory. Respondent provided persuasive evidence that Respondent treated Petitioner and his family just as well, if not better than others qualified to receive services, in its provision of housing assistance benefits.

38. In sum, no discriminatory intent or effect was shown and Petitioner failed to establish that Respondent discriminated against Petitioner based upon Petitioner's race or handicap in providing housing assistance to Petitioner and his family.

39. Petitioner also failed to establish that Respondent failed to reasonably accommodate Petitioner's disability when providing services to Petitioner and his family. Florida and Federal law provide strong remedies in the case of discrimination in housing or the administration of public housing benefits. See generally Florida Civil Rights Act of 1992 (§§ 760.01-760.11, Fla. Stat.), the Florida Fair Housing Act (§§ 760.20-760.37, Fla. Stat.), or the U.S. Fair Housing Act (42

U.S.C.A. § 3604). Those statutes also require reasonable accommodations for persons with disabilities.

40. Although the Commission suggested that Petitioner's Complaint alleges that Respondent failed to accommodate his disability, the Complaint, as well as the evidence at trial, fails to support such a claim. See Findings of Fact 22-24, supra. In fact, the evidence shows that Petitioner never asked Respondent for an accommodation for a disability. Id.; cf. Gaston v. Bellingrath Gardens and Home, Inc., 167 F.3d 1361, 1363-64 (11th Cir. 1999) (must request an accommodation and be denied such prior to bringing a reasonable accommodation claim under Title I of the ADA).

In sum, Petitioner failed to prove that Respondent discriminated against Petitioner based upon Petitioner's race or handicap, or that Respondent failed to make reasonable accommodations for Petitioner's physical disability, in providing housing assistance to Petitioner and his family.

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 Complaint and Petition for Relief.

DONE AND ENTERED this 24th day of November, 2010, in
Tallahassee, Leon County, Florida.



JAMES H. PETERSON, III
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of November, 2010.

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.