

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EMPERATRIZ RAMIREZ,)
)
 Petitioner,)
)
 vs.) Case No. 10-2421
)
 VILLAGE OF KINGS CONDOMINIUM)
 ASSOCIATION, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was held by video teleconference between Miami and Tallahassee, Florida, on January 4, 2011, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Emperatriz Ramirez, pro se
7705 Camino Real, Apartment No. B413
Miami, Florida 33143

For Respondent: Marco D. Commisso, Esquire
Cole, Scott, & Kissane, P.A.
1645 Palm Beach Lakes Boulevard
Second Floor
West Palm Beach, Florida 33401

STATEMENT OF THE ISSUE

Whether Respondent violated the Florida Fair Housing Act by discriminating against Petitioner based on her sex, national

origin, and/or handicap by the manner it enforced its vehicle parking rules.

PRELIMINARY STATEMENT

At the times relevant to this proceeding, Emperatriz Ramirez (Petitioner) owned and resided in a two-bedroom condominium unit managed by Villages of Kings Condominium Association, Inc. (Respondent). On January 26, 2010, Petitioner filed a Housing Discrimination Complaint (Complaint) with the United States Department of Housing and Urban Development (HUD). The Complaint alleged that Respondent discriminated against Petitioner based on her sex, national origin, and handicap by the manner it enforced its vehicle parking rules and its occupancy rules.

HUD forwarded the complaint to the Florida Commission on Human Relations (FCHR) for investigation.

On April 15, 2010, FCHR entered a "Notice of Determination of No Cause" which advised Petitioners that based on its investigation "the FCHR has determined that reasonable cause does not exist to believe that a discriminatory housing practice has occurred." The investigation determined that the alleged discrimination pertaining to Respondent's occupancy rules was not timely because section 760.34(2), Florida Statutes¹, requires violations of the Fair Housing Act to be filed within a year of

the discriminatory act, and Petitioner filed the Complaint more than a year after the alleged act of discrimination.

On April 29, 2010, Petitioner filed a "Petition for Relief" against Respondent alleging that Respondent discriminated against her based on her sex, national origin, and handicap by the manner it enforced its vehicle parking policy. The Petition for Relief did not contain an allegation pertaining to Respondent's occupancy policy.

At the formal hearing, Petitioner abandoned her claim that Respondent discriminated against her based on her sex or national origin. Petitioner asserted at the formal hearing that Respondent failed to make a reasonable accommodation of her handicap that would permit her to park the automobile she inherited from her late husband on condominium premises.

Petitioner is a native of Peru and does not speak, read, or write English. Petitioner's daughter, Patricia Ramirez, who is bilingual, was permitted to assist her mother at the formal hearing. At the formal hearing, the parties agreed to introduce Petitioner's deposition and the deposition exhibits in lieu of her live testimony, which was accepted as Petitioner's Composite Exhibit 1. Petitioner offered one other composite exhibit, which was admitted as Petitioner's Composite Exhibit 2.

In addition to her deposition testimony, Petitioner presented the testimony of Patricia Ramirez. Petitioner also

called Carlos Ramirez, but he had no relevant testimony to offer since the events about which he intended to testify occurred more than a year before Petitioner filed the Complaint. Respondent offered no testimony, but it offered three sequentially-numbered exhibits, each of which was admitted into evidence.

A Transcript of the proceedings, consisting of one volume, was filed February 8, 2011. The parties submitted Proposed Recommended Orders which have been duly considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is an 81-year-old female who is a native of Peru. Petitioner does not speak, write, or read English.

2. Petitioner and her late husband were owners and residents of a condominium unit managed by Respondent. Petitioner continued to own and reside in the unit after her husband's death in September 2009.

3. Petitioner and her husband had ten children, two of whom are Patricia Ramirez and Gloria Silva.

4. At the time of his death, Petitioner's husband owned an automobile that he had properly registered with Respondent.

5. Following her husband's death, Petitioner inherited the automobile he had owned. Petitioner does not drive and does not have a driver's license.

6. On September 17, 2009, the title to the car was changed into the names of Petitioner and Gloria Silva.

7. Gloria Silva has not been recognized by Respondent as a "resident" of Petitioner's unit.²

8. Respondent's rules and policies are set forth in a "Handbook of Rules and Regulations" (the Handbook).

Respondent's vehicle parking policies begin on page 28 of the Handbook.

9. Respondent's parking policies for a "Resident Parking Decal" provide, in relevant part, as follows:

A "Resident" as set forth in these regulations is a person who has been registered at the Management Office and has been approved by the Association to live in the Unit whether it is an owner or a tenant. All vehicles of Residents parked in the Condominium Property must have a "Resident PARKING DECAL" [sic]. This permit consists of a decal containing a number that is placed on the outside top or bottom left-side corner of the rear glass of the vehicle. For your protection, this decal shall be applied to the glass by an Association Representative only. Only Residents actually living all year round in the Condominium Property and owning a valid driver's license will be issued a Resident Parking Decal. . . . Only one vehicle is allowed per Resident with a valid driver's license and a Vehicle Registration to such vehicle issued in the Residents' name. There will be a \$25.00 refundable deposit for every Resident Parking Decal issued. Failure to return the Decal to the Management Office upon selling and/or disposing of his/her vehicle (including total loss due to an automobile accident) or

moving out of the Property, such \$25.00 shall be forfeited. . . .

If the Resident sells or in any other way disposes of a vehicle to which a Resident Parking Decal was previously issued, that Resident must remove and bring to the Management Office such Resident Parking Decal before a new Resident Parking Decal is issued for a new vehicle.

10. Gary Mars, an attorney representing Respondent, advised Petitioner by letter dated September 10, 2009, that she was in violation of Respondent's vehicle parking policy and its occupancy policy. As to the parking policy, the letter provided, in relevant part, as follows:

The Rules and Regulations state that "[o]nly Residents actually living all year round in the Condominium Property and owning a valid driver's license will be issued a Resident Parking Decal. Absentee owners who lease their units are not entitled to having a Resident Parking Decal. Only one vehicle is allowed per Resident with a valid driver's license and a Vehicle Registration to such vehicle issued in the Resident's name. . . ."

. . . This correspondence serves as . . . demand that any and all guests of your Unit cease and desist utilizing a resident parking decal immediately upon receipt of this communication and secure the appropriate parking decals from the Property Management Office.

11. Mr. Mars wrote a second letter to Petitioner on November 9, 2009, containing the following demand:

This letter is being provided in order to notify you as to a recently recognized

violation of the Declaration of Condominium which requires your immediate attention. Specifically, the Association has recognized that the vehicle registered to your deceased husband continues to maintain a residents [sic] parking decal even though the vehicle is utilized by your daughter, Ms. Gloria Silva, who is not a resident of the Condominium. Therefore, this use of a decal is improper and in violation of the Association's controlling documents.

The Rules and Regulations state that "[o]nly Residents actually living all year round in the Condominium Property and owning a valid driver's license will be issued a Resident Parking Decal. Absentee owners who lease their units are not entitled to having a Resident Parking Decal. Only one vehicle is allowed per Resident with a valid driver's license and a Vehicle Registration to such vehicle issued in the Resident's name. . . ."

Notice is hereby provided of this violation. Specifically, the Association is demanding that your guest permanently cease and desist utilizing a resident parking decal, and remove and return the decal within seventy-two hours of this communication to the Property Management Office. In the event you and your guests fail to comply with the request as set forth herein, the Association may have no alternative but to enforce the Rules and Regulations which may include the towing and removal of the vehicle . . .

12. By letter dated December 31, 2009, Mr. Mars wrote to Petitioner a third and final letter, styled "Final Demand," repeating his notice that the vehicle would be towed if she did not comply with the resident parking policy.

13. On the following dates Respondent had Petitioner's vehicle towed from the condominium property: January 19, January 22, and February 9, 2010.

14. At all times relevant to this proceeding, Petitioner was out-of-compliance with Respondent's resident parking policy.

15. There was no evidence that Petitioner ever surrendered the Resident Parking Decal that remained on the vehicle after her husband died.

16. There was no evidence that Petitioner filed an application reflecting the change of ownership of the vehicle following her husband's death or paid the application fee for a new decal.³

17. There was no evidence that Respondent knew or should have known that Petitioner was handicapped or disabled.⁴

18. There was no evidence that Respondent's enforcement of its parking policies was motivated by Petitioner's sex, national origin, or handicap.

CONCLUSIONS OF LAW

19. DOAH has jurisdiction over the subject matter of and the parties hereto pursuant to sections 120.569 and 120.57(1), Florida Statutes.

20. The Florida Fair Housing Act (Florida FHA) is codified in sections 760.20 through 760.37, Florida Statutes.

21. Section 760.23(2)(a) provides as follows:

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.

22. Petitioner, who is asserting the affirmative of the issues in this case, has the burden of proving by a preponderance of the evidence that Respondent discriminated against her as alleged in the Petition. See Balino v. Dep't of HRS, 348 So. 2d 349, 350 (Fla. 1st DCA 1977) and Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

23. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000).

24. Petitioner abandoned her claim that Respondent was discriminated against her based on her sex or her national origin.

25. In order to prevail in her claim of discrimination based on handicap, Petitioner must prove (1) that she is handicapped as defined in the Florida FHA; (2) that Respondent knew or reasonably should have known of her handicap; (3) that she requested a reasonable accommodation under Respondent's rules and regulations necessary to afford her an equal

opportunity to use and enjoy her unit; and (4) that Respondent refused to provide the reasonable accommodation. See United States v. California Mobile Home Park Mgmt. Co., 107 F.3d 1374, 1380 (9th Cir. 1997). Petitioner's burden is to prove all four prongs of this analysis by a preponderance of the evidence.

26. Petitioner failed to prove prong two and prong three of the four-prong analysis set forth above. Petitioner did not prove that Respondent knew or should have known that she was handicapped, and Petitioner did not prove that she told Respondent that her handicap required an accommodation to Respondent's parking rules. Consequently, Petitioner failed to meet her burden of proof in this proceeding.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing Petitioner's Petition for Relief.

DONE AND ENTERED this 21st day of March, 2011, in
Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of March, 2011.

ENDNOTES

¹ Unless otherwise noted, each reference to a statute is to Florida Statutes (2010).

² Ms. Silva lived in her mother's unit for a period of time after her father's death. The refusal by Respondent to accept Ms. Silva as a "resident", as opposed to a "guest" of her mother's unit, was an issue in the Complaint filed with HUD, but is not an issue in this proceeding.

³ Patricia Ramirez testified that she faxed a copy of the changed title and registration to Mr. Mars in January 2010 before the vehicle was first towed. That effort did not comply with Respondent's vehicle parking policy because no one on behalf of Petitioner surrendered the old parking decal, applied for a new parking decal, or paid the fee for a new decal. Moreover, Gloria Silva did not meet the definition of a "resident," and Petitioner did not have a driver's license.

⁴ There was no evidence that Petitioner requested an accommodation for a handicap or disability prior to filing the Complaint with HUD. During the investigation of Petitioner's

Complaint, FCHR secured a medical information form from Dr. Luis Fernandez, Petitioner's treating physician, dated February 26, 2010. By this form Dr. Fernandez opined that Petitioner has a physical or mental impairment and described the impairments. Dr. Fernandez further opined that the duration was temporary (as opposed to permanent).

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.