

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JULIO SAMA,)
)
Petitioner,)
)
vs.) Case No. 10-3333
)
MIAMI-DADE BOARD OF COUNTY)
COMMISSIONERS AND ROYAL)
AMERICAN MANAGEMENT, INC.,)
)
Respondents.)
)

LEANDRA DURAN,)
)
Petitioner,)
) Case No. 10-3335
vs.)
)
MIAMI-DADE BOARD OF COUNTY)
COMMISSIONERS AND ROYAL)
AMERICAN MANAGEMENT, INC.,)
)
Respondents.)

RECOMMENDED ORDER

Administrative Law Judge, John D. C. Newton, II, of the
Division of Administrative Hearings, heard this case, as
noticed, on September 2, 2010, by video teleconference at sites
in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioners: Julio Sama pro se
1310 Northwest 16th Street, No. 319
Miami, Florida 33125

Leandra Duran pro se
c/o Julio Sama
1310 Northwest 16th Street, No. 201
Miami, Florida 32315

For Respondents: Miami-Dade County Board of County
Commissioners:
Shannon D. Summerset, Esquire
Terrence A. Smith, Esquire
111 Northwest First Street, Suite 2810
Miami, Florida 33128-1993

Royal American Management:
Jamie B. Dokovna, Esquire
Becker and Poliakoff, P.A.
121 Alhambra Plaza, 10th Floor
Coral Gables, Florida 33134

STATEMENT OF THE ISSUES

A. Did Respondents discriminate against Mr. Sama because of his handicap?

B. Did Respondents discriminate against Ms. Duran on account of her national origin?

PRELIMINARY STATEMENT

On February 24, 2010 Julio Sama and Leandra Duran filed complaints of discrimination in public housing with the Florida Commission on Human Relations (Commission). Mr. Sama claimed that Respondents, Miami-Dade Board of County Commissioners (Miami-Dade) and Royal American Management, Inc. (Royal American), discriminated against him on account of a handicap. Ms. Duran claimed that Respondents, Miami-Dade and Royal American, discriminated against her because of her national origin. On May 18, 2010, the Commission issued its Notice of

Determination of No Cause in Ms. Duran's case. On May 27, 2010, the Commission issued its Notice of Determination of No Cause in Mr. Sama's case. Mr. Sama and Ms. Duran both filed Petitions for Relief with the Commission. On June 18, 2010 the Division of Administrative Hearings received referrals of both Petitions from the Commission.

The undersigned consolidated the cases on June 25, 2010. By notice dated June 30, 2010, the consolidated cases were set to be heard by video teleconference on September 2, 2010. The final hearing was conducted as noticed.

At the final hearing Mr. Sama and Ms. Duran presented the testimony of themselves, Katia Cantu, Lizette Capote, Rafaela Gendis, and Christian Rodriguez. They entered Petitioners' Exhibit 1 into evidence.

Miami-Dade and Royal American did not offer testimony. They entered the following exhibits into evidence: Respondents' Exhibits 8, 10, 11, 13, and 15.

The court reporter filed the transcript on September 16, 2010. All parties submitted Proposed Recommended Orders.

FINDINGS OF FACT

Based on the testimony and other evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. Mr. Sama is blind and has other physical limitations that require him to have the 24-hour assistance of an aide.

2. Ms. Duran is the live-in aide who provides the assistance Mr. Sama needs. Although Mr. Sama refers to Ms. Duran as his daughter, she is not his daughter. Ms. Duran is of Columbian descent, and a United States Citizen.

3. The Miami-Dade County Public Housing Agency (Housing Agency) is an agency of the county. Royal American manages housing for the Housing Authority, including Singer Plaza.

4. Miami-Dade and Royal American agree that Mr. Sama has a handicap and requires the 24-hour assistance of Ms. Duran.

5. Mr. Sama applied to the Housing Agency for housing. He sought to have Ms. Duran housed with him as a reasonable accommodation for his blindness and other handicaps. The Housing Authority began processing his request for accommodation and his housing request.

6. October 1, 2009, the Housing Authority notified Mr. Sama that he was approved for a one-bedroom unit at Singer Plaza. Mr. Sama accepted the offer on October 5, 2009. He moved in on December 3, 2009, and Ms. Duran moved in with him.

7. Guidelines governing the Housing Authority provide that two people cannot live in a one-bedroom unit without specifically agreeing to a one-bedroom unit. The reason for the policy is not in the record. Ms. Capote of the Miami-Dade

Housing Authority explained this requirement to Mr. Sama and Ms. Duran. Ms. Capote asked Mr. Sama to sign a document agreeing to accept a one-bedroom unit until a two-bedroom unit became available. Mr. Sama and Ms. Duran became upset because they thought that accepting the one-bedroom unit meant abandoning their request for a two-bedroom unit. It did not. Ms. Capote was not asking Mr. Sama to give up his place on the waiting list for a two-bedroom unit. The Housing Authority approved Mr. Sama for the one-bedroom unit to share with Ms. Duran and put him on the waiting list for a two-bedroom unit.

8. The Housing Authority conducted its standard background check of Ms. Duran as a proposed resident of Singer Plaza. It performs the same background check for all residents. She was reviewed the same way that all residents are reviewed. The process includes verifying the resident's identity. Ms. Duran submitted identification that included her Certificate of Naturalization, her Social Security card, and a Florida driver's license.

9. Ms. Duran's Florida license number bore the name Leandra Duran Palma. Her Social Security card bore the name Leandra Duran. Her Certificate of Naturalization bore the name Leandra Duran. Because of the name differences, the Housing Authority requested additional identification. This is the

Housing Authority's routine practice and was a reasonable request. Ms. Duran provided her Columbian Identification Card and Passport. They bear the name Leandra Margarita De Las Nieves Duran Palma. After reviewing all the documents and discussing the name differences on the documents with Ms. Duran, the Housing Authority accepted Ms. Duran as a resident serving Mr. Sama as a live-in aide.

10. Mr. Sama and Ms. Duran began living in a one-bedroom unit at Singer Plaza while awaiting a two-bedroom unit. They wanted to remain in Singer Plaza and told Miami-Dade and Royal American so.

11. Miami-Dade and Royal American agree that a two-bedroom living unit is a reasonable accommodation. On November 2, 2009, the Housing Authority advised Mr. Sama that his request for a two-bedroom unit with a live-in aide as a reasonable accommodation was approved.

12. No two-bedroom units were available in Singer Plaza at the time. The property had a limited number of two-bedroom units. The Housing Authority and Royal American put Mr. Sama on the waiting list for a two-bedroom unit.

13. Ms. Cantu of Royal American worked to make a two-bedroom unit available for Mr. Sama. She identified a two-bedroom unit occupied by one person. She then worked to locate a one-bedroom unit to move that person into. This took some

time. In March, 2010, Ms. Cantu succeeded in relocating the resident of the two-bedroom unit to make it available to Mr. Sama. Cleaning and repairing the unit to prepare it for Mr. Sama and Ms. Duran took several weeks.

14. Since May 26, 2010, Miami-Dade and Royal American have provided Mr. Sama and Ms. Duran a two-bedroom apartment, as they requested, as an accommodation for Mr. Sama. Ms. Duran does not lease the apartment, but is authorized to live in it in her role as Mr. Sama's aide.

15. Mr. Sama and Ms. Duran were not living in the apartment as of the day of the hearing. They view it as dangerous because of other residents. They also think it is in unacceptably poor condition.

CONCLUSIONS OF LAW

16. Sections 120.569, 120.57(1), and 760.35 Florida Statutes (2010), grant the Division of Administrative Hearings jurisdiction over the subject matter of this proceeding and of the parties.

17. Mr. Sama brings his claim under Florida's Fair Housing Act, Sections 760.20-760.37, Florida Statutes (2010) (Fair Housing Act). He alleges that Miami-Dade and Royal American engaged in a discriminatory housing practice by denying him a reasonable accommodation based on his disability. The

reasonable accommodation is a two-bedroom unit so that he and his live-in aide would each have a bedroom.

18. Section 760.23(2), Florida Statutes (2010), makes it unlawful to discriminate against anyone on account of a handicap in the sale or rental of housing. Discrimination includes refusal to make a reasonable accommodation that will allow a person with a handicap an equal opportunity to use and enjoy a dwelling. § 760.23(9)(b), Fla. Stat.

19. Mr. Sama has the burden of proving by a preponderance of the evidence that Miami-Dade and Royal American violated the Fair Housing Act. See §§ 760.34(5) and 120.57(1)(j), Fla. Stat.

20. Miami-Dade and Royal American do not dispute that Mr. Sama has a handicap as defined in Section 760.22(7), Florida Statutes (2010), or that a two-bedroom unit is a reasonable accommodation. The only issue is whether they provided a reasonable accommodation.

21. Mr. Sama did not prove that Miami-Dade and Royal American refused to make reasonable accommodation. The evidence established that Mr. Sama sought a living unit in Singer Plaza and was provided one. It also established that two-bedroom units were limited and that Miami-Dade and Royal American worked to make a unit available and provided it to Mr. Sama in a reasonable period of time. In addition, Miami-Dade and Royal American permitted Mr. Sama's live-in aide, Ms. Duran, to share

the one-bedroom unit with him, while he was on the waiting list for a two-bedroom unit. Miami-Dade and Royal American fulfilled the obligations imposed by the Fair Housing Act.

22. The facts do not support Mr. Sama's claim of discrimination.

23. Section 760.23(2), Florida Statutes, makes it unlawful to discriminate against any person in the terms, conditions, or privileges of rental of a dwelling on account of the person's national origin.

24. Ms. Duran complains that Miami-Dade and Royal American discriminated against her because of her national origin in violation of Section 760.23(2), Florida Statutes. The discrimination Ms. Duran alleges is the request that she provide additional forms of identification to clarify the name differences between her Certificate of United States Citizenship, her Social Security card, and a Florida driver's license.

25. Ms. Duran bears the burden of proving her claim by a preponderance of the evidence. See §§ 760.34(5) and 120.57(1)(j), Fla. Stat. (2010).

26. The Florida Legislature modeled the Fair Housing Act after the United States Fair Housing Amendments Act of 1988. Therefore, interpretation of the federal law by federal courts

is instructive and persuasive in applying Florida's Fair Housing Act. Dornbach v. Holley, 854 So. 2d 211 (Fla. 2d DCA 2002).

27. The legal framework developed by the federal courts in discrimination cases brought under the Fair Housing Act of 1968 and Title VII of the Civil Rights Act applies. U.S. Dept. of Housing and Urban Dev. V. Blackwell, 908 F.2d 864 (11th Cir. 1990). The three-part burden of proof test developed in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) governs in this case. First, the plaintiff must prove a prima facie case of discrimination by a preponderance of the evidence. Second, if the plaintiff establishes a prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for its action. Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by preponderance that the legitimate reasons asserted by the defendant are in fact mere pretext. Id.

28. Ms. Duran established that she is a member of a protected minority group. But she did not prove that she was discriminated against in the terms conditions or privileges of rental. There is no evidence that she was treated differently than residents of a different national origin. Miami-Dade and Royal American conducted a background check of her as they do of all residents. When she provided identification documents with

two different names, Miami-Dade and Royal American acted reasonably to clarify the differences and confirm her identity by requesting additional forms of identification.

29. The facts do not support Ms. Duran's claim of discrimination.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations deny the Petitions of Julio Sama and Leandra Duran.

DONE AND ENTERED this 18th day of October, 2010, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of October, 2010.

COPIES FURNISHED:

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Larry Kranert, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Terrence A. Smith, Esquire
Miami-Dade County Attorney's Office
111 Northwest First Street, Suite 2810
Miami, Florida 33128

Julio Sama
1310 Northwest 16th Street, No. 319
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c/o Julio Sama
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121 Alhambra Plaza, 10th Floor
Coral Gables, Florida 33134

Shannon D. Summerset, Esquire
111 Northwest First Street, Suite 2810
Miami, Florida 33128-1993

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.