

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ALBERTO PIS AND MARIA SOTO,)
)
 Petitioners,)
)
vs.) Case No. 10-6430
)
MARATHON HOUSING ASSOCIATES,)
LTD., ET AL.,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was by video teleconference between Key West and Tallahassee, Florida, on January 5, 2011, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Alberto Pis and Maria Soto, pro se
240 Sombrero Beach Road, Apartment A-4
Marathon, Florida 33050

For Respondent: Franklin D. Greenman, Esquire
Greenman and Manz
5800 Overseas Highway
Gulfside Village, Suite 40
Marathon, Florida 33050

STATEMENT OF THE ISSUE

Whether Respondent committed the unlawful employment practice alleged in the Charge of Discrimination filed with the

Florida Commission on Human Relations (FCHR) and, if so, the relief that should be granted.

PRELIMINARY STATEMENT

At the times relevant to this proceeding, Petitioners resided in an apartment in a complex managed by Marathon Housing Associates (MHA). On or about March 19, 2010, Alberto Pis and Maria Soto (collectively referred to as Petitioners) filed a Charge of Discrimination (Complaint) with the United States Department of Housing and Urban Development (HUD) alleging that MHA was responsible for discriminatory terms, conditions, privileges, or services and facilities; and had failed to make a reasonable accommodation of Mr. Pis' handicap. It is alleged that MHA's acts were based on national origin and handicap.

HUD referred the matter to the Florida Commission on Human Relations (FCHR) for investigation. On June 18, 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."

On July 15, 2010, Petitioners filed a "Petition for Relief" against MHA which attached some 45 pages of materials and alleged that MHA had committed a "Housing Discrimination Practice". The Petition for Relief makes the same allegations

as Petitioners' Complaint of Discrimination, which was investigated by FCHR and found to lack cause.

On May 24, 2010, Petitioners filed with FCHR an Amended Petition of Housing Discrimination that names the following Respondents: MHA, Monroe County Housing Corporation, Monroe County Housing Authority, Housing Authority Key West, J. Manuel Castillo (Executive Director of MHA and City of Key West Housing Authority), and Susan Vogt (Housing Manager for MHA).

Petitioners are from Cuba and do not speak fluent English. At the hearing, Petitioners had the services of an interpreter and a translator.

Petitioners assert that Respondents discriminated against them by providing a written Notice of Lease Violation (NOLV) in English without a Spanish translation.

Petitioners assert that the behavior of Ms. Vogt when delivering the NOLV was an act of discrimination.

Petitioners assert that Mr. Castillo's failure to promptly respond to their complaints was an act of unlawful discrimination.

At the final hearing, Petitioners presented the testimony of Elio Alberto Pis (Petitioners' son) and Petitioner Alberto Pis. Petitioners offered ten sequentially-numbered exhibits, nine of which were admitted into evidence. Respondents presented the testimony of Susan Vogt and J. Manual Castillo.

Respondents offered one exhibit, which was admitted into evidence.

No transcript of the proceedings was filed. The parties submitted Proposed Recommended Orders which have been duly considered by the undersigned in the preparation of this Recommended Order.

Unless otherwise noted, each reference to a statute is to Florida Statutes (2010). There has been no material change to any statute cited in this Recommended Order from the date the events occurred to the date of this Recommended Order.

FINDINGS OF FACT

1. At all relevant times, Petitioners resided in an apartment in Eastwind Apartments, a HUD multifamily development in Marathon, Florida.

2. MHA manages Eastwind Apartments.

3. Monroe County Housing Corporation has an ownership interest in Eastwind Apartments.

4. Ms. Vogt is the housing manager of Eastwind Apartments.

5. Mr. Castillo is the executive director of MHA.

6. The lease between Petitioners and MHA contains the following provision: "The Tenant agrees to permit the Landlord, his/her agents or other persons, when authorized by the Landlord, to enter the unit for the purposes of making reasonable repairs and authorized inspections."

7. On September 18 and October 14, 2009, Ms. Vogt provided notices to all residents of Eastwind Apartments of upcoming inspections. The notices contained the following: ". . . there is still not a pet policy. If you have a pet, make sure it is confined and not loose anywhere in the apartment. The inspector can walk into any room and look around and your pet cannot be loose or locked in a room."

8. On December 2, 2009, a maintenance man reported to Ms. Vogt that he was hesitant to enter the Petitioners' apartment because of the presence of a pit bull dog in the apartment.

9. On December 2, 2009, Ms. Vogt hand-delivered an NOLV to Petitioner Alberto Pis based on the presence of the dog in the apartment. The NOLV instructed Petitioners to remove the dog from the apartment by December 5, 2009.

10. The NOLV was written in English. There was not a Spanish translation of the NOLV.

11. Ms. Vogt is fluent in English, but she is not fluent in Spanish.

12. Mr. Pis could not read the NOLV in English. Mr. Pis became upset when Ms. Vogt asked him to sign that he had received the NOLV. Petitioners allege that Ms. Vogt's demand that Mr. Pis sign for the receipt of the NOLV constituted an act of discrimination.

13. Petitioners have an adult son and an adult daughter who are fluent in Spanish and English. The adult daughter translated the NOLV to her parents on December 2, 2009, after Ms. Vogt had returned to her office.

14. On December 14, 2009, Ms. Vogt hand-delivered a second NOLV to Petitioner Alberto Pis. This NOLV advised that keeping the dog in the apartment was a lease violation.

15. The second NOLV was written in English. There was not a Spanish translation of the second NOLV.

16. At all times relevant, MHA had an employee in the office at Eastwind Apartments who was fluent in Spanish and English.

17. Elio Pis is a student at a school in Miami, but lives in the apartment leased by his parents from time to time. The dog in the apartment belongs to Elio Pis. Elio Pis, acting on behalf of himself and his parents, complained to Mr. Castillo about the NOLVs. At first, Mr. Castillo refused to discuss the matter with Elio Pis because Mr. Castillo thought that Elio Pis resided in Miami, not in the subject apartment. Mr. Castillo discussed the matter with Elio Pis after he learned that Elio Pis resided in the apartment from time to time. Petitioners allege that Mr. Castillo's refusal to promptly investigate their complaints constituted an act of discrimination.

18. On February 8, 2010, Mr. Castillo wrote the following letter to Petitioner Alberto Pis:

Following a phone conversation with your son regarding a Lease Violation issued on December 2, 2009, I conducted a review of the incident and actions taken by the Eastwind staff.

The review indicates that on December 2nd, maintenance staff attempted to respond to a request for maintenance in your unit (work order) and was scared off by the presence of a dog in the unit. Based on this information, the Housing Manager issued you a lease violation. Additionally, on December 14, 2009, numerous tenants received what was intended to be a courtesy notice but was titled "Lease Violation", one of which you received. This second notice was rescinded on December 17, 2009.

With regard to the initial lease violation issued, the Housing Manager perhaps over-reacted out of concern for the safety and well-being of the employee and others. The employee, while relaying the incident to a fellow employee, was noticeably shaken. I have asked the Housing Manager to also rescind the December 2nd Lease Violation. Staff is currently finalizing a revised Pet Policy that will allow for pets at Eastwind Apartments with restrictions and limitations. Residents will be notified of this change as the process is completed. On behalf of the Housing Authority, I apologize for any inconvenience to you and your family.

19. The two NOLVs were rescinded before Petitioners filed their initial Complaint of Discrimination with HUD on March 19, 2010. Petitioners have been allowed to keep the dog in their apartment.

20. Petitioners complained that certain repairs have not been made to their apartment. There was no evidence that similar repairs had been made to apartments rented by non-Hispanic tenants.

21. There was no evidence that the terms and conditions of Petitioners' tenancy at Eastwind Apartments were different from the terms and conditions of any other tenant.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 760.35, Florida Statutes.

23. The Florida Fair Housing Act (FFHA) is codified in sections 760.20 through 760.37.

24. Section 760.23(1)(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.

25. Petitioners have the burden of proving the allegations of their Amended Petition for Relief. See Florida Dep't of Transp. v. J. W. C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). Petitioners failed to establish that Respondents

discriminated against them in any manner. Petitioners failed to meet their 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 Petitioners' Amended Petition for Relief.

DONE AND ENTERED this 14th day of February, 2011, in Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of Februray, 2011.

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.