

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA COMMISSION ON HUMAN)
RELATIONS ON BEHALF OF)
BAHIYYIH WATSON,)
)
Petitioner,)
)
vs.) Case No. 10-9371
)
CHRISTINA VIERING,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case commencing on December 14, 2010, in Orlando, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings. After an extended recess due to matters outside the parties' control, the final hearing was concluded on February 22, 2011.

APPEARANCES

For Petitioner: Lawrence F. Kranert, Jr., Esquire
John Chaves, Esquire
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

For Respondent: Jamison Jessup, Qualified Representative
Florida Education Advocate, Inc.
557 Noremac Avenue
Deltona, Florida 32728

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Christina Viering, discriminated against Petitioner, Bahiyyih Watson, on the basis of Watson's race and/or religion in violation of the Florida Fair Housing Act.

PRELIMINARY STATEMENT

Petitioner, Florida Commission on Human Relations the ("Commission"), on behalf of Bahiyyih Watson, filed a Petition for Relief with the Division of Administrative Hearings ("DOAH") dated November 13, 2009. Upon motion by Respondent and no response thereto by Petitioner, the undersigned entered an Order Closing File dated June 10, 2010, stating that there appeared to be no disputed issues of material fact. Petitioner filed a Motion for Relief from Order contending that there were disputed issues of material fact to be addressed by DOAH. The Commission then entered an Order remanding the Petition for Relief to DOAH on September 10, 2010. The undersigned Administrative Law Judge ("ALJ") was assigned to the case, and a final hearing was held as indicated above.

On the first day of the final hearing, Petitioner called three witnesses: Christina Viering, Respondent; Petrea Quilling; and Charlene Wilson. At the conclusion of the first day of hearing, Petitioner advised that one more witness, Bahiyyih Watson, would be called when the hearing resumed on

December 16, 2010.^{1/} On December 15, 2010, DOAH was advised that counsel for Petitioner would be unable to attend the hearing on December 16, 2010, as a result of injuries he received in an automobile accident. The hearing was then rescheduled to continue on February 22, 2011. On that day, Petitioner called Bahiyyih Watson and Lisa Southerland, investigator for the Commission. Petitioner did not offer any exhibits into evidence. Respondent called two witnesses: Christina Viering and Jamaal Crooks. Respondent's Exhibits 4 through 49 and 51 were admitted into evidence.^{2/}

The parties advised that a transcript of the final hearing would be ordered. The Transcript was filed on January 21 and March 30, 2011, respectively. By rule, parties were allowed ten days to submit proposed recommended orders, but requested an additional ten days. Petitioner then requested an additional extension of time, which was allowed. Petitioner and Respondent each submitted a Proposed Recommended Order. Each was duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Bahiyyih Watson ("Watson") is a light-skinned Black American^{3/} female. Watson is an adjunct professor at Valencia Community College, where she teaches cultural anthropology. Watson holds a Ph.D. in anthropology. Watson practices the religion known as Yoruba, which has a

tradition of Orishas and places a great emphasis on ancestors. The religion emphasizes African traditions and a respect for elders as well.

2. At all times relevant hereto, Watson was residing in a house at 1830 Dover Road, Winter Park, Florida (the "House"). The House is owned by Respondent, Christina Viering ("Viering"). The House is a three-bedroom house in a residential neighborhood. It has a dining room, living room, kitchen and sun room, each of which was considered a common area for all residents.

3. On August 2, 2008, Watson and Viering entered into a legal document erroneously entitled, "Assignment of Lease" (hereinafter the "Lease"), which called for Viering to rent a room in the House. The Lease has a term of six months, i.e., from August 30, 2008, until February 28, 2009. Viering identified the Lease as a month-to-month lease, but there is no language in the Lease to confirm that description. There is a document attached to the Lease entitled, "Tenant Policies," setting forth various issues relating to the Lease. The attachment contains a provision which states: "MONTH TO MONTH LEASE TERMINATING WITH PROPER NOTICE. WHEN TERMINATING YOUR LEASE, A **30 DAY WRITTEN NOTICE** IS REQUIRED." The provision does not explain how it would be interpreted in contravention of the plain language of the Lease.

4. There is nothing in the Lease specifying a particular room for Watson, but the parties testified that Watson occupied the bedroom with a bath, presumably the master suite. The Lease did not identify a specific room for Viering.

5. Viering testified that she resided at the House during the term of the Lease between her and Watson, but did not sleep there every night. Watson said Viering never slept at the House while she, Watson, was there. One neighbor who lived across the street said she believed Viering lived at the House during the time Watson lived there. Another neighbor said she never saw Viering's car at the House overnight and only rarely during the day. The greater weight of the evidence suggests that Viering was at the House only sporadically and probably did not reside there as a residence.

6. At the time Watson signed the Lease, she was working as an adjunct professor at Valencia Community College. She was in the process of submitting an application, including extensive paperwork, to become a tenured professor at the University of South Florida. The application process was intense and required considerable concentration and attention to detail to complete. The application was the most important matter in Watson's life at that time. One of her reasons for selecting the House as a residence was because it was on a quiet street and appeared to

be a place where she could work without major distractions. Viering was made aware of this situation.

7. On or about March 17, 2008, another resident, Abbey Nichols, moved into one of the other bedrooms in the House. On October 17, 2008, yet another resident, Kristen Bryan, moved into the third bedroom. Both of the two new tenants were young (twenty-ish) Caucasian women who were of the Christian faith. Each of the new tenants entered into an agreement identical to the Lease, but with different dates of residency. The two new tenants were not inclined to help Watson clean or maintain the House.

8. Viering testified that she slept overnight at the House only two or three times a month. When she slept there, she slept in the Florida room at the rear of the House. The washer and dryer were located in the Florida Room. Again, Watson does not remember Viering ever staying overnight at the House, taking her meals there, or otherwise treating it as her place of residence.

Landlord-Tenant Disputes

9. Almost immediately upon Watson taking residence in the House, she and Viering began to have disputes about various and sundry issues. For example: Watson complained that Viering was moving her personal belongings around; Viering said she only moved items off the kitchen table so that she could wash the

tablecloth. Watson said that Viering had thrown away some of Watson's kitchenware; Viering said she threw away a styrofoam cup when she was cleaning the kitchen. The disputes soon escalated.

10. On September 17, 2008, less than one month into the six-month lease, Viering sent Watson a notice to vacate the premises within 30 days. The parties must have worked out an agreement, however, because Watson remained in the House after the proffered termination date.

11. The relationship between Viering and Watson, however, did not improve. They continued to disagree about things and communication between the two seemed quite strained.

12. On or about November 8, 2008, Viering went to the House to check on a leak which had been reported. A neighbor from across the street, Ms. Wilson, accompanied her as she looked around the House. Viering testified under oath that while doing the inspection, she noticed mail in Watson's room that appeared to belong to Viering. When she inspected the mail and determined that it belonged to her, Viering was concerned about possible identity theft. Viering then went to the local post office and requested an address change so that her mail would not go to the House. Wilson remembers the event somewhat differently: She says that Viering said she (Viering) believed Watson had some of her mail and wanted to go into the room to

check. Watson saw Viering take some mail that she claimed belonged to her, but Watson never personally identified the names on the letters. Watson denies ever having mail that belonged to Viering. The only certain fact concerning this situation was that Viering did go into Watson's room and retrieved some mail. It is not certain who the mail belonged to or whether Viering identified the mail as hers before going into Watson's room.

Plumbing Problems

13. Two days later, one of the tenants reported to Viering that the plumbing at the House was stopped up. Viering told the tenants that it was their responsibility to call a plumber and get the stoppage cleared up. She took this stance because, some ten years prior, some of Viering's tenants had flushed items down the toilet, causing a back-up in the plumbing. Viering believed her current tenants had done the same. One of the young tenant's fathers then called Viering and suggested that the plumbing problem could be caused by roots growing into the pipes, and, if so, then the problem would be the landlord's responsibility. Viering agreed then to call the plumber herself.

14. Jamaal Crooks, a plumber working for Bryan Plumbing, came to the House on November 14, 2008, to work on the problem. He went into the House, but only into the hallway bathroom. He

did not enter Watson's room or the bathroom in her room. Crooks then went outside and used a cable to reach inside the main sewer line. He pulled three tampons out of the line, thus, clearing the blockage. Crooks could not say if there were more tampons in the line at that time, but the ones he removed were sufficient to allow the sewage to flow.

15. Crooks apparently gave Viering a bill for his services at that time. The amount on the bill was \$178.00. Viering demanded that Watson pay the bill or that she at least pay her one-third share. Viering did not believe she should share in the cost, because she was not staying at the House on a permanent basis. That testimony contradicts her statements that she was at the House regularly and that it was her residence at that time. Watson refused to pay the bill, because she did not feel responsible for the stoppage.

16. Some six days later, Bryan Plumbing issued another invoice in the amount of \$178.00. The invoice included a note that said, "Tenant refused to pay bill. Christina was present the whole time." It is unclear from the testimony why this invoice was issued if a bill had been presented on the day of service. Viering ultimately paid the plumbing bill and asked each of her tenants to pay a portion of it.

17. Watson said the plumbing worked for only four or five hours after Crooks left the premises. Viering says the plumbing

was working for up to a week. It is clear the plumbing problem was not totally resolved. When a tenant would attempt to shower or flush the toilet, sewage would back up into the bathtub and shower stall. The tenants were afraid to drink water from the faucet because they did not know if it was contaminated or not.

18. As will be discussed below, the two Caucasian tenants left the House soon after the November 14, 2008, plumbing issue. Watson, who could not afford to move and had no friends or family with space to accommodate her, remained at the House. There was no working toilet, so Watson had to find other means of performing daily hygiene. She would bathe as well as possible at local stores or gas stations. She would drive to stores to use their restrooms. At night when the stores were closed, she would reluctantly go into the backyard and dig a hole to use as a latrine. By that time she was becoming physically ill from all the stress. When she needed to vomit, she would have to use the hole in the ground for that purpose as well. Watson endured this situation for almost three weeks before finally finding another place to live.

19. On December 19, 2008, a little over a month after the initial plumbing problem, Crooks came back to the House to fix the plumbing again. By that time, all three tenants, including Watson, had already moved out of the House. Although Crooks had no independent recollection of being at the House on that date,

he identified a written statement he had made on that date saying he had "found more tampons in line [sic]." Crooks could not say if the tampons were left over from the prior visit, but inasmuch as the plumbing was not working in the interim, that is probable.

Notices to Vacate

20. On November 12, 2008, just two days after receiving her initial notice about the plumbing problem, Viering gave all three tenants a Lease Violation Warning setting forth certain alleged violations and giving the tenants three days to come into compliance. Two days later, on the day the plumbing was initially fixed, Viering gave each tenant a 30-day notice to vacate the premises. The basis for the notices, as set forth in another letter from Viering to the tenants, was that a police officer had advised her that she should evict the three tenants. Viering said that action was "radical" and that she opted for a 30-day notice of termination of the Leases instead.

21. On the same day she gave the tenants the 30-day notice, she gave each of them a seven-day notice which specified lease violations. The notice to Bryan set forth the following violations:

- Failure to maintain plumbing
- Failure to pay share of utilities and repairs
- Unauthorized guests on property
- Unauthorized overnight guests
- Harassment by unauthorized guests

- Disturbing the peace
- Failure to maintain sanitary conditions

22. The notice to Nichols set forth very similar violations, to wit:

- Failure to maintain premises in a sanitary manner
- Negligent use of plumbing
- Failure to pay plumbing repair
- Unauthorized guests on the property
- Unauthorized overnight guests on the property
- Destruction of property belonging to the landlord or permitting another person do so

23. The notice given to Watson contained the following alleged violations:

- Failure to maintain plumbing
- Failure to comply with payments due [sic]
- Share of utilities to be paid
- Share of repair to plumbing
- Disposal of garbage in sanitary manner
- Maintaining the premises in sanitary condition
- Unauthorized overnight guests on a regular basis
- Harassment to me by yourself and guests

24. On the same date that Viering gave the tenants their seven-day notices and 30-day termination notices, she gave Watson two additional letters: One was a letter advising Watson that her security deposit amount was being increased by an additional \$100.00; the second was a demand to have Viering's dresser (which Watson was using) ready to be picked up on the upcoming weekend.

Religious Controversy

25. The rash of notices on November 14, 2008, indicates some irrationality on Viering's part. It also indicates that

the landlord-client relationship was not working effectively. On that same day, Watson called the police to report Viering for harassment. While waiting for the police, Watson went into the backyard to avoid contact with Viering. Viering, however, came into the backyard and confronted Watson. Watson remembers Viering coming toward her with something in her hand, raised above her head. Viering was chanting some incantations and acting bizarre. Viering remembers only that she wanted to talk to Watson and was going to use her cell phone to videotape Watson as she talked. As she approached Watson, she recited the Lord's Prayer to cover herself with God's protection.^{4/}

26. On November 15, 2008, one day after the aforementioned notices, Viering posted a Notice of Non-Renewal at the House, advising Nichols that her lease would not be renewed and that Nichols must vacate the premises no later than December 1, 2008. On that same day, Viering cut out cross-shaped designs from some magazines and posted them around the House. Viering did so as a part of her Christian religious beliefs, thinking there was "evil" in the House and hoping to eradicate it.

27. When Watson took the crosses down because she considered them offensive, Viering made replacement crosses. Watson says Viering used paper from Watson's room to make the crosses; Viering says she used liner paper from her dresser and

a Home Depot catalogue. The crosses were placed on various windows around the House.

28. Watson states that she sent Viering a letter complaining that the crosses were traumatizing to her as a black woman. Viering does not remember any complaint from Watson about the crosses. Watson's written missive to Viering on this subject could not be produced. Watson says she also left voice messages on Viering's telephone. Viering said that she does not remember any such message, but since Watson sent her so many text and emails that were harassing in nature, Viering would frequently delete messages before reading them.

29. The following day, Sunday, November 16, 2008, Viering returned to the House and put up wooden crosses in the front flower beds. She also painted black crosses on each slat of the privacy fence behind the House and on some windows in the House. The crosses were accompanied by messages such as, "The pure white light of Christ" and other inspirational sayings from Viering's Christian literature. The black crosses were crudely painted using a paper towel because Viering could not find a paint brush.

30. Watson arrived home after dark and found the large cross in the front yard and the crosses painted on all the windows, which frightened her, so she asked a male neighbor to accompany her into the House to make sure no one was there.

Inside the House, there were numerous crosses painted on windows and doors. All of this made Watson extremely frightened, so she called the police. She was told that unless the crosses were on fire, they could not investigate.

Additional Disputes

31. On November 17, 2008, Viering provided additional notices to the tenants: Watson was advised that her bedroom would be inspected, that she should return all items that were not her property, and that she should remove her property from the common areas of the House. Bryan received yet another Notice of Termination, effective immediately. Both Bryan and Nichols moved out of the House shortly thereafter.

32. At some point, Watson remembers receiving a written notice telling her to vacate within seven days. The reason for the notice was that Viering had gotten into a confrontation with a black woman outside the House and presumed that the woman was Watson's friend. In fact, the woman was the mother of one of Bryan's friends.^{5/} Viering had borrowed a bicycle off the front porch of the House. The bike belonged to a young man who was visiting Bryan, and he thought someone had stolen the bike. The young man's mother accosted Viering for taking the bike without asking. That altercation appears to have been the genesis of the notice to Watson.

33. On November 19, 2008, Watson contacted the Seminole County Sheriff's Office and filed a complaint against Viering. The complaint was for harassment and violation of landlord-tenant laws. Watson also contacted every state agency she could think of to seek some sort of redress from the conditions she was living in. She called, by her account, the Public Works department, the Utilities Commission, Health and Safety, and Sanitation, to name a few. None of the agencies acknowledged jurisdiction over the matter.

34. On December 9, 2008, Viering received a letter from a local television station stating that a consumer had filed a complaint alleging denial of basic services by Viering. Thereafter, the television station broadcasted a consumer human-interest story concerning Watson's plight.

35. At some point in time, Watson filed a Petition for Temporary Injunction against Viering, claiming some sort of violence by Viering. The Injunction proceeding was dismissed on January 6, 2009, when Watson failed to appear at the court hearing on the matter. By that date, Watson was no longer residing at the House. On or about November 30, 2008, Watson had vacated the House, ending the relationship between herself and Viering.

36. Watson alleges discrimination based on her race due to the fact that she received more notices than the other

(Caucasian) tenants from Viering. However, Watson was the longest serving tenant and had the most interaction with Viering, so there is no way to establish discrimination based solely on the number of notices.

37. Watson alleges religious discrimination based on the bizarre behavior of Viering, such as placing crosses and religious sayings around the House, chanting the Lord's Prayer or other incantations, and referencing evil in the House. However, there is no persuasive evidence that Viering was aware of Watson's religion, Yoruba. Although Viering was in Watson's room on occasion and must have seen Watson's shrines, there is no evidence that Viering was aware of what the shrines stood for.

38. Watson claims discrimination based on the fact that Viering was less tolerant of her than of the white, Christian tenants. The other tenants did not testify at final hearing, so it is impossible to compare their treatment to Watson's.

39. Viering clearly acted in a very strange and unusual fashion. She was not a pleasant landlord. However, her actions appear to be based on her own personality and demeanor, rather than on any intent to discriminate based on race or religion.

CONCLUSIONS OF LAW

40. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this

proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2010). Unless otherwise specifically stated herein, all references to Florida Statutes shall be to the 2010 version.

41. Florida's Fair Housing Act (the "Act") is codified in sections 760.20 through 760.37, Florida Statutes. Section 760.23 reads in pertinent part:

Discrimination in the sale or rental of housing and other prohibited practices.--

* * *

(2) 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.

42. Petitioner has the burden of proving by a preponderance of the evidence that Viering violated the Act by discriminating against Watson as alleged in her complaint. §§ 120.57(1)(j) and 760.34(5).

43. In evaluating housing discrimination claims, courts have applied the burden shifting analysis developed in McDonnell Douglas Corp. v Green, 411 U.S. 792, 802-804 (1973), and later refined in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-253 (1981). Following this approach, Watson must make a prima facie case for discrimination. A prima facie showing of housing discrimination simply requires Watson, as the

petitioner, to show that she was ready, able and willing to continue her residency at the House was not in violation of the Lease and that she was a member of a protected class. See Soules v. U.S. Dep't of Hous. & Urban Dev., 967 F.2d 817, 822 (2d Cir. 1992). Watson, a black American adhering to a non-mainstream religion, is a member of a protected class. Watson established a prima facie case.

44. The burden of production then shifts to Viering to show that the actions she took--giving Watson numerous notices to vacate the premises and posting crosses and religious verses around the House--were based on legitimate, nondiscriminatory reasons. Id. As shown, Viering provided notices to Watson due to the breakdown of the landlord-tenant relationship between the two women. The crosses and verses placed around the House were done because of Viering's extreme religious beliefs.

45. That being the case, the burden then shifts back to Petitioner to prove that Viering's reasons were mere pretext and that the real reason for her actions was discrimination. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 515 (1993). There is no evidence in the record to support that contention. Viering acted pursuant to her own somewhat aggressive religious convictions and as a dissatisfied landlord. Her actions, vis-à-vis the two Caucasian tenants, were not significantly different than her treatment of Watson.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Florida Commission on Human Relations dismissing the Petition for Relief filed by Bahiyiyih Watson in its entirety.

DONE AND ENTERED this 11th day of May, 2011, in Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of May, 2011.

ENDNOTES

^{1/} The final hearing had initially been scheduled for one day. When Mr. Jessup filed a notice of appearance on behalf of Respondent, he requested additional days. The ALJ had a hearing already scheduled on December 15, 2010, but agreed to reconvene on the December 16, 2010, for an additional day of testimony.

^{2/} Respondent offered Exhibit 50, a partial transcript of a ruling by a Circuit Court judge in a criminal proceeding, but the exhibit was not accepted. Respondent's qualified representative then improperly attached the exhibit to his

Proposed Recommended Order, but it was not considered in the preparation of this Recommended Order.

^{3/} Watson did not refer to herself as an African-American, but as a black American.

^{4/} Despite Viering's extensive testimony concerning her religious beliefs and the posting of crosses and religious sayings around the House to ward off evil, she was unable to accurately recite the Lord's Prayer at final hearing when asked to do so.

^{5/} Watson said Viering had been introduced to the young man and told he was Bryan's friend, but Viering does not recollect such an introduction. Watson said Viering's association of the young man with her (Watson) must be racially motivated.

COPIES FURNISHED:

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

Lawrence F. Kranert, Jr., General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Bahiyyih Watson
2611 Cedar Bay Point, Apartment 103
Casselberry, Florida 32707

Christina Viering
1830 Dover Road
Winter Park, Florida 32792

Christina Viering
Post Office Box 141593
Orlando, Florida 32814

Jamison Jessup
Florida Education Advocate, Inc.
557 Noremac Avenue
Deltona, Florida 32738

John Chaves, Esquire
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

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.