

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ELIZABETH SHERLOCK, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 10-9940  
 )  
 WEDGEWOOD AT PELICAN STRAND )  
 NEIGHBORHOOD ASSOCIATION, ET )  
 AL.; NEWELL PROPERTY )  
 MANAGEMENT, ET AL.; SHERYL )  
 WHITAKER, OWNER; AND CAMBRIDGE )  
 MANAGEMENT, ET AL., )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on May 16, 2011, in Fort Myers, Florida, before Thomas P. Crapps, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Elizabeth Sherlock, pro se  
245 Walnut Street, South  
Belle Plaine, Minnesota 56011

For Respondent Cambridge Management:

Daniel J. Santaniello, Esquire  
Thomas J. Gibbons, Esquire  
Luks, Santaniello, Petrillo & Jones  
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Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUES

Whether Respondent, Cambridge Management Inc., engaged in housing discriminatory practice in violation of the Florida Fair Housing Act, as amended, sections 760.20 through 760.37, Florida Statutes (2010).<sup>1/</sup>

PRELIMINARY STATEMENT

On June 25, 2010, Petitioner, Elizabeth Sherlock (Ms. Sherlock), filed a complaint with United States Department of Housing and Urban Development. She amended the complaint on July 27, 2010, alleging that Respondents, Wedgewood at Pelican Strand Neighborhood Association, et al., Newell Property Management, et al., Sheryl Whitaker, owner, and Cambridge Management, Inc. (Cambridge Management), discriminated against her and her minor son based on sex and familial status.

On September 15, 2010, the investigative report was issued finding no cause to believe that a violation of the Florida Fair Housing Act had occurred. On September 22, 2010, the Florida Commission on Human Relations (Commission) issued a Notice of Determination of No Cause in the instant case.

On October 25, 2010, Ms. Sherlock filed a Petition for Relief which alleged, in pertinent part, that Respondents violated the Florida Fair Housing Act through "discriminatory terms, conditions, privileges or services, and facilities."

On November 2, 2010, the Commission transmitted Ms. Sherlock's petition to the Division of Administrative Hearings. On November 5, 2010, Administrative Law Judge Barbara Staros issued an Initial Order. On November 29, 2010, the instant case was transferred to Administrative Law Judge Thomas P. Crapps. The case was set for hearing on January 31, 2011.

On December 22, 2010, Respondent, Wedgewood at Pelican Strand Neighborhood Association, et al., requested a continuance of the January 31, 2011, hearing, which was granted. The hearing was rescheduled for March 2, 2011.

On February 4, 2011, Ms. Sherlock and Respondents, Wedgewood at Pelican Strand Neighborhood Association, et al., and Newell Property Management, et al., entered into a Joint Stipulation of Voluntary Dismissal With Prejudice, and filed it with the Division of Administrative Hearings.

On February 17 and 18, 2011, Petitioner filed two Motions to Compel against the remaining Respondents, Sheryl Whitaker and Cambridge Management. The discovery dispute centered, in part, on a request for production of the "gate camera surveillance tapes."

On February 28, 2011, Cambridge Management requested a continuance of the final hearing set for March 2, 2011.

Ms. Sherlock did not object to the continuance, and the final hearing was rescheduled for March 30 and 31, 2011.

On March 25, 2011, at a case management hearing, Ms. Sherlock informed the undersigned and Respondent, Ms. Whitaker, that she was voluntarily dismissing Ms. Whitaker from the case. Based on Ms. Sherlock's representation at the case management hearing dismissing Ms. Whitaker, the final hearing concerned only Ms. Sherlock's allegations against Cambridge Management.

On March 30, 2011, the undersigned began the final hearing. At the hearing, disputes arose concerning trial subpoenas issued by Ms. Sherlock, and her failure to file witness and exhibit lists. The undersigned, on his own initiative, re-scheduled the final hearing for May 16, 2011, and directed Ms. Sherlock to file her witness and exhibit lists before April 15, 2011, and serve all her trial subpoenas before April 29, 2011.

On May 10, 2011, the Strand Golf and Country Club filed a Motion to Quash Subpoena Duces Tecum that was served by Ms. Sherlock seeking a copy of the surveillance tapes from a gate guardhouse at the Strand Golf and Country Club, and a copy of the Master Association contract between the Strand Golf and Country Club and Cambridge Management. On May 12, 2011, Ms. Sherlock filed a Motion to Amend Complaint to Include Punitive Damages against Cambridge Management.

Prior to beginning the hearing on May 16, 2011, the undersigned heard both motions. First, concerning the Motion to Quash Subpoena Duces Tecum, the undersigned took testimony and determined that the Strand Golf and Country Club did not appear to be the proper entity, and did not have either surveillance tapes of the gate guardhouse or a Master Association contract. Based on the testimony, the undersigned granted the Motion to Quash. Next, on the issue of Ms. Sherlock's motion seeking punitive damages, the undersigned found that section 760.35(3)(b), Florida Statutes, did not provide statutory authority to award punitive damages in an administrative hearing. Therefore, Ms. Sherlock's motion seeking punitive damages was denied.

At the May 16, 2011, final hearing, Ms. Sherlock presented the testimony of five witnesses: Mr. Jules LeClaire (Mr. LeClaire), Mr. William Weaver (Mr. Weaver), Mr. Charles Sherlock (Mr. Sherlock), Major Rubele (Ms. Rubele) and herself. Ms. Sherlock introduced into evidence one exhibit, labeled Exhibit "B." Respondent, Cambridge Management, did not call any witnesses or present any exhibits. The parties declined to order a transcript of the proceedings and were directed to file any proposed recommended orders within ten days of the conclusion of the hearing.

On May 23, 2011, Ms. Sherlock filed a proposed recommended order. Respondent, Cambridge Management, untimely filed a proposed recommended order on June 2, 2011. Both proposed recommended orders have been considered by the undersigned.

FINDINGS OF FACT

1. In 2009-2010, Ms. Elizabeth Sherlock and her nine-year-old son, Luke Sherlock, rented a home from Ms. Sheryl Whitaker. The home was located in the Wedgewood II at Pelican Strand located in Collier County, Florida. The lease was from June 1, 2008, until June 1, 2010.

2. Cambridge Management is the Master Association for the condominium association for the Strand properties. Cambridge Management did not rent or lease the home to Ms. Sherlock.

3. Ms. Sherlock testified that the homeowner's association cited her for violations of the homeowner's association covenants, based on her son engaging in normal childhood activities such as climbing trees, archery, playing in the street and the community clubhouse. Ms. Sherlock testified that she was told in April 2010 that her lease would not be renewed, because her son had run across a sand trap on the golf course during a rain storm.

4. According to Ms. Sherlock, Cambridge Management discriminated against her and her son by denying them access to their rented home.<sup>2/</sup> Further, Ms. Sherlock testified that her

son suffered severe traumatic stress, based on the security officers denying them access to their home. Finally, Ms. Sherlock testified that the decision not to continue renting to her caused her to move from the home and resulted in financial hardship. Ms. Sherlock's Petition for Relief summarily states that Respondents violated the Florida Fair Housing Act through "discriminatory terms, conditions, privileges or services, and facilities." The Petition for Relief does not contain any specific factual allegation against Respondents.

5. The record does not support Ms. Sherlock's testimony that Cambridge Management engaged in any discriminatory practice or that it retaliated against her and her son in violation of the Florida Fair Housing Act.

6. Mr. LeClaire is a security guard for the Wedgewood at Pelican Strand. Mr. LeClaire testified that on June 24, 2010, at approximately 9:00 p.m., he had stopped Ms. Sherlock at the gate because his supervisor had told him that Ms. Sherlock may not be a current resident. After confirming that she was still a current resident, Mr. LeClaire allowed Ms. Sherlock to access her home through the gate. Although Mr. LeClaire's supervisor had told him that Ms. Sherlock may not be a current resident, no one from Cambridge Management had told Mr. LeClaire to deny Ms. Sherlock access to her rented home.

7. Mr. Weaver is also a security guard for the Wedgewood at Pelican Strand. Mr. Weaver testified that on July 2, 2010, at approximately 9:00 p.m., he stopped Ms. Sherlock at the gatehouse to determine whether or not she was a current resident. Mr. Weaver credibly testified that he stopped Ms. Sherlock because he did not recognize her as a resident. After he verified that she was a current resident, Mr. Weaver allowed Ms. Sherlock into the community. Mr. Weaver credibly testified that he delayed her at most three minutes.

8. Mr. Charles Sherlock is Ms. Sherlock's father. Mr. Sherlock resides in Naples, Florida, during the winter. He testified about the close relationship that he enjoys with his grandson Luke. According to Mr. Sherlock, Luke felt that it was his fault that he and Ms. Sherlock had been evicted from Ms. Whitaker's home, and had to move to Minnesota. Mr. Sherlock further testified that he had to pay for Ms. Sherlock's move to Minnesota, and that he would like to be reimbursed for the costs.

9. Ms. Rubele is an officer with Wackenhut Security, and she testified about the Wackenhut Standard Operating Procedure for the Strand, and testified that Wackenhut's contact person for security was Ms. Brandy K. Callahan of Cambridge Property Management.

10. Prior to the final hearing, Ms. Sherlock voluntarily dismissed, with prejudice, her claims against Respondents,



Wedgewood at Pelican Strand Neighborhood Association, et al., and Newell Property Management, et al., and voluntarily dismissed Respondent, Sheryl Whitaker.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to sections 120.569 and 120.57, Florida Statutes (2010).

12. The Florida Fair Housing Act, codified in sections 760.20 through 760.37 provides, in pertinent part, that:

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.

(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.

§ 760.23, Fla. Stat.

13. Further, section 760.37 provides that it is "unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of her or his having exercised . . . " any rights under the Florida Fair Housing Act.

14. Petitioner bears the initial burden of proof to establish a prima facie case of discrimination by a

preponderance of the evidence. 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, Ms. Sherlock must make a prima facie case for discrimination. A prima facie showing of housing discrimination requires Ms. Sherlock, as Petitioner, to show that she was a member of a protected class; that she was ready, able, and willing to continue her residency at her rental unit; that she was not in violation of the lease; and that other similarly situated individuals, who were not a member of her class, were treated differently than her. See Soules v. U.S. Dep't of Hous. & Urban Dev., 967 F.2d 817, 822 (2d Cir. 1992). If, the complainant (in this case Petitioner) fails to establish a prima facie case of discrimination, the matter ends. See, e.g., Nat'l Indus., Inc. v. FCHR, 527 So. 2d 894 (Fla. 5th DCA 1988).

15. Applying the rules of law to the facts here, it is clear that Ms. Sherlock has failed to bring forward evidence to establish a prima facie case that Cambridge Management engaged in a discriminatory housing practice. First, it is undisputed that Ms. Sherlock is a member of a protected class based on familial status and gender. Ms. Sherlock, however, failed to

bring forward evidence showing that she was qualified to continue renting the home, or that similarly situated individuals, who were not members of her class, were treated differently than her. The focus of Ms. Sherlock's evidence concerned her complaint that Respondent, Cambridge Management, through the security officers, had denied her access to her rented home on two occasions. It was not disputed that Ms. Whitaker owned and leased the property to Ms. Sherlock. Cambridge Management did not own, lease, or rent the home. There is no evidence that Respondent, Cambridge Management, refused or failed to rent to Ms. Sherlock; thus, no evidence that Respondent, Cambridge Management, violated the Florida Fair Housing Act by refusing to rent or renew Ms. Sherlock's lease.

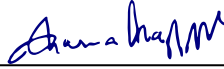
16. Next, assuming that Ms. Sherlock's complaint against Respondent, Cambridge Management, is that it denied her access to her home based on a discriminatory purpose, or that it denied her access to her home in retaliation for her housing complaint, the record does not support the allegation. There was no evidence that Ms. Sherlock was denied access to her rented home. The evidence brought forward showed that on two instances the security officers stopped Ms. Sherlock to verify whether she was a current resident. Upon verification, the security officers allowed Ms. Sherlock to proceed to her rented home. The testimony of Mr. Weaver credibly showed that the verification

took approximately three minutes and that Ms. Sherlock was allowed to access her home. Further, the lone exhibit admitted into evidence by Ms. Sherlock, the Standard Operating Procedure for the Wackenhut Security Officers, which is presumably provided to security officers for the community, provides that security officers are to verify the identification of persons driving into the gated community. Ms. Sherlock did not bring forward any evidence showing that other similarly situated residents, who were not single women with children, were treated differently than her. In fact, Mr. Weaver testified that Ms. Sherlock was treated like any other resident when he needed to verify whether or not the person was a current resident of the community. Based on the foregoing, Ms. Sherlock failed to establish a prima facie case under the Florida Fair Housing Act.

#### 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 of dismissal of the Petition for Relief.

DONE AND ENTERED this 7th day of June, 2011, in  
Tallahassee, Leon County, Florida.



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THOMAS P. CRAPPS  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of June, 2011.

ENDNOTES

<sup>1/</sup> Unless otherwise indicated, all references to the Florida Statutes are to the 2010 version.

<sup>2/</sup> In the discovery proceedings and at trial, Ms. Sherlock attempted to prove the existence of surveillance tapes of the gate guardhouse. According to Ms. Sherlock, the surveillance tapes would support her claim that the security officers had not allowed her immediate access to her rental home. The testimony was not disputed that the security officers had stopped Ms. Sherlock from entering the community, and had required verification that she was a current resident. Also, it was undisputed that, after verification, Ms. Sherlock was provided access to her rented home.

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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.