

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FANNIE BILLINGSLEY,)
)
 Petitioner,)
)
 vs.) Case No. 10-10304
)
 HOUSING AUTHORITY OF)
 THE CITY OF WINTER PARK,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on January 28, 2011, by video teleconference between Tallahassee and Orlando, Florida, before Thomas P. Crapps, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Fannie Billingsley, pro se
915 Randall Street
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For Respondent: Michael H. Bowling, Esquire
Bell, Roper & Kohlmyer, P.A.
2707 East Jefferson Street
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STATEMENT OF THE ISSUE

Whether Petitioner showed by a preponderance of the evidence that Respondent engaged in an unfair and discriminatory housing

practice in violation of the Florida Fair Housing Act, section 760.20 et seq., Florida Statutes (2010).^{1/}

PRELIMINARY STATEMENT

On July 13, 2010, Petitioner, Fannie Billingsley (Ms. Billingsley), filed a Housing Discrimination Complaint (Complaint) against Respondent, Housing Authority of the City of Winter Park (Housing Authority). Ms. Billingsley filed the Complaint with the U.S. Department of Housing and Urban Development (HUD). In the Complaint, Ms. Billingsley alleged that the Housing Authority had denied her housing because she was an African-American and that the Housing Authority had a racial preference for Hispanics.^{2/}

On July 13, 2010, HUD forwarded Ms. Billingsley's Complaint to the Florida Commission on Human Relations (Commission) for investigation and provided the Housing Authority a copy of the Complaint. On that same date, the Commission contacted the Housing Authority and began its investigation. During the investigation, the Housing Authority promptly responded to the Commission's requests for information.

On September 16, 2010, the Commission's investigator issued his report finding no reasonable cause to believe that a violation of the federal Fair Housing Act had occurred. Consequently, on October 5, 2010, the Commission issued its Notice of Determination of No Cause.

On November 4, 2010, Ms. Billingsley filed a Petition for Relief with the Commission alleging that the Housing Authority had violated the Florida Fair Housing Act and that the Commission's investigator had been biased. Further, Ms. Billingsley alleged that she had not had an opportunity to reply to the new evidence supplied by the Housing Authority and that "I am proof" of the discrimination.

On November 19, 2010, the Commission transmitted Ms. Billingsley's petition to the Division of Administrative Hearings for a formal administrative hearing.

On November 19, 2010, Thomas P. Crapps, a duly-appointed Administrative Law Judge, was assigned the instant case. A final administrative hearing was set for January 28, 2011.

At the January 28, 2011 hearing, Ms. Billingsley testified on her own behalf and did not submit or introduce any exhibits into evidence. The Housing Authority called Lynda Hinckley (Ms. Hinckley) as its witness and introduced, without objection, Exhibits 1 through 14 into evidence. The Housing Authority's exhibits were admitted into evidence.

A one-volume Transcript of the proceedings was filed on February 23, 2011. The parties were given an opportunity to present proposed recommended orders. The Housing Authority submitted a Proposed Recommended Order, but Ms. Billingsley did not submit one.

FINDINGS OF FACT

1. Ms. Billingsley is an African-American woman; thus, a member of a protected class.

2. The Housing Authority is a government entity of the City of Winter Park, Florida, that provides affordable, public assistance housing for elderly, disabled, and low-income families and individuals.

3. Applicants for the public housing are required to fill out an application that requests information identifying the applicant's income source, Social Security number, addresses for the past five years, and the size of the apartment that the applicant is seeking to rent. The applicant is then placed on a waiting list for an available apartment. Generally, an applicant is informed that the wait for housing is between six to 12 months. The time on this waiting list can be affected by whether or not an applicant meets the criteria for a preference in granting the housing and transfers of existing tenants within the housing complex.

4. Ms. Hinckley, the Housing Authority's executive director, credibly testified that the Housing Authority provides preferences for working families and families with disabled members. In order to qualify for a working-family preference, an applicant must have worked at least 20 hours a week for six of the last 12 months. Ms. Hinckley credibly explained that before

an applicant is moved into a housing unit, the Housing Authority will conduct a home visit and verify the applicant's employment for the working preference. In addition to preferences, Ms. Hinckley explained that the amount of time an applicant is on the waiting list can be affected by transfers within the housing complex. The Housing Authority allows a family to transfer within the housing complex based on need, before accepting new families from the waiting list. For example, a family living in a two-bedroom apartment would be allowed to transfer to a larger three-bedroom apartment before an applicant from the waiting list would be allowed to move into the housing complex.

5. On August 27, 2008, Ms. Billingsley applied with the Housing Authority for a three-bedroom apartment. She indicated in her application that she was eligible for the working-family preference. Ms. Billingsley was then placed on the waiting list and given a working-family preference. On June 2, 2009, Ms. Hinckley conducted the home visit with Ms. Billingsley concerning her application.

6. Between December 2009 and Spring 2010, the Housing Authority began renovations of the rental unit bathrooms. During this time, the Housing Authority was unable to accommodate Ms. Billingsley for a three-bedroom apartment. Moreover, the Housing Authority honored transfers within the housing complex before offering Ms. Billingsley a housing unit.

7. On April 9, 2010, the Housing Authority contacted Ms. Billingsley and informed her that a three-bedroom unit would be available in May of 2010. The Housing Authority then sought to verify Ms. Billingsley's working status. Unfortunately, Ms. Billingsley had recently been discharged from employment. The Housing Authority contacted Ms. Billingsley and asked her to provide proof of employment.

8. On May 12, 2010, Ms. Billingsley informed the Housing Authority that she was not employed, but that she was looking for work. Based on the fact that Ms. Billingsley was not working at the time in late April 2010, she was no longer eligible for the working-family preference. As a result, the Housing Authority did not rent the available unit to Ms. Billingsley.

9. Ms. Billingsley has not provided the Housing Authority with any subsequent proof of employment. Moreover, the Housing Authority has not been able to verify her recent claim that she has been employed by Toys-R-Us.

10. Ms. Billingsley did not introduce any evidence, either direct or indirect, showing that the Housing Authority discriminated against her based on her race or that the Housing Authority had a racial preference for Hispanics.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. § 120.57(1), Fla. Stat.

12. In the instant case, Ms. Billingsley's initial complaint sent to HUD alleged that the Housing Authority had violated the federal Fair Housing Act, section 804(b). Because HUD transferred the case to the Commission, the issue is whether the Housing Authority violated the Florida Fair Housing Act, which is substantially similar to the federal Fair Housing Act.^{3/}

13. Under the Florida Fair Housing Act ("Act"), sections 760.20 through 760.37, it is unlawful to discriminate in the sale or rental of housing. Section 760.23 states, in part:

(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.

14. Because the Florida Fair Housing Act is patterned after the federal Fair Housing Act, 45 U.S.C. sections 3601 through 3631,^{4/} federal case law dealing with the federal Fair Housing Act is applicable. See Fla. Dep't. of Cmty. Aff. v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

15. Ms. Billingsley bears the burden of proof in this cause to establish by a preponderance of the evidence that the Housing Authority committed an unlawful act constituting a violation of section 760.25. See § 760.34(5).

16. In order to establish a prima facie case of housing discrimination, Ms. Billingsley must prove that: (1) she is a member of a protected class; (2) she attempted to engage in a real estate transaction with the Housing Authority and she met all relevant qualifications for doing so; (3) the Housing Authority failed to engage in the transaction despite Ms. Billingsley's qualifications; and (4) the Housing Authority continued to engage in that type of transaction with similarly qualified persons outside of Petitioner's protected class.

Velez, et al., v. Centerstate Banks, Inc., et al., Case No. 10-3182 (Fla. DOAH Dec. 3, 2010; FCHR Mar. 3, 2011); accord Sec'y, Hous. and Urban Dev. ex. rel. Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990) (applying the burden-shifting analysis from McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), in a housing discrimination case under the federal Fair Housing Act.). Failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1013 n.6 (Fla. 1st DCA), aff'd, 679 So. 2d 1183 (Fla. 1996) (citing Arnold v. Burger Queen Sys., 509 So. 2d 958 (Fla. 2d DCA 1987)).

17. If the threshold prima facie case is met, then a presumption of discriminatory action is created. Blackwell, at 870. The burden then shifts to the Housing Authority to articulate some legitimate, non-discriminatory reason for its action. Id. If the Housing Authority offers a non-discriminatory explanation, then the presumption is rebutted and the burden shifts back to Ms. Billingsley to establish by a preponderance of the evidence that the reason asserted by the Housing Authority is, in fact, merely a pretext for discrimination. See Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc., 3 F.3d 1472, 1476 n.6 (11th Cir. 1993), cert. den., 513 U.S. 808, 115 S. Ct. 56, 130 L. Ed. 2d 15 (1994) ("Fair housing discrimination cases are subject to the three-part test articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)."). Pretext can be shown by inconsistencies and/or contradictions in testimony. Blackwell, 908 F.2d at 871.

18. "Discriminatory intent may be established through direct or indirect circumstantial evidence." Johnson v. Hamrick, 155 F. Supp. 2d 1355, 1377 (N.D. Ga. 2001). "Direct evidence of discrimination is 'evidence that, if believed, proves the existence of a fact without inference or presumption'." Dixon v. Hallmark Cos., 627 F.3d 849, 854 (11th Cir. 2010), quoting Wilson v. B/E Aerospace, Inc., 376 F.3d

1079, 1086 (11th Cir. 2004). However, "direct evidence of intent is often unavailable and a circumstantial case may be proven." Shealy v. City of Albany, Georgia, 89 F.3d 804, 806 (11th Cir. 1996).

19. On the other hand, proof that, in essence, amounts to no more than mere speculation and self-serving belief on the part of Petitioner concerning the motives of Respondent is insufficient, standing alone, to establish a prima facie case of intentional discrimination. See Goring v. Bd. of Supervisors of Louisiana State Univ. & Agric & Mech. Coll., 2011 U.S. App. LEXIS 2352 *4 (5th Cir. Feb. 4, 2011) (stating "We are left with Goring's subjective belief that the decision was discriminatory, which is insufficient to create an inference of pretext"); see also Ade v. KidsPeace Corp., 2010 U.S. App. LEXIS 23558 *13 (3d Cir. Nov. 15, 2010) ("Ade simply offers denials of his own inappropriate conduct and his opinion that the real reason was a racial animus. A denial that he engaged in the conduct for which he was purportedly terminated is insufficient to create a genuine issue of material fact."). Sherrills v. Beison, 242 Fed. Appx. 332, 338 (6th Cir. 2007) (Sherrills' subjective impression that Kimmel's "didn't seem to appear comfortable talking with me," insufficient proof); Woythal v. Tex-Tenn Corp., 112 F.3d 243, 247 (6th Cir. 1997) ("[M]ere personal belief, conjecture and speculation are insufficient to support

an inference of . . . discrimination.") (internal quotation marks omitted); Waggoner v. City of Garland, Texas, 987 F.2d 1160, 1166 (5th Cir. 1993) (subjective belief that discharge was based on a discriminatory animus insufficient to establish a claim for purposes of summary judgment).

20. Applying the rule of law to the facts here, it is clear that Ms. Billingsley did not prove a prima facie case of housing discrimination. Here, Ms. Billingsley did offer evidence that she was a member of a protected class; that she was qualified to rent the apartment, but not qualified for the working-family preference; and that the Housing Authority had refused to rent to her. However, Ms. Billingsley did not offer any evidence that the Housing Authority provided housing to individuals who were similarly situated to her, but not members of her protected class. In fact, the exhibits admitted into evidence show that the majority of the tenants that moved into the Housing Authority's complex at the same time were the same protected class as Ms. Billingsley, African-American. Thus, the evidence offered by the Housing Authority refuted Ms. Billingsley's claim that the Housing Authority had a preference for Hispanics over African-Americans. Ms. Billingsley's evidence here is no more than her subjective belief that she had been discriminated against. This belief is insufficient to support her claim.

21. Even if one assumed that Ms. Billingsley had established a prima facie case, the record clearly shows that the Housing Authority offered a legitimate, non-discriminatory explanation for not providing Ms. Billingsley the housing unit. Ms. Hinckley credibly testified about the working-family preference and that Ms. Billingsley did not qualify for the preference when the Housing Authority offered Ms. Billingsley the rental unit. Ms. Billingsley did not provide any evidence to show that the Housing Authority's non-discriminatory explanation for her not receiving the rental unit was pretextual.

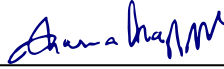
22. Rather, simply put, Ms. Billingsley is still on the waiting list for an apartment, because she has not provided proof that she has been employed for at least 20 hours a week for six months out of the past year. Consequently, Ms. Billingsley holds the key to the apartment, if she will become employed and provide the Housing Authority with proof.

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 dismissing Petitioner, Fannie Billingsley's, Petition for Relief.

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



THOMAS P. CRAPPS
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of March, 2011.

ENDNOTES

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2010 version.

^{2/} Petitioner's Initial Complaint filed with the U.S. Department of Housing and Urban Development alleged that Respondent violated section 804(b) and (f) of Title VIII of the Civil Rights Act, as amended.

^{3/} In her Petition for Relief, that is subject of this hearing, Petitioner alleged that Respondent violated the Florida Fair Housing Act.

^{4/} The language in section 760.25, is identical to the language in 42 U.S.C. section 3605, the federal Fair Housing Act.

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.