

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LILLIAN CRAIG,)
)
 Petitioner,)
)
 vs.) Case No. 10-10700
)
 ST. JOSEPH GARDEN COURTS, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case commencing on April 27, 2011, in Orlando, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Lillian Craig, pro se
12472 Lake Underhill Road, Unit 137
Orlando, Florida 32828

For Respondent: Sarah K. Newcomer, Esquire
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STATEMENT OF THE ISSUES

The issues in this case are:

1. Whether Respondent, St. Joseph Garden Courts, Inc. ("Garden Courts"), discriminated against Petitioner, Lillian

Craig ("Craig"), on the basis of her race (Caucasian) in violation of the Florida Fair Housing Act; and

2. Whether Gardens Courts retaliated against Craig when she filed a discrimination claim.

PRELIMINARY STATEMENT

Craig filed a Petition for Relief with the Florida Commission on Human Relations dated December 8, 2010. A copy of the Petition was forwarded to the Division of Administrative Hearings ("DOAH") on December 16, 2010.

At the final hearing, Craig called three witnesses: Craig, Reverend Robert Brown, and Carol Rackley. Craig's Exhibits 1, 3, 4, and 6 were admitted into evidence. Garden Courts called one witness: Cynthia Mott, property manager for Garden Courts. Garden Courts' Exhibits 1 through 14 were admitted into evidence.

The parties advised that a transcript of the final hearing would be ordered. By rule, parties were allowed ten days to submit proposed recommended orders ("PRO"), but Craig asked for 15 days to accommodate her lack of knowledge about the process. Despite Garden Courts' objection, the parties were given 15 days from the date the transcript was filed at DOAH. The Transcript was filed at DOAH on June 3, 2011. Garden Courts later filed a request for an additional 30 days to file its PRO; Craig objected to the motion. An additional amount of time was

allowed for both parties to file their PROs, but Craig filed hers in advance of the filing date. Thereafter, Garden Courts filed a renewed motion for additional time. The motion was partially granted. Craig and Garden Courts each timely submitted a PRO. Each was duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Craig is an elderly Caucasian woman, who at all times material hereto resided at Garden Courts.

2. Garden Courts is a federally-funded, multi-unit housing project that provides housing to elderly and lower income individuals under Section 202 of the Housing Act of 1959, as amended.

3. On February 27, 2009, Craig entered into a "202 Project Rental Assistance Contract" (the "Lease") with Garden Courts. Craig agreed to lease Unit 311 for the sum of \$465.00 per month, plus \$60.00 per month for utility services. Craig agreed to abide by all terms and conditions of the Lease, including the Rules and Regulations attached thereto as an addendum.

4. The Rules and Regulations attachment contains the following provision at paragraph 30:

Authorized personnel will enter the apartment periodically for routine inspections, maintenance replacement/repairs, and pest control. Routine inspections, as required by HUD, are

conducted to determine the condition of the dwelling unit, that the unit is decent, safe and sanitary, and in good physical condition. Inspections may reveal possible lease violations. Photographs will be taken if determined necessary. Any lease violations found during these inspections may result in termination of tenancy.

5. On October 10, 2010, Garden Courts conducted a routine housekeeping and maintenance inspection of Unit 311. Mott, as property manager, headed up the inspection. Mott used a form checklist consistent with Department of Housing and Urban Development (HUD) guidelines for the inspection.

6. Inspections of several other units were performed on the same day. The inspections were conducted by Mott with the assistance of Rudy (last name not provided), the maintenance director. Generally, Mott would inspect the kitchen and bathroom, while Rudy inspected the bedroom(s). Inspections were performed to assure cleanliness, orderliness, and compliance with all safety requirements.

7. Upon inspection of Unit 311, Mott determined that there was one minor deficiency, a dirty stovetop, and one major problem, a fire hazard in the bedroom. The apartment was deemed free of roaches and vermin, free of trash and garbage, and in a "fair" state of cleanliness. Photographs were taken on the unit to document the major deficiency.

8. The situation causing a major fire safety problem in the unit was that Craig had boxes and furniture stacked up in the bedroom which blocked the outside window. Inasmuch as there need to be two methods of ingress/egress for each room, the boxes illegally blocked one of the escape routes. The boxes also were stacked so high that the inspectors could not reach the smoke detector to determine whether it was functional. Further, the boxes blocked the electrical outlets so that they could not be tested. The fact that the boxes contained lots of paper was a concern to Garden Courts due to the possibility of fire.

9. Due to the deficiencies, a follow-up inspection had to be scheduled. Garden Courts usually asked the tenant whether he or she wanted the re-inspection to occur within 15 days or 30 days. In this case, Craig asked for some time to rectify the problem and requested re-inspection a month later. Garden Courts honored her request and scheduled a re-inspection for the unit on September 10, 2010, one month after the initial inspection.

10. Craig was advised by Mott that the boxes and furniture in the bedroom were the cause of Craig's apartment not passing the inspection. There is no credible evidence that Mott told Craig to move the boxes or face eviction. The best evidence is that Craig understood the need to move the boxes and volunteered

to do so if she was afforded ample time. When Mott came back to re-inspect the unit a month later, the boxes had been moved.

11. Craig claims she was treated differently from other tenants during her inspection. On the same date that Unit 311 was initially inspected, Mott and Rudy also inspected Units 210, 217, 306, 325, 119, and 116. The tenants of each of those units were Hispanic. Craig asserts that she was treated differently, because she was not Hispanic. That is, Unit 116 also had an issue relating to stacks of boxes, but Mott did not take a picture of that apartment. According to Mott, that was because the other unit was not, in her opinion, as severe a problem as Craig's unit.

12. Each of the Hispanic tenants was given two weeks to a month to correct his or her cited deficiencies, depending on the nature and severity of the issues. Craig was allowed one full month to correct her deficiencies. The tenant of Unit 116 was ultimately given additional time to move the boxes in her apartment due to her physical condition. That tenant asked for and received additional time; Craig did not ask for additional time, because she was able to move her boxes before the scheduled re-inspection.

13. Shortly after the re-inspection, Craig contacted the Jacksonville HUD office to complain about her treatment by Mott. Craig actually filed a Housing Discrimination Complaint with

HUD, alleging discrimination based upon her race, Caucasian. HUD notified Mott about the complaint and asked Mott to speak to Craig about the allegations. Mott then tried to contact Craig to discuss the complaint. However, the phone number Mott had for Craig did not have a voice mailbox set up, so Mott was not able to leave Craig a message.

14. On September 15, 2010, Craig returned to Garden Courts after doing some grocery shopping. As she walked through the lobby, Mott asked her to stop and talk for a moment concerning the HUD complaint. Craig indicated that she could not talk at that time because she had to get her groceries put away. Mott told Craig that attempts to leave Craig a message on her cell phone were thwarted due to the fact that the message box had not yet been set up. Craig disputed that statement, saying that she was receiving messages from other people. Craig says that Mott grabbed her arm and yelled at her. Mott remembers only speaking to Craig in a normal tone of voice and requesting a meeting. There is no persuasive evidence as to how the conversation actually occurred.

15. Mott awaited a return call or visit from Craig for a few hours, then drafted a letter to Craig when there was no further contact. The letter again asked Craig to contact Mott to discuss the HUD complaint. The letter included the cell phone number that Mott had on file for Craig and asked Craig to

contact Mott by the end of the following day. Craig, however, was apparently unwilling to talk with Mott on her own, so she went to speak with an attorney, rather than contacting Mott.

16. There is no indication that Mott and Craig ever had a meaningful discussion between themselves about the fire hazard issue. At some point in time, a meeting was held that both Mott and Craig, along with legal counsel, attended. However, the results of that meeting are not in evidence.

CONCLUSIONS OF LAW

17. 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).^{1/}

18. Florida's Fair Housing Act (the "Act") is codified in sections 760.20 through 760.37, Florida Statutes. Subsection 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.

19. Craig has the burden of proving by a preponderance of the evidence that Garden Courts violated the Act by discriminating against her as alleged in her complaint. §§ 120.57(1)(j) and 760.34(5).

20. There is, in housing discrimination cases, a shifting of the burden of persuasion between a petitioner and a respondent. In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the Supreme Court established an analysis to be followed. Under that analysis, a petitioner has the initial burden to prove a prima facie case of discrimination.

21. In order to establish a prima facie case, Craig must simply show that she is a member of a class (Caucasian); that she is ready, willing, and able to reside in the apartment; that Gardens Court is aware of her class; and that Gardens Court took some adverse action against her. The prima facie case has been established.

22. The burden then shifts to Garden Courts to show that the action it took--making Craig remove the boxes from Unit 311--was based on a legitimate, nondiscriminatory reason. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 515 (1993). As shown, Garden Courts took that action in order to prevent a fire safety hazard in Craig's apartment. The action was consistent with actions taken against other, non-Caucasian

tenants and was in accord with HUD guidelines which are applied to all tenants.

23. That being the case, the burden then shifts back to Craig to prove that Garden Courts' rationale was mere pretext and that the real reason for action was discrimination. There is no evidence in the record to support that contention. There is no evidence that Gardens Court discriminated against any class of person, Caucasian or Hispanic or other. There is no evidence that any action taken by Garden Courts was pretext for some improper action.

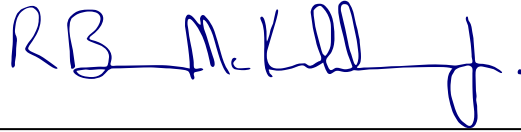
24. As to Craig's claim of retaliation, there was no evidence presented, persuasive or otherwise, that Gardens Court took any action whatsoever that would support the claim. None of the evidence presented could reasonably be inferred to substantiate such a claim.

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 Lillian Craig in its entirety.

DONE AND ENTERED this 13th day of July, 2011, in
Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of July, 2011.

ENDNOTE

^{1/} Unless specifically stated otherwise, all references to
Florida Statutes shall be to the 2010 version.

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.