

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ESTELLA SMITH,)
)
 Petitioner,)
)
 vs.) Case No. 11-1619
)
 SARASOTA HOUSING AUTHORITY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A video teleconference final hearing was conducted on July 25, 2011, between Sarasota and Tallahassee, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division). By prior Order, Petitioner participated in the hearing by telephonic conference call from Chickasaw County, Mississippi.

APPEARANCES

For Petitioner: Elizabeth M. Boyle, Esquire
Gulfcoast Legal Services, Inc.
Glasser Schoenbaum Human
Services Center
1750 17th Street, Unit I
Sarasota, Florida 34234

For Respondent: Ricardo L. Gilmore, Esquire
Saxon, Gilmore, Carraway
and Gibbons, P.A.
201 East Kennedy Boulevard, Suite 600
Tampa, Florida 33602

STATEMENT OF THE ISSUES

The issues are whether Respondent, Sarasota Housing Authority (the Housing Authority), discriminated against Petitioner, Estella Smith (Ms. Smith), based on her disability in violation of the Florida Fair Housing Act (the Florida FHA), and, if so, the relief to which Petitioner is entitled.

PRELIMINARY STATEMENT

The Florida Commission on Human Relations (FCHR) and the Federal Department of Housing and Urban Development (HUD) administer the Florida FHA, sections 760.20 through 760.37, Florida Statutes (2010).^{1/} On February 22, 2011, Ms. Smith was notified that the Housing Authority was terminating her HUD housing choice voucher assistance, a/k/a Section 8 housing choice voucher benefits (Section 8 program), for two reasons: an unauthorized person^{2/} living in the current rental unit and "family obligation failure to pay rent." Ms. Smith immediately requested an administrative hearing regarding the termination of her assistance.

On March 2, 2011, the Housing Authority conducted a hearing and determined that Ms. Smith's termination from the Section 8 program was based on the two program violations: an unauthorized person living in her current rental unit and her failure to pay rent in a timely fashion.

On March 22, 2011, Ms. Smith's executed Petition for Relief was filed with the FCHR. The petition alleged that the Housing Authority violated the Florida FHA as amended and also violated "Sections 804b or f and 804fsB of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988 and Section 504 of the 1973 Rehabilitation Act." Specifically, the complaint alleged that Ms. Smith attempted to pay her rent obligation late, but the landlord refused it, and that she did not have an unauthorized person in her rental unit as the individual was her live-in aide.

On March 29, 2011, the FCHR transferred the case to the Division. A Notice of Hearing dated April 20, 2011, scheduled the hearing for June 27, 2011. Following one continuance, the hearing was held on July 25, 2011.

At the final hearing, Ms. Smith testified on her own behalf. Petitioner's pre-numbered Exhibits 2 through 10, 12, 13, 15, 17, 18, 22, 23, 24 and 26 were admitted into evidence. The Housing Authority called one witness: Sharla Frantz, of the Housing Authority. Respondent's Composite Exhibit A and Composite Exhibit B were admitted into evidence.

There was no court reporter present at the hearing. Accordingly, there was no transcript filed.

The parties timely submitted their proposed recommended orders, which have been duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Ms. Smith, a 52-year-old female, testified she participated in the Section 8 program for over ten years and never had any problems until she moved to Sarasota. Ms. Smith moved into the Sarasota rental unit in October 2009.

2. The Housing Authority is a public housing authority that administers the Section 8 program, within Sarasota County, Florida, pursuant to 42 U.S.C. section 1437f.

3. Under the Section 8 program, the Housing Authority uses funds, supplied by HUD, to pay a percentage of the monthly rent on a leased "unit" directly to the landlord. The Section 8 program tenant pays the balance of the monthly rent to the landlord.

4. Ms. Smith executed a residential lease for a HUD-approved unit on September 5, 2009, to begin a one-year rental. Ms. Smith agreed to abide by all the terms and conditions of the residential lease, including the timely payment of rent and the number of occupants (one adult and one child) in the rental unit without the written consent of the landlord. On or about October 1, 2009, Ms. Smith moved from Tampa, Florida, to

Sarasota, Florida, and resided at the rental unit, 3047 East Tamiami Circle, Apartment A, Sarasota, Florida.

5. On September 8, 2009, Ms. Smith executed the Housing Authority's personal declaration/tenant information form. Under part three of this form labeled: "Family Members (including Head of Household) currently residing in unit," there were blank lines to be completed by Ms. Smith. The following information was requested: name; date of birth; social security number; disabled; Hispanic; race; and relationship. Ms. Smith (or someone at her direction) completed the form including information about herself and her sole dependant. Under the disabled heading on the line for Ms. Smith, the word "Pending" is written. Additionally, in part five of this form labeled: "Expenses," was a question, "Are you or your spouse age 62 or older and/or disabled?" Ms. Smith (or someone on her behalf) checked the box before "no" after this specific question.

6. Ms. Smith testified she suffered a stroke sometime in 2009 and was physically affected by it. However, she was unable to reference the specific time frame except for prior to her "porting" back to Sarasota. Ms. Smith claimed to use both a walker and a wheelchair at various times since suffering the effects of the stroke. Further, she later testified that, when she was in her rental unit, the doorways were narrow but she could maneuver in it.

7. During her initial interview with the Housing Authority in September 2009, Ms. Smith stated she was using a walker that day and never told anyone at the Housing Authority that she was disabled.

8. Ms. Smith admitted she withheld the rent from the landlord. However, she claimed her refusal to pay the rent was based on the lack of heat in the rental unit and the suspension of her laundry room privileges.

9. Ms. Smith further testified Bertha L. Pete (Ms. Pete) provided Ms. Smith with assistance in her daily living activities and started living in Ms. Smith's rental unit after Christmas or in late December 2009. A copy of Ms. Pete's Florida driver's license, which reflects Ms. Smith's rental unit address as Ms. Pete's residence as of January 27, 2010, was admitted into evidence.

10. On February 10, 2010, Ms. Smith executed a request for a live-in aide with the Housing Authority. Ms. Smith named Ms. Pete to be her proposed live-in aide. The date stamp for the Housing Authority reflects that the request was received by the Housing Authority on February 17, 2010. Any proposed live-in aide has to meet the requirements imposed by the Housing Authority and HUD. Ms. Pete did not meet the requirements.

11. Additionally, on February 17, 2010, Ms. Smith executed a verification of live-in aide form to be completed by her

physician and returned to the Housing Authority. That completed form was never returned to the Housing Authority. Both parties produced an executed medical doctor's prescription with Ms. Smith's name as the patient. The hand-written notation on the prescription is "patient needs in home aid." This verbiage is not sufficient nor equivalent to the requirements listed on the verification form for a "live-in aide."

12. The Housing Authority did not know that Ms. Smith needed a live-in aide when she completed her application in September 2009. Although Ms. Smith utilized a walker at the time of her initial interview with the Housing Authority, the Housing Authority did not know she was disabled at that time. It is not the Housing Authority's practice to inquire of someone's physical status, as that could be perceived as a discriminatory question.

13. Sharla Frantz (Ms. Frantz), director of human resources for the Housing Authority, is the hearing officer for the Section 8 program. Ms. Frantz testified as to the process utilized in the Housing Authority's Section 8 program.

14. Ms. Frantz testified that Ms. Smith made a request for assistance on January 27, 2010, regarding the lack of heat in her rental unit. The Housing Authority caused an inspection to be made that same day, and a deficiency was noted. The repair was completed, and the rental unit passed a follow-up inspection

on February 28, 2010. However, at the time of her complaint, Ms. Smith did not discuss any other conditions or circumstances regarding the rental unit, nor was any request for a live-in aide made.

15. On or about February 11, 2010, the Housing Authority was made aware of a possible unauthorized person living at Ms. Smith's rental unit, as well as her failure to timely pay rent. Several days later, the Housing Authority issued a letter to Ms. Smith detailing the reasons for her termination from the Section 8 program: an unauthorized person living in the rental unit and her failure to pay rent.

16. Ms. Smith requested a hearing from the Housing Authority, which was held on March 2, 2010. As a result of the hearing, the Housing Authority issued a letter detailing the basis for Ms. Smith's termination from the Section 8 program: an unauthorized person living in the rental unit and her failure to pay rent. Ms. Smith was afforded time to prove that the rental amount was paid in full and that Ms. Pete did not live with her.

17. Ms. Frantz testified that at the Housing Authority hearing, Ms. Smith wrote a check for the past due rental amount. However, Ms. Frantz never received proof that the payment was actually made to the landlord. Ms. Smith testified the landlord wanted the payment in cash; however, Ms. Smith did not feel

comfortable paying the rent in cash, as it did not provide her with a receipt. The rent was never paid.

18. After waiting several days, the Housing Authority issued another letter to Ms. Smith stating that Ms. Smith was terminated from the Section 8 program for two program violations. It further described that a lease agreement, brought in to the Housing Authority, did not substantiate her claim that an unauthorized person (Ms. Pete) was not living in Ms. Smith's rental unit.

CONCLUSIONS OF LAW

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

20. Ms. Smith has the burden of proving by a preponderance of the evidence that the Housing Authority violated the Florida FHA by discriminating against her as alleged in her complaint. §§ 120.57(1)(j) & 760.34(5), Fla. Stat.

21. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary, 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

22. The Florida FHA is codified in sections 760.20 through 760.37. 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.

23. 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. In order to establish a prima facie case, Ms. Smith must simply show that she is a member of a protected class (handicapped/disabled); that she is ready, willing, and able to reside in the rental unit; the Housing Authority is aware of her protected class; and the Housing Authority took an action against her because of her protected class. The prima facie case has not been established. See, e.g., Wells v. Burger King Corporation, 40 F. Supp. 2d 1366 (Fla. 1998).

24. As shown by the preponderance of the evidence, the Housing Authority took the action to terminate Ms. Smith's participation in the Section 8 program because she failed to pay

her rent in a timely manner, and she had an unauthorized person living in her rental unit without the Housing Authority's permission or knowledge.

25. There is no evidence in the record to support the allegation of discrimination based on Ms. Smith's disability. There is no evidence that the Housing Authority discriminated against any protected class. There is no persuasive evidence that Ms. Smith was discriminated against by the Housing Authority. Ms. Smith failed to prove her claim.

26. As to Ms. Smith's claim of retaliation, there was no evidence presented, persuasive or otherwise, that the Housing Authority 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 Estella Smith in its entirety.

DONE AND ENTERED this 17th day of August, 2011, in
Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
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 17th day of August, 2011.

ENDNOTES

^{1/} All references to Florida Statutes are to 2010, unless otherwise noted.

^{2/} Throughout the course of the hearing and within the exhibits the phrases "unauthorized person" or "illegal boarder" are used interchangeably. For a consistent reference, the term "unauthorized person" shall be used.

COPIES FURNISHED:

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

Elizabeth M. Boyle, Esquire
Gulfcoast Legal Services, Inc.
Glasser Schoenbaum Human
Services Center
1750 17th Street, Unit I
Sarasota, Florida 34234

Ricardo L. Gilmore, Esquire
Saxon, Gilmore, Carraway
and Gibbons, P.A.
201 East Kennedy Boulevard, Suite 600
Tampa, Florida 33602

Larry Kranert, General Counsel
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.