

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LISA CARDWELL,)
)
 Petitioner,)
)
 vs.) Case No. 11-3387
)
 CHARLESTON CAY LTD, ET AL.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 29, 2011, in Port Charlotte, Florida, before Thomas P. Crapps, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Lisa Cardwell, pro se
22523 Westchester Boulevard, Unit B204
Port Charlotte, Florida 33980

For Respondents: Chelsie J. Flynn, Esquire
Ford and Harrison, LLP
300 South Orange Avenue, Suite 1300
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether Respondents, Charleston Cay, Ltd., et al. (Charleston Cay), violated the Florida Fair Housing Act, as amended, sections 760.20 through 760.37, Florida Statutes (2010).^{1/}

PRELIMINARY STATEMENT

On February 15, 2011, Petitioner, Lisa Cardwell (Ms. Cardwell), filed a Housing Discrimination Complaint with the United States Department of Housing and Urban Development (HUD). Ms. Cardwell alleged that Respondents, Charleston Cay, Ltd., Handover Housing Partners, Inc., Gloria Jaster, manager of Charleston Cay apartment complex, and Patrick Boone, assistant manager, had unlawfully evicted her from an apartment based on her race in violation of Federal Fair Housing Act, section 804(b) of Title VIII, the Federal Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988 (prohibiting discrimination in the sale or rental of housing and other prohibited practices). On March 23, 2011, Ms. Cardwell filed an Amended Complaint adding a claim that Charleston Cay had retaliated against her in violation of section 818 of Title VIII, by submitting a claim for unpaid rent to a collection agency after she had filed the initial discrimination claim against Charleston Cay.

HUD transferred the complaint to the Florida Commission on Human Relations (FCHR) to conduct an investigation. On May 19, 2011, the FCHR completed an investigation into Ms. Cardwell's claims. The investigation first found that it "was unable to show [Ms. Cardwell] was discriminated against based on her race." However, as for the retaliation claim, the investigation

stated "the Commission finds that there is reasonable cause to believe that a discriminatory housing practice occurred in violation of section 818, of the Fair Housing Act, as amended."

On June 8, 2011, FCHR issued a Notice of Determination of No Cause stating that it had "determined that reasonable cause does not exist to believe that a discriminatory housing practice has occurred."

On July 7, 2011, Ms. Cardwell filed a Petition for Relief with FCHR claiming that Charleston Cay had violated the Florida Fair Housing Act.

On July 12, 2011, FCHR transmitted the Petition for Relief to DOAH, and Administrative Law Judge Lynne A. Quimby-Pennock was assigned the case. The case was initially set for a final hearing on September 2, 2011. Charleston Cay filed an unopposed request for an extension of time, and the final hearing was rescheduled for September 29, 2011. On September 16, 2011, the case was transferred to Administrative Law Judge Thomas P. Crapps.

At the September 29, 2011, final hearing, Ms. Cardwell presented the testimony of herself, Gloria Jaster (Ms. Jaster), Tina Figliuolo (Ms. Figliuolo), and introduced into evidence four exhibits. Charleston Cay presented the testimony of Ms. Jaster, and introduced into evidence seven exhibits.^{2/}

The FCHR did not provide a court reporter to transcribe the hearing, so no transcript was filed with DOAH. The undersigned, however, recorded the proceedings which were copied onto a disc and placed in the case-file. The parties were given ten days to file Proposed Recommended Orders, which the undersigned considered in preparation of the Recommended Order.

FINDINGS OF FACT

1. Ms. Cardwell is an African-American woman who rented an apartment from Charleston Cay. Ms. Cardwell and Charleston Cay entered into a written lease beginning on December 23, 2009, and ending on November 30, 2010. The lease required Ms. Cardwell to pay her rent on the first of each month and that the rent would be delinquent by the third of each month. Furthermore, the lease provided that non-payment of rent shall result in a breach of the lease and eviction. The initial monthly rent for Ms. Cardwell's apartment was \$663.00, a month and was subsequently increased to \$669.00, a month.

2. Ms. Cardwell credibly testified that she had not read the lease or the Housing Addendum which she signed when entering into the lease and that she had not subsequently read either document.

3. On November 1, 2010, Ms. Cardwell failed to pay her rent. On November 4, 2010, Ms. Jaster, manager of Charleston Cay apartments, posted a three-day notice to pay rent or vacate the

premises. On November 9, 2010, Ms. Jaster posted another notice for Ms. Cardwell about non-payment and requesting that Ms. Cardwell call or come to the office. Ms. Cardwell paid \$100.00, of the rent on November 17, 2010. Again, Ms. Jaster posted a three-day notice seeking payment of the remaining November 2010, rent in the amount of \$569.00. On November 24, 2010, Ms. Cardwell paid an additional \$200.00, of the \$569.00, owed, leaving a balance of \$369.00 for November 2010. Because Ms. Cardwell's written lease was to expire at the end of November, she requested that Charleston Cay enter into a month-to-month lease, but Ms. Jaster informed Ms. Cardwell that Charleston Cay was not interested in entering into a month-to-month tenancy.

4. On December 1, 2010, Ms. Jaster posted another three-day notice requiring Ms. Cardwell to pay the \$369.00, owed in November, or to vacate the premises. The facts also showed that Ms. Cardwell did not pay the \$669.00, owed by December 1, 2010, or anytime thereafter.

5. On December 8, 2010, Charleston Cay filed an eviction and damages complaint against Ms. Cardwell based on non-payment of the rent.

6. Some time in December 2010, Ms. Cardwell contacted Ms. Tina Figliuolo of the Charlotte County Homeless Coalition, seeking financial assistance to avoid being evicted.

Ms. Figliulo credibly testified that the Charlotte County Homeless Coalition administers grant money to help prevent a person from being evicted and helps individuals find affordable housing. A provision of the grant, however, prevents the Charlotte County Homeless Coalition from paying money into a court registry if an eviction process has begun. Ms. Figliulo credibly testified that she contacted Ms. Jaster about making a payment on Ms. Cardwell's behalf. Ms. Jaster informed Ms. Figliulo that Charleston Cay had already begun eviction proceedings. Consequently, Ms. Figliulo was unable to use grant money to pay for Ms. Cardwell's back rent.

7. Based on the eviction proceedings, Ms. Cardwell vacated the premises sometime in December 2010, and turned in her key for the apartment.

8. The initial hearing on the eviction was set for January 5, 2011. On December 28, 2010, the hearing was cancelled based on Ms. Cardwell's vacating the premises. On January 13, 2011, Ms. Cardwell filed a Motion to Dismiss the case in county court indicating that she had given up possession of the premises. On January 31, 2011, the Charlotte County Court issued an Order dismissing the case effective March 1, 2011, unless Charleston Cay set a hearing on damages.

9. The record credibly showed through the exhibits and Ms. Jaster's testimony that Ms. Cardwell was evicted from her apartment based on her non-payment of rent.

10. There was no evidence that other individuals, who were not in Ms. Cardwell's protected class, were treated more favorably or differently, than she was in the proceedings.

11. There was no evidence, either direct or indirect, supporting Ms. Cardwell's claim of racial discrimination. Ms. Cardwell testified that she felt that Ms. Jaster had acted based on race, because of Ms. Jaster's perceived attitude. Ms. Cardwell did not bring forward any evidence showing a specific example of any comment or action that was discriminatory. Ms. Jaster credibly testified that she did not base the eviction process on race, but only on non-payment.

12. Ms. Cardwell specifically stated during the hearing that she was not addressing the retaliation claim or seeking to present evidence in support of the FCHR determination concerning the retaliation claim. Consequently, the undersigned does not make any finding concerning that issue.

13. There was testimony concerning whether or not Ms. Cardwell had properly provided employment information required by the written lease in relation to a tax credit. The facts showed that Charleston Cay apartments participated in a Low Income Tax Credit Housing Program under section 42, of the

Internal Revenue Code. On entering the lease, Ms. Cardwell had signed a Housing Credit Lease Addendum which acknowledged her participation in the tax credit, and agreement to furnish information concerning her income and eligibility for compliance with the tax credit. Failure to provide information for the tax credit would result in a breach of the rental agreement.

14. As early of August 2011, Ms. Jaster, manager for Charleston Cay Apartments, contacted Ms. Cardwell about providing information concerning her income and continued eligibility for the program. Ms. Cardwell provided information that was incomplete as to her income, because it failed to demonstrate commissions that she earned. Again, in November 2010, Ms. Jaster contacted Ms. Cardwell about providing information to recertification for the tax credit. Finally, on November 11, 2010, Ms. Jaster left a seven-day notice of non-compliance, with an opportunity to cure, seeking Ms. Cardwell to provide information concerning her income. Ms. Cardwell provided information concerning her salary, but did not have information concerning commissions that she earned from sales. This information was deemed by Ms. Jaster to be incomplete and not in compliance for the low income housing tax credit. The record shows, however, that Ms. Cardwell's failure to provide the required income information was not a basis for her eviction.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties to and subject matter of this proceeding, pursuant to sections 120.569 and 120.57, Florida Statutes (2011).

16. As the complainant, Ms. Cardwell has the burden of establishing facts to prove discrimination by a preponderance of the evidence. See §§ 760.34(5) and 120.57(1)(j), Fla. Stat. (2011).

17. The Florida Fair Housing Act provides, in relevant part, that:

(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(2), Fla. Stat.

18. Discrimination covered by the Florida Fair Housing Act is the same discrimination as is prohibited under the Federal Fair Housing Act. Savanna Club Worship Serv. v. Savanna Club Homeowners' Ass'n, 456 F. Supp. 2d 1223 (S.D. Fla. 2005); see Fla. Dep't. of Cmty. Aff. v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991) (the Florida Fair Housing Act is patterned after the Federal Fair Housing Act, 45 U.S.C. sections 3601 through 3631; thus, federal case law dealing with the Federal Fair Housing Act is applicable). Therefore, federal cases involving

discrimination in housing are instructive and persuasive in interpreting section 760.23. See Dornbach v. Holley, 854 So. 2d 211, 213 (Fla. 2d DCA 2002).^{3/}

19. "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." Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1086 (11th Cir. 2004) (citation and quotation marks omitted). "If the [complainant] offers direct evidence and the trier of fact accepts that evidence, then the [complainant] has proven discrimination." Maynard v. Bd. of Regents, 342 F.3d 1281, 1289 (11th Cir. 2003). "[D]irect evidence is composed of 'only the most blatant remarks, whose intent could be nothing other than to discriminate' on the basis of some impermissible factor . . . If an alleged statement at best merely suggests a discriminatory motive, then it is by definition only circumstantial evidence." Schoenfeld v. Babbitt, 168 F.3d 1257, 1266 (11th Cir. 1999). Likewise, a statement "that is subject to more than one interpretation . . . does not constitute direct evidence." Merritt v. Dillard Paper Co., 120 F.3d 1181, 1189 (11th Cir. 1997). Because direct evidence of intent is often unavailable, those who claim to be victims of intentional discrimination "are

permitted to establish their cases through inferential and circumstantial proof." Kline v. Tennessee Valley Auth., 128 F.3d 337, 348 (6th Cir. 1997).

20. Where a complainant attempts to prove intentional discrimination using circumstantial evidence, "the Supreme Court's shifting-burden analysis adopted in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-804, 36 L. Ed. 2d 668, 93 S. Ct. 1817 (1973), . . . is applicable." Laroche v. Denny's Inc., 62 F. Supp. 2d 1375, 1382 (S.D. Fla. 1999); see also Head v. Cornerstone Residential Mgmt., 2010 U.S. Dist. Lexis 99379, 19-20 (S.D. Fla. Sept. 22, 2010). "Under this framework, the [complainant] has the initial burden of establishing a prima facie case of discrimination. If [the complainant] meets that burden, then an inference arises that the challenged action was motivated by a discriminatory intent. The burden then shifts to the [respondent] to 'articulate' a legitimate, non-discriminatory reason for its action. If the [respondent] successfully articulates such a reason, then the burden shifts back to the [complainant] to show that the proffered reason is really pretext for unlawful discrimination." Schoenfeld, 168 F.3d at 1267 (citations omitted). If, however, the complainant fails to establish a prima facie case of discrimination, the matter ends. 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)).

21. To establish a prima facie case of housing discrimination in the instant case, Ms. Cardwell must prove that: 1) she is a member of a protected class; 2) she attempted to rent or continue to rent the dwelling consistent with the terms and conditions offered by Charleston Cay and that she met all relevant qualifications for doing so; 3) Charleston Cay denied her housing despite her qualifications; and 4) Charleston Cay allowed similarly qualified persons, outside of Ms. Cardwell's protected class, to rent an apartment. See Billingsley v. Housing Auth. of the City of Winter Park, Case No. 10-10304, 2011 Fla. Div. Admin. Hear. LEXIS 37 (Fla. DOAH Mar. 21, 2011; FCHR June 7, 2011); accord, Sec'y, Hous. & Urban Dev. ex. Rel. Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990).

22. Turning to the facts in the instant case, Ms. Cardwell failed to bring forward evidence that she attempted to continue renting the apartment consistent with the terms offered by Charleston Cay, that she was qualified to rent the apartment, or that other similarly qualified persons outside of Ms. Cardwell's race, were allowed to remain in the apartment without paying rent.

23. It was undisputed that Ms. Cardwell had violated her written lease by non-payment of rent in November 2010. As a result of her non-payment, she was not qualified as a renter and did not meet the terms offered by Charleston Cay to continue residing in the apartment. Moreover, Ms. Cardwell did not bring forward any evidence, either direct or indirect, showing that the decision to evict her from the apartment was based on race. At best, Ms. Cardwell offered her subjective belief that discrimination had occurred, which is insufficient to establish a prima facie case of intentional discrimination. See Billingsley, 2011 Fla. Div. Admin. Hear. LEXIS 37, at 11-12 ("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)'). Based on the lack of evidence, Ms. Cardwell failed to prove a prima facie case of violation of the Florida Fair Housing Act.

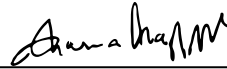
24. Moreover, even if one found that Ms. Cardwell presented a prima facie case of discrimination, the record shows

that Charleston Cay presented competent and credible evidence of a legitimate, non-discriminatory reason for Ms. Cardwell's eviction. Charleston Cay offered evidence showing that Ms. Cardwell was evicted from her apartment based on non-payment of her rent. This explanation is a legitimate, non-discriminatory reason for the eviction. Under the McDonnell Douglas rule of law, the burden shifted to Ms. Cardwell to present evidence showing that Charleston Cay's explanation was a pretext for unlawful discrimination. Ms. Cardwell did not present any evidence, either direct or indirect, that Charleston Cay's explanation that she was evicted for non-payment of the rent was a pretext for an unlawful discrimination. Consequently, Ms. Cardwell failed to prove her allegations that Charleston Cay violated 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 28th day of October, 2011, in
Tallahassee, Leon County, Florida.



THOMAS P. CRAPPS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of October, 2011.

ENDNOTES

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

^{2/} Ms. Cardwell also had a witness, Mr. Demetrius Thomas, under subpoena, who failed to attend the hearing. During the hearing, Ms. Cardwell presented the notarized return of service showing that Mr. Thomas had been subpoenaed to appear for the September 29, 2011, hearing. Ms. Cardwell explained that she had spoken to Mr. Thomas and he had stated that he could not leave work to attend the hearing. Based on the fact that Ms. Cardwell had properly served a subpoena on Mr. Thomas, the undersigned agreed to allow Ms. Cardwell a period of 60 days in which to seek enforcement of the subpoena in circuit court, and that additional time would be afforded if Ms. Cardwell could not receive a hearing date or order from the circuit court within the 60 days. On October 3, 2011, Ms. Cardwell faxed a letter to DOAH informing the undersigned that she had decided not to enforce the subpoena. Therefore, Ms. Cardwell had presented her case, and the undersigned could consider the matter.

^{3/} The language in section 760.23(2) is identical to the language in 42 U.S.C. section 3604(b), 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.