

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JUDITH AMADIZ, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 11-3975  
 )  
 SUNBEACH APTS. CORP., )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on May 9, 2012, by video teleconference, with the parties appearing in Miami, Florida, before June C. McKinney, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Judith Amadiz, pro se  
Apartment 604  
3120 Collins Avenue  
Miami Beach, Florida 33140

For Respondent: Juan C. Zorrilla, Esquire  
Zorrilla and Associates, P.L.  
Penthouse 10  
2600 Douglas Road  
Coral Gables, Florida 33134

STATEMENT OF THE ISSUES

The issues are whether Respondent discriminated against Petitioner by not providing a reasonable accommodation, steam

cleaning the apartment after the sprinkler head broke, that Petitioner was entitled to, and Respondent was required to provide, and, if so, whether Petitioner should receive damages as a result of Respondent's failure to provide Petitioner with a reasonable accommodation.

PRELIMINARY STATEMENT

In a Housing Discrimination Complaint, filed on March 3, 2011, and subsequently investigated by the Florida Commission on Human Relations ("Commission"), Judith Amadiz ("Petitioner" or "Amadiz") charged that Sunbeach Apts. Corp. ("Respondent" or "Sunbeach") unlawfully discriminated against Petitioner by not providing the reasonable accommodation of steam cleaning her apartment after the sprinkler head broke.

The Commission investigated Petitioner's claim and on November 17, 2010, issued a notice setting forth its determination finding that reasonable cause existed to believe that a discriminatory housing practice had occurred. On March 2, 2011, a Notice of Failure of Conciliation was issued by the Commission. Thereafter, Petitioner filed a Petition for Relief, which the Commission sent to the Division of Administrative Hearings ("DOAH") on August 8, 2011.

The final hearing was noticed and scheduled for October 12, 2011. After several continuances, the final hearing was set and

heard on May 9, 2012. Both parties appeared at the appointed place and time.

At the final hearing, Amadiz testified on her own behalf. Petitioner's Composite Exhibits 1 through 6 were admitted into evidence. Respondent presented the testimony of three witnesses: Maria Garcia, Enrique Perez, and Rene Fernandez, an expert witness. Respondent's Exhibits 2, 4, 7, 9 through 15, 18, and 20 were offered and received into evidence.

The hearing was recorded and transcribed. On June 15, 2012, the Transcript was filed at DOAH. On June 29, 2012, the undersigned issued an Order Granting Extension of Time. Both parties filed timely Proposed Recommended Orders, which have been duly considered in preparation of this Recommended Order.

#### FINDINGS OF FACT

1. On December 8, 2009, Amadiz applied to become a tenant at Sunbeach. Amadiz informed Sunbeach at the time of her application that she had lupus.

2. Sunbeach approved Amadiz's application and she became a tenant of unit 417, a studio apartment having approximately 400 square feet of living spaces. The apartment came furnished with a bed, dresser, nightstand, stove refrigerator, and desk.

3. On April 11, 2010, Amadiz arrived home to her apartment at approximately 1:30 a.m., from volunteering at a fundraiser held by Miami Beach Veiled Wine Society.

4. After Amadiz entered her apartment and closed the door, the sprinkler system started and an outpour of brownish water came out of the sprinkler because the cover was not on the sprinkler and the sprinkler head was not in place. The water wet Amadiz.

5. Amadiz left the apartment and went to report the incident to the property manager Miguel Echemendia ("Echemendia"). Although Echemendia and Amadiz had a difficult time communicating with one another because she didn't speak his language (Spanish), Echemendia got dressed and went upstairs with Amadiz to assist her.

6. Echemendia looked at the water in Amadiz's apartment. He tried to locate the shut off but was not able to find it to cut off the running sprinkler.

7. After about 45 minutes, Amadiz's neighbor helped Echemendia find the sprinkler shut-off and turned it off.

8. Water covered Amadiz's tiled floors in the bathroom, closet, and main living area.

9. After the sprinkler was turned off, Amadiz pumped water out of her apartment for about three hours.

10. Amadiz threw out a lot of personal items the next day while trying to clean up from the water. A friend came over and assisted Amadiz with the clean up. They cleaned the tiled floor with bleach, dried the floors, and discarded wet and damaged

goods. Amadiz and her friend were able to dry up most of the water.

11. At about 3:45 p.m. on April 11, 2012, the same day as the sprinkler incident, Amadiz wrote Respondent a letter, which she sent certified, detailing the sprinkler outpour situation of earlier that morning.

12. In the letter, Amadiz informed Sunbeach that she "cleaned the floors to the best of her ability." Amadiz also informed Sunbeach that "as water has seeped under the dresser, the refrigerator and stove, I am unable to complete the process without any assistance" and she requested "complete maintenance review for sprinkler systems, clean up of the areas I noted, fair reparations for the items [listed] damaged."

13. By April 12, 2010, the water under the bed had dried up. However, the dresser had some brown water around it. Amadiz moved the dresser as far as she could and removed the water that she saw and cleaned the floor with bleach. Amadiz was concerned that there might be more water under the dresser that she couldn't get to left over from the sprinkler outpour.

14. Amadiz also had a concerns about water she had discovered when she reached under the stove and refrigerator that she could not reach to clean. Amadiz dried up the areas around the appliances she could reach in the floor area.

15. Amadiz was worried about water residue because the grout in her apartment was brownish, not white, after the outpour of water. Amadiz concluded that a mold-type condition existed even though mold does not colonize on tile floors.

16. The areas that Amadiz couldn't access underneath the stove, refrigerator, and behind the floorboards concerned her. Amadiz neither asked nor sought anyone to help her access any of the areas. And, she was never able to determine if there was water behind the floorboard, stove, and refrigerator.

17. On April 12, 2010, Sunbeach's repairman, Erique Perez ("Perez"), went to unit 417 with Echemendia to evaluate the water damage. He checked both the floors and walls with his hands. He checked underneath the refrigerator and stove by pulling it forward and did not find any water. Perez determined that there was no water damage in the apartment.

18. On April 13, 2010, Amadiz sent Sunbeach a second letter requesting that Sunbeach come "check out the damage of her apartment, provide steam cleaning support or speak with her about the next steps." She also stated in the letter that she had been given antibiotics and a steroid cream for a rash and set up another doctor's appointment.

19. On April 15, 2010, Amadiz called Garcia to follow up on her requests from the letters. Garcia indicated that she

would speak to her supervisor and get back in contact with Amadiz the next week.

20. Soon thereafter, code compliance visited Amadiz's apartment.

21. On April 27, 2010, Amadiz sent a third letter to Respondent notifying Sunbeach that she was going to withhold rent if repairs weren't made in seven days and requested the following:

- Steam cleaning of the unit in which I reside as soiled water residue still remains under the appliances and furniture and within the grout of the tiles in the main living area as well as the bathroom
- An inspection of the two remaining sprinklers in the unit
- The rug directly in front of door remains and has begun showing signs of mold and mildew enough in fact that the smell can be ascertained from the elevators.

22. Amadiz further detailed the items for which she wanted to be reimbursed and stated:

These addressed issues coupled with my own health issues (on SSA Disability for systemic lupus erythematosus) cited in my previous correspondence lead me to assume the habitability of the unit is of little concern. I have made you aware of the need for antibiotics and steroid creams to offset the effects of the soiled water . . . the presence of mold and mildew within and without the unit creates inhabitable living conditions.

23. Amadiz paid rent up to April 27, 2010, then withheld rent payments per her attorney's advice.

24. On or about May 17, 2010, Amadiz received a three-day eviction notice from Sunbeach.

25. Amadiz responded with a fourth letter dated May 17, 2010, which chronicled her previous letters, requested steam cleaning and inspection, and reparations for lost items, and listed her health issues identically as she had in the letter of April 27, 2010.

26. Amadiz remained in the apartment from April 11, 2010, to June 29, 2010. She vacated the unit 417 on July 3, 2010, pursuant to the final judgment of eviction by Sunbeach entered against her for non-payment of rent.

#### CONCLUSIONS OF LAW

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

28. Under Florida's Fair Housing Act, sections 760.20 through 760.37, it is unlawful to discriminate in the sale or rental of housing. Section 760.23 states, in pertinent part:

- (8) 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 with such dwelling, because of a handicap of:
  - (a) That buyer or renter;
  - (b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or



\* \* \*

- (9) For purposes of subsections (7) and (8), discrimination includes:
- (b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

29. To prevail with a reasonable accommodation claim, Petitioner must establish that (1) she is disabled or handicapped within the meaning of the Florida Housing Act, (2) she requested a reasonable accommodation, (3) such accommodation was necessary to afford her an opportunity to use and enjoy her dwelling, and (4) the defendant refused to make the requested accommodation. United States v. Hialeah Hous. Auth., 418 Fed. Appx. 872 (11th Cir. Fla. 2011). Under this approach, Amadiz must demonstrate a prima facie case for discrimination.

30. In this matter, Respondent stipulates that Petitioner has lupus and is disabled or handicapped within the meaning of the Florida Housing Act. However, Petitioner has failed to prove a prima facie case. First, Amadiz fails to establish the second prong of the test that a specific demand was made for an accommodation. Amadiz's letters fail to establish any specific or direct request for steam cleaning services as a reasonable accommodation. In fact, lupus was not even mentioned in the first two letters of April 11 and 13, 2010. And, the April 27,

2010, letter, which was a notice to terminate lease agreement and the May 17, 2010, letter both fail to make any direct connection between the request for steam cleaning and Amadiz's lupus disability.

31. And, if the last two letters could have been tied to Petitioner's lupus condition, which was noted in her application for an apartment, the record lacks any credible evidence of Amadiz putting Sunbeach on notice why her lupus condition required the reasonable accommodation of steam cleaning services.<sup>1</sup> There is no persuasive evidence showing that Petitioner was precluded from steam cleaning the floors in her apartment. Accordingly, Petitioner's failure to establish the two prongs of a reasonable accommodation claim ends any further inquiry regarding discrimination because Amadiz fails to meet her burden.

32. As to the issue of damages, Petitioner is not entitled to any damages because Sunbeach did not fail to provide her a reasonable accommodation.

#### 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's Petition for Relief filed by Judith Amadiz in its entirety.

DONE AND ENTERED this 16th day of August, 2012, in  
Tallahassee, Leon County, Florida.

*June C. McKinney*

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JUNE C. MCKINNEY  
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 16th day of August, 2012.

ENDNOTE

<sup>1</sup> Amadiz mentioned Dr. Session in her Petition for Relief but never provided that information to Sunbeach to notify Respondent of any medical opinion regarding her apartment.

COPIES FURNISHED:

Denise Crawford, Agency Clerk  
Florida Commission on Human Relations  
Suite 100  
2009 Apalachee Parkway  
Tallahassee, Florida 32301  
violet.crawford@fchr.myflorida.com

Lawrence F. Kranert, Jr., General Counsel  
Florida Commission on Human Relations  
Suite 100  
2009 Apalachee Parkway  
Tallahassee, Florida 32301

Juan Carlos Zorrilla, Esquire  
Zorrilla and Associates, P.L.  
Penthouse 10  
2600 Douglas Road  
Coral Gables, Florida 33134  
jcz@zgolaw.com

Judith Amadiz  
Apartment 604  
3120 Collins Avenue  
Miami Beach, Florida 33140  
alexamadiz@yahoo.com

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.