

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BARBARA PORTER, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 11-4830  
 )  
 IMPERIAL EMBASSY )  
 CONDOMINIUM FOUR, INC., )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was held in this case commencing on January 25, 2012, in New Port Richey, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Barbara Porter, pro se  
5353 Buttonwood Drive  
New Port Richey, Florida 34652

For Respondent: Scott H. Jackman, Esquire  
Cole, Scott and Kissane, P.A.  
4301 West Boy Scout Boulevard, Suite 400  
Tampa, Florida 33607

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Imperial Embassy Condominium Four, Inc. ("Imperial"), discriminated against Petitioner, Barbara Porter ("Porter"), on the basis of

her purported disability in violation of the Florida Fair Housing Act.

PRELIMINARY STATEMENT

Porter filed a Petition for Relief with the Florida Commission on Human Relations dated September 19, 2011. A copy of the Petition was forwarded to the Division of Administrative Hearings ("DOAH") on September 21, 2011.

At the final hearing, Porter testified on her own behalf and called three additional witnesses: Ronald Sims, Cheryl Sohrweid, and Mary Ellen Uzzo. Porter's Exhibits 1, 2, 4, and 6 through 15 were admitted into evidence. Imperial called three witnesses: Janet James, Jacqueline Moran, and David Andrews. Respondent's Exhibits 2 through 7 and 9 were admitted into evidence.

The parties advised that a transcript of the final hearing would likely not be ordered. By rule, parties were allowed ten days from the final hearing to submit proposed recommended orders (PROs). The parties were ordered to advise the Administrative Law Judge as to whether a transcript was ordered. If not, PROs were due on or before February 6, 2012. Neither party timely filed a PRO. Respondent filed a PRO on February 14, 2012; however, there was no motion filed seeking leave to submit the PRO later than allowed. Petitioner did not file a PRO. Respondent's PRO was not considered in the preparation of this Recommended Order.

## FINDING OF FACTS

1. Porter is a Caucasian female, who at all times material hereto, resided at Imperial. Porter asserts she is "handicapped" based on a mental condition. The only evidence presented at final hearing to support that assertion was: 1) A certificate of registration from "USAR"--an unidentified entity--indicating the registration of a "psychiatric service animal" to Porter on February 19, 2011; and 2) Two letters ostensibly from a physician saying Porter needed to have a pet for her mental and physical well-being. There was no non-hearsay corroboration to support Porter's assertion that she has or had a mental or psychological condition which would constitute a handicap.

2. At all times material hereto, Porter was a resident at Imperial, specifically residing at 5353 Buttonwood Drive. The unit that Porter inhabited was part of a complex of buildings and townhouses comprising the "condominium." The condominium was apparently contained within a gated neighborhood.

3. Imperial is the homeowner's association for the condominium, which is located in Pasco County, Florida. The association has been in existence since 1973. The residents of the condominium are subject to the By-Laws of the association, recorded at O.R. Book 673, Pages 697-[uncertain],<sup>1/</sup> in the public records of Pasco County, Florida.

4. The By-Laws at section 7(g) specifically prohibit residents to keep dogs or cats as pets in their respective units. Other pets, such as fish and small birds, are allowed with some restrictions. The By-Laws allow persons who already own a small dog or cat at the time they become a resident of the condominium to keep that pet until it dies. However, the residents are specifically prohibited from replacing a pet that dies. Further, the By-Laws allow the association to make a resident remove any pet that is a nuisance to other residents. At some point in time, the By-Laws were amended to allow cats, but not dogs, to be kept as pets.

5. Porter purchased a unit in the condominium in December 2007. At that time she owned a small dog, but did not bring the dog to live with her at the condominium. Instead, she left the dog with her son in another city. When Porter moved into her unit, she was advised by Ms. James that dogs and cats were prohibited.

6. Nonetheless, Porter later brought her dog to live with her in her unit. Porter ostensibly tried to supply Ms. James with a copy of a letter from her physician dated August 3, 2009, saying the dog was necessary for her well-being. Ms. James does not remember receiving any such letter. The dog died in March 2010.

7. When her first dog expired, Porter purchased a replacement dog, clearly in violation of the By-Laws.<sup>2/</sup> She obtained another letter from her physician dated March 11, 2010, which stated: "Due to the mental and physical well-being, I advised [Porter] to have her live [sic] pet live with her." There is no diagnosis of Porter's condition or other explanation in the letter, nor did her physician testify at final hearing.

8. The association notified Porter by letter dated May 18, 2010, that additional documentation from a physician would be required in order for her to keep the dog in her unit. On July 6, 2010, a follow-up letter was sent to Porter advising her that based on the letters she had submitted, the association's board was considering her request and was imposing certain restrictions concerning her dog. The restrictions--e.g., where Porter could walk the dog, keeping the dog quiet, etc.--were a stop-gap measure to allow Porter to keep the dog until the association board had an opportunity to meet and discuss the situation. The president of the association followed up with a letter again telling Porter to meet the restrictions that had been imposed.

9. Porter continued to maintain her dog, but refused to fully comply with the restrictions imposed by the association. She believed the restrictions were unreasonable and meant to harass her. There was no credible evidence at final hearing to

support her assertion. As a result of Porter's non-compliance, the association's attorney sent Porter a letter dated October 28, 2010, requesting a letter from her physician certifying that her condition met the definition of a disabled person under the American with Disabilities Act, the Fair Housing Act, or the Rehabilitation Act of 1973. No such documentation was ever provided to the association by Porter.

10. Meanwhile, another resident began to complain to the association about Porter's dog. The resident had been working in her yard when Porter brought her dog close to the resident, frightening her. The resident was extremely fearful of dogs and did not want the dog near her. After making her complaint to the association, the resident then hired an attorney to see if she could get the covenants in the By-Laws enforced.

11. At least one other resident of the community had a dog. That dog was allowed because the owner provided the association board sufficient documentation to prove the animal was medically necessary. There were similar restrictions imposed on that resident relating to maintaining her dog within the community.

12. Some residents, including Ms. James, owned cats. It was ultimately decided by the association to allow residents to keep cats as pets.

13. Ultimately, the association board notified Porter that she had failed to provide sufficient justification for the dog and that it must be removed from the premises.

CONCLUSIONS OF LAW

14. 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 (2011). Unless specifically stated otherwise herein, all references to the Florida Statutes shall be to the 2011 codification.

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

16. Petitioner has the burden of proving by a preponderance of the evidence that Imperial violated the Act by discriminating against Porter based on her disability as set forth in her complaint. §§ 120.57(1)(j) and 760.34(5).

17. In evaluating housing discrimination claims, courts have applied the burden-shifting analysis developed in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-804 (1973), as later refined in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-253 (1981). Under this approach, Porter must first make a prima facie case for discrimination.

18. A prima facie showing of housing discrimination simply requires Porter to show that she was ready, able, and willing to continue her residency at Imperial and that she was a member of a protected class. See Soules v. U.S. Dep't of Hous. and Urban Dev., 967 F.2d 817, 822 (2d Cir. 1992). Porter did not provide any persuasive evidence that she was handicapped in any way. The hearsay evidence presented by Porter is insufficient to meet her initial burden of proof.

19. However, even if Porter could have established that she was handicapped, the burden of proof would then shift to Imperial to show that the action it took--denying Porter the right to have a replacement dog in her condominium unit--was based on a legitimate, nondiscriminatory reason. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 515 (1993). As shown, Imperial showed that the By-Laws clearly prohibited residents from having a pet dog, unless the dog was with the resident at the time they purchased their condominium unit. That situation did not apply to Porter, especially for her replacement pet.



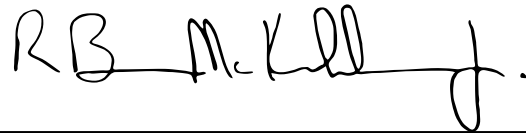
20. That being the case, the burden would then shift back to Porter to prove that Imperial's rationale was mere pretext and that the real reason for its action was discrimination. There is no evidence in the record to support that contention. The By-Laws are clear and unambiguous.

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 Barbara Porter in its entirety.

DONE AND ENTERED this 17th day of February, 2012, in Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
Administrative Law Judge  
Division of Administrative Hearings  
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Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of February, 2012.

ENDNOTES

1/ The copy of the By-Laws admitted into evidence are not entirely readable. There appear to be pieces missing from the By-Laws as presented. However, the gist of the document suggests the recordation set forth above.

2/ Porter may have had a cat for some period of time after the first dog died, but prior to purchasing her second dog. The testimony was not clear as to that fact.

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.