

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MATTIE LOMAX,)
)
 Petitioner,)
)
 vs.) Case No. 12-1552
)
 CITRUS HEALTH NETWORK, INC.,)
 AND JOSE GARCIA, ADMINISTRATOR)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This case came before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings for final hearing on June 7, 2012, in Miami, Florida.

APPEARANCES

For Petitioner: Mattie Lomax, pro se
Apartment Number One
212 Northwest 15th Street
Miami, Florida 33136

For Respondent: Olga Golik, Esquire
Citrus Health Network, Inc.
4175 West 20th Avenue, Third Floor
Hialeah, Florida 33012-5875

STATEMENT OF THE ISSUE

Whether a discriminatory housing practice occurred against Petitioner by Citrus Health Network Inc., and Jose Garcia.

PRELIMINARY STATEMENT

In a Housing Discrimination Complaint, filed on December 21, 2011, and subsequently investigated by the Florida Commission on Human Relations ("Commission"), Mattie Lomax ("Petitioner" or "Lomax") charged that Citrus Health Network, Inc., and Jose Garcia, Administrator ("Respondents" or "Citrus") unlawfully discriminated against Petitioner by not providing additional financial assistance to her and by not returning her calls during her application process.

The Commission investigated Petitioner's claim and on March 12, 2012, issued a notice setting forth its determination that reasonable cause did not exist to believe that a discriminatory housing practice had occurred. Thereafter, Petitioner filed a Petition for Relief, which the Commission sent to the Division of Administrative Hearings ("DOAH") on April 27, 2012.

At the final hearing, Lomax testified on her own behalf and presented six witnesses: James Errol and Valarie Errol (Petitioner's landlords); Alberto Abella (Housing Inspector); Jose Garcia (Citrus Health Program Administrator for HAND program); George Mensah (City of Miami Director of Community Development); and Maria Bringas (Citrus Health Service Coordinator for HAND program). Petitioner's Composite Exhibit 1 was admitted into evidence and the late-filed exhibit has also

been admitted into evidence as Exhibit 2. Respondent presented the testimony of Jose Garcia. Respondent's Exhibit 1 was offered and received into evidence.

The hearing was recorded but was not transcribed. On July 15, 2012, Lomax filed a Retroactive Petition for Relief ("Petition"), to which her late-filed composite Exhibit 2 was attached. On July 27, 2012, Respondent filed Respondent's Motion to Dismiss Retroactive Petition against Respondent ("Motion"). The undersigned has reviewed Petitioner's Petition and determined that it is Lomax's Proposed Recommended Order. Accordingly, Respondent's Motion is denied. Hence, both parties filed timely Proposed Recommended Orders, which have been duly considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. Lomax is a black female who lived at 125 Northwest 15th Street, Lower Level, Miami, Florida ("old residence").

2. Lomax's disability income is \$1,291.99 monthly.

3. From January 2011 to September 2011, Lomax did not pay any rent at her old residence, even though there was no interruption in her income. Lomax was going to be evicted because the building was in foreclosure and had been neglected by the property owner.

4. The Housing Assistance Network of Dade ("HAND") is a program that helps prevent people from becoming homeless. The

program is funded by a grant from the U.S. Department of Housing and Urban Development. The grant is awarded to the City of Miami who subcontracts with Citrus to operate the HAND program.

5. On or about August 11, 2011, Lomax sought financial assistance for housing by applying to the HAND program for first and last month rent. Lomax was assigned a case manager, Robert Butler ("Butler"), to process her application.

6. During the application process, Lomax tried to talk to and meet with HAND program administrators about her application instead of working with her case manager. Lomax was able to speak to Maria Bringas ("Bringas"), the Citrus Health Service Coordinator for the HAND Program. Lomax did not like Bringas' demeanor and requested that she speak to her supervisor Jose Garcia ("Garcia"). Lomax talked to Garcia afterwards.

7. Even though Butler was processing Lomax's application, Lomax called Citrus numerous times and felt she should have had more communication with the administration during the process.

8. The HAND program does not have a working site. It is community based and set up whereby applicants work with case managers in the field. The level of assistance provided to participants is based on the income level.

9. The HAND program evaluated Lomax and determined that she was qualified to be approved for the program.

10. Lomax found new rental accommodations from James and Valarie Errol.

11. On or about September 2, 2011, Citrus sent Alberto Abella ("Abella") to inspect Lomax's prospective rental unit for habitability and determined the property was above standards. Abella provided his report, a HUD requirement, to Citrus as part of Lomax's application process.

12. Citrus processed Lomax application expeditiously in less than 10 days and helped Lomax obtain new housing at 212 Northwest 15th Street, Miami, Florida 33136, ("new home") by approving her application and providing her first month's rent so that she could move into the new residence upon eviction and never be homeless.

13. Lomax was transitioned straight from the eviction of the old residence to a stable housing situation with Citrus' assistance of first month's rent for her new home.

14. Lomax was not satisfied with the level of assistance that she received from the HAND program and appealed to receive the last month's rent she had originally requested.

15. As a result of Lomax's first appeal, Citrus denied her request but had its attorney call Lomax's new landlord and negotiated a plan for Lomax to pay her rent for the last month in installments instead of all upfront.

16. Lomax still was not satisfied with her level of assistance and filed a second grievance to the funder, the City of Miami, for more funding. The city denied her request after determining she had not lost any income prior to her eviction.

17. Lomax protested the denial, alleging she had been financially caring for the property where she had been residing by paying the maintenance services like plumbing and lawn care, and that is why she didn't have the savings from her monthly income where she had not paid rent. The City of Miami agreed to reconsider Lomax's appeal for more assistance and requested she provide maintenance receipts to document her maintenance payments.

18. The City of Miami reviewed the receipts Lomax provided and determined Lomax did not provide the right receipts for the City of Miami to provide additional funding to her. It was determined that Lomax did not demonstrate that she lacked financial resources needed to pay her last month's rent. Therefore, the City of Miami denied her grievance appeal.

19. Lomax filed a discrimination case against Citrus with the Commission because she believes that the reason she was not provided last month's rental assistance was because of her race and sex. Lomax felt that Citrus' administration was racist, hateful and offensive, and the administrators did not return her calls during the application process.

20. From October 1, 2010, to October 1, 2011, Citrus provided financial assistance to 1,146 individuals without regard to race, sex, or ethnicity. African Americans make up 576 (51 percent) of the persons served. Hispanic/Latinos make up 554 (49 percent) of the persons served. Females make up 64 percent of the total adults served. A majority of the individuals served have a lower income than the Petitioner.

21. At the time of the hearing, Lomax still resided in her new home she obtained with the financial assistance of first month's rent from the HAND program.

CONCLUSIONS OF LAW

22. 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.

23. 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:

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.

(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.

24. As the person complaining of discrimination in this administrative proceeding, Lomax has the burden of proving by a preponderance of the evidence that she was discriminated against by Citrus on the basis of her race, sex, and handicap. See § 760.34(5) ("In any proceeding brought pursuant to this section [section 760.34] or section 760.35, the burden of proof is on the complainant").

25. 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, Lomax must first make a prima facie case for discrimination.

26. A prima facie showing of housing discrimination simply requires Lomax to show that she was ready, able, and willing to continue her residency at the house; that she was a member of a protected class; and that her application denied (or, in the present case, that financial services of last month's rent requested were denied by Respondents). See Soules v. U.S. Dep't of Hous. & Urban Dev., 967 F.2d 817, 822 (2d Cir. 1992). Lomax, a black female, is a member of a protected class. However, she

presented no evidence that she was entitled to last month's rent or additional financial assistance than what was provided, or that she was treated less favorably by the Respondent than similarly situated persons outside of her protected class.

27. In fact, the evidence showed that Lomax talked to administration during her application process, and was assisted by Citrus expeditiously with first month's rent, which specifically allowed Lomax to obtain a new residency after she was evicted and prevented her from becoming homeless. Further, Lomax remained in the new home at the time of the hearing.

28. Had Lomax met her burden of proof, the burden then would have then shifted to Citrus to show that the action it took was based on a legitimate, nondiscriminatory reason. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 515 (1993). However, there is no evidence that Citrus discriminated against Lomax. Therefore, there is no need to shift the burden of proof in this case.

29. It should also be noted that Lomax did not present a scintilla of evidence concerning discrimination by the Respondents. At hearing, Petitioner also failed to address or present any evidence of gender or handicap discrimination. Therefore, those issues have not been addressed in this matter. And, Citrus did provide evidence as to its treatment of other HAND program applicants, but the evidence was unnecessary due to

Lomax's failure to establish a prima facie case. Accordingly, Petitioner's claims are without merit.

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 Mattie Lomax in its entirety.

DONE AND ENTERED this 9th day of July, 2012, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of July, 2012.

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.