

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT PAGANO,)
)
 Petitioner,)
)
 vs.) Case No. 12-2279
)
 THE FOURTH BAYSHORE CONDOMINIUM)
 ASSOCIATION, INC., KARL)
 STEMMLER AND RICHARD GROVE,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case commencing on August 23, 2012, in Bradenton, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Robert Pagano, pro se
2235 Canal Drive
Bradenton, Florida 34207

For Respondent, The Fourth Bayshore Condominium Association, Inc.:

Ron Campbell, Esquire
Patrick Boland, Esquire
Cole, Scott & Kissane, P.A.
27300 Riverview Center Boulevard
Bonita Springs, Florida 34135

For Respondent Karl Stemmler: No Appearance

For Respondent Richard Grove: Richard Grove, pro se

STATEMENT OF THE ISSUE

The issue in this case is whether Respondents, The Fourth Bayshore Condominium Association, Inc. ("Bayshore"), Karl Stemmler ("Stemmler"), and/or Richard Grove ("Grove"), discriminated against Petitioner, Robert Pagano ("Pagano"), on the basis of his physical handicap in violation of the Florida Fair Housing Act.

PRELIMINARY STATEMENT

Pagano filed a Housing Discrimination Complaint with the Florida Commission on Human Relations (the "Commission") on or about April 20, 2012. The Commission entered a Notice of Determination of No Cause dated June 6, 2012. A copy of the Determination was sent to Pagano via certified mail. Pagano then filed a Petition for Relief with the Commission dated June 21, 2012. A copy of the Petition was forwarded to the Division of Administrative Hearings ("DOAH") on June 28, 2012.

At the final hearing, Pagano testified on his own behalf and offered six exhibits, each of which was admitted into evidence. Bayshore and Grove called two witnesses: Richard Grove and Jerald Van Buren, president of Bayshore.^{1/} Bayshore's Exhibits 1 and 2, were admitted into evidence. Stemmler did not testify or offer any exhibits into evidence.^{2/}

The parties advised that a transcript of the final hearing would not be ordered. By rule, parties were allowed ten days

from the final hearing to submit proposed recommended orders (PROs). The PROs were due on or before September 4, 2012. Each party timely filed a PRO and each was considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Pagano is a Caucasian male who is handicapped by virtue of medical complications which resulted in the amputation of his left leg in March 2008. He has been confined to a wheelchair since that time. At all times relevant hereto, Pagano was renting a condominium unit at Bayshore.

2. In January 2012, Pagano saw another unit at Bayshore advertised for rent. He called Grove, listed as the owner of the unit, and inquired about renting the property. Grove told Pagano that a key to the unit would be left under a mat between the screen door and front door on January 19, 2012. On that day, Pagano went to inspect the unit, accompanied by a friend, Philip Saglimebene.

3. Upon arrival at the unit, Pagano and his friend began looking for the hidden key, but could not find it. They apparently made some noise while searching for the key, because they were confronted by Stemmler. According to Pagano, Stemmler began asking them in unfriendly terms who they were and what they were doing at the unit. The friend then told Stemmler they

were looking for a key so they could go in and inspect the unit as Pagano was interested in renting it from Grove.

4. Stemmler, supposedly identifying himself as a "building representative," said there was no key to be found. He also reputedly told Pagano and his friend that they would not need a key anyway, "because you are not moving in." When the friend explained that the unit was for Pagano, not him, Stemmler allegedly said that Pagano was not moving in either because he was an "undesirable." When asked to explain that comment, Stemmler purportedly said, "He just is; that's all you need to know." (None of Stemmler's comments were verified by competent evidence and, without verification or support, cannot be relied upon to make a finding of fact in this case.)

5. Pagano believes Stemmler's purported comments were based on the fact that he (Pagano) has long hair and a beard and does not fit into the conventional norm at Bayshore. He also believes that his handicap served as a basis for Stemmler's alleged comments. There was no credible evidence presented at final hearing to substantiate Pagano's suppositions.

6. Grove had put his condominium unit up for rent at the beginning of the year. When Pagano called to inquire about it, Grove - who lives out-of-state - notified a friend to leave a key under the mat, as described above. That friend simply forgot to leave a key at the unit on the designated date. Grove

knew nothing about Pagano's interaction with Stemmler. Grove had not spoken to Stemmler prior to the day he and Pagano had their interaction. Stemmler had no authority to speak for Grove or to make a decision concerning to whom Grove would rent his condominium unit.

7. Subsequent to the day Pagano visited the unit, Grove took the unit off the rental market because his wife decided to use the unit to house family and friends rather than renting it out to someone else. It took several weeks for the rental advertisement for the unit to be removed from a locked bulletin board at Bayshore.

8. Grove said that if the unit ever went back on the market, he would call Pagano first about renting it, i.e., Grove had no opposition whatsoever to Pagano's being a tenant.

9. Van Buren, president of Bayshore, explained that the condominium association utilizes the support of voluntary building representatives to assist with security and minor maintenance at Bayshore. The volunteers, who are generally seasonal residents at Bayshore, do not hold keys to individual units and have no authority to grant or deny an applicant's request to rent a unit. Stemmler is one of many building representatives who resides part-time at Bayshore.

10. Pagano does not know of any non-handicapped individual who was allowed to rent a unit at Bayshore to the exclusion of

himself or any other handicapped person. In fact, Pagano currently resides in another unit at Bayshore; he is already a resident there.

CONCLUSIONS OF LAW

11. 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 (2012). Unless specifically stated otherwise herein, all references to the Florida Statutes shall be to the 2012 codification.

12. Florida's Fair Housing Act (the "Act") is codified in sections 760.20 through 760.37, Florida Statutes. Section 760.23, Florida Statutes, 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.

13. Petitioner has the burden of proving by a preponderance of the evidence that Bayshore, Stemmler, or Grove violated the Act by discriminating against Pagano based on his

disability, as set forth in his complaint. §§ 120.57(1)(j) and 760.34(5), Fla. Stat.

14. Pagano testified that he was ready, able, and willing to rent the disputed condominium unit and that he was a member of a protected class. He was, he felt, prevented from renting the unit because of discrimination. Pagano established a prima facie case for discrimination.

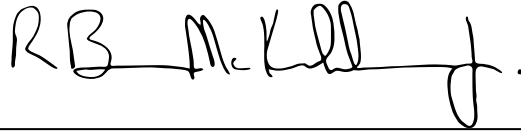
15. As shown, Stemmler had no authority whatsoever to make a decision about Pagano's rental of the unit. Thus, any action he took is irrelevant to this inquiry. Grove proved that he did nothing other than offer to show Pagano his unit, but that a mistake was made about the key. Bayshore, which already leases a unit to Pagano, took no adverse action whatsoever against Pagano.

16. There is no persuasive evidence that Pagano's handicap was a factor in any decision made concerning his desire to rent the condominium unit. While it is clear that Pagano believes in his heart that he was discriminated against, there is no evidence to support his contention.

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 Robert Pagano in its entirety.

DONE AND ENTERED this 5th day of September, 2012, in
Tallahassee, Leon County, Florida.



R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of September, 2012.

ENDNOTES

^{1/} Pagano objected to the telephone appearance of Van Buren; his objection was overruled as the telephonic appearance was not prejudicial to Pagano and served to expedite the final hearing.

^{2/} Pagano objected to the fact that Stemmler did not testify. However, Pagano did not subpoena Stemmler, and there is no rule requiring a party to appear at final hearing.

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.