

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ARISMAIDA PRADO,)
)
 Petitioner,)
)
 vs.) Case No. 12-2619
)
 MIAMI-DADE BOARD OF)
 COMMISSIONERS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes,^{1/} before Jessica E. Varn, an administrative law judge of the Division of Administrative Hearings (DOAH), on January 9, 2013, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Arismaida Prado, pro se
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STATEMENT OF THE ISSUE

Whether Respondent committed a discriminatory act based on
Petitioner's disability, in violation of the Fair Housing Act.

PRELIMINARY STATEMENT

On July 5, 2012, the Florida Commission on Human Relations
(Commission) issued a Notice of Determination finding no cause to
believe that Respondent, Miami-Dade Board of County
Commissioners, committed a discriminatory housing practice in
violation of the Fair Housing Act, against Petitioner, Ms. Prado.
On August 1, 2012, Ms. Prado filed a Petition for Relief alleging
that Respondent had engaged in a discriminatory housing practice
based on disability. Specifically, she wrote:

My rights have been violated because the
Board of Commissioners did not take into
consideration my medical disabilities
including my need for using medical equipment
to reduce the previous benefits I was

receiving. During the interview process I was not allowed to support the above mentioned conditions and my need to keep two bedrooms house [sic] to keep the aid devices ordered for my doctors.

I can prove that I am a mentally disabled person who suffers from several physical illness [sic], which lead me to require the use of a Foley bed, an oxygen machine, an electric bicycle, an aerosol machine, a treadmill, and a roller walker. I cannot keep all the aid devices in one room. I use the hospital bed when I am in pain crisis with muscles [sic] rigidity and limited mobility.

On August 7, 2012, the Florida Commission on Human Relations transmitted the Petition for Relief to the Division of Administrative Hearings to assign an administrative law judge to conduct the necessary proceedings. The hearing was initially scheduled for October 19, 2012. On October 5, 2012, Respondent filed a Motion for Continuance, which was granted. The hearing was rescheduled for January 9, 2013.

At the hearing, Ms. Prado testified on her own behalf, and presented the testimony of her daughter, Noylan Gonzalez. Ms. Prado introduced into evidence Petitioner's Exhibits 1, 2, and 3. Respondent presented the testimony of Donna Gunther, Edilia Diaz, and Barry Klein; Respondent Exhibits D-2, D-3, D-4, D-5, D-6, and D-7 were introduced into evidence.

Notwithstanding the requirements of section 120.57(1)(g), Florida Statutes, and Florida Administrative Code Rule 28-

106.214, the Commission has ceased providing a court reporter to preserve the testimony at a final hearing. The parties were advised, in the Notice of Hearing issued on October 10, 2012, that if the parties did not provide a court reporter, each party was responsible for providing a notary public to swear in all witnesses who intended to testify. Neither party provided a court reporter or a notary public; both parties agreed to have the undersigned swear in the witnesses via video teleconference.

Both parties filed Proposed Recommended Orders, which were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Ms. Prado rented an apartment using a Housing Choice Voucher in Miami, Florida.

2. Florida Quadel entered into a contract with Miami-Dade County in 2009. Florida Quadel, pursuant to this contract, administers the Housing Choice Voucher Program on behalf of the County.

3. During a routine quality control review of the program's files, Ms. Prado's file was randomly selected for a more in-depth quality control review.

4. A review of the file revealed that Ms. Prado was a single individual residing in a two-bedroom apartment, utilizing a voucher that allowed for a two-bedroom unit.

5. There was insufficient documentation in the file to justify the need for a two-bedroom unit; therefore, paperwork requesting a reasonable accommodation was forwarded to Ms. Prado for completion. The paperwork required that Ms. Prado's health care provider indicate the medical necessity for any reasonable accommodation being requested.

6. Ms. Prado's health care physician did not provide a statement of medical necessity for the second bedroom; therefore, Quadel made numerous additional requests for the physician to provide the necessary statement. The physician never made such a statement.

7. Quadel then conducted an on-site inspection of the dwelling. During this inspection, Ms. Prado told the inspector that the second bedroom was used for guests. There was no indication during the inspection that a second bedroom was for housing Ms. Prado's medical equipment.

8. Ms. Prado's voucher was amended from a two-bedroom voucher, to a one-bedroom voucher. This amendment did not require that Ms. Prado vacate the two-bedroom unit, but it did reduce the amount of subsidy Ms. Prado received.

9. Ms. Prado filed a grievance as to this determination. At the grievance committee meeting, Ms. Prado stated that she slept in one bedroom, and the other bedroom was used when her daughter and husband visited and spent the night.

10. Based on the absence of any documentation indicating the medical necessity of a second bedroom, coupled with Ms. Prado's own statements to Quadel, the grievance was denied. Ms. Prado then filed a complaint of discrimination with the Florida Commission on Human Relations.

11. Ms. Prado presented no evidence of discrimination in the housing decision. Quadel's decision to amend the voucher from a two-bedroom unit to a one-bedroom unit was based on legitimate, non-discriminatory reasons.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

13. Petitioners have alleged that Respondents violated the Florida Fair Housing Act, sections 760.20-760.37, Florida Statutes. Section 760.23(2), prohibits discrimination against persons, in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with rental of a dwelling, because of that person's handicap.

14. In all respects material here, the language in section 760.23(2) is identical to that in Title 42, section 3604(b), United States Code, which is part of the Federal Fair Housing

Act, as amended. "If a Florida statute is modeled after a federal law on the same subject, the Florida statute will take on the same construction as placed on its federal prototype, insofar as such interpretation is harmonious with the spirit and policy of the Florida Legislation." See Brand v. Florida Power Corp., 633 So. 2d 504, 509-510 (Fla. 1st DCA 1994).

15. Ms. Prado had the ultimate burden of proving that a discriminatory housing practice was committed by Respondent, based on Ms. Prado's disability. See § 760.34(5), Fla. Stat. In the absence of direct evidence of intentional discrimination, of which there is none in this record, a three-part analysis, derived from McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973), is used:

First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to articulate some legitimate, non-discriminatory reason for its action. Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by preponderance that the legitimate reasons asserted by the defendant are in fact mere pretext.

See U.S. Dep't of Hous. and Urban Dev. v. Blackwell, 908 F.2d 864, 872 (11th Cir. 1990) (quoting Pollitt v. Bramel, 669 F. Supp. 172, 175 (S.D. Ohio 1987)).

16. Ms. Prado must establish a prima facie case, and would still retain the ultimate burden of persuasion concerning the discrimination claim after showing a prima facie case by presenting evidence that any legitimate, non-discriminatory reason put forth by Respondent was pre-textual.

17. Ms. Prado could have presented circumstantial evidence of discrimination in the form of proof that Respondent treated persons outside of the protected class, who were otherwise similarly situated, more favorably than Ms. Prado was treated. U.S. Dep't. of Hous. & Urban Dev. v. Blackwell, 908 F.2d 864, 871 (11th Cir. 1990).

18. To establish housing discrimination through circumstantial evidence, Ms. Prado must establish that (1) she belong to a protected class; (2) she was qualified to reside in housing; (3) she was denied housing or treated differently than others who were not in the protected class. Failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1013 n.7 (Fla. 1st DCA 1996), aff'd, 679 So. 2d 1183 (Fla. 1996).

19. Ms. Prado does belong to a protected class as a disabled person, and there was no dispute that she was qualified to reside in housing. Ms. Prado presented no evidence, however, that she was treated differently than any other person.

Ms. Prado, therefore, failed to establish a prima facie case of housing discrimination.

20. In addition, Respondent proved that the decision to amend Ms. Prado's housing voucher was based on legitimate, non-discriminatory reasons.

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 determining that Respondent did not commit a discriminatory housing practice based on Ms. Prado's disability.

DONE AND ENTERED this 18th day of February, 2013, in Tallahassee, Leon County, Florida.



JESSICA E. VARN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of February, 2013.

ENDNOTE

^{1/} Unless otherwise noted, all references to the Florida Statutes are to the 2012 version.

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.