

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ALECIA RIVERA,)
)
 Petitioner,)
)
 vs.) Case No. 12-3863
)
 LAKE BENTLEY SHORES, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this cause by video teleconference before J. D. Parrish, an administrative law judge of the Division of Administrative Hearings (DOAH), on February 1, 2013, with the parties appearing from Lakeland, Florida.

APPEARANCES

For Petitioner: Richard L. Bradford, Esquire
Suite 196
150 East Bloomingdale Avenue
Brandon, Florida 33511

For Respondent: Mark N. Miller, Esquire
Matthew D. Jones, Esquire
Gray Robinson, P. A.
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STATEMENT OF THE ISSUE

Whether Respondent, Lake Bentley Shores, Inc. (Respondent), engaged in unlawful housing discrimination in violation of the Florida Fair Housing Act.

PRELIMINARY STATEMENT

On July 18, 2012, Petitioner, Alecia Rivera (Petitioner or Rivera), filed a Housing Discrimination Complaint against Respondent and Dennis Goodkind, a security guard. Essentially, Petitioner maintained that Respondent and Mr. Goodkind had intimidated, coerced, and interfered with her full enjoyment of her home in violation of law. More specifically, Petitioner alleged that Mr. Goodkind had sexually harassed Petitioner by looking through her window, peeping through a hole in a wall, following her in the parking area of the complex, and following her motor vehicle. Petitioner averred that she had registered complaints to management regarding Mr. Goodkind's behavior and Respondent took no action to stop or prevent the harassment.

After completing its investigation of Petitioner's complaint, the Florida Commission on Human Relations (FCHR) issued its Determination in the matter on October 3, 2012. The Determination found:

Based on the evidence obtained during the investigation, the FCHR has determined that reasonable cause does not exist to

believe that a discriminatory housing practice has occurred. Accordingly, the above-referenced complaint is hereby dismissed.

Thereafter, Petitioner timely filed a Petition for Relief that reiterated the allegations of discrimination previously stated. Petitioner asserted that Respondent had failed to respond to allegations of harassment and failed to protect Petitioner from ongoing harassment from the security guard, Dennis Goodkind. As stated in the Petition for Relief:

- a. For nearly two years Rivera had been subjected to sexual harassment by Dennis Goodkind.
- b. Goodkind would stalk Rivera, look through her window, and look through a hole into her condominium.
- c. Rivera's neighbors had witnessed Goodkind trying to look into the condominium where Rivera was staying.
- d. Goodkind also followed Rivera while she was in her car.
- e. Rivera made multiple complaints to Respondent regarding Goodkind's behavior and Respondent failed to take action.

The case was forwarded to DOAH for formal proceedings on November 29, 2012. On December 3, 2012, Respondent filed an Answer to the charges that denied Petitioner is entitled to any relief.

At the hearing, Petitioner testified in her own behalf and presented testimony from Mario Thomas. Respondent presented the

testimony of Mike Melito, Dennis Goodkind (Mr. Goodkind), Jada Chandler, and Steve Allen (Mr. Allen). Respondent's Exhibits A, F, G, and H were admitted into evidence. A transcript of the formal hearing was not filed.

At the conclusion of the hearing the parties were directed to file their proposed orders within ten days. Respondent timely filed a Proposed Recommended Order. Petitioner's Proposed Findings of Fact and Conclusions of Law was not filed until February 18, 2013. Respondent's Motion to Strike Petitioner's proposal as untimely is denied.

FINDINGS OF FACT

1. Petitioner is a female who, at all times material to the allegations of this case, resided in a first floor condominium, Unit A-3, in Lake Bentley Shores.

2. The legal owner of Unit A-3, Lake Bentley Shores, is Jose Anglada (Mr. Anglada).

3. Mr. Anglada employed CDC Properties of Central Florida, LLC (CDC), to manage his unit. CDC was responsible for the day-to-day management of the unit and collected rent payments due to the unit owner. In contrast, A1A Property Management (A1A) was the on-site property manager for the Lake Bentley Shores condominium community.

4. The Lake Bentley Shores condominium community was governed by Respondent, a condominium association organized under the laws of Florida.

5. In addition to retaining a management firm to address the daily workings of the condominium property, Respondent also retained U. S. Security Associates, Inc. to provide night-time security services for the condominium community. The security company reported to A1A daily regarding security issues.

6. At all times material to the allegations of this case, U. S. Security Associates, Inc. employed Mr. Goodkind and assigned him to the Lake Bentley Shores condominium property.

7. Mr. Goodkind was not Respondent's employee.

8. Mr. Goodkind was not A1A's employee.

9. Mr. Goodkind was not CDC's employee.

10. All leasing arrangements between Petitioner and the Unit A-3 owner were handled by CDC. Any complaints regarding the unit were to be made to CDC.

11. Petitioner never filed a written complaint to Respondent regarding the offensive or inappropriate behavior toward her committed by Mr. Goodkind.

12. On January 10, 2012, Petitioner made a verbal complaint to Steve Allen, A1A's on-site manager, regarding Mr. Goodkind's alleged sexual harassment toward Petitioner. Mr. Allen took action to notify U. S. Security Associates, Inc. Mr. Goodkind

was immediately removed from the Lake Bentley Shores assignment. Thereafter, Petitioner made no written or verbal complaints regarding sexual harassment to Respondent, A1A, or CDC.

13. Lake Bentley Shores comprises of 160 condominium units. Some of the units, like Unit A-3, share a wall with a utility/storage closet. Such closets house water heaters. Water heaters must be inspected regularly to assure no leakage. Historically, leaking water heaters were a maintenance issue at the condominium property.

14. Although Respondent has rules and regulations regarding resident conduct on the Lake Bentley Shores property, it delegates the routine operation of the condominium property to A1A. At all times material to the allegations of this case, A1A directed U. S. Security Associates, Inc. (through its night-time security employee) to assure noise levels during the night-time hours were appropriate, to regularly "walk" the Lake Bentley Shores property to assure the safety of residents, and to observe and report any suspicious activity.

15. Included in the areas to "walk" were the utility/storage closets previously described. Thus, it was common for Mr. Goodkind to enter the closets, walk around the buildings, observe the parking areas, and to listen for noises to assure the tranquility of the property. Excessive noise from any unit was not acceptable.

16. Prior to the allegations of this case, Mr. Goodkind worked as a security guard at the Lake Bentley Shores property for approximately four years. During that time he established himself as a conscientious enforcer of the noise regulations, he kept a log of vehicles entering and exiting the property, and made efforts to reduce vandalism or theft.

17. Mr. Goodkind did not sexually harass Petitioner. At no time did Mr. Goodkind peer into Petitioner's windows, peep through any hole, or follow Petitioner except in the manner appropriate for the performance of his routine duties as a security officer.

18. Mr. Goodkind did, however, confront a resident or guest of Unit A-3 to seek reduction in the noise level emanating from the unit.

19. CDC initiated eviction proceedings against Petitioner due to failure to pay rent and damage to Unit A-3.

20. Respondent had no involvement in the eviction.

21. A1A had no involvement with or connection to the eviction other than a report made to CDC that gave notice of a broken window visible from the exterior of the unit.

22. Petitioner eventually moved out of Unit A-3 after reaching an agreement with CDC.

23. Petitioner presented no credible evidence that Mr. Goodkind harassed her in any manner. Mr. Goodkind did not interfere with Petitioner's enjoyment of her residence.

24. Petitioner presented no credible evidence that Respondent harassed her in any manner or suffered any damages as a result of such alleged behavior. Respondent did not interfere with Petitioner's enjoyment of her residence.

25. Petitioner presented no credible evidence that A1A as Respondent's agent harassed her in any manner. A1A did not interfere with Petitioner's enjoyment of her residence.

CONCLUSIONS OF LAW

26. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.57(1) and 760.35, Fla. Stat. (2012).

27. The Florida Fair Housing Act (the Act) is codified in sections 760.20 through 760.37, Florida Statutes (2012). The Act makes certain acts prohibited unlawful housing practices including those described in section 760.23, Florida Statutes (2012), which provides, in 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.

28. In this case, Petitioner maintains that as a member of a protected class (female) subjected to sexual harassment by Mr. Goodkind, the enjoyment of her residence was adversely impacted. Implicit in that assertion is the conclusion that others similarly situated were not subjected to the alleged offensive behavior as a condition of the use of their residences.

29. The Act gives the FCHR authority to issue an order prohibiting the practice and providing affirmative relief from the effects of the unlawful conduct. Section 760.35, Florida Statutes, provides in pertinent part:

(3)(a) If the commission is unable to obtain voluntary compliance with ss. 760.20-760.37 or has reasonable cause to believe that a discriminatory practice has occurred:

1. The commission may institute an administrative proceeding under chapter 120; or

2. The person aggrieved may request administrative relief under chapter 120 within 30 days after receiving notice that the commission has concluded its investigation under s. 760.34.

(b) Administrative hearings shall be conducted pursuant to ss. 120.569 and 120.57(1). The respondent must be served written notice by certified mail. If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending

affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1). Judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

30. Petitioner has the burden of proving the allegations asserted. "Discriminatory intent may be established through direct or indirect circumstantial evidence." Johnson v. Hamrick, 155 F. Supp. 2d 1355, 1377 (N.D. Ga. 2001).

31. "Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to inference or presumption." See Wilson v. B/E Aero., Inc., 376 F.3d 1079, 1086 (11th Cir. 2004) ("Direct evidence is 'evidence, that, if believed, proves [the] existence of [a] fact without inference or presumption.'"). "If the [complainant] offers direct evidence and the trier of fact accepts that evidence, then the [complainant] has proven discrimination." Maynard v. Board of Regents, 342 F.3d 1281, 1289 (11th Cir. 2003). In this case, Petitioner failed to prove sexual harassment that interfered with the enjoyment of her residence. She proved she is a female who resided at a condominium property, but she established little else.

32. Moreover, although victims of discrimination may, by indirect evidence, be "permitted to establish their cases through inferential and circumstantial proof," Petitioner similarly failed to present credible inferential or circumstantial proof. See Kline v. Tennessee Valley Auth., 128 F.3d 337, 348 (6th Cir. 1997).

33. Mr. Goodkind's behaviors were consistent with his employer's directives. Walking the grounds, checking closets, verifying noise level and source of the noise, all fell within the purview of his job. Watching residents (including females) walk to and from parking areas was within the scope of his employment. All residents were treated with the same level of observation as Petitioner.

34. Petitioner did not present credible evidence to support sexual harassment. There was no behavior sufficiently severe or pervasive to demonstrate the condition of Petitioner's housing was adversely affected. No one propositioned Petitioner. No one sought sexual favors from Petitioner in exchange for anything. No one invaded Petitioner's privacy. Even Petitioner's assertion that Mr. Goodkind peeped through a hole into her living space was not corroborated. There were no holes in the utility/storage closet wall.

35. Once made aware of Petitioner's claim, Mr. Allen, as the on-site property manager, took immediate action.

Mr. Goodkind was removed from his assignment at Lake Bentley Shores, the alleged "hole" in the closet was inspected (and found to be nonexistent), and Respondent was duly notified. Once made aware of the allegations Respondent took all precautions reasonably necessary to assure Petitioner's enjoyment of the premises. A1A timely and appropriately dealt with Petitioner's one complaint to management.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission Human Relations issue a final order finding no cause for an unlawful housing practice as alleged by Petitioner, and dismissing her complaint.

DONE AND ENTERED this 28th day of March, 2013, in Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
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Filed with the Clerk of the
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this 28th day of March, 2013.

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.