

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ERIC AND NORA GROSS,

Petitioners,

vs.

Case No. 14-4997

ROYAL ARMS VILLAS CONDOMINIUM,
INC.,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on January 27, 2015, in Ft. Myers, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioners: Eric H. Gross, pro se
Nora A. Gross, pro se
209 Yorkshire Court
Naples, Florida 34112

For Respondent: Peter M. Starling, Esquire
Meredith A. Peck, Esquire
Peck and Peck, P.A.
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STATEMENT OF THE ISSUE

Whether Respondent, Royal Arms Villas Condominium, Inc., discriminated against Petitioners, Eric and Nora Gross, in violation of the Florida Fair Housing Act.

PRELIMINARY STATEMENT

In May 2014, Mr. and Mrs. Gross filed a housing discrimination complaint with the Florida Commission on Human Relations (Commission). The Commission investigated, and on September 24, 2014, entered a Notice of Determination of No Cause (Notice). The Notice was sent to Petitioners via certified mail. On October 21, Petitioners filed a Petition for Relief with the Commission, and on October 22, the case was referred to the Division.

At the final hearing, Petitioners called Demetrius Burkes and Eric Gross to testify. Petitioners' Exhibits 1^{1/} and 2 were admitted into evidence over objection. Respondent called Joanne Orrino to testify on its behalf. Respondent's Exhibits 1 through 7, 11 (over objection), and 16 were admitted into evidence.

At the end of the hearing, Respondent's counsel advised the undersigned that a transcript of the final hearing would be ordered. The parties were advised that their proposed recommended orders (PROs) were due ten days after the filing of the transcript.

Petitioners filed their PRO on February 6. To the extent that Petitioners' PRO contained new testimony or evidence, not subject to cross-examination, that information has not been considered.

The Transcript was filed on February 12. On February 13, the undersigned issued a Post-Hearing Order that confirmed the Transcript had been filed, and provided "all proposed findings of fact, conclusions of law, orders, and memoranda on the issues, if any, shall be filed . . . on or before the close of business on February 22, 2015."^{2/}

On February 17, Petitioners filed an Objection stating that the undersigned had:

issued an order on January 27, 2015 stating that both parties shall provide a **Proposed Recommended Order. This document was to be sent in within 10 days from the date of the hearing.**

A review of the Transcript clearly recorded at the end of the hearing that Respondent elected to order a hearing Transcript. The parties agreed that each could file a PRO within ten days of the filing of the transcript, and that the undersigned would issue a Post-Hearing Order when the transcript was filed. Petitioners' Objection is denied. Respondent timely filed its PRO on February 20.

On February 23, Petitioner's [sic] Reply to Respondent's Proposed Order (Reply) was filed. Therein Petitioners attempted

to add evidence to the hearing. On March 2, Respondent's Reply to Petitioners' Objection and Reply was filed. Petitioners' Reply has not been considered. Both PROs have been considered in the preparation of this Recommended Order.

Unless otherwise stated, all statutory references are to the 2013 codification of the Florida Statutes.

FINDINGS OF FACT

1. Petitioners are a married couple, living in a rental home at 209 Yorkshire Court, Naples, Florida (rental unit). Petitioners have two children and two grandchildren; however, none of these relatives live in Petitioners' rental unit.

2. Mr. Gross was diagnosed with stage four hodgkin's lymphoma in 2002. Mr. Gross has been in remission since 2003. Mr. Gross was declared disabled by the Social Security Administration in 2003.

3. Petitioners have lived in this rental unit since August 2006. A Florida residential lease agreement with the property owners, Joan and Charles Forton, was entered on August 8, 2006.^{3/} This lease was for a 12-month period, from September 1, 2006, through August 31, 2007. At the end of this period, the lease became a month-to-month lease and continued for years without anyone commenting on it.

4. In 2012, Respondent inquired about a dog that was seen with Petitioners. After providing supporting documentation to

Respondent, Petitioners were allowed to keep Mr. Gross' service dog, Evie.

5. Respondent is a Florida not-for-profit corporation. There are 62 units, and the owner of each unit owns a 1/62 individual share in the common elements. Since its inception, Respondent has, through its members (property owners), approved its articles of incorporation, bylaws, and related condominium powers, and amended its declaration of condominium in accordance with Florida law.

6. Ms. Orrino is currently vice-president of Respondent's Board of Directors (Board). Ms. Orrino has been on the Board since 2009 and has served in every executive position, including Board president. Ms. Orrino owns two condominiums within Respondent's domain, but does not reside in either.

7. In 2012 or 2013, Respondent experienced a severe financial crisis, and a new property management company was engaged. This company brought to the attention of Respondent's Board that it had not been approving leases as required by its Declaration of Condominium.^{4/} As a result of this information, the Board became more pro-active in its responsibilities, and required all renters to submit a lease each year for the Board's approval.

8. Petitioners felt they were being singled out by Respondent to provide a new lease. The timing of Respondent's

request made it appear as if Respondent was unhappy about Petitioners keeping Evie. Petitioners then filed a grievance with HUD.^{5/} HUD enlisted the Commission to handle the grievance, and Mr. Burkes served as the Commission's facilitator between Petitioners and Respondent.

9. On October 24, 2013, Petitioners executed a Conciliation Agreement (Agreement) with Respondent and the Commission. The terms of the Agreement include:

NOW, THEREFORE, it is mutually agreed between the parties as follows:

1. Respondent agrees:

a. To grant Complainants' request for a reasonable accommodation to keep Eric Gross's emotional support/service dog (known as "Evie") in the condominium unit even though it exceeds the height and weight limits for dogs in the community.

b. That their sole remedy for Complainants' breach of the provisions contained in subparagraphs (a) through (g) below, in addition to the attorney's fees and costs provision of paragraph 10 of this Agreement, shall be the removal of the Complainants' dog.

2. Complainants agree:

a. That they will not permit the dog to be on common areas of the association property, except to transport the dog into or out of Complainants' vehicle, to and from Complainants' unit, and to take the dog through the backyard of the unit to walk it across the street off association property.

b. That if the dog is outside of the condominium unit, they will at all times keep the dog on a leash and will at all times maintain control of the dog.

c. That if their dog accidentally defecates on association property, they will immediately collect and dispose of the waste.

d. That they are personally responsible and liable for any accidents or damages/injuries done by the dog and that they will indemnify and hold the Respondent harmless and defend Respondent for such claims that may or may not arise against Respondent.

e. That they will not allow the dog to be a nuisance in the community or disrupt the peaceful enjoyment of other residents. A nuisance will specifically include, but is not limited to, loud barking and any show of aggressive behavior, including, but not limited to, aggressive barking, growling or showing of teeth regardless of whether the dog is inside or outside of the unit.

f. That they will abide by all community rules and regulations of Respondent with which all residents are required to comply, including but not limited to submitting to the required pre-lease/lease renewal interview, and completing a lease renewal application and providing his updated information to Respondents and submitting to Respondent a newly executed lease compliant with Florida law and the Declaration of Condominium. The pre-lease/lease renewal interview will be conducted at Complainants' unit at a time and date agreeable to the parties but not to exceed 30 days from the date of this agreement.

g. If Complainants' current dog "Evie" should die or otherwise cease to reside in the unit, Complainants agree to replace the dog, if at all, with a dog that is in full compliance with the association's Declaration

of Condominium or Rules and regulations in force at that time and will allow the dog to be inspected by Respondent for approval.

3. Respondent agrees to ensure, to the best of their abilities, that their policies, performance and conduct shall continue to demonstrate a firm commitment to the Florida Civil Rights Act of 1992, as amended, Sections 760.20-37, Florida Statutes, (2012), and the Civil Rights Act of the United States (42 U.S.C. 1981 and 1982 and 3601 et.seq).
[sic]

4. Respondent agrees that it, its Board members, employees, agents and representatives shall continue to comply with Title VIII of the Civil Rights Act of 1968, as amended by The Fair Housing Act, which provides that Respondents shall not make, print or publish any notice, statement of advertisement with respect to the rental or sale of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, national origin, sex, disability or familial status. Respondent also agrees to continue to comply with Title VIII of the Civil Rights Act of 1968, as amended by The Fair Housing Act, which prohibits Respondents from maintaining, implementing and effectuating, directly or indirectly, any policy or practice, which causes any discrimination or restriction on the bases of race, color, religion, national origin, sex, disability or familial status. Respondents also agree to continue to comply with Section 504 of the 1973 Rehabilitation Act.

5. It is understood that this Agreement does not constitute a judgment on the part of the Commission that Respondents did nor did not violate the Fair Housing Act of 1983, as amended, Section 760.20-37, Florida Statutes (2011). The Commission does not waive its rights to process any additional complaints

against the Respondent, including a complaint filed by a member of the Commission.

6. It is understood that this Agreement does not constitute an admission on the part of the Respondent that they violated the Fair Housing Act of 1983, as amended, or Section 504 of the 1973 Rehabilitation Act.

7. Complainants agree to waive and release and do hereby waive and release Respondent from any and all claims, including claims for court costs and attorney fees, against Respondent, with respect to any matters which were or might have been alleged in the complaint filed with the Commission or with the United States Secretary of Housing and Urban Development, and agree not to institute a lawsuit based on the issues alleged in this complaint under any applicable ordinance or statute in any court of appropriate jurisdiction as of the date of this Agreement. Said waiver and release are subject to Respondent's performance of the premises and representations contained herein.

8. The Commission agrees that it will cease processing the above-mentioned Complaint filed by Complainants and shall dismiss with prejudice said complaint based upon the terms of this Agreement.

9. Respondent agrees to waive and release any and all claims, including claims for court costs and attorney fees, against Complainants with respect to any matters which were or might have been alleged in the complaint filed with the Commission or with the United States Secretary of Housing and Urban Development, and agree not to institute a lawsuit based on the issues alleged in these complaints under any applicable ordinance or statute in any court of appropriate jurisdiction as of the date of this Agreement. Said waiver and release are subject to Complainants' performance of the

premises and representations contained herein.

10. The parties agree in any action to interpret or enforce this agreement the prevailing party is entitled to the recovery from the non-prevailing party its reasonable attorney's fees and costs, including attorney's fees and costs of any appeal.

FURTHER, the Parties hereby agree that:

This Agreement may be used as evidence in any judicial, administrative or other forum in which any of the parties allege a breach of this Agreement.

1. Execution of this Agreement may be via facsimile, scanned copy (emailed), or copies reproduced and shall be treated as an original.

2. This Conciliation Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties have caused this Conciliation Agreement to be duly executed on the last applicable date, the term of the agreement being from the last applicable date below for so long as any of the rights or obligations described here in continue to exist.

10. Eric Gross and Nora Gross signed the Agreement on October 24, 2013. Ms. Orrino, as President of Respondent, signed the Agreement on September 9. The Commission's facilitator, Mr. Burkes, signed the Agreement on October 24. The Commission's housing manager, Regina Owens, signed the Agreement on October 30, and its executive director, Michelle Wilson, signed the Agreement on November 4. The effective date of the Agreement is

November 4, the last day it was signed by a party, and the clock started running for compliance.

11. Petitioners failed to abide by the Agreement in the following ways:

a. Petitioners failed to submit an updated lease agreement that conformed to Respondent's rules and regulations.

b. Petitioners failed to submit to the required pre-lease/lease renewal interview within 30 days of signing the Agreement.

c. Petitioners failed to complete a lease renewal application.

d. Petitioners failed to provide updated information to Respondent.

12. It is abundantly clear that Eric Gross and Ms. Orrino do not get along. However, that personal interaction does not excuse non-compliance with an Agreement that the parties voluntarily entered. Each party to the Agreement had obligations to perform. Respondent attempted to assist Petitioners with their compliance by extending the time in which to comply, and at one point, waving the interview requirement. Petitioners simply failed to comply with the Agreement.

13. Petitioners failed to present any credible evidence that other residents in the community were treated differently. Mr. Gross insisted that the Agreement had sections that Petitioners did not agree to. Mr. Burkes was unable to shed any

light on the Agreement or the alleged improprieties that Mr. Gross so adamantly insisted were present.

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.

15. Florida's Fair Housing Act (the "Act") is codified in sections 760.20 through 760.37, Florida Statutes. Section 760.23 provides in relevant 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. Petitioners have the burden of proving by a preponderance of the evidence that Respondent violated the Act by discriminating against Petitioners based on a disability as set forth in their complaint. § 120.57(1)(j) and 760.34(5), Fla. Stat. Petitioners failed to meet their burden in this case.

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, Petitioners must first make a prima facie case for discrimination.

18. A prima facie showing of housing discrimination simply requires the Petitioners to show that they were ready, able, and willing to rent the property, that they were a member of a protected class, and that their application for renting the house was denied. See Soules v. U.S. Dep't of Housing and Urban Dev., 967 F.2d 817, 822 (2d Cir. 1992).

19. The burden of proof would then shift to the Respondent to show that the actions it took were based on a legitimate, nondiscriminatory reason. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 515 (1993). The burden would then shift back to Petitioners to prove that the Respondent's stated rationale was mere pretext and that the real reason for its action was discrimination.

20. Petitioners have established that Mr. Gross is a member of a protected class in that he has a disability. However, Petitioners have failed to establish that other individuals, who are not members of a protected class, were treated differently. Credible testimony was received that Respondent required the same renewal information, application, and lease from other residents.

21. Even if Petitioners had proved their prima facie case, the remainder of the evidence in this case fails to support a claim of discrimination by Respondent. There is no evidence that discrimination occurred or that Petitioners were treated differently because of Mr. Gross's disability.

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 Petitioners in its entirety.

DONE AND ENTERED this 17th day of March, 2015, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of March, 2015.

ENDNOTES

^{1/} Petitioners' Exhibit 1 was taken under advisement during the hearing.

^{2/} An Endnote in that Post-Hearing Order adjusted the actual date for filing to the close of business on Monday, February 23, as February 22 was a Sunday.

^{3/} During the course of the hearing, Petitioners stated that Mrs. Forton had recently passed away. This information has no bearing on this proceeding.

^{4/} See Section 13, Leasing of Units; Respondent's Exhibit 1.

^{5/} Although never defined, the undersigned believes this is the U.S. Department of Housing and Urban Development. HUD provides for citizens to file a housing discrimination complaint that will be reviewed to determine if a violation of the Fair Housing Act has occurred.

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.