

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KEVIN AND CATHERINE HANNON,

Petitioners,

vs.

Case No. 15-0223

HORSE CREEK ESTATES HOMEOWNERS
ASSOCIATION, INC.; THE COMPASS
MANAGEMENT GROUP, LLC; AND DALE
MULLIN,

Respondents.

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on March 11, 2015, in Naples, Florida, before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (Division).

APPEARANCES

For Petitioners: Catherine Hannon, pro se
Kevin Hannon, pro se
3452 Atlantic Circle
Naples, Florida 34119

For Respondents: Michael E. Riley, Esquire
GrayRobinson, P.A.
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Tallahassee, Florida 32302

STATEMENT OF THE ISSUE

Whether Respondents, Horse Creek Estates Homeowners Association, Inc. (HCE); The Compass Management Group, LLC; and

Dale Mullin, HCE president, discriminated against Petitioners, Kevin and Catherine Hannon, in violation of the Florida Fair Housing Act.

PRELIMINARY STATEMENT

In September 2014, Mr. and Mrs. Hannon filed a housing discrimination complaint with the Florida Commission on Human Relations (Commission). The Commission investigated, and on December 5, 2014, entered a Notice of Determination of No Cause (Notice). The Notice was sent to Petitioners via certified mail.^{1/} On January 6, 2015, Petitioners filed a Petition for Relief with the Commission, and on January 14, the Commission referred the case to the Division.

On March 3, Respondents' Motion in Limine was filed (Motion). This Motion set forth multiple areas of concerns that Respondents did not want Petitioners to explore during the hearing. On March 4, Petitioners filed a Motion to Report Harassment and Objecting to Motion in Limine (Objection). The Motion and Objection were taken under advisement at the hearing. The Motion and Objection are denied.^{2/}

At the final hearing, Petitioners called Mrs. Hannon to testify. Petitioners' Composite Exhibits 1 and 2 were admitted into evidence. Respondents called Mr. Mullin, Daniel Sussman, and Aubrey Nolen to testify on their behalf. Respondents'

Exhibits 1 through 9, 11, 13, 14,^{3/} and 16 through 18^{4/} were admitted into evidence.

At the end of the hearing, Respondents' counsel advised that a transcript of the final hearing would be ordered. The parties were advised that any post-hearing submissions would be due on the tenth day following the filing of the transcript. Petitioners requested seven additional days in which to submit their proposed recommended orders (PROs). The request was granted and the PROs were due 17 days after the filing of the transcript.

The Transcript was filed on April 7, 2015. On April 7, a Notice of Filing was issued informing the parties that the "proposed orders . . . must be filed with the Division on or before the close of business on April 24."

The parties timely submitted their PROs, which have been considered in the preparation of this Recommended Order.

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

On May 4, 2015, Petitioners filed an "Exception Request for Award of Attorney Fee and Dismissal." Petitioners' pleading contained testimony or evidence that was not subjected to cross-examination. That pleading has not been considered.

On May 6, 2015, Respondents' Motion to Strike as Impertinent and Scandalous Petitioners' "Exception Request for Attorney Fee Award and Dismissal" was filed with the Division. In light of the ruling that Petitioners' "Exception" pleading has not been considered, so too this particular pleading has not been considered in the rendering of this Recommended Order.

Unless otherwise stated, all statutory references are to the 2014 codification of the Florida Statutes.

FINDINGS OF FACT

PARTIES

1. Petitioners are a married couple with children, living in Naples, Florida. During the applicable period, Petitioners owned a home located at 442 Saddlebrook Lane (Saddlebrook home). They currently reside in their new home at 3452 Atlantic Circle.

2. Petitioners did not allege they are members of a protected class and they were subjected to discrimination based on that protected classification. Petitioners alleged that Respondents violated the Florida Fair Housing Act, as amended in the manner specifically described:

- Respondents creates [sic] different terms and standards for different tenants and do not have a fair screening process;
- Respondents continue to discriminate against proteted [sic] classes in order to "create" their desired All White Neighborhood;
- Respondents failed to provide a "written adverse action notice as required by the Federal Trade Commission (FTC)

3. Further, Petitioners alleged as the "ultimate facts" and "entitlement to relief" as:

Respondents did discriminate when they unfairly denied the tenants based on highly inaccurate information. They failed to use a fair screening process and intentionally [sic] delayed the approval process. This action caused and created unnecessary stress and a considerable amount of time, effort and financial burden & expenses to prove tenant was not a convicted felon. Respondents have never taken any responsibility for their actions, apologized or expressed remorse. They have manipulated the facts and benefit by having unlimited [illegible] I am seeking justice.^{5/}

4. Petitioners claimed their tenants were subjected to discrimination based on their protected class: race and familial status. As set forth below, such discrimination was not established.

5. Respondent HCE is a Florida not-for-profit corporation. According to Mr. Mullin, HCE represents 109 lots, including 103 homes, four empty lots and one lot being developed.^{6/} Since its inception, HCE has, through its members, approved its articles of incorporation and bylaws, and amended its declaration of condominium in accordance with Florida law.

6. Respondent Mr. Mullin is currently president of HCE's Board of Directors (Board). Mr. Mullin has been on the Board since 2010 and has served as its president for the last two years. Mr. Mullin resides in the community. The undersigned

finds that Mr. Mullin was listed as a Respondent in his official capacity as the Board's president, and not in his individual capacity.

7. Respondent Compass Management Group, LLC (Compass), is a property management company which supervises approximately 130 different properties in Naples and the surrounding area, including HCE. Compass is responsible for the accounting, repairing property, and processing sales and leases for the various properties it manages. Compass processes the various lease applications, but does not make any decisions on which tenants are approved or denied; those decisions are made by the individual property associations.

SCENARIO

8. In 2014, Petitioners were in the process of building a new home in another Naples neighborhood. Petitioners determined that if they could not sell the Saddlebrook home in order to obtain the necessary financing for their new home, they would list the Saddlebrook home as rental property.

9. Petitioners engaged Chris Lecca as their real estate rental agent for the Saddlebrook home. Mr. Lecca listed the Saddlebrook home on the MLS (multiple listing services).

10. Nhuchau Hong Presti, who is also a real estate agent, saw the MLS rental listing for the Saddlebrook home. She, along with her husband Scott Presti, completed and executed the Compass

application checklist (2 pages), and the "Estates at Horse Creek" lease application^{7/} (21 pages, which included a copy of the Florida Residential Landlord and Tenant Act) on June 27, 2014. This lease application included a notice that "[an] interview with the Board is required prior to approval."^{8/}

11. The Saddlebrook home lease term was August 1, 2014, through March 31, 2015. The Prestis submitted their completed lease application to Mr. Lecca. Prior to submitting the lease application to Compass, Mr. Lecca performed a background check on Mr. and Mrs. Presti. Mr. Lecca found the Prestis to have "decent or good credit." The background check also provided information about an old arrest of Mr. Presti. The arrest was over ten years old and was not a felony. Mr. Lecca could not envision any reason for the Prestis' application to be denied.

12. Mr. Lecca submitted the Prestis' lease application to Compass on Tuesday, July 1, 2014, 30 days before the lease was to begin. Compass forwarded the lease application to the HCE Board for its review and determination.

13. According to HCE bylaws, a decision on the lease application had to be announced within 15 days of the application.^{9/} On Wednesday, July 9, Compass sent a letter to Petitioners notifying them that the Prestis' lease application was denied. The stated reason was:

(1) This application is being denied do [sic] to results that were returned on the background/credit check for the applicants. Attached is a copy of the Horse Creek Estates "Regulatory Criteria for Disapproving a Rental Lease". . [sic]

14. The Board initially based its decision on information found in the "REAL-ID Incorporated" documentation, which reflected Mr. Presti's arrest and Mrs. Presti's financial foreclosure actions. Once the Board was advised of the circumstances, the Board exercised its right to interview the Prestis. As a result of that personal interview, the lease application was approved, and the Prestis moved into the Saddlebrook home.

15. Compass' client services manager, Ms. Nolen, advised Mr. Lecca that the Board's basis for the denial was Mr. Presti's felony conviction and Mrs. Presti's financial foreclosure actions.

16. Shortly thereafter, Petitioners engaged an attorney who requested the Board to reconsider the denial decision. On Monday, July 14, Mr. and Mrs. Presti were asked to attend an in-person interview with the Board or members of the Board. Although the Board (through Compass) offered to meet with the Prestis on Thursday, July 17, a conflict arose and the interview was re-scheduled to Friday, July 18.

17. On July 18, Mr. and Mrs. Presti, accompanied by Mr. Lecca, arrived at the interview location, Mr. Mullin's residence. Mr. Mullin declined to allow Mr. Lecca to attend the meeting, stating that Mr. Lecca's presence wasn't necessary.

18. Board members, Mr. Mullin and Mr. Sussman, interviewed the Prestis. Following this 30 to 45 minute interview, the Board reversed its denial and approved the Prestis' lease application. Mr. Mullin telephoned Mr. Lecca and told him that the lease application was approved. The Compass approval letter was issued on Tuesday, July 22.

19. The Prestis moved into the Saddlebrook home on or about August 1, the date the lease began. They have paid their monthly rental fee timely and there have been no complaints.

20. No testimony or evidence was presented that demonstrated any type of discrimination was the motivation for the initial denial of the lease application.

CONCLUSIONS OF LAW

21. 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.

22. 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.

23. 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.

24. 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; that their application for renting the house was denied; and that the house remained available for lease. See Soules v. U.S. Dep't of Housing and Urban Dev., 967 F.2d 817, 822 (2d Cir. 1992).

25. Petitioners are not within a protected class as contemplated by the Act.

26. Petitioners have the burden of proving by a preponderance of the evidence that Respondents violated the Act

by discriminating against Petitioners based on the tenants' race. §§ 120.57(1)(j) and 760.34(5), Fla. Stat. Petitioners failed to meet their burden in this case.

27. On March 24, 2015, Respondents filed a Motion for Attorney's Fees Pursuant to Section 57.105, Florida Statutes against Petitioners. Therein Respondents contend that Petitioners "knew or should have known that a claim or defense was not supported by the material facts necessary to establish the claim or would not be supported by the application of the then-existing law." Further, Respondents rely on sections 760.23(1) and (2). The undersigned finds that Petitioners believed they had a discriminatory claim of action.

28. Further, section 760.35 provides in pertinent part:

[I]f the administrative law judge finds that a discriminatory housing practice has occurred . . . 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). (emphasis added.)

29. In the instant case, the undersigned did not find that a discriminatory housing practice occurred.

30. It should be noted that Mrs. Hannon was very credible. However, she did not carry the burden of proof to establish that discrimination actually occurred. The initial denial was made in

a timely fashion. The reconsideration and ultimate lease approval enabled the Prestis to move into the Saddlebrook home on the original rental date.

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, and denying Respondent's request for attorney's fees.

DONE AND ENTERED this 8th day of May, 2015, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of May, 2015.

ENDNOTES

1/ The date of Petitioner's receipt of the Notice was never established.

2/ It is noted that the undersigned does not have jurisdiction over the practice of law.

3/ Respondents' Exhibit 14 is Mrs. Hannon's February 11 deposition. Therein, at page 132, Respondents' counsel directed the court reporter "to mark all these exhibits and attach them to the deposition transcript." None of the deposition exhibits were contained in Exhibit 14.

4/ In lieu of live testimony, the depositions of Christopher Lecca, Scott Presti and Nhuchau Hong Presti were admitted into evidence as Exhibits 16, 17, and 18 respectively. Each deposition transcript reflected that exhibits with various numbers for identification were provided to the deponents. However, only Mr. Lecca's deposition (Exhibit 16) contained one attached exhibit number 14, which was admitted separately at hearing as Respondents' Exhibit 8.

In Exhibit 18, the parties agreed that several references to "Mr. Hannon" should be to "Mr. Mullin."

5/ Please see the Notice of Hearing issued January 29, 2015.

6/ It is noted that the number of homes and lots does not equal the number of units Mr. Mullin described.

7/ The lease application reflects that the starting point of the lease is "8/1/14" and the ending point is "3/31/15." However, in the "NOTE" section, the lease term is a "minimum of seven (7) months, 1 time per year." The term of the lease is for eight months.

8/ Section 3.23.1 of the Declaration of Covenants, Restrictions and Easements for Horse Creek Estates provides the following:

LEASES. All leases of Lots must be in writing, and a copy of any Lease shall be delivered to the Board of Directors prior to the commencement of the Lease. The provisions of this Declaration shall be deemed expressly incorporated into the Lease of any Lot. An

Owner may lease a Lot only in accordance with the following provisions:

3.23.1 An Owner intending to lease his Lot must give the Board, or its designee, written notice of such intention and a copy of the proposed Lease at least thirty (30) days prior to the proposed transaction, together with the name and address of the proposed tenant, and such other information as the Board may reasonably require. The Board, or its designee, may require the personal appearance of any tenant, their spouse, and any other potential occupant, as a condition of approval. (emphasis added).

^{9/} Section 3.23.3 of the Declaration of Covenants, restrictions and Easements for Horse Creek Estates provides the following:

After the required notice, application fee and all information or appearances requested have been provided, the Board, or its designee, shall approve or disapprove the proposed Lease within fifteen (15) days. If the Board, or its designee, neither approves nor disapproves within the time state above, such failure to act shall be deemed the equivalent of disapproval. In the event the Board fails to approve the Lease, the Lease may not be entered into, and shall not be effective. The Board may consider the status of paid or unpaid assessments in determining whether a lease should be approved.

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.