

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DIANA VARONA,

Petitioner,

vs.

Case No. 15-1720

HIALEAH HOUSING AUTHORITY,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on August 5, 2015, and continued to and concluded on August 27, in Kissimmee, Florida, before Administrative Law Judge, Lynne A. Quimby-Pennock, of the Division of Administrative Hearings (Division). Respondent participated in the hearing by telephonic conference call from Hialeah, Florida.

APPEARANCES

For Petitioner: Diane Varona, pro se
12006 Dunmore Court
Orlando, Florida 32821

For Respondent: S. Nicole Bates, Esquire
Hialeah Housing Authority
75 East 6th Street
Hialeah, Florida 33010

STATEMENT OF THE ISSUE

Whether Respondent, Hialeah Housing Authority (the Housing Authority), discriminated against Petitioner, Diana Varona, in

violation of the Florida Fair Housing Act (the Act), and, if so, the relief to which Petitioner is entitled.

PRELIMINARY STATEMENT

The Florida Commission on Human Relations (FCHR) and the Federal Department of Housing and Urban Development (HUD) administer the Act, sections 760.20 through 760.37, Florida Statutes (2015). By letter dated August 26, 2013, Petitioner was notified that the Housing Authority was terminating her participation in the Section 8 Housing Choice Voucher Program (section 8 program), for two reasons: (1) Documentation evidencing Petitioner's arrest on April 30, 2013, for alleged violent criminal activity; and (2) A determination that two unauthorized individuals had been living in Petitioner's rental unit. Petitioner requested an administrative hearing regarding the termination of her housing assistance.

Petitioner requested a continuance of the Housing Authority's administrative hearing. The Housing Authority granted her request, and the administrative hearing was re-scheduled to early December 2013.

By letter dated December 9, 2013, the Housing Authority notified Petitioner that following the administrative hearing, at which Petitioner was represented by counsel, and careful consideration of the testimony and documentation, Petitioner's termination from the section 8 program was upheld.

On November 10, 2014, Petitioner executed a housing discrimination complaint with the Florida Commission on Human Relations (Commission).^{1/} The Commission investigated, and on February 12, 2015, entered a Notice of Determination of No Cause (Notice). The Notice was sent to Petitioner via certified mail. On March 23, Petitioner filed a Petition for Relief with the Commission, and the Commission referred the case to the Division that same day.

At the final hearing, Petitioner testified on her own behalf. Petitioner's 21 exhibits^{2/} were admitted into evidence over objection. Respondent presented the testimony of Magalys Forte, Paulette Smith, Rene Gutierrez, Joel Bonilla, and Yinet Companioni. Respondent's Exhibits A through O were admitted into evidence.^{3/}

At the end of the hearing, Respondent's counsel confirmed that a transcript of the final hearing would be ordered. Petitioner asked for 15 days following the filing of the transcript in which to file proposed recommended orders (PROs). The request was granted.

The Transcript was filed on September 21, 2015, and the undersigned immediately issued a Notice of Filing Transcript (Notice). That Notice confirmed that the "proposed orders in this matter must be filed with the Division of Administrative Hearings by close of business on or before October 6, 2015."

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

Unless otherwise stated, all statutory references are to the 2015 codification of the Florida Statutes.

FINDINGS OF FACT

1. Petitioner is a black Hispanic female. She is a former resident of an apartment complex administered by the Housing Authority.

2. The Housing Authority is a public housing authority that administers the section 8 program within Miami-Dade County, Florida, pursuant to 42 U.S.C. section 1437f.

3. Under the section 8 program, the Housing Authority uses funds, supplied by HUD, to pay a percentage of the monthly rent on a leased "unit" directly to the landlord. The section 8 program tenant pays the balance of the monthly rent to the landlord. As part of the Housing Authority's program, each year section 8 participants must complete a personal declaration form. This form requires specific information about various aspects of the declarant and those family members authorized to participate in the program. The information includes the declarant's financial circumstances and other facts.

4. In or around January 2012, Petitioner moved into an apartment complex administered by the Housing Authority from

out-of-state. Petitioner and her two minor children were the only authorized occupants for the apartment.

5. Petitioner was diagnosed with ADHD (attention deficit hyperactivity disorder), bipolar disorder, and cancer in 2012 or 2013. She was scheduled for cancer surgery in July 2013, but had to cancel the surgery due to an unexpected addition to her family.

6. On July 22, 2013, Petitioner requested to break her lease when she reported to the Housing Authority what she considered to be "life-threatening" conditions in her apartment, as well as the harassment of her children when they played outside. Petitioner had to go up the Housing Authority's chain-of-command to get assistance; however, her apartment was inspected. As a result of the inspection, Petitioner's landlord advised the Housing Authority that there were additional people living in Petitioner's apartment.

7. Based on the landlord's observation of unauthorized persons living in the apartment, the Housing Authority instituted a fraud investigation.

8. Detective Gutierrez is a Hialeah police officer assigned to the Housing Authority as an investigator. Detective Gutierrez conducts investigations into alleged violations of section 414.39, Florida Statutes (fraud).

9. On August 13, 2013, Detective Gutierrez knocked on Petitioner's front door. Petitioner opened the door and engaged in a conversation with the detective. While standing at Petitioner's front door, Detective Gutierrez observed two adult males in Petitioner's apartment. Jose Varona, Petitioner's uncle, was released to Petitioner on July 24, 2013,^{4/} and was living in Petitioner's apartment. Lazaro Gomez, Petitioner's boyfriend, was also living in Petitioner's apartment.^{5/}

10. Once his conversation was completed, Detective Gutierrez returned to his office and reviewed Petitioner's section 8 personal declaration form. On the form, Detective Gutierrez noted that Petitioner stated that she had never been arrested. Detective Gutierrez researched police records and determined that Petitioner had, in fact, been arrested in April 2013 for making a threat against an individual. Additionally, Detective Gutierrez noted that Petitioner's stated income on the declaration form did not support the purchase of an automobile via a loan agreement.

11. On August 13, 2013, Petitioner submitted to the Housing Authority an incomplete application for a live-in aide to assist her. The Housing Authority's application is seven pages long and Petitioner failed to submit two pages that provided information from her treating physician.

12. The Housing Authority's process to determine whether to grant a live-in aide request involves a three step process: the verification that the requesting individual is disabled (meets the definition of a disabled person via a physician's confirmation); that the individual needs the assistance of another person (which is also determined by a physician's documentation); and that the live-in-aide qualifies as a live-in aide. On August 22, the Housing Authority denied Petitioner's application for a live-in aide, but notified her that she could supplement her request with additional documentation, including the doctor's verification. Petitioner did not supplement her application.

13. Petitioner also claimed she filed a request to allow a family member, Mr. Varona, to move in with her family. Petitioner discussed with the Housing Authority personnel about adding her uncle to her contract. However, the Housing Authority never received a written request for Mr. Varona to be added to Petitioner's voucher. It is the Housing Authority's policy that it does not add adult family members to a voucher contract except via marriage or legal guardianship. Although Petitioner holds the power of attorney for Mr. Varona, she is not his legal guardian.

14. Detective Gutierrez completed his investigation and filed his report with the Housing Authority. On August 26, the

Housing Authority notified Petitioner that her participation in the section 8 Housing Choice Voucher Program was terminated, effective September 30. The basis given for Petitioner's housing termination were listed as: engaging in criminal activity and failing to disclose it to the Housing Authority in her personal declaration in July 2013 (verification that Petitioner had been arrested on April 30, 2013); and allowing an unauthorized person to reside in the apartment.

15. Petitioner timely requested an administrative hearing regarding the termination of her housing voucher. The hearing was originally scheduled for October 30, 2013; however, on October 28, Petitioner requested a continuance of the hearing based on her physical condition. The request was granted and the hearing was continued to December 3.

16. In early November 2013, Petitioner asked the Housing Authority for a reasonable accommodation for an apartment with accessible features. The Housing Authority did not approve or deny this request, as it does not own the apartments, but offered to send her a list of accessible units known to the Housing Authority. Petitioner never contacted the Housing Authority for additional information.

17. Petitioner was represented by an attorney at the Housing Authority's December 3 hearing. As a result of this

hearing, Petitioner's termination of participation in the section 8 program was upheld.

18. That said, Petitioner failed to present any credible evidence that other residents in the community were treated differently.

CONCLUSIONS OF LAW

19. The Division has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

20. Petitioner has the burden of proving by a preponderance of the evidence that the Housing Authority violated the Act by discriminating against her. The Act is codified in sections 760.20 through 760.37. Section 760.23 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.

21. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary, 1201 (7th ed. 1999), or evidence that "more likely

than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000).

22. 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). If, however, the complainant establishes a prima facie case, the burden then shifts to the respondent to articulate some legitimate, nondiscriminatory reason for its action. If the respondent satisfies this burden, then the complainant must establish by a preponderance of the evidence that the reason asserted by the respondent is, in fact, merely a pretext for discrimination. See Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc., 3 F.3d 1472, 1476, n.6 (11th Cir. 1993), cert. denied, 513 U.S. 808 (1994) (fair housing discrimination cases are subject to the three-part test articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)).

23. There is no credible evidence in the record to support the allegation of discrimination based on Petitioner's race or disability. There is no evidence that Petitioner was discriminated against by the Housing Authority. Petitioner failed to meet her burden of demonstrating that the Housing Authority discriminated against her.

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 Petitioner in its entirety.

DONE AND ENTERED this 4th day of November, 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 4th day of November, 2015.

ENDNOTES

^{1/} At the top of the complaint form is the date October 22, 2014; however it appears that Petitioner executed and dated the complaint on November 10, 2014.

^{2/} Petitioner's exhibits were not clearly marked or paginated for ease of reference.

^{3/} Exhibits A, E and N were admitted over objection.

^{4/} Petitioner testified when Mr. Varona was released from federal prison, he was originally living with "his last child's mother." However, she (the child's mother) had Mr. Varona "Baker Acted" and Petitioner was "called [on] July 23rd, 24th . . . to take care of him."

^{5/} Petitioner testified that she was to have surgery in July 2013, that Mr. Gomez was living with her to help her with her cancer surgery, and that her July 2013 surgery was cancelled.

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.