

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JOAN VASSAR,

Petitioner,

vs.

Case No. 15-4724

CMP CHP SAN MARCOS LTD, OWNER,

Respondent.

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RECOMMENDED ORDER

A final hearing was conducted in this case on October 26, 2015, in Tallahassee, Florida, before Suzanne Van Wyk, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Charles Hobbs, II, Esquire  
Post Office Box 5908  
Tallahassee, Florida 32314

For Respondent: Joelle C. Sharman, Esquire  
Lewis, Brisbois, Bisgaard & Smith, LLP  
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STATEMENT OF THE ISSUE

Whether Respondent engaged in an unlawful discriminatory housing practice against Petitioner on the basis of her disability.

PRELIMINARY STATEMENT

On or about June 24, 2015, Petitioner filed a Housing Discrimination Complaint (Complaint) against CMP CHP San Marcos Ltd. (Respondent) with the Florida Commission on Human Relations (Commission) for investigation. According to the Complaint, Respondent failed to make reasonable accommodation for Petitioner's handicap, with the most recent date of discrimination occurring on December 1, 2014.

Following completion of its investigation, the Commission issued a Determination dated August 10, 2015, finding "reasonable cause does not exist to believe that a discriminatory housing practice has occurred." Petitioner timely filed a Petition for Relief (Petition) with the Commission.

On August 20, 2015, the Commission transmitted the Petition to the Division of Administrative Hearings (DOAH) for assignment of an administrative law judge to conduct an administrative hearing on the Petition. The administrative hearing was scheduled for October 26, 2015.

On October 6, 2015, Respondent filed a Motion to Exclude Evidence, which was granted after a telephonic hearing on the Motion. Respondent filed a Motion to Relinquish Jurisdiction and Dismiss Petition for Relief on October 19, 2015. On

October 22, 2015, Petitioner filed a Motion to Continue the final hearing. Both motions were denied, and the hearing commenced as scheduled.

At the final hearing, Petitioner testified on her own behalf and offered no exhibits. Respondent presented the testimony of Valerie Gosier-Coleman and introduced Respondent's Exhibits 1 through 6 and 9 into evidence.

The proceedings were recorded and a transcript was ordered. A one-volume Transcript was filed on November 24, 2015. The time established for filing post-hearing submissions was ten days following the date the Transcript was filed, or December 4, 2015. Respondent timely filed a Proposed Recommended Order which has been considered by the undersigned in preparing this Recommended Order. To date, Petitioner, who is represented by counsel, has neither filed a proposed recommended order nor requested an extension.

#### FINDINGS OF FACT

1. At all times relevant hereto, Petitioner, Joan Vassar, was an individual participant in a tenant-based voucher arrangement under the Section 8 Housing Program funded by the Department of Housing and Urban Development and administered by the Tallahassee Housing Authority (THA). Petitioner was a resident of The Lakes at San Marcos (The Lakes), an apartment

complex located at 4768 Woodville Highway in Tallahassee, Florida.

2. Respondent, CMP CHP San Marcos Ltd. (San Marcos), is the owner of The Lakes, which is managed by a company known as HSI.

3. Petitioner has been diagnosed with fibromyalgia and has suffered multiple strokes. Petitioner is disabled for purposes of the Fair Housing Act.

4. Beginning in August 2009, Petitioner rented apartment 1533 at The Lakes, a one-bedroom apartment on the third floor of building 15. Petitioner's rent was paid directly to San Marcos by THA pursuant to Petitioner's one-bedroom housing choice voucher.

5. Petitioner had difficulty climbing the stairs to her third-floor apartment and often took breaks at each landing to rest. There was no elevator at The Lakes as an alternative means of accessing the third floor of building 15.

6. By all accounts, Petitioner's tenancy at The Lakes was peaceful and without incident.

7. In 2011, Valarie Gosier-Coleman became the assistant manager of The Lakes. Petitioner described Ms. Gosier-Coleman as compassionate toward her. Ms. Gosier-Coleman occasionally disposed of Petitioner's garbage for her and retrieved Petitioner's mail.

8. In May 2014, Petitioner reported to Ms. Gosier-Coleman that her health had declined, that she would need a live-in caregiver, and that she wished to move to a two-bedroom, first-floor apartment.

9. On June 4, 2014, in response to Petitioner's request, Respondent informed Petitioner in writing that two two-bedroom, first-floor apartments--1311 and 1413--would become available beginning August 1, 2014.

10. Apartment 1413 was located in the building next to Petitioner's existing apartment, and Petitioner indicated she would accept that apartment.

11. HSI requires all occupants of an apartment to complete an application and be approved to rent. Petitioner brought her would-be caregiver to The Lakes to apply for apartment 1413. However, the caregiver was reticent to complete the financial information section of the application. Although she took the incomplete application with her when she left the office, the caregiver never submitted a completed application for the apartment.

12. Shortly thereafter, Petitioner was offered apartment 1116, a one-bedroom first-floor apartment. On July 16, 2014, Petitioner rejected that apartment, sight unseen, as "too far in the back of the complex."

13. On July 31, 2014, Petitioner renewed her lease for apartment 1533. At that time, she wrote to management, "I do not want a (2) bedroom apt. any place except where I specified for personal reasons. I have been here for 5 years and am very secure and familiar with my neighbors in my building . . . . Plus, my family lives in this same building on the first floor."<sup>1/</sup>

14. No other first-floor apartments became available at The Lakes between August and October 2014.

15. Shortly after renewing her lease, Petitioner informed HSI that she desired to leave The Lakes. Petitioner requested to break her lease, which Respondent allowed. Respondent refunded Petitioner's deposit in full.

#### CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to, and subject matter of, this proceeding. See §§ 120.569 & 120.57(1), Fla. Stat. (2015)<sup>2/</sup>; see also Fla. Admin. Code R. 60Y-4.016 & 60Y-8.001.

17. Florida's Fair Housing Act (the Act) is codified in sections 760.20 through 760.37, Florida Statutes.

18. Among other things, the Act brands certain actions "discriminatory housing practices." Under the Act, following an administrative hearing, the Commission has authority to make findings as to whether a "discriminatory housing practice" has

occurred. If such a finding is made, the Act further authorizes the Commission to issue an order "prohibiting the practice" and providing "affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs." § 760.35(3)(b), Fla. Stat.

19. The "discriminatory housing practices" prohibited by the Act include those described in section 760.23(2), which provides:

(2) It is unlawful to discriminate against any person in 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.

20. The language in section 760.23(2) is identical to the prohibition in the federal Fair Housing Act (FHA), found at 42 U.S.C. § 3604(b). Because section 760.23(2) is patterned after a federal law on the same subject, "it [should] be accorded the same construction as in federal courts to the extent the construction is harmonious with the spirit of the Florida legislation." Cf., Winn-Dixie Stores v. Reddick, 954 So. 2d 723, 728 (Fla. 1st DCA 2007) (discussing the same rule of construction in the context of the Florida Civil Rights Act of 1992, sections 760.01 through 760.11, Florida Statutes.), rev. denied, 967 So. 2d 198 (Fla. 2007).

21. Petitioner, as the party asserting the affirmative in this proceeding, has the initial burden of proof. See Balino v. Dep't of Health & Rehab. Servs., 348 So. 2d 349, 350 (Fla. 1st DCA 1977).

22. Petitioner has the burden of establishing facts to prove a prima facie case of discrimination. U.S. Dep't of Hous. & Urban Dev. v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990).

23. The three-part "burden of proof" pattern developed in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973), applies. Blackwell, 908 F.2d at 870. Under that test:

First, [Petitioner] has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if [Petitioner] sufficiently establishes a prima facie case, the burden shifts to [Respondent] to "articulate some legitimate, nondiscriminatory reason" for its action. Third, if [Respondent] satisfies this burden, [Petitioner] has the opportunity to prove by a preponderance that the legitimate reasons asserted by [Respondent] are in fact mere pretext.

Id. (citing Pollitt v. Bramel, 669 F. Supp. 172, 175 (S.D. Ohio 1987) (FHA claim)).

24. Discrimination under the Act and the FHA can occur upon "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a disabled person an] equal opportunity to use and enjoy a dwelling." § 760.23(9)(b), Fla. Stat.;



42 U.S.C. § 3604(f)(3)(B). In proving an alleged refusal to make a reasonable accommodation, Petitioner has the burden of showing that a proposed accommodation is reasonable. See Loren v. Sasser, 309 F.3d 1296, 1302 (11th Cir. 2002). To prevail on a claim of failure to accommodate under either the Act or the FHA, Petitioner must establish that: (1) she is handicapped within the meaning of the Act; (2) she requested a reasonable accommodation; (3) such accommodation was necessary to afford her an opportunity to use and enjoy her dwelling; and (4) Respondent refused to make the requested accommodation. See Philippeaux v. Apartment Inv. & Mgmt. Co., 598 Fed. Appx. 640, \*6-7 (11th Cir. 2015).

25. As explained by the Eleventh Circuit Court of Appeals in Schwarz v. City of Treasure Island, 544 F.3d 1201, 1226 (11th Cir. 2008):

The FHA's reasonable accommodation provision requires only those accommodations that "may be *necessary* . . . to afford *equal* opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B) (emphases added). The word "equal" is a relative term that requires a comparator to have meaning. In this context, "equal opportunity" can only mean that handicapped people must be afforded the same (or "equal") opportunity to use and enjoy a dwelling as non-handicapped people, which occurs when accommodations address *the needs created by the handicaps*. If accommodations go beyond addressing these needs and start addressing problems not caused by a person's handicap, then the handicapped person would receive

not an "equal," but rather a better opportunity to use and enjoy a dwelling, a preference that the plain language of this statute cannot support.

26. Petitioner proved the first three elements of a prima facie case of discrimination--she is disabled, she made a request for an accommodation in the form of a first-floor apartment, and said request was necessary for her to use and enjoy her dwelling, particularly the necessities of retrieving her mail and disposing of her garbage.

27. However, Petitioner did not prove that Respondent refused to accommodate Petitioner's request. To the contrary, the testimony and evidence demonstrated that San Marcos, through HSI, timely responded to Petitioner's request for accommodation and offered three different apartments to Petitioner in June and July 2014 to accommodate her needs.

28. In late July 2014, Petitioner narrowed her request for accommodation to a two-bedroom apartment in building 15 only. Petitioner is not entitled to the accommodation of her choice, but is entitled to only a reasonable accommodation. See Solodar v. Old Port Cove Lake Point Tower Condo. Ass'n, U.S. Dist. LEXIS 61680 \*13 (S.D. Fla. 2012) (citing Stewart v. Happy Herman's Cheshire Bridge, 117 F.3d 1278, 1286 (11th Cir. 1997)); Petty v. Terry Hammer d/b/a Park Drive Apts., Case No. 02-4051 (Fla. DOAH Jan. 30, 2003; Fla. FCHR July 10, 2003) ("Neither applicable

statutes nor caselaw has established that [Petitioner] can dictate the specifics of 'reasonable accommodation.'"). Under the facts sub judice, Petitioner's request for an apartment in building 15 was not reasonably necessary to accommodate her disability. Petitioner's personal reasons for wanting to remain in building 15 do not promote her request to the only "reasonable accommodation."

29. Assuming, arguendo, that Petitioner's request for a two-bedroom, first-floor apartment in building 15 was reasonable, Petitioner did not prove that Respondent refused to make that accommodation. The evidence showed that no first-floor unit became available to fulfill Petitioner's request between the date Petitioner made her request and the date she voluntarily terminated her lease with Respondent.

30. Because Petitioner failed to prove that Respondent refused to provide a reasonable accommodation for her disability, Petitioner failed to establish a prima facie case of housing discrimination.

31. In sum, Petitioner failed to prove her claim that Respondent discriminated against her in violation of the Act.

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 dismissing the Complaint and Petition for Relief.

DONE AND ENTERED this 22nd day of December, 2015, in Tallahassee, Leon County, Florida.



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SUZANNE VAN WYK  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of December, 2015.

ENDNOTES

<sup>1/</sup> Petitioner emphatically maintained throughout the hearing that she possessed a housing choice voucher for a two-bedroom apartment, and that, as such, she was wrongly denied a two-bedroom apartment in building 15. The record evidence did not support a finding that Petitioner ever held any housing choice voucher other than the one-bedroom voucher issued by THA in 2008. The record established that Petitioner did apply in 2013 to rent apartment 1511, a unit on the first floor of building 15. No evidence was introduced to corroborate Petitioner's hearsay statements that she was wrongly denied a lease for apartment 1511 in 2013.

<sup>2/</sup> References herein to the Florida Statutes are to the 2015 version, unless otherwise specified.

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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.