

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

OCTAVIA STEWART,

Petitioner,

vs.

Case No. 16-6867

HOLLY BERRY GIFTS, INC., AND
MIKE PRUSINSKI,

Respondents.

FINAL ORDER

D. R. Alexander, the assigned Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted a hearing in this case by video teleconferencing at sites in St. Petersburg and Tallahassee, Florida, on July 24, 2017.

APPEARANCES

For Petitioner: Octavia Stewart, pro se
Post Office Box 16763
St. Petersburg, Florida 33733

For Respondents: Lindsay M. Alvarez, Esquire
Robert A. Strickland, Esquire
Rywant, Alvarez, Jones, Russo
& Guyton, P.A.
109 North Brush Street, Suite 500
Tampa, Florida 33602-4159

STATEMENT OF THE ISSUE

The issue is whether Respondents violated section 70-176, Pinellas County Code of Ordinances (Code), as alleged in Petitioner's Housing Discrimination Complaint (Complaint).

PRELIMINARY STATEMENT

On October 13, 2015, Petitioner dual-filed her Complaint with the Pinellas County Office of Human Rights (County) and the United States Department of Housing and Urban Development (HUD) alleging that in 2015 Respondents violated the Pinellas County Human Rights Ordinance and federal Fair Housing Act by discriminating against her on the basis of race. Because the law enforced by the County is substantially equivalent to the Fair Housing Act, and the County has authority to enforce housing discrimination complaints in the area where the complaint arose, on November 12, 2015, HUD referred the matter to the County to take all further action in the matter.

After conducting an investigation, the County determined there was reasonable cause to believe that Respondents engaged in unlawful housing discrimination. Pursuant to a contract between the County and DOAH, the County referred the matter to DOAH to conduct a hearing.

Petitioner's former counsel was authorized to withdraw by Order dated May 26, 2017. Therefore, Petitioner represented herself and testified on her own behalf.^{1/} Petitioner's Exhibits 1 through 11 were accepted in evidence. To the extent they contain hearsay, they have been considered only if they supplement or explain other competent evidence. § 120.57(1)(c), Fla. Stat. Respondents presented the testimony of three

witnesses. Respondents' Exhibits 1 through 11 were accepted in evidence. Official recognition was taken of the federal Fair Housing Act codified at 42 U.S.C. § 3601, et seq. Finally, three motions filed by Respondents one working day before the hearing, and served on Petitioner by regular mail, were considered untimely.

A transcript of the hearing was not prepared. Respondents filed a proposed final order (PFO), while Petitioner filed a letter, with attachments. The PFO and letter, but not the attachments, have been considered in the preparation of this Final Order.

FINDINGS OF FACT

1. This case concerns an allegation that Petitioner, an African-American female, was the victim of housing discrimination in two respects. First, after complaining that her bathroom was not timely repaired by her landlord, Petitioner reported the problem to the City of St. Petersburg (City). When the manager came to repair the bathroom, Petitioner alleges he told her he "would throw her black ass out of here for calling the city on them." Second, Petitioner alleges she was told by the manager to move her car that was parked "for a few days" on the property, yet white tenants were allowed to keep a truck with "no tags and flat tires" on the premises for more than a

year. Because no evidence was presented on the second issue, only the first allegation will be addressed.

2. By way of background, from August 2012 until she was evicted in October 2015, Petitioner resided in an apartment complex at 3865 9th Avenue North, St. Petersburg, Florida. The complex is owned by Holly Berry Gifts, Inc., whose president is Holly Bonk. The complex is managed by Mike Prusinski. Bonk and Prusinski are employed full-time in other jobs, but devote attention to apartment matters when required. Bonk has a practice of leasing units to whoever is qualified, regardless of their race. She was drawn into this affair because of the alleged comments of her manager. It is fair to assume that Bonk has delegated responsibility to Prusinski to deal with maintenance issues and to evict tenants.

3. Pursuant to a one-year Residential Lease executed by Petitioner in July 2012, she was required to pay \$500.00 rent each month, due no later than the fifth day of the month. If rent was paid after the fifth day, a \$60.00 late charge was imposed. After the lease expired on July 31, 2013, Petitioner continued renting her apartment on a month-to-month basis, but all terms and conditions in the original lease still applied, including the same monthly rent and late payment provisions.

4. Prior to 2015, Petitioner was periodically late in paying her rent. For the months of February, March, July, and

August 2015, she was either late paying her rent, or she did not pay the full amount. No rent was paid for September 2015. Despite Petitioner being in arrears throughout her tenancy, Prusinski "worked with" her because of her financial constraints, and according to Petitioner, he never demanded she pay the late charge.

5. On June 2, 2015, Petitioner sent a text message to Bonk complaining that her upstairs neighbor (a female) was playing loud music and was noisy, which interfered with Petitioner's enjoyment of her apartment. When the neighbor came to Petitioner's apartment to discuss the complaint, Petitioner opened the door and "maced" the neighbor in the face.

6. The neighbor filed a complaint with the police. Petitioner was arrested and charged with battery. In 2016, a jury convicted her of battery, and she was sentenced to 15 days in jail and placed on probation for 11 months.

7. According to Prusinski, the macing incident was the final straw that led him to begin the eviction process. Besides the macing incident, Prusinski explained that Petitioner "harassed" the air-conditioning crew that serviced the complex to the point they refused to provide further service unless they received a \$45.00 surcharge for each visit. He described Petitioner as being "hostile" towards him throughout her

tenancy, and he noted it reached the point where she would not answer the door half of the time when he knocked.

8. On August 14, 2015, a Fifteen Day Notice to Vacate the premises was personally served on Petitioner informing her that she must vacate the premises by August 31, 2015. An Eviction Notice was then obtained from the court. Before it was served on Petitioner, she changed the door locks, padlocked the circuit breaker box to her apartment, and moved out without notice to Respondents. Each of these actions violated the terms of her lease. Petitioner says she did this because she was "scared" that "Mike was coming over to throw her out," and a friend told her it was okay to change the locks. Prusinski was forced to call a locksmith to access the empty apartment and use bolt cutters on the padlock to restore electricity. In all, Petitioner still owes \$1,933.00 for past due rent, late charges, court costs, locksmith charges, and the cost of a bolt cutter.

9. There is no evidence that the eviction process was motivated by racial bias. The record shows that Prusinski has evicted four black tenants and eight white tenants for failing to pay their rent. Although Petitioner was upset that she had to relocate to new housing, she agrees there was justification for her eviction. A month after her eviction, Petitioner filed her Complaint. Petitioner says the Complaint was filed only to address issues other than her eviction.

10. Against this backdrop, the only allegation that requires resolution is an assertion by Petitioner that Prusinski directed a racial slur towards her when he was repairing her bathroom.^{2/} Due to a leak in the upstairs bathroom, Petitioner's bathroom developed multiple problems, which required repairs to the walls and ceiling and professional mold remediation. Although these problems were eventually resolved, they were not resolved as quickly as Petitioner desired. Therefore, she reported the problem to the City. The City inspected her unit in early April 2015, determined that repairs were needed, and relayed its findings to Prusinski.

11. After receiving the City's report, Prusinski came to the apartment to repair the bathroom. Petitioner says an argument over the repairs ensued, and he told her he would "throw her black ass out of here for calling the city on them." Except for Petitioner's testimony, there is no other credible evidence to corroborate this statement. Notably, even though the incident occurred in early April 2015, Petitioner never reported it to Bonk (Prusinski's boss), she did not mention the incident at the eviction hearing, and she waited until after she was evicted to raise the issue with the County.

12. Prusinski denies making any racial comments to Petitioner and attributes her allegation to the hostile relationship between the two and her eviction in September 2015.

Having considered the record as a whole, Prusinski's testimony is accepted as being the most credible on this issue.

Ironically, Petitioner sometimes used the term "black ass" when referring to herself in text messages sent to Bonk, and during the hearing, she sometimes referred to herself as a "black ass."

CONCLUSIONS OF LAW

13. The undersigned has jurisdiction over this matter pursuant to section 120.65(6), Florida Statutes, and a contract between DOAH and the County.

14. Division 3, chapter 70, Code of Ordinances, governs housing and public accommodation complaints. Section 70-147(b) provides that "the Florida Administrative Procedures [sic] Act (F.S. ch. 120) governs hearings under this section." Subsection (f) further provides that the "administrative law judge shall issue a final order within 30 days of the hearing conducted under this section. The final order issued by the administrative law judge shall be the final agency action under this section." The Code provides that if the administrative law judge determines that the respondent has engaged in a discriminatory housing practice, he may order a wide range of relief to the complainant. See § 70-148, Code of Ordinances. There is no provision for awarding attorney's fees incurred by the prevailing party.

15. In a chapter 120 hearing, the case is considered de novo by the undersigned based on the facts and evidence presented at the hearing. § 120.57(1)(k), Fla. Stat. There is no presumption of correctness that attaches to the preliminary determination of the County. See Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 785 (Fla. 1st DCA 1981).

16. Petitioner has the burden of proving by a preponderance of the evidence that Respondents committed an unlawful housing discrimination practice. See § 120.57(1)(j), Fla. Stat. See also U.S. Dep't of Hous. & Urban Dev. v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990) (Petitioner has the burden of establishing facts to prove a prima facie case of housing discrimination).

17. Section 70-176 makes it an unlawful housing discrimination practice for any person to "make unavailable or deny a dwelling to any person because of race" or to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling . . . because of race."

18. The Complaint alleges that after Petitioner reported an unrepaired bathroom to the City, Prusinski "made the statement that he would throw her black ass out of here for calling the city on them." Presumably, Petitioner is alleging that this comment, based on race, interfered with her use and

enjoyment of a housing right under the Code, and if proven, would constitute a violation of the Code.

19. Assuming that directing a crude comment to a member of a protected class constitutes a violation of section 70-176, Petitioner has failed to establish by credible evidence that Prusinski made the comment, as alleged. Therefore, a case of discrimination has not been established, and Petitioner's Complaint must be dismissed.

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that Petitioner's Complaint of Housing Discrimination is dismissed, with prejudice.

DONE AND ORDERED this 15th day of August, 2017, in Tallahassee, Leon County, Florida.



D. R. ALEXANDER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of August, 2017.

ENDNOTES

^{1/} Without prior notice, at the beginning of the hearing, Petitioner requested that the undersigned telephone a number of individuals who could corroborate her claims. The request was denied.

^{2/} At hearing, Petitioner testified that on an undisclosed date in 2015, Prusinski sent her a text message that called her a derogatory name. However, Prusinski denies that he did, and there is no other evidence to corroborate Petitioner's assertion. This probably accounts for the fact that the Complaint, drafted by her former attorney, does not include this allegation.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL APPEAL

Any party who is adversely affected by this Final Order is entitled to judicial review by filing a petition for writ of certiorari in the circuit court of the Sixth Judicial Circuit in and for Pinellas County, Florida, within 30 days of the date of this Final Order. § 70-147(g), Code of Ordinances.