

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EVERDAN SALES CORREIA,

Petitioner,

vs.

Case No. 17-2569

ST. MONICA GARDENS, INC.,

Respondent.

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RECOMMENDED ORDER

On July 6, 2017, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by videoconference in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Everdan Sales Correia, pro se
Apartment 217
3425 Northwest 189th Street
Miami Gardens, Florida 33056

For Respondent: Thomas H. Courtney, Esquire
J. Patrick Fitzgerald & Associates, P.A.
110 Merrick Way, Suite 3-B
Coral Gables, Florida 33134

STATEMENT OF THE ISSUE

The issue is whether Respondent has unlawfully discriminated against Petitioner on the basis of his national origin and in retaliation for his opposing discriminatory practices in connection with his rental of an apartment, in

violation of the Florida Fair Housing Act, section 760.23(2), Florida Statutes.

PRELIMINARY STATEMENT

By a Housing Discrimination Complaint dated October 25, 2016 (Complaint), Petitioner claimed that he is Brazilian and resides at St. Monica Gardens, an 84-unit apartment complex in Miami Gardens owned by Respondent and managed by Catholic Housing Management. The Complaint alleges that the onsite property manager, Isabela Noriega, who is Cuban, treats Cuban residents preferentially over Petitioner on the basis of national origin. The Complaint alleges that Ms. Noriega dismisses Petitioner's complaints. In particular, the Complaint alleges that Ms. Noriega barred Petitioner from the building lunchroom and issued a notice of lease violation in September 2016 after Petitioner complained about the food handling and the presence of an unauthorized person in the lunchroom. The Complaint alleges without examples of retaliation for Petitioner's complaints about Ms. Noriega's allegedly discriminatory conduct.

On March 31, 2017, the Florida Commission on Human Relations (Commission) entered a Notice of Determination (No Cause).

On May 1, 2017, Petitioner filed a Petition for Relief asserting largely the same allegations contained in the Housing Discrimination Complaint.

At the hearing, Petitioner called one witness, himself, and offered into evidence 12 exhibits: Petitioner Exhibits 1-7 and 9-13. Respondent called two witnesses and offered into evidence five exhibits: Respondent Exhibits 1-3 and 5-6. All exhibits were admitted for all purposes except Respondent Exhibits 2 and 3, which were not admitted for the truth.

The parties did not order a transcript. Respondent filed a proposed recommended order on July 13, 2017.

FINDINGS OF FACT

1. Petitioner was born in Brazil. He resides in an apartment in St. Monica Gardens in Miami Gardens, Florida. St. Monica Gardens provides housing subsidized by the U.S. Department of Housing and Urban Development (HUD) for low-income, elderly residents.

2. St. Monica Gardens is owned and operated by Respondent, which is a not-for-profit corporation, and managed by Catholic Housing Management, which is a management company owned by the Archdiocese of Miami, Inc. Catholic Housing Management manages 17 buildings accommodating over 2500 persons from all over the world.

3. Residents at St. Monica Gardens, including Petitioner, receive free lunches through the charitable offices of Catholic Charities of the Archdiocese of Miami, Inc. Petitioner has objected to the quality and operation of this free-food program. On one occasion, Petitioner complained that a food server used the same-colored gloves that are used to perform maintenance duties, and an unauthorized person was allowed to remain in the food-preparation and -service areas. However, these complaints do not establish that Catholic Charities fails to serve St. Monica Gardens residents safe food, lawfully prepared.

4. On September 16, 2016, Catholic Charities was conducting an annual verification audit of residents at lunch that day. Petitioner angrily confronted a Catholic Charities food-service worker, demanding that he be given immediate access to his free lunch. Other residents, mostly Cuban, objected to Petitioner's behavior, although, on this record, their objections appear to be based on Petitioner's discourtesy, not national origin.

5. Respondent conducted an informal investigation of the incident and issued a notice to Petitioner that this confrontational behavior was in violation of his lease. There is no evidence of any discrimination against Petitioner, nor is there any evidence that Respondent took any adverse action

against Petitioner or his lease or occupancy of his apartment at St. Monica Gardens.

6. Petitioner complained to HUD, but Respondent did not discriminate or take adverse action against Petitioner for this complaint either.

CONCLUSIONS OF LAW

7. DOAH has jurisdiction of the subject matter.
§§ 120.569 and 120.57(1), Fla. Stat. (2017).

8. Section 760.23 provides:

(1) It is unlawful to refuse to . . . rent after the making of a bona fide offer, to refuse to negotiate for the . . . rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.

(2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of . . . 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.

9. Petitioner bears the burden of proving the material allegations by a preponderance of the evidence. Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990); § 120.57(1)(j).

10. Section 760.23 is part of Florida's Fair Housing Act. § 760.20. As the state counterpart to the Federal Fair Housing Act Amendments, the Florida act is construed consistently with federal law. Fair Hous. Ctr. of the Greater Palm Beaches, Inc.

v. Sonoma Bay Cmty. Homeowners Ass'n, 141 F. Supp. 3d 1321, 1329 n.1 (S.D. Fla. 2015) (citing Dornbach v. Holley, 854 So. 2d 211, 213 (Fla. 2d DCA 2002)).

11. On the present facts, a notice of a lease violation for a lunchroom disturbance created by a resident is not discriminatory. Compare Soto v. City of West Chicago, 2010 U.S. Dist. LEXIS 123195 (N.D. Ill. 2010) (enforcement of land-use ordinances not discriminatory). Additionally, such a notice of a lease violation appears to have had no consequence, so it does not constitute a denial of a dwelling within the meaning of section 760.23(1) or alteration in the terms, conditions, or privileges of the rental of a dwelling, or alteration of the provision of services or facilities in connection with the rental of a dwelling, within the meaning of section 760.23(2).

RECOMMENDATION

It is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief filed on May 1, 2017.

DONE AND ENTERED this 2nd day of August, 2017, in
Tallahassee, Leon County, Florida.



Robert E. Meale
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of August, 2017.

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.