

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JEAN RATH,

Petitioner,

vs.

Case No. 17-4227

PERRY CARRELL,

Respondent.

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RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings for final hearing by video teleconference on January 24, 2018, at sites in Tallahassee and Port St. Lucie, Florida.

APPEARANCES

For Petitioner: Jean Rath, pro se  
422 Southeast Naranja Avenue  
Port St. Lucie, Florida 34983

For Respondent: Glenn J. Webber, Esquire  
Glenn J. Webber, P.A.  
101 Southeast Ocean Boulevard, Suite 203  
Stuart, Florida 34994

STATEMENT OF THE ISSUES

Whether Respondent Perry Carrell ("Respondent") failed to provide reasonable accommodations for Petitioner Jean Rath's ("Petitioner") disability and discriminated against Petitioner

because of her disability in violation of Florida's Fair Housing Act; and, if so, the relief that is appropriate.

PRELIMINARY STATEMENT

On March 14, 2017, Petitioner filed a fair housing discrimination complaint with the Florida Commission on Human Relations ("FCHR"), alleging that Respondent and Tiara Towers Condominium Association, Inc. ("Tiara Towers"), failed to provide reasonable accommodations for her disability and discriminated against her because of her disability. The FCHR is a state agency charged with investigating fair housing discrimination complaints. After its investigation of Petitioner's complaint, FCHR issued a Notice of Determination of No Cause on June 30, 2017.

Dissatisfied with FCHR's determination, Petitioner filed a Petition for Relief with FCHR on July 25, 2017, alleging that Respondent violated Florida's Fair Housing Act by failing to accommodate her disability and discriminating against her because of her disability. The petition did not identify Tiara Towers as a Respondent, and no relief against Tiara Towers was sought in the petition.

On July 25, 2017, FCHR referred this matter to the Division of Administrative Hearings ("DOAH") to assign an administrative law judge to conduct the final hearing. When FCHR referred this

matter to DOAH, FCHR identified both Respondent and Tiara Towers as Respondents in the case-style.

The final hearing was initially set for September 19, 2017, but was continued at the request of Petitioner, and rescheduled for October 23, 2017. On August 17, 2017, Tiara Towers filed a motion to dismiss. On August 25, 2017, the undersigned entered an Order granting the motion. On October 17, 2017, Petitioner requested another continuance of the final hearing. On October 18, 2017, Respondent filed an objection to the request for a continuance. On October 20, 2017, the undersigned entered an Order granting Petitioner's request for a continuance, and the matter was rescheduled for final hearing on January 24, 2018.

The final hearing was held on January 24, 2018, with both parties present. At the hearing, Petitioner testified on her own behalf and presented the additional testimony of John Cooney, Lisa Kinser, Lisa Sutherland, and Karen Perkinson. Petitioner's Exhibits 1 through 6 were received in evidence. Respondent testified on his own behalf and presented the additional testimony of Edward Galvin and Nancy Olson. Respondent's Exhibits 6, 8, 10 through 12, and Composite Exhibit 18 were received in evidence.

On February 6, 2018, Petitioner filed a "Letter of Information," which the undersigned construed as a post-hearing motion to reopen the proceedings. On February 13, 2018, the

undersigned entered an Order denying the motion. On February 21, 2018, Petitioner filed another letter requesting clarification regarding the Homeowner's Association ("HOA") records received in evidence at the hearing. On February 21, 2018, the undersigned entered an Order of Ex Parte. The records received in evidence at the hearing are identified in the preceding paragraph.

The one-volume final hearing Transcript was filed at DOAH on February 8, 2018. The parties filed proposed recommended orders, which were considered in the preparation of this Recommended Order. Unless otherwise indicated, citations to the Florida Statutes are to the 2015 version.

#### FINDINGS OF FACT

1. In 2005, Respondent purchased condominium unit 604 in Tiara Towers, located at 3120 North Highway A1A, Fort Pierce, Florida 34949. Respondent purchased the condominium unit as his primary residence.

2. In 2013, Respondent decided to rent the unit to Petitioner. In May 2013, Petitioner and Respondent entered into a written residential lease agreement for Petitioner to lease the premises from Respondent from July 1, 2013, to June 30, 2015. Pursuant to the lease, Petitioner was obligated to pay monthly rent to Respondent in the amount of \$1,850.00.

3. Petitioner's tenancy was subject to the rules and regulations of the condominium association.

4. The association's rules do not allow for tenants to have pets.

5. In addition, the association requires all leases be in writing.

6. The written lease between Petitioner and Respondent expired on June 30, 2015. A properly executed second written lease was never executed by Petitioner and submitted to the association.

7. Nevertheless, Petitioner continued residing at the premises on a month-to-month basis.

8. Petitioner is disabled and requires a service animal because of her disability.

9. Over the course of the tenancy, the association became concerned about Petitioner's violation of its rules, including the lack of documentation of Petitioner's dog as a service animal, and the lack of a new written lease after the initial lease expired on June 30, 2015.

10. In an effort to assist Petitioner in keeping the dog, Respondent gathered information to demonstrate the qualifications of Petitioner's dog as a service animal and provided the documentation to the association on Petitioner's behalf.

11. Based on the lack of a new written lease and the absence of sufficient documentation as to the service animal, the association fined Respondent \$2,000.00.

12. Respondent provided Petitioner with a termination of lease and demand to vacate notice on May 28, 2016. The notice of termination was based on the fines by the association against Respondent for not having a timely signed lease in place, and the association's belief that sufficient documentation had not been presented to support the dog as a service animal.

13. Petitioner vacated the unit on or about July 1, 2017. Respondent did not re-lease the unit and sold the unit on March 22, 2017.

14. During the appeal process, the fine of \$1,000.00 related to the service animal was rescinded by the association.

15. Respondent paid the \$1,000.00 fine related to the lack of a written lease, and has not requested reimbursement from Petitioner.

16. At hearing, Petitioner acknowledged Respondent did not discriminate against her on the basis of her disability, and that Respondent advocated to the association on her behalf.

17. The persuasive and credible evidence adduced at hearing demonstrates that Respondent did not fail to reasonably accommodate Petitioner's disability or discriminate against Petitioner on the basis of her disability.

CONCLUSIONS OF LAW

18. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

19. Florida's Fair Housing Act is codified in sections 760.20-760.37, Florida Statutes, and prohibits discriminatory housing practices. A "discriminatory housing practice" means an act that is unlawful pursuant to section 760.23(2), (8), and (9).

Section 760.23(2) provides:

(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.

20. Section 760.23(8) and (9) further provide:

(8) 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 with such dwelling, because of a handicap of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(9) For purposes of subsections (7) and (8), discrimination includes:

(a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises; or

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

21. A person is handicapped if he or she has "a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment;" or a person with "a developmental disability as defined in s. 393.063." § 760.22(7) Fla. Stat. (2013).

22. Florida's Fair Housing Act is patterned after the Federal Fair Housing Act. Federal court decisions interpreting the Federal Fair Housing Act provide guidance in determining whether a violation of Florida's Fair Housing Act has occurred. Hawn v. Shoreline Towers Phase I Condo. Ass'n, 347 Fed. App. 464, 467 (11th Cir. 2009).

23. Petitioner has the burden of proving by a preponderance of the evidence that Respondent violated Florida's Fair Housing Act by refusing to provide a reasonable accommodation for her disability and discriminating against her because of her disability. Id.



24. In evaluating fair housing reasonable accommodation and discrimination claims, courts apply the burden shifting analysis developed in McDonnell Douglas Corporation v. Green, 411 U.S. 792, 802-804 (1973). Under this approach, Petitioner must first establish a prima facie case of discrimination. If Petitioner establishes a prima facie case, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for his action. If Respondent satisfies his burden, Petitioner must then prove that the legitimate reasons asserted by Respondent are a mere pretext for discrimination. Secretary, HUD on behalf of Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990); Savanna Club Worship Serv. v. Savanna Club Homeowners' Ass'n, 456 F. Supp. 2d 1223, 1231 (S.D. Fla. 2005).

25. To establish a prima facie case of failure to provide a reasonable accommodation under the Federal Fair Housing Act, Petitioners must show that: 1) she suffers from a handicap; 2) a reasonable accommodation was requested; 3) that such accommodation is necessary to afford her an opportunity to use and enjoy the dwelling and facilities; and 4) Respondent refused to make the requested accommodation. Hawn, 347 Fed. App. at 464, 467; Solodar v. Old Port Cove Lake Point Tower Condo. Ass'n, 2013 U.S. Dist. LEXIS 104996, \*25 (S.D. Fla. 2013); Petrella v. Arlen House Condo. Ass'n, Case No. 16-2034, 2016 Fla. Div. Admin. Hear. LEXIS 508, \*15-16 (Fla. DOAH August 31, 2016).

26. As detailed in the Findings of Fact above, Petitioner suffers from a handicap, she needs a service animal because of her disability, and Respondent requested a reasonable accommodation to the association on Petitioner's behalf. However, Petitioner failed to establish that Respondent refused to make the requested accommodation. In fact, the evidence demonstrates that Respondent advocated to the association on Petitioner's behalf.

27. Even if Petitioner established a prima facie case, Respondent presented sufficient evidence to overcome the prima facie case, which Petitioner failed to demonstrate was a pretext for unlawful disability discrimination.

#### 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 Petition for Relief.

DONE AND ENTERED this 27th day of February, 2018, in  
Tallahassee, Leon County, Florida.



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DARREN A. SCHWARTZ  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of February, 2018.

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.