

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IMRE BEKE,

Petitioner,

vs.

Case No. 17-5290

ERIKA AND FRIEDRICH ROTH,

Respondents.

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by video teleconference between sites in Sarasota and Tallahassee, Florida, on April 12, 2018, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Imre Beke, pro se
No. 225
13624 Tamiami Trail
North Port, Florida 34287

For Respondents: Gary Parker, Esquire
Legal Aid of Manasota
Suite 302
1900 Main Street
Sarasota, Florida 34236

STATEMENT OF THE ISSUE

Whether Respondents, in their capacity as Petitioner's landlord, unlawfully discriminated against Petitioner by calling

him a gypsy during the course of eviction proceedings resulting from Petitioner's alleged irregular payment of rent.

PRELIMINARY STATEMENT

On or about July 24, 2017, Imre Beke (Petitioner) filed a Housing Discrimination Complaint with the Florida Commission on Human Relations (FCHR), which alleges that Erika and Friedrich Roth (Respondents) violated section 760.23(3), Florida Statutes (2016),^{1/} by discriminating against him on the basis of national origin. The allegations were investigated, and on August 18, 2017, FCHR issued its Determination: No Cause. A Petition for Relief was filed by Petitioner on September 21, 2017. On September 21, 2017, FCHR transmitted the case to the Division of Administrative Hearings (DOAH) for assignment of an administrative law judge to conduct a final hearing.

The Complaint alleges, in part, that Respondents made disparaging remarks about his national origin "calling Complainant 'sleazeball,' and 'gypsy,' as well as 'cigany,' a derogatory remark meaning gypsy," and that Respondents attempted to evict him based on false accusations of past due rent. Complainant's ultimate allegation of fact is that he "believes he is being subjected to [d]iscriminatory [t]erms and [c]onditions, as well as [d]iscriminatory [s]tatements based on his National Origin." FCHR determined that there was no cause to believe that acts taken by Respondents "were based on National Origin."

Allegations of national origin discrimination are the only issues before the undersigned.

During the final hearing, Petitioner testified on his own behalf and offered testimony from Stephanie Merlino.

Respondents, Mr. and Mrs. Roth, each testified and no other witnesses testified on their behalf. Petitioner's composite Exhibit 1 was admitted into evidence. Respondents' Exhibits A through E were admitted into evidence.

A transcript of the final hearing was not filed. Petitioner and Respondents each filed a Proposed Recommended Order.

FINDINGS OF FACT

1. Complainant was born in the eastern European country of Hungary. Complainant is not licensed to practice law in the United States. Complainant has, however, practiced international law in Europe.

2. Respondents were each born in Yugoslavia. Respondents reside at 12306 Alta Mira Street, North Port, Florida. Several years ago Respondents established a family trust, and through this trust Respondents managed property owned by the trust, which is located at 12308 Alta Mira Street, North Port, Florida (Trust Property).

3. Sometime around June 2016, Respondents entered into an oral agreement with Petitioner for the rental of the Trust Property. The parties agreed that \$900 would be the amount due

for rent on the 25th day of each month during the duration of the tenancy. It is undisputed that Respondents, at the inception of the landlord/tenant relationship with Petitioner, knew of Petitioner's Hungarian ancestry.

4. The first few months of the parties' landlord/tenant relationship were uneventful. However, around October 2016, the parties' otherwise cordial relationship began to deteriorate. Petitioner offered no explanation as to why the relationship dynamics changed, but Respondents attribute the change to the fact that it was around this time when Petitioner either started paying rent late, or not at all. Petitioner admits that at times, his rent was paid late.

5. Respondents, prior to renting to Petitioner, had never rented the Trust Property, and credibly testified that they were unfamiliar with the requirements of the laws of Florida for evicting a tenant. Respondents explained that given their unfamiliarity with landlord/tenant law, they conducted research on the internet which led them to conclude that in order to evict Petitioner they needed to give him written notice to vacate the property.

6. By notice dated December 7, 2016, Respondents provided a "Notice to Quit" to Petitioner and stated therein that Petitioner "was only to stay here until he finds a place to stay, [and] he

was told already last month he has to leave, [and] now he wants an eviction notice.”

7. On or about December 8, 2016, Respondents posted on the door of the Trust Property a “Three-Day Notice” demanding that Petitioner vacate the property or pay Respondents \$2,325 for past due rent, electric and cleaning expenses. The amount of \$1,800 was alleged as being owed for past-due rent.

8. On or about December 14, 2016, Respondents posted another “Three-Day Notice” on the door of the Trust Property and demanded from Petitioner an additional \$100 for “cleaning” and another \$100 for “electric,” thus bringing the total claim to \$2,525.

9. Petitioner, in response to Respondents’ repeated demands to vacate the Trust Property, continued to reside on the premises and wrote Respondent several letters which outlined his legal rights as a tenant. Respondents became frustrated with Petitioner and believed that he was taking advantage of them by not paying his rent in a manner consistent with their oral agreement. In furtherance of their feelings of frustration, Respondents temporarily turned the lights off in the Trust Property, and temporarily locked Petitioner out of the premises.

10. On December 22, 2016, Respondents filed a Complaint for Eviction against Petitioner and alleged therein that “Defendant failed to pay the rent due [for] November & December, 2016.”

11. By Order entered January 25, 2016, County Judge Phyllis R. Galen, County Court of the Twelfth Judicial Circuit, in and for Sarasota County, Florida, directed Petitioner to pay \$2,250 into the registry of the court for the accrued rent of \$450 for November 2016, \$900 for December 2016, and \$900 for January 2017.

12. Following a final hearing, Judge Galen, by Order entered May 15, 2017, directed that \$2,250 be awarded to Petitioner as "a refund of rent and an award damages" for November 2016 (\$450), December 2016 (\$900), and January 2017 (\$900). Additional registry funds were also returned to Petitioner for the period May 8 through May 25, 2017. The court's Order is silent as to the rationale for returning these registry funds to Petitioner.^{2/}

13. Section 83.60(2), Florida Statutes (2016), provides, in part, that "[i]n an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and rent which accrues during the pendency of the proceeding, when due"

14. While it is true that Petitioner was eventually given a rent refund in the amount of \$450 for the month of November 2016, the evidence establishes that on or about December 8, 2016, when

Respondents first posted the three-day notice on the door of the Trust Property, there was a colorable claim for rent owed by Petitioner for November 2016 as reflected in Judge Galen's Order directing that these funds be placed in the registry of the court.

15. Mr. Roth admits that in Petitioner's presence, he verbally referred to Petitioner as a gypsy, in both English and Hungarian (cigany), and that his use of the term(s) occurred when Petitioner was not timely making his rent payments. The evidence is inconclusive regarding the number of times that Mr. Roth referred to Petitioner as a gypsy. As used by Mr. Roth, the word "gypsy (cigany)" was meant to disparage Petitioner based on Petitioner's ethnicity and nation of origin.

16. Respondents' decision to evict Petitioner was motivated by Petitioner's failure to pay his rent in accordance with the terms of the agreement and not because of reasons related to Petitioner's national origin.

CONCLUSIONS OF LAW

17. DOAH has personal and subject matter jurisdiction in this proceeding. §§ 120.569, 120.57(1), and 760.20-760.37, Fla. Stat. (2017).

18. Florida's Fair Housing Act (Act) is codified in sections 760.20 through 760.37.

19. Among other things, the Act makes certain acts "discriminatory housing practices" and gives the FCHR the authority, if it finds that a "discriminatory housing practice" has occurred, to issue an order "prohibiting the practice" and provide "affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs." § 760.35(3)(b), Fla. Stat.

20. The essence of the Complaint filed by Petitioner is that Respondents called Petitioner a gypsy and attempted to have him evicted from the rental dwelling as a pretext for national origin discrimination.

21. Section 760.34(5) provides that Petitioner bears the burden of proof.

22. Section 760.23(3) provides that it is unlawful to make "any . . . statement . . . with respect to the . . . rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . national origin . . . or an intention to make any such preference, limitation, or discrimination."

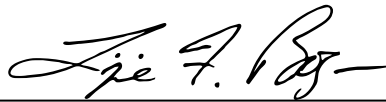
23. While it is true that Mr. Roth's use of the word gypsy was intended to disparage Petitioner during the parties' landlord/tenant dispute, the evidence does not establish that Mr. Roth's bias against gypsies (either perceived or actual) was the basis for the decision to evict Petitioner from the Trust

Property. See generally, Straughn v. Delta Air Lines, Inc., 250 F.3d 23, 36 (1st Cir. 2001) (mere fact that remark may be probative of speaker's bias does mean remark is probative of pretext). Succinctly stated, Petitioner failed to prove that Mr. Roth's bias against gypsies, and the fact that he perceived Petitioner as such, motivated the decision to evict Petitioner from the Trust Property. Petitioner failed to meet his burden of proof.

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 Petitioner's Petition for Relief and the allegations of discrimination contained therein.

DONE AND ENTERED this 11th day of May, 2018, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of May, 2018.

ENDNOTES

^{1/} All subsequent references to Florida Statutes will be to 2016, unless otherwise indicated.

^{2/} Judge Galen also ordered that registry funds for the months of February 2017, March 2017, and April 25 through May 8, 2017, be given to Respondents.

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.