

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DONALD BAYER,

Petitioner,

vs.

Case No. 18-2663

WINTER HAVEN HOUSING AUTHORITY,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (Division), conducted the final hearing in this matter on July 25, 2018, in Winter Haven, Florida.

APPEARANCES

For Petitioner: Donald Bayer, pro se
Apartment No. 301
391 Avenue O Northeast
Winter Haven, Florida 33881

For Respondent: Joseph P. Mawhinney, Esquire
Reed Mawhinney & Link, PLLC
1611 Harden Boulevard
Lakeland, Florida 33803

STATEMENT OF THE ISSUE

Did Respondent, Winter Haven Housing Authority (Authority), discriminate against Petitioner, Donald Bayer, in the sale or rental of housing on account of a disability?

PRELIMINARY STATEMENT

Mr. Bayer filed housing discrimination complaints with the United States Department of Housing and Urban Development and the Florida Commission on Human Relations (Commission). The complaints alleged that the Authority discriminated against Mr. Bayer because of a visual disability. Mr. Bayer asserted that the Authority did not provide him a reasonable accommodation for completing an application for low-income "section 8 housing."^{1/} The Commission investigated the complaints. It determined that the Authority did not unlawfully discriminate against Mr. Bayer. The Commission concluded that Mr. Bayer did not allow the Authority sufficient time to grant his accommodation request.

Mr. Bayer disputed the decision by filing a Petition for Relief with the Commission. The Commission transmitted the matter to the Division to conduct a formal hearing.

Mr. Bayer presented testimony from Dian Diaz and himself at the hearing. Mr. Bayer's Exhibits 1 through 4 and 6 through 15 were admitted. The Authority presented testimony from Bersy Sanchez.

As an accommodation for his visual impairment, Mr. Bayer was provided a transcript of the hearing in computer formats that his software could convert to spoken word. Also, Mr. Bayer was

provided additional time in which to prepare a proposed recommended order.

The Authority timely filed a proposed recommended order. Mr. Bayer did not file a proposed recommended order.

FINDINGS OF FACT

1. Mr. Bayer is visually impaired. At all material times he was a resident of Lakeside Terrace Senior Apartment Homes (Lakeside) in Winter Haven, Florida, operated by the Authority. On March 3, 2017, while in Lakeside's management office to pay his rent, Mr. Bayer asked the property manager, Bersy Sanchez, to help him complete an application for a section 8 housing subsidy.

2. Because it was early in the month, Ms. Sanchez was very busy collecting rents for Lakeside's 84 units. She was the only employee in the office.

3. Ms. Sanchez and Mr. Bayer disagree about the exact content of their conversation. Considering the witnesses' demeanor and the areas about which there is no disagreement, Ms. Sanchez' testimony was more credible and persuasive. In addition, they agree that Ms. Sanchez told Mr. Bayer she was too busy to assist him that day but would assist him if he returned to the office the following day. (Tr 61 & 62). According to Mr. Bayer, Ms. Sanchez said, "Will you come back tomorrow?" (Tr 19).

4. Mr. Bayer did not return to the office to complete the application the next day or any day afterwards. He explained his decision like this: "I - if I would have went back the next day I would have given away my complaint that she had violated my rights because maybe she would have helped me fill out the application. I'm not giving away a free violation of my rights, and that's why I did not go back." (Tr 61).

5. By any measure, Ms. Sanchez' offer to assist Mr. Bayer the next day was a reasonable accommodation for his visual disability. Mr. Bayer's explanation for refusing to return the next day demonstrates intent to secure an advantage over the Authority.

CONCLUSIONS OF LAW

6. The Division has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569, 120.57(1), and 760.35(3), Fla. Stat. (2018).^{2/}

7. Mr. Bayer brings his complaint under Florida's Fair Housing Act, sections 760.20 through 760.37, Florida Statutes. He alleges that the Authority engaged in a discriminatory housing practice by refusing to immediately assist him with completing the section 8 housing application. Mr. Bayer bears the burden of proving his claim by a preponderance of the evidence. See §§ 760.34(5) and 120.57(1)(j), Fla. Stat.

8. Discrimination against a person in the sale or rental of housing because of a handicap is unlawful. § 760.23, Fla. Stat. Mr. Bayer's visual disability is a handicap. § 760.22(7)(a), Fla. Stat. Refusing to provide him a reasonable accommodation for his disability would be unlawful, if it occurred. § 760.23(9)(b), Fla. Stat.

9. The Authority did not refuse to provide Mr. Bayer a reasonable accommodation. It offered to provide the requested accommodation. It only asked in good faith that Mr. Bayer return the next day for assistance because the only person in the office on the day of his request was very busy. This was reasonable. Mr. Bayer's response was not.

10. Mr. Bayer rejected the accommodation because he saw a chance to impose liability upon the Authority. Accommodation is an interactive, "give and take," process to determine what accommodation will help. Neither party may sabotage the process in order to avoid or inflict liability. Ward v. McDonald, 762 F.3d 24 (D.C. Cir. 2014) (Prompt meeting to address accommodation request with some delay to complete paperwork documenting disability was reasonable; employee leaving the same day and never returning was not.); compare Groome Res., Ltd. v. Parish of Jefferson, 234 F.3d 192 (5th Cir. 2000) (Continued indeterminate delay in responding to accommodation request can amount to denial.)^{3/}

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations dismiss the Petition for Relief of Petitioner, Donald Bayer.

DONE AND ENTERED this 6th day of May, 2019, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of May, 2019.

ENDNOTES

^{1/} "Section 8 [low income] housing was created by the Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 201(a), 88 Stat. 633, 662. Section 8 housing differs from public housing in several ways. Most important, section 8 housing is owned by private parties who enter into contracts with government authorities, while public housing is owned directly by Public Housing Authorities ('PHAs')." Paris v. Dep't of Housing and Urban Dev., 843 F.2d 561, 563 (1st Cir. 1988).

^{2/} Citations to Florida Statutes are to the 2018 codification unless noted otherwise.

^{3/} Florida's chapter 760 is patterned after Title VII of the Civil Rights Act of 1964, as amended. Consequently, Florida courts look to federal case law when interpreting chapter 760. Valenzuela v GlobeGround N. Am., LLC., 18 So. 3d 17 (Fla. 3d DCA 2009).

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.