

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANUEL RODRIGUEZ,

Petitioner,

vs.

Case No. 19-2791

INDIAN RIVER COUNTY HABITAT FOR
HUMANITY, INC.,

Respondent.

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on July 30, 2019, at sites in Tallahassee and Sebastian, Florida.

APPEARANCES

For Petitioner: Manuel Rodriguez, pro se
2330 10th Road Southwest, Apartment 10
Vero Beach, Florida 32692

For Respondent: C. Douglas Vitunac, Esquire
Collins Brown Barkett, Chartered
756 Beachland Boulevard
Vero Beach, Florida 32963

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent unlawfully discriminated against Petitioner on the basis of his national origin or race in violation of the Florida Fair Housing Act.

PRELIMINARY STATEMENT

In a Housing Discrimination Complaint filed with the Florida Commission on Human Relations ("FCHR") on or around July 24, 2018, Petitioner Manuel Rodriguez alleged that Respondent Indian River County Habitat for Humanity, Inc., a nonprofit charitable corporation, had unlawfully discriminated against him on the basis of national origin or race by refusing to lend him money to purchase an affordable home under the same terms and conditions applicable to others.

The FCHR investigated Mr. Rodriguez's claims, and, on May 7, 2019, issued a notice setting forth its determination that reasonable cause did not exist to believe that a discriminatory housing practice had occurred. Thereafter, Mr. Rodriguez filed a Petition for Relief, which the FCHR transmitted to the Division of Administrative Hearings ("DOAH") on May 23, 2019.

The final hearing took place on July 30, 2019. Mr. Rodriguez testified on his own behalf. He also submitted Petitioner's Exhibits 1, 6, 8, 9, and 10, which were received into evidence. Respondent rested without presenting evidence.

The final hearing was transcribed, but neither party ordered a transcript of the proceeding. Respondent filed a Proposed Recommended Order within the time frame, which ended on August 9, 2019, established at the conclusion of the hearing.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2019 Florida Statutes.

FINDINGS OF FACT

1. Petitioner Manuel Rodriguez ("Rodriguez") is a middle-aged white man of (in his words) "Spanish and Italian" descent who at all times relevant lived in Vero Beach, Florida.

2. Respondent Indian River County Habitat for Humanity, Inc. ("Habitat"), is a nonprofit charitable corporation that makes interest-free loans to qualified applicants for the purchase of affordable housing, which the buyers, in return, must help build or renovate.

3. In or around December 2018, Rodriguez submitted a "pre-screening" application for a Habitat home. By letter dated January 3, 2019, Habitat informed Rodriguez that, according to the information he had provided, he fell "within the income guidelines." This meant that Rodriguez could progress to the next step (group orientation) of the multi-step application process.

4. As it happened, however, he did not make it all the way. In a letter dated February 19, 2019, Habitat told Rodriguez that his application could not be approved because his monthly income was insufficient to cover the estimated debt service. Rodriguez presented no evidence at hearing suggesting that Habitat had denied his application for any reason other than the one given to

him, namely that "you [Rodriguez] do not earn enough to support a mortgage."

5. Rodriguez was not satisfied with this rationale and arranged to meet with a Habitat employee named David Willis to discuss the matter. Rodriguez believes that Mr. Willis was rude and disrespectful to him. Further, Rodriguez testified that, during their conversation, Mr. Willis used the phrase, "you people." Clearly, this is a potentially offensive remark, and Rodriguez was, in fact, offended by it. When pressed, however, Rodriguez admitted that he did not consider the comment to have been a slur against Spanish or Italian people; rather, he took it as a more focused insult—against, for example, disputatious people. In any event, there is no evidence that Mr. Willis intended to disparage an ethnic or racial group.

Determinations of Ultimate Fact

6. There is no persuasive evidence that any of Habitat's decisions concerning, or actions affecting, Rodriguez, directly or indirectly, were motivated in any way by discriminatory animus.

7. Thus, there is no competent, persuasive evidence in the record, direct or circumstantial, upon which a finding of any sort of unlawful housing discrimination could be made. Ultimately, therefore, it is determined that Habitat did not commit any prohibited act.

CONCLUSIONS OF LAW

8. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 760.35, 120.569, and 120.57(1), Florida Statutes.

9. Under the Florida Fair Housing Act ("FFHA"), sections 760.20 through 760.37, it is unlawful to discriminate in the sale or rental of housing. Rodriguez's allegations of housing discrimination based on national origin or race implicate section 760.23, which states, in part:

(1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or 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 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.

These provisions of the FFHA are nearly identical to, and are clearly patterned after, sections 804(a) and 804(b) of the federal Fair Housing Act. See 42 U.S.C. § 3604.

10. In cases involving a claim of housing discrimination, the complainant has the initial burden of proving a prima facie case of discrimination by a preponderance of the evidence. Generally speaking, a prima facie case comprises circumstantial

evidence of discriminatory animus, such as proof that the charged party treated persons outside of the protected class, who were otherwise similarly situated, more favorably than the complainant was treated.^{1/} Failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1012 n.6 (Fla. 1st DCA), aff'd, 679 So. 2d 1183 (1996) (citing Arnold v. Burger Queen Sys., 509 So. 2d 958 (Fla. 2d DCA 1987)).

11. If, however, the complainant sufficiently establishes a prima facie case, the burden then shifts to the charged party to articulate some legitimate, nondiscriminatory reason for its action. If the charged party satisfies this burden, then the complainant must establish by a preponderance of the evidence that the reason asserted by the charged party is, in fact, merely a pretext for discrimination. See Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc., 3 F.3d 1472, 1476 n.6 (11th Cir. 1993), cert. denied, 513 U.S. 808, 115 S. Ct. 56, 130 L. Ed. 2d 15 (1994) ("Fair housing discrimination cases are subject to the three-part test articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)."); Sec'y, U.S. Dep't of HUD, on behalf of Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990) ("We agree with the ALJ that the three-part burden of proof test developed in *McDonnell Douglas* [for claims brought under Title VII of the Civil Rights Act] governs

in this case [involving a claim of discrimination in violation of the federal Fair Housing Act].").

12. To make out a prima facie case of discrimination, Rodriguez needed to show that he: (1) belonged to a protected class; (2) was qualified to receive the services in question; (3) was denied the services by Habitat; and (4) was treated less favorably by Habitat than were similarly-situated persons outside of the protected class. See, e.g., Jackson v. Comberg, 2006 U.S. Dist. LEXIS 66405, 15 (M.D. Fla. Aug. 22, 2006).

13. It is undisputed that Rodriguez belongs to a protected class and was not approved to purchase a Habitat home. Beyond that, Rodriguez failed to prove any of the facts required to establish a prima facie case of discrimination on the basis of national origin or race.

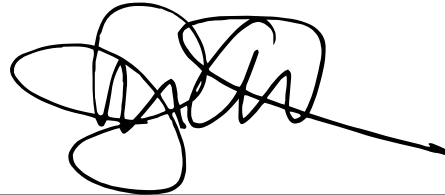
14. The failure to establish a prima facie case of discrimination ended the inquiry. The burden never shifted to Habitat to articulate legitimate, nondiscriminatory reasons for its conduct, but it did so anyway. Plainly stated, Rodriguez's reported income failed to satisfy the debt-service coverage ratio that Habitat requires for a successful application, and he was denied on that basis. There was no discrimination involved.

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 finding Habitat not liable for housing discrimination and awarding Rodriguez no relief.

DONE AND ENTERED this 15th day of August, 2019, in Tallahassee, Leon County, Florida.



JOHN G. VAN LANINGHAM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of August, 2019.

ENDNOTE

^{1/} Alternatively, the complainant's burden may be satisfied with direct evidence of discriminatory intent. See Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121, 105 S. Ct. 613, 621, 83 L. Ed. 2d 523 (1985) ("[T]he McDonnell Douglas test is inapplicable where the plaintiff presents direct evidence of discrimination" inasmuch as "[t]he shifting burdens of proof set forth in *McDonnell Douglas* are designed to assure that the 'plaintiff [has] his day in court despite the unavailability of direct evidence.'").

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.