

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SERGIO TRUJILLO-GONZALEZ AND
MARIELLA TRUJILLO-GONZALEZ,

Petitioners,

vs.

Case No. 19-3655

RICHMAN PROPERTY SERVICES, INC.;
JOE LAMBERT; MIRA VERDE LIMITED
PARTNERSHIP, AND RMS GP, LLC,

Respondents.

_____ /

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 October 25, 2019, by video teleconference with locations in Tallahassee and Fort Myers, Florida.

APPEARANCES

For Petitioners: Sergio J. Trujillo-Gonzalez, Pro Se
Mariella Trujillo-Gonzalez, Pro Se
Apartment 127
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For Respondents: J. Mike Williams, Esquire
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STATEMENT OF THE ISSUES

A. Did Respondents, Richman Property Service, Inc. (Richman Property); Joe Lambert; Mira Verde Limited Partnership (Mira Verde); and RMS GP, LLC; discriminate against Petitioners, Sergio Trujillo-Gonzalez and Mariella Trujillo-Gonzalez, in the sale or rental of housing on account of a handicap?

B. Did Respondents, Richman Property; Joe Lambert; Mira Verde; and RMS GP, LLC, discriminate against Petitioners, Sergio Trujillo-Gonzalez and Mariella Trujillo-Gonzalez, in the sale or rental of housing on account of national origin?

PRELIMINARY STATEMENT

Mr. and Mrs. Trujillo-Gonzalez filed a housing discrimination complaint with the U.S. Department of Housing and Urban Development (HUD) alleging that Respondents violated Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988. The Trujillo-Gonzalezes specifically charged that Respondents discriminated against them in housing on account of Mr. Trujillo-Gonzalez's disability and the Trujillo-Gonzalez's national origin. HUD referred the complaint to the Florida Commission on Human Relations (Commission) for investigation. The Commission investigated the complaint as a

complaint under Florida's analogous Fair Housing Act, sections 760.20-760.37, Florida Statutes (2018).^{1/} The Commission issued its Determination of No Cause which determined "reasonable cause does not exist to believe that a discriminatory housing practice has occurred." It dismissed the complaint.

Mr. and Mrs. Trujillo-Gonzalez filed a Petition for Relief. The Commission transmitted the Petition to the Division to conduct a formal hearing. Due to Hurricane Dorian, the hearing originally set for September 5, 2019, was continued to October 25, 2019.

The undersigned conducted the hearing as scheduled. The Trujillo-Gonzalezes presented the testimony of Mr. Trujillo-Gonzalez. Their exhibits 1 through 4 and 7 through 9 were admitted. Joe Lambert, manager of Mira Verde, and Carmen Davila, a leasing associate at Mira Verde, testified on behalf of Respondents. Respondents' Exhibits 1 through 5, 7 through 11, 13 through 17, 29, and 32 were admitted.

The Transcript was filed on December 16, 2019. Respondents timely filed a Proposed Recommended Order, which has been considered in the preparation of this Order. The Trujillo-Gonzalezes did not file a proposed recommended order.

FINDINGS OF FACT

1. Mr. Trujillo-Gonzalez is handicapped. He routinely uses an electric wheelchair to move about. Due to his disability, he

needs assistance and accommodation in moving about, including a ramp and "grab bars" in the bathroom.

2. Richman Property and Mira Verde hold ownership interest in the Mira Verde apartments. Mr. Lambert is their manager for the property. There is no evidence establishing any relationship of RMS GP, LLC, with Mr. Lambert, Mira Verde Apartments, or the events described in this Order.

3. From March 31, 2018, forward, Mr. Lambert, Richman Property, and Mira Verde were aware that Mr. Trujillo-Gonzalez was disabled and needed these accommodations. When asked about Mr. Trujillo-Gonzalez's patently obvious disability, Mr. Lambert prevaricated in his answer.

4. Asked if Mr. Trujillo-Gonzalez used a wheel chair, Mr. Lambert replied, "I've seen him with an electric chair. I have seen him walking with a walker or a stick. I have seen him drive his Hummer. I have seen him walking without any assistance." (T-143) This evasiveness, along with the differences in demeanor of Mr. Lambert and Mr. Trujillo-Gonzalez, caused the undersigned to find Mr. Trujillo-Gonzalez more credible and persuasive when testimony of the two witnesses differed. In addition Mr. Trujillo-Gonzalez's willing admission of harmful facts enhanced his credibility. For these reasons, Mr. Trujillo-Gonzalez's testimony about requesting a modified apartment is accepted as more credible than Mr. Lambert's

statements that Mr. Trujillo-Gonzalez never requested a modified apartment.

5. Mr. Trujillo-Gonzalez is of Cuban descent. At all times material to this case, Mr. Lambert, Richman Property, and Mira Verde were aware of this.

6. On March 31, 2018, Mr. and Mrs. Trujillo-Gonzalez entered into a Florida Tax Credit Lease Agreement with Richman Property and Mira Verde for a Mira Verde apartment. The apartment complex is part of a Low Income Housing Tax Credit Program. The maximum allowable apartment rent is based on the area's median income published annually by HUD. The majority of the apartments rent for 60 percent of the allowable rent. A minority of them rent to qualified tenants at 35 percent of the allowable rent.

7. A goodly amount of evidence was directed to the Trujillo-Gonzalez's efforts to obtain a 35 percent apartment and Mira Verde's responses. There are no findings of fact on this subject because there is no evidence that difficulties or delays obtaining a lower rent apartment were due to Mr. Trujillo-Gonzalez's handicap or the Trujillo-Gonzalez's national origin. Mr. Trujillo-Gonzalez acknowledged there was no national origin discrimination in his testimony.

8. He was asked, "Do you have any evidence with you here today that Mr. Lambert, the property manager, treats Cubans

differently than other Hispanic tenants?" Mr. Trujillo-Gonzalez responded, "He mistreats everybody." (T-75)

9. Mr. Trujillo-Gonzalez was asked, "And you don't have any evidence with you today to show residents who were non-Cubans were treated any differently, meaning you don't have a witness here today to show that they were - that non-Cubans were treated any differently than you?" He answered, "No. No." (T-75)

10. The 14-page lease agreement between the Trujillo-Gonzalezes, Richman Property, and Mira Verde addresses a multitude of matters. They include security deposits, subletting, late payments, tenant utility responsibilities, the landlord's right to enter the premises without notice, tenant responsibility for clean carpets, waiver of landlord responsibility for criminal activity on the premises, pet prohibitions, waivers of claims for mold or mildew injury, tenant responsibility to report fire extinguisher malfunctions, prohibitions against all weapons including BB guns and paintball guns, restrictions on installation of satellite dishes, and curfews. The agreement does not contain a single word about when or how to request an accommodation for a handicap.

11. On August 8, 2017, the tenant in Apartment 95 vacated the apartment. Apartment 95 had been modified to accommodate handicapped residents.

12. Mr. Trujillo-Gonzalez asked Mr. Lambert to lease that apartment to him as an accommodation for his handicap.

Mr. Lambert did not grant the request. The tenant who moved did not have a handicap. (T-21) There is no credible, persuasive evidence that allowing the Trujillo-Gonzalezes to rent that apartment was not reasonable.

13. Instead of granting the request, Mr. Lambert gave Mr. Trujillo-Gonzalez a form to complete. The form only provided for requesting physical modifications to an apartment. The form also stated that the tenant understood and agreed that he was responsible for all costs for the modifications. A few days later Mr. Lambert gave Mr. Trujillo-Gonzalez an estimate for the installation of "four handicap bars." The cost was \$795.00. The Trujillo-Gonzalezes could not afford this and told Mr. Lambert so. Since they could not afford to pay for the modifications, Mr. Trujillo-Gonzalez did not complete the form.

14. Apartment 95 stood vacant for two months. (T-21)

15. In November of 2017, Mr. Trujillo-Gonzalez asked Mr. Lambert to rent him apartment number 134. This apartment had been modified to accommodate tenants with handicaps. Mr. Lambert did not grant the request and indicated that the apartment was involved in a court proceeding. Yet Mr. Lambert rented the apartment to someone else in January 2018. There is no credible,

persuasive evidence that allowing the Trujillo-Gonzalezes to rent that apartment was not reasonable.

16. In late March or early April of 2018, Mr. Lambert told Mr. Trujillo-Gonzalez he would rent him the next vacant apartment modified to accommodate a handicap. He did not do this.

17. In June of 2018, Mr. Trujillo-Gonzalez told Mr. Lambert that if Mr. Lambert would not rent him a modified apartment, then Mr. Trujillo-Gonzalez needed a shower, grab bars for the bath, and a wheelchair ramp for his apartment. On June 13, 2018, Mr. Lambert again provided the form described in Finding of Fact 13.

18. Mr. and Mrs. Trujillo-Gonzalez filed their complaint with HUD on July 18, 2018. The complaint stated that June 11, 2018, was the most recent date of discrimination and that the discrimination was continuing. The complaint did not state that June 11, 2018, was the first or the only date of discrimination.

19. In July and August of 2018, Mr. Trujillo-Gonzalez provided Mr. Lambert letters from Alvarez Gonzalez Gemayaret, M.D., of the University of Miami, Miller School of Medicine, stating that Mr. Trujillo-Gonzalez needed home modifications for his handicaps. The July 11, 2018, letter stated his needs included a ramp and a modified bathroom. The August 21, 2018, letter provided more detail.

20. It stated:

Mr. Trujillo is an established patient of the UHealth Institute for Advanced Pain Management and he is being treated for his chronic Right sided pain in his RU and RLE subsequent to subcortical ischemic stroke. Mr. Trujillo requires electric wheelchair to assist his mobility which is impaired because of the hemiplegia and RLE pain. Patient also has certain needs related to his stroke and disability and will greatly benefit from certain home improvements such as a ramp at the entrance to his house, as well as necessary rails in his house and bathroom, which will facilitate his daily activities.

21. On August 7, 2018, Mr. Lambert contacted the Trujillo-Gonzalezes about completing an application for the transfer to a 35 percent lease that the Trujillo-Gonzalezes had been seeking. Mrs. Trujillo-Gonzalez refused to speak to him. Mr. Trujillo-Gonzalez stated that he would not participate further in the process until the Commission had completed its complaint review. (R. Ex. 16). Mr. Trujillo-Gonzalez testified: "I told him that I was going to wait for the commission investigation to finish. See, because that was the advice that they gave me, to wait for the investigation to be concluded." (T-72) Nonetheless, Mr. Trujillo-Gonzalez continued to communicate about obtaining a modified apartment.

22. Mr. Lambert says that because of this exchange, he did not communicate further with the Trujillo-Gonzalezes about changing apartments to obtain a 35 percent lease or to obtain a

modified apartment. This was not reasonable in light of Mr. Trujillo-Gonzalez's subsequent communications about obtaining a modified apartment.

23. The tenant in Apartment 106 vacated the apartment on October 31, 2018. Apartment 106 was modified to accommodate handicapped tenants. Mr. Trujillo-Gonzalez asked Mr. Lambert to lease him that apartment. Mr. Lambert did not grant the request. (T-39-41). There is no credible, persuasive evidence that allowing the Trujillo-Gonzalezes to rent that apartment was not reasonable.

24. November 30, 2018, Apartment 85 became available. It was modified to accommodate handicapped residents. Mr. Lambert did not offer it to the Trujillo-Gonzalezes. Instead, he rented it to another family. There is no credible, persuasive evidence that allowing the Trujillo-Gonzalezes to rent that apartment was not reasonable.

25. Apartment 20 is modified to accommodate handicapped residents. The tenants vacated the apartment on December 31, 2018. Mr. Lambert did not offer it to the Trujillo-Gonzalezes. There is no credible, persuasive evidence that allowing the Trujillo-Gonzalezes to rent that apartment was not reasonable.

26. Renting an already modified apartment to Mr. and Mrs. Trujillo-Gonzalez was a reasonable, cost-free accommodation for Mr. Trujillo-Gonzalez's handicap. Starting August 8, 2017,

the Trujillo-Gonzalezes repeatedly requested this accommodation. Mr. Lambert, Richman Property, and Mira Verde never granted this reasonable request.

27. Renting Mr. and Mrs. Trujillo-Gonzalez an apartment with bathroom grab bars and a wheel chair ramp within 30 days of the effective date of this order is reasonable affirmative relief providing a reasonable accommodation for Mr. Trujillo-Gonzalez's handicap.

28. Modifying the apartment by installing grab bars in all bathrooms and installing a wheelchair ramp within 30 days of the effective date of this order is alternative, reasonable affirmative relief providing a reasonable accommodation for Mr. Trujillo-Gonzalez's handicap.

CONCLUSIONS OF LAW

29. The Division has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569, 120.57(1), and 760.35(3), Fla. Stat. (2019).

30. The Trujillo-Gonzalezes allege that Respondents committed a discriminatory housing practice by refusing to lease them an apartment modified for handicapped tenants, refusing to modify their apartment to accommodate Mr. Trujillo-Gonzalez's handicap, and refusing to provide them a 35 percent lease. They bear the burden of proving their claims by a preponderance of the evidence. See §§ 760.34(5) and 120.57(1)(j), Fla. Stat.

31. The Trujillo-Gonzalezes also claim Respondents discriminated against them because of their national origin. The evidence does not support that claim.

32. Discrimination against a person in the sale or rental of housing because of a handicap or national origin is unlawful. § 760.23, Fla. Stat. Mr. Trujillo-Gonzalez's disabilities are handicaps. § 760.22(7)(a), Fla. Stat. Refusing to provide a reasonable accommodation for the handicaps is unlawful. § 760.23(9)(b), Fla. Stat.

33. Florida's Fair Housing Act, sections 760.20 through 760.37, Florida Statutes, governs this proceeding. To prevail in a failure to accommodate a claim, the Trujillo-Gonzalezes must establish that: (1) Mr. Trujillo-Gonzalez is a person with a disability within the meaning of the Florida Fair Housing Act; (2) that he requested a reasonable accommodation for his disability; (3) the requested accommodation was necessary to afford him an opportunity to use and enjoy the dwelling; and (4) Respondents refused to make the accommodation. See Hunt v. Aimco Props., L.P., 814 F.3d 1213, 1225 (11th Cir. 2016); Bone v. Vill. Club, Inc. , 223 F. Supp. 3d 1203, 1210-11 (M.D. Fla. 2016).^{2/} All four criteria are satisfied.

34. 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. See Ward v. McDonald, 762 F.3d 24 (D.C. Cir. 2014).

35. Respondents did not refuse to provide a reasonable accommodation when they refused to pay for modifications to the Trujillo-Gonzalez's apartment. They were willing to permit modification at the Trujillo-Gonzalezes expense. This is all the law requires. §760.23(9)(a), Fla. Stat.

36. The evidence proved, without serious dispute, that a ramp and grab bars were modifications needed to allow Mr. Trujillo-Gonzalez an opportunity to use and enjoy his apartment. Respondents' primary defense to the Trujillo-Gonzalez's claim that they were denied relocation to a vacant, already modified apartment is that Mr. Trujillo-Gonzalez did not request that accommodation. The preponderance of the evidence proved that Mr. Trujillo-Gonzalez repeatedly made that request, and Respondents did not grant it. This was a simple, low cost, reasonable accommodation. It satisfies the requirement that an accommodation be both efficacious and proportional to implementation costs. Wis. Cmty. Servs. v. City of Milwaukee, 465 F.3d 737, 749 (7th Cir. 2006).

37. Mr. Lambert, Richman Property Group, and Mira Verde repeatedly refused to provide the Trujillo-Gonzalezes the reasonable accommodation of leasing a vacant modified apartment to

them. They should have granted it. The evidence did not prove that RMS GP, LLC, denied an accommodation.

38. Respondents also rely upon an unstated assumption, without citation, that the request for the specific accommodation of an already modified apartment had to be written. This is incorrect. The request need not be written. It must only be clear. Ballard v. Rubin, 284 F.3d 957, 962 (8th Cir. 2002); Birton v. Wal-Mart, Inc., 209 F. Supp. 2d 993, 997 (E.D. Mo. 2002). Mr. Trujillo-Gonzalez's requests were clear.

39. Respondents also rely upon a theory that some unidentified authority limits the Trujillo-Gonzalezes to claims based upon accommodation requests made on or after the June 11, 2018, date mentioned in their HUD Complaint. Respondents do not provide legal support for this argument. Also, the Complaint makes clear that June 11, 2018, was only the date of the most recent accommodation request and that the denial of a reasonable accommodation was ongoing. Respondents also make the requested accommodation on October 31, 2018; November 30, 2018; and December 31, 2018.

40. Section 760.35(3)(b) establishes the remedies that may be imposed in this proceeding. It states:

If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending

affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1).

41. There are no attorney's fees and costs in this case. There are quantifiable damages. Those damages are the costs of modifying the Trujillo-Gonzalez's apartment if an already modified apartment is not available. In 2017 that cost was \$795.00. The current cost is not in the record. This is the reason for the recommendation that the Commission order Respondents to pay the cost of modifications to the Trujillo-Gonzalez's apartment if an already modified apartment is not available, rather than pay a specific amount of damages.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a Final Order that:

- A. Dismisses the Petition against Respondent, RMS GP, LLC;
- B. Prohibits Respondents, Richman Property Services, Inc.; Joe Lambert; and Mira Verde Limited Partnership from refusing to provided reasonable accommodations to handicapped tenants.
- C. Requires that within 30 days of the Commission's order becoming final that Respondents, Richman Property Services, Inc.; Joe Lambert; and Mira Verde Limited Partnership; either:

1. Lease the Trujillo-Gonzalezes an apartment with existing modifications that at least include bathroom grab bars and a wheel chair ramp, or

2. Modify the Trujillo-Gonzalez's existing apartment, at Respondents' expense, by installing at least grab bars in each bathroom and a wheelchair ramp.

DONE AND ENTERED this 15th day of January, 2020, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
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 January, 2020.

ENDNOTES

^{1/} All citations to Florida Statutes are to the 2018 compilation unless otherwise noted.

^{2/} Florida's Fair Housing Act is patterned after the federal act, 42 U.S.C. § 13601, et seq. See Bhogaita v. Altamonte Heights Condo. Ass'n, 765 F.3d 1277, 1285 (11th Cir. 2014) ("The [federal FHA] and the Florida Fair Housing Act are substantively identical, and therefore the same legal analysis applies to each.").

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.