

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BRIDGET AND TONNY WALKER,

Petitioners,

vs.

Case No. 20-0155

LGI HOMES-FLORIDA, LLC,

Respondent.

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings, conducted the final hearing in this case by video conference on April 28, 2020.

APPEARANCES

For Petitioners: Bridget Trinettea Walker, pro se
 Tonny Walker, pro se
 1144 Barclay Woods Drive
 Ruskin, Florida 33570

For Respondent: Brett Purcell Owens, Esquire
 Fisher & Phillips, LLP
 101 East Kennedy Boulevard, Suite 2350
 Tampa, Florida 33602

STATEMENT OF THE ISSUE

Did Respondent, LGI Homes-Florida, LLC (LGI), discriminate in housing against Petitioners, Bridget and Tonny Walker, on account of their race in violation of section 760.23 Florida Statutes (2018)?¹

¹ All references to the Florida Statutes are to the 2018 compilation unless noted otherwise.

PRELIMINARY STATEMENT

On June 25, 2018, Mr. and Ms. Walker filed a complaint of discrimination in housing with the Florida Commission on Human Relations (Commission). The complaint alleged that LGI discriminated against Mr. and Ms. Walker by refusing to allow them to buy or inspect a four-bedroom home in LGI's Hill 'N Dale community. After conducting an investigation, the Commission issued its Notice of Determination of No Cause on December 12, 2019. Mr. and Ms. Walker filed a Petition for Relief on January 12, 2020. The Commission referred the Petition to the Division of Administrative Hearings.

The hearing was set for March 9, 2020. Upon motion of the Walkers, the hearing was continued until April 28, 2020. The undersigned conducted the hearing as scheduled.

The Walkers presented testimony from Mrs. Walker. The Walkers' Exhibits 1, 5 (first two pages), 6, and 13 were admitted.

LGI presented testimony from Danine Stratton and Mr. Walker. LGI Exhibits 1, 2, 4, 5, 7 (Harrington, Easton, Samuels, and Boyd photographs), 8 through 11, and 15 (Bates number 74) were admitted.

A Transcript of the hearing was filed May 19, 2020. LGI timely filed a proposed recommended order. It has been considered in the preparation of this Recommended Order. The Walkers did not file a proposed recommended order.

FINDINGS OF FACT

1. Mr. and Ms. Walker are African-American. Their claim in this matter arises out of their inquiry into buying a house from LGI in its Hill 'N Dale community.

2. LGI is a national homebuilder. It develops residential communities consisting of homes that it built. It offers financing for those homes.

3. LGI follows a specific, multi-step process for home sales. The process includes maintaining a log of contacts with potential buyers. The log includes the name of the sales representative who spoke to the potential buyers, the date of the contact, and the outcome of the contact. The process also includes a loan pre-qualification step. Using a Pre-Qualification Worksheet, a sales representative gathers basic financial information from a prospective buyer including employment, compensation, and bank account balances. In addition, LGI obtains a credit report for the prospective buyer. A determination that a buyer is qualified is effective for 30 days at any LGI property. After 30 days, a buyer who wishes to tour a home must undergo the pre-qualification process again.

4. LGI does not give home tours to individuals unless they pre-qualify for financing. It follows this policy to conserve sales representative time by avoiding wasting time showing homes to individuals who are unlikely to be able to purchase them. LGI also says the policy avoids raising unrealistic expectations in would-be buyers who will not be able to finance a home.

5. LGI's policies require every sales representative to first take each pre-qualified prospective buyer to a target home, identified as the lowest price home available, before viewing any other available homes on the property.

6. On March 17, 2018, Mr. and Ms. Walker visited LGI's Ballentrae community. There they completed the pre-qualification process. An LGI representative advised them that they were pre-approved for a home valued around \$150,000. The Walkers did not tour a home in the Ballentrae community.

7. On June 16, 2018, the Walkers visited LGI's Hill 'N Dale community. They had scheduled an appointment with Danine Stratton, an LGI sales representative. After the Walkers arrived and seated themselves in the waiting area, a Caucasian couple arrived and sat down. When Ms. Stratton

entered the waiting area she spoke to the Caucasian couple before acknowledging the Walkers.

8. Ms. Stratton consulted with the Walkers and obtained the information needed for pre-qualification from them. This was necessary because more than 30 days had passed since they had pre-qualified at the Ballentrae property. She also asked for some demographic information.

9. The Walkers inquired about purchasing a four-bedroom house. Ms. Stratton expressed skepticism that they could afford a four-bedroom home. During the consultation Ms. Stratton learned that Mr. Walker's name was spelled "Tonny," with two "n"s. She noted that the spelling was unusual. She went on to say, "It's either three things, your mother could not spell, your mother was on drugs, or just unique." The Walkers were justly offended and understandably perceived the comment as invoking racial stereotypes.

10. Ms. Stratton maintains that this was just good natured, light-hearted, teasing meant to build rapport with the Walkers. She testified that she was "completely shocked" that they were offended. Ms. Stratton is not credible. It is not plausible that a sales person would expect insulting a customer's mother to build rapport with the customer. Ms. Stratton's comments are inexplicable.

11. Nonetheless, Ms. Stratton gave the Walkers a tour of the community.² She offered to show the Walkers a three-bedroom home, consistent with LGI's "target home" strategy. They asked about a four-bedroom home. Ms. Stratton said that a four-bedroom home was not available for showing. There is no persuasive evidence that one was available at that time or that a four-bedroom home was shown during that time period to non-minority persons.

12. Ms. Stratton was willing to sell a three-bedroom home to the Walkers. By then they had decided they would not purchase a home from LGI. In

² The testimony of Ms. Walker and Ms. Stratton differed on this point and others. Based on the demeanor of the witnesses, consistency with other evidence, and the implausibility of some of Ms. Stratton's testimony, the undersigned finds Ms. Walker more credible and persuasive.

Ms. Walker's words, "I declined her offer to purchase any home with LGI." (Tr. p. 39).

13. Upset by Ms. Stratton's comments about the spelling of Mr. Walker's name, the Walkers decided that they just wanted to leave. In order to do this peacefully they said they needed to check with an uncle to obtain funds for the required earnest money. They also refused to sign the pre-qualification form.

14. On June 17, 2018, Ms. Stratton texted the Walkers saying, "Hey there, just touching base. Were you able to talk with your uncle about helping out?" This text demonstrated that Ms. Stratton wanted to sell the Walkers a home. On June 18, 2018, Ms. Walker replied that because of the comment about the spelling of Mr. Walker's name, "We will not be purchasing with LGI."

15. Ms. Stratton replied: Oh my goodness, I'm so sorry that I offended you. I certainly didn't mean to. I was just making a joke and in hindsight was in poor taste. Again, I'm so sorry and best of luck to you guys."

16. Ms. Walker went to an LGI property in Ruskin and spoke to a supervisor there named Joe Boyd. He assured her that LGI would take care of the problem and someone would call her. Ms. Walker also called LGI's home office in Texas. She was connected to the area director for Florida. He emailed Ms. Walker and said that he would have someone named Todd Fitzgerald contact her. Mr. Fitzgerald did not contact the Walkers.

17. On Friday, June 22, 2018, at 12:52 p.m., Ms. Walker sent Mr. Boyd an email. It stated, "Myself and my husband recently visited one of your properties and received poor customer service and rude racist remarks from one of your employees. I have spoken to one of you[r] managers locally but I do not [know] if anything was done. There was no follow up. Please contact me at [phone number]."

18. On Friday, June 22, 2018, at 10:13 p.m., Mr. Boyd replied:

It is my understanding that our division president Todd Fitzgerald called you to discuss this. Please let me know if he hasn't and I will be happy to call.

Please be assured that in no way was the intent of our representative to offend in any way.

We apologize for you feeling that you received comments that were rude and even racist, that is definitely not like us, so from the bottom of my heart I am sorry on behalf of our company.

I'll be available to discuss tomorrow if Todd has not already spoke with you.

Have a nice evening!

19. The next day Ms. Walker replied: "Thank you for your quick response. But I have not spoken to Todd Fitzgerald."

20. There is no evidence of further communications between LGI and the Walkers.

21. The Walkers did not offer to purchase a home from LGI. They would not purchase a home from LGI.

22. From March 2018 through March 2019, LGI closed on the sale of 15 homes at Hill 'N Dale for which Ms. Stratton was the responsible sales representative. African-Americans purchased seven of those houses.

23. On May 20, 2018, Ms. Stratton sold a four-bedroom home Hill 'N Dale to Alfreeda Harrington, an African-American, for \$175,000.00. This was before her June meeting with the Walkers.

24. Ms. Stratton sold a three-bedroom home in Hill 'N Dale to Tawanda Boyd, for \$160,000.00. Ms. Boyd is an African-American.

25. On August 11, 2018, Beverly Easton, an African-American, purchased a four-bedroom home in Hill 'N Dale for \$175,000.00. Ms. Stratton was the sales representative for the transaction.

26. On June 9, 2018, Ms. Stratton sold a home in Hill 'N Dale to the Samuels family, who were African-Americans.

27. On April 12, 2019, Ms. Stratton sold a home in Hill 'N Dale to an African-American buyer whose last name is Wheeler.

28. On March 25, 2019, Ms. Stratton sold a home in Hill 'N Dale to an African-American buyer whose last name is Bacon.

29. On January 28, 2019, Ms. Stratton sold a home in Hill 'N Dale to an African-American buyer whose last name is Swanson.

CONCLUSIONS OF LAW

30. Sections 120.569, 120.57(1), and 760.11(7), Florida Statutes (2019), grant the Division of Administrative Hearings jurisdiction over the parties and subject matter of this cause. *See also* Fla. Admin. Code R. 60Y-4.016.

31. The Walkers bring their complaint under Florida's Fair Housing Act (Fair Housing Act), sections 760.20 through 760.37. The Walkers allege that LGI engaged in a discriminatory housing practice by refusing to show them a four-bedroom house for sale in its Hill 'N Dale community. The Walkers bear the burden of proving by a preponderance of the evidence that LGI violated the Fair Housing Act. §§ 760.34(5) and 120.57(1)(j), Fla. Stat. (2019).

32. The Fair Housing Act prohibits discriminatory housing practices described in section 760.23. It provides, in pertinent 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.

(3) It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, handicap, familial status, or religion or an intention to make any such preference, limitation, or discrimination.

33. The Florida Legislature modeled the Fair Housing Act after the United States Fair Housing Amendments Act of 1988. Therefore, interpretation of the federal law is instructive and persuasive in applying Florida's Fair Housing Act. *Dornbach v. Holley*, 854 So. 2d 211, 213 (Fla. 2d DCA 2002).

34. To prove discrimination prohibited by section 760.23(1), the Walkers must prove that they made a "a bona fide offer" to purchase a home. *Noah v. Assor*, 379 F. Supp. 3d 1284, 1298 (S.D. Fl. March 8, 2019) ("ready, willing, and able" requirement). They did not make "a bona fide offer" to buy a home. They, therefore, did not prove a violation of section 760.23(1).

35. To prove a prima facie case, or make an initial showing, of a violation of section 760.23(2) the Walkers must prove, by direct or circumstantial evidence, that LGI discriminated against them in the sale of housing because of their race or color. *See Scholz v. RDV Sports, Inc.*, 710 So. 2d 618, 624 (Fla. 5th DCA 1998) (proof of discrimination in employment may be direct or circumstantial evidence). The proof may be evidence of discriminatory treatment or discriminatory effects of a policy. *Martin v. Palm Beach Atl. Ass'n, Inc.*, 696 So. 2d 919, 921 (Fla. Dist. Ct. App. 1997).

36. The Walkers failed in three ways to prove a prima facie case of a violation of section 760.23(2). First, although Ms. Stratton made rude, arguably racist, comments to the Walkers, her comments are not linked to any discrimination against them in the sale of a home. To the contrary,

Ms. Stratton continued her efforts to sell the Walkers a home on June 17, 2018. Ms. Walker rebuffed her.

37. Second, the Walkers' claim focusses narrowly on the refusal to show them a four-bedroom home. But the weight of the persuasive evidence did not prove that a four-bedroom home was available for showing.

38. Third, there is no evidence of disparate treatment of the Walkers, i.e. willingness to sell a four-bedroom home to a similarly situated non-minority purchaser. *Id.* Additionally, the proof of multiple home sales in Hill 'N Dale by LGI to African-Americans vitiates any inference of discrimination by LGI that might be drawn from Ms. Stratton's crude comments. Also, the claim is against LGI, not Ms. Stratton. When Mr. Boyd, an LGI supervisor learned of Ms. Stratton's remarks, he promptly made it clear that LGI did not agree with or condone Ms. Stratton's comments.

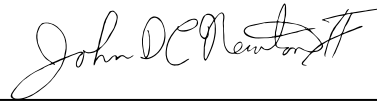
39. There is no evidence that LGI made, printed, or published any notice statement, or advertisement that indicated "any preference, limitation, or discrimination based on race or color. Consequently the Walkers did not present prima facie proof of a violation of section 760.23(3).

40. The Walkers did not present prima facie proof of a violation of section 760.23.

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 denying the Petition for Relief.

DONE AND ENTERED this 12th day of June, 2020, in Tallahassee, Leon
County, Florida.



JOHN D. C. NEWTON, II
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Filed with the Clerk of the
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this 12th day of June, 2020.

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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.