

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EVELYN CHANDLER,

Petitioner,

vs.

Case No. 20-1041

FORT WALTON BEACH HOUSING
AUTHORITY, ET AL,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted via Zoom before Administrative Law Judge Garnett W. Chisenhall of the Division of Administrative Hearings (“DOAH”), on May 28, 2020.

APPEARANCES

For Petitioner: Evelyn Chandler, pro se
65D 8th Avenue
Shalimar, Florida 32579

For Respondent: Jennifer Hanson Copus, Esquire
Copus & Copus, P.A.
25 Walter Martin Road Northeast, Suite 200
Fort Walton Beach, Florida 32548

STATEMENT OF THE ISSUE

The issue is whether Respondent violated the Florida Fair Housing Act (“the Act”) by failing to provide Petitioner with a reasonable accommodation or by subjecting her to disparate treatment.

PRELIMINARY STATEMENT

Evelyn Chandler filed a complaint with the Florida Commission on Human Relations (“the Commission”) on November 29, 2018, alleging that the Fort Walton Beach Housing Authority (“Housing Authority”) discriminated against her because of a disability. The substance of her complaint, as described by the Commission, was that Shelia Gordon, a case manager for the Housing Authority, notified her in January of 2018:

[A]bout an upcoming inspection of her unit in February 2018. [Ms. Chandler] alleges she informed Respondent Gordon that she was suffering from a physical disability []¹ and requested a reasonable accommodation to delay her inspection. [Ms. Chandler] stated she explained to Respondent Gordon that she was requesting the delay to allow her enough time to recover from her disability and prepare the home for an inspection. [Ms. Chandler] alleges Respondent Gordon denied her accommodation request. As a result, [Ms. Chandler] failed her inspection on or about February 15, 2018, lost her housing voucher and was eventually evicted from the subject property because she was unable to make rental payments. [Ms. Chandler] believes the [Housing Authority and Ms. Gordon] collectively discriminated against her based on disability in violation of the [A]ct.

After conducting an investigation, the Commission issued a Determination on January 28, 2020, concluding there was no reasonable cause to believe that a discriminatory housing practice had occurred. While the Commission found that Ms. Chandler was disabled within the meaning of the Act, it also found that she did not put the Housing Authority on notice of her disability. Accordingly, the Commission concluded that no discriminatory housing practice had occurred.

¹ Rather than disputing that Ms. Chandler had a disability, the Housing Authority argued it was not on notice of her disability. Therefore, describing the nature of Ms. Chandler’s disability herein is unnecessary.

Ms. Chandler filed a Petition for Relief on February 24, 2020, and the Commission referred this matter to DOAH for a formal administrative hearing on February 26, 2020.

The final hearing took place as scheduled on May 28, 2020. Ms. Chandler testified on her own behalf, and Petitioner's Exhibits 2 through 9 were accepted into evidence. The Housing Authority presented testimony from Sheila Gordon, and Respondent's Exhibits A through Q were accepted into evidence. The undersigned granted the Housing Authority's Motion to take official recognition of documents from a case that had been before the Okaloosa County Court, and those documents are collectively designated as Respondent's Exhibit R.

The final hearing Transcript was filed on June 18, 2020, and the Housing Authority filed a timely Proposed Recommended Order on June 25, 2020. Ms. Chandler did not file a proposed recommended order.

FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

1. Congress established the Section 8 Housing Program ("Section 8") in 1974 as part of the Housing and Community Development Act. Section 8 "authorizes a number of distinct programs to aid lower-income families in obtaining a decent place to live and to promote economically mixed housing." *Drake v. Pierce*, 691 F.Supp. 264, 266-67 (W.D. Wash. 1998). Under the Section 8 program, the Secretary of the Department of Housing and Urban Development ("HUD") enters into contracts with public housing authorities "to make housing assistance payments to owners of existing dwelling units on behalf of eligible low-income families." *Id.* Public housing authorities accept

applications, determine a family's eligibility, maintain wait lists, and select participants. *Id.*

2. The Housing Authority operates a Section 8 housing program. After an initial certification, a Housing Authority client must annually recertify his or her continuing eligibility for the program. That is accomplished by disclosing information about one's current financial status and submitting to a home inspection so that the Housing Authority can verify that the residence in question continues to satisfy HUD standards.

3. The Housing Authority conducts recertification by having multiple clients simultaneously visit its office in order to complete the required paperwork. The Housing Authority also conducts individual meetings so that confidential matters can be discussed. While clients can contact their assigned case worker at any time, the recertification process affords them an opportunity to notify the Housing Authority of any changes in their circumstances, such as changes in health or employment status.

4. Clients with a disability are eligible to receive additional benefits from the Housing Authority, and the Housing Authority only requires a letter from the client's treating physician as proof of a disability.²

5. The Housing Authority does not offer relocation assistance.

6. Ms. Chandler is 61 years old. In January of 2006, she began living in a house in Mary Esther, Florida with the Housing Authority subsidizing a portion of her rent.

² Sheila Gordon, a case manager with the Housing Authority, testified that when the Housing Authority learns that a client might be disabled, "[w]e ask for some type of documentation and go right to the file. We try to make it clear that the documentation that they provide simply has to come from someone who has the power and the authority and the responsibility to make the diagnosis; simply to write that to the best of their professional ability they recognize there is a disability. And we tell them at that time that it is not necessary, nor is it wanted that the actual diagnosis be divulged to us. You simply have to say I'm disabled and you verify that with . . . your physician."

7. Ms. Chandler was diagnosed in 2016 with a condition that would constitute a “disability” under the Act.³

8. Ms. Chandler acknowledged receiving written notifications of her right to request a reasonable accommodation on January 8, 2015, January 7, 2016, and January 5, 2017. However, there is nothing in the Housing Authority’s files indicating Ms. Chandler ever requested a reasonable accommodation.

9. The Housing Authority notified Ms. Chandler in November of 2017 that she was due for recertification and that a home inspection would be conducted on January 2, 2018. When Adrienne Carr from the Housing Authority arrived at Ms. Chandler’s residence⁴ to conduct the inspection, Ms. Chandler refused to allow Ms. Carr to enter because Ms. Chandler had been ill and unable to prepare for the inspection.⁵ Nevertheless, Ms. Carr inspected the outside of the residence and gave it a failing grade due to a nonfunctional porch light. Ms. Carr’s inspection report also noted there was a “tremendous amount of” clutter in the home that impeded entry and exit.

10. The Housing Authority notified Ms. Chandler’s landlord, Randy Dean, of the failed inspection via a letter dated January 11, 2018. The letter also stated that the Housing Authority’s payments to Mr. Dean would be abated beginning February 1, 2018. During this abatement period, Mr. Dean could not charge Ms. Chandler for the Housing Authority’s portion of the rent. The letter further stated that the abatement would end if Mr. Dean made the necessary repairs and the residence passed an inspection by February 23, 2018. Finally, the Housing Authority stated that its contract with Mr. Dean would be terminated if the repairs were not completed by February 27, 2018.

³ Ms. Chandler began receiving disability payments in July of 2018.

⁴ At that time, Ms. Chandler was sharing her residence with two of her daughters and three grandchildren. One of her daughters has Downs Syndrome.

⁵ Ms. Chandler did not provide the Housing Authority with any advance notification that she needed a different inspection time.

11. Ms. Carr conducted another inspection of Ms. Chandler's residence on January 23, 2018, and this inspection also resulted in a failing grade. Ms. Carr's ability to enter individual rooms was impeded by an excessive amount of clutter. Nevertheless, her inspection report noted that a bathroom sink was clogged and that black water was coming from the drain.

12. A third inspection occurred on February 1, 2018, and resulted in another failing grade. The inspection report noted several problems such as a broken oven door handle, a broken dishwasher, an overheating refrigerator, a nonfunctional doorbell, and a clogged sink. The inspection report also noted the continued presence of excessive clutter.

13. The Housing Authority sent a letter to Mr. Dean on February 6, 2018, notifying him that Ms. Chandler's residence had failed a third inspection and that the Housing Authority's contract with him would be terminated on March 3, 2018, if the necessary repairs were not made by February 20, 2018.

14. Rather than making the necessary repairs, Mr. Dean's wife notified the Housing Authority via e-mail on February 13, 2018, that Ms. Chandler had been served with a 30-day eviction notice. Ms. Chandler remained in the residence after expiration of the abatement period and thus become solely responsible for the monthly rent. Mr. Dean later notified the Housing Authority that Ms. Chandler owed him \$1,501.36 in back rent and \$2,000.00 for property damage.

15. Eviction jeopardized Ms. Chandler's continued eligibility for a housing subsidy because HUD policy requires that clients be in good standing with their previous landlord, and owing money to a landlord is not considered good standing.

16. The Housing Authority issued a new voucher to Ms. Chandler on February 21, 2018, in order to give her more time to reach an agreement with Mr. Dean, relocate to a new residence, and avoid eviction. This voucher was initially set to expire on April 29, 2018, but the Housing Authority extended it to June 28, 2018. However, Ms. Chandler was unable to afford a move,

began falling behind on her rent, and the Okaloosa County Court rendered a Final Judgment on April 27, 2018, evicting Ms. Chandler from the residence.

17. The Housing Authority notified Ms. Chandler via a letter dated June 11, 2018, her housing subsidy would be ending on June 30, 2018, due to the eviction. Ms. Chandler requested an informal hearing to dispute the Housing Authority's decision, and an informal hearing officer issued a decision on July 11, 2018, informing Ms. Chandler she was upholding the Housing Authority's decision:

Due to your inability to maintain your home in a safe and sanitary manner, [the Housing Authority] (by policy) was not able to continue paying their portion of the landlord's rent. Your landlord could not allow you to stay without receiving any rental payment and therefore issued you a notice for rent due, damages incurred, and demand for possession of their unit. It was you who brought this notice to Sheila Gordon [of the Housing Authority]. It appeared to me that for a variety of reasons your landlord was resistant to allowing you to stay in the home. [The Housing Authority] went above the normal policy to allow you to move to another unit. Sheila Gordon counseled you that you must not allow the landlord to file an eviction or she would have no choice but to terminate your assistance.

18. In sum, the failed inspections led to the abatement of the Housing Authority's payments to Mr. Dean, the abatement of those payments led to Mr. Dean evicting Ms. Chandler, and the eviction led to Ms. Chandler losing her housing subsidy.

19. There was conflicting testimony about whether Ms. Chandler notified the Housing Authority of her disability. For instance, Ms. Chandler testified that she notified a Housing Authority inspector in 2015 about her disability.

However, there was no notation in the Housing Authority's files about Ms. Chandler being disabled or requesting a reasonable accommodation.

20. Ms. Chandler testified that her appearance was enough to put the Housing Authority on notice of her need for a reasonable accommodation. Ms. Chandler specifically mentioned that she experiences conditions that render her need for a reasonable accommodation readily apparent.

However, Sheila Gordon, the last Housing Authority employee to manage Ms. Chandler's file, testified that there was nothing about Ms. Chandler's appearance that would lead one to think that she was disabled.

21. Ms. Chandler did not prove by a preponderance of the evidence that she requested a reasonable accommodation or that the Housing Authority should have been on notice of her need for a reasonable accommodation.

22. Ms. Chandler presented no evidence indicating that the Housing Authority gives preferential treatment to people who are not disabled. The greater weight of the evidence indicates that the Housing Authority followed its established procedures in handling Ms. Chandler's case and did not discriminate against her in any way.

CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat.

24. Florida's Fair Housing Act, sections 760.20 through 760.37, Florida Statutes, makes it unlawful to discriminate against persons in matters incidental to a dwelling on the basis of a person's handicap. In that regard, section 760.23(2), provides that:

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.

25. Section 760.23(8) and (9) provides:

(8) 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 with such dwelling, because of a handicap of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person associated with the buyer or renter.

(9) For purposes of subsections (7) and (8), discrimination includes:

* * *

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

26. Entities such as the Housing Authority are not exempt from anti-discrimination laws. *See generally Hinneberg v. Big Stone Cty. Hous. & Redevelopment Auth.*, 706 N.W.2d 220, 224-25 (Minn. 2005).

27. The Act is patterned after the Federal Fair Housing Act (“the FHA”). Federal court decisions interpreting the FHA provide guidance in determining whether a violation of the Act has occurred. *Dornbach v. Holley*, 854 So. 2d 211, 213 (Fla. 2d DCA 2002).

28. With regard to Ms. Chandler’s argument that the Housing Authority failed to provide her with a reasonable accommodation, she has the burden of proving by a preponderance of the evidence that the Housing Authority violated the Act by failing to provide a reasonable accommodation for her

disability. *U.S. Dep't of Hous. and Urban Dev. v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990).

29. In evaluating such claims, courts apply the burden-shifting analysis developed in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 802-804, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Under this approach, a petitioner must first establish a prima facie case of discrimination. If the petitioner is successful in doing so, then the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its action.

30. To establish a prima facie case of failure to provide a reasonable accommodation under the FHA, a petitioner must demonstrate that: (1) he or she is disabled within the meaning of the FHA; (2) a reasonable accommodation was requested; (3) that such accommodation was necessary to afford him or her an opportunity to use and enjoy the dwelling; and (4) the respondent refused to make the requested accommodation. *Bhogaita v. Altamonte Heights Condo. Ass'n*, 765 F.3d 1277, 1285 (11th Cir. 2014).

31. Even if we assume that Ms. Chandler is disabled within the meaning of the Act, she failed to prove by a preponderance of the evidence that the Housing Authority was on notice of her disability. *See Boston Hous. Auth. v. Bridgewater*, 898 N.E.2d 848, 857 (Mass. 2009)(noting that “[a]s a predicate to obtaining a reasonable accommodation in federally financed public housing, a disabled tenant must, if his landlord is not already aware, inform the landlord that he has a disability and must request some accommodation.”). Accordingly, she has failed to establish a prima facie case of failure to provide a reasonable accommodation.

32. To the extent that Ms. Chandler alleged a disparate treatment claim, a petitioner seeking to establish a prima facie case of disparate treatment based on a failure to provide services must show that she: (a) is a member of a protected class; (b) that she requested services be performed on terms comparable to others living in the community; and (c) that, based on her disability, she was denied provision of services that were were available to

other tenants. See *Miller v. Richman Prop. Servs., Laurel Oaks Apts.*, Case No. 12-3237 (Fla. DOAH Dec. 27, 2012; Fla. FCHR March 11, 2013)(setting forth the elements of a prima facie disparate treatment claim based on race). The final element implies that the respondent was aware of the petitioner's protected class status.

33. Ms. Chandler has failed to present a prima facie case. Even if it were assumed that Ms. Chandler is sufficiently disabled to be a member of a protected class, that the Housing Authority was aware of her condition, and that she requested that services be performed on terms comparable to those received by other residents, there was no persuasive evidence that any actions or inactions by the Housing Authority were influenced by Ms. Chandler's physical or mental condition. In other words, there was no persuasive evidence indicating that residents with no perceptible disabilities received more favorable treatment from the Housing Authority.

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 dismissing Evelyn Chandler's Petition for Relief from a Discriminatory Housing Practice.

DONE AND ENTERED this 16th day of July, 2020, in Tallahassee, Leon
County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 16th day of July, 2020.

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.