

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

APRIL WILLIAMS,

Petitioner,

vs.

Case No. 20-2125

ORION REAL ESTATE SERVICES, AND
HOUSING AUTHORITY OF THE CITY OF
WINTER PARK,

Respondents.

RECOMMENDED ORDER

On July 23, 2020, Administrative Law Judge Hetal Desai of the Florida Division of Administrative Hearings (DOAH) conducted the final hearing via video teleconferencing with locations in Altamonte Springs and Tallahassee, Florida.

APPEARANCES

For Petitioner: April Williams, pro se
746 Margaret Square
Winter Park, Florida 32789

For Respondent Orion Real Estate Services:

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For Respondent Housing Authority of the City of Winter Park:

Ricardo L. Gilmore, Esquire
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STATEMENT OF THE ISSUE

Whether Respondents Orion Real Estate Services (Orion) and the Housing Authority of the City of Winter Park (Housing Authority) subjected Petitioner April Williams to discriminatory housing practices based on her race (African American, non-Hispanic), in violation of the Florida Fair Housing Act, chapter 760, part II, Florida Statutes (2019) (FHA).¹

PRELIMINARY STATEMENT

On, November 19, 2019, Petitioner filed a charge of housing discrimination with the Florida Commission on Human Relations (FCHR), alleging Respondents discriminated against her based upon her race (African-American, non-Hispanic), in violation of the FHA.

On February 26, 2020, FCHR issued a "Notice of Determination of No Cause," finding that there was no reasonable cause to believe that Respondents had committed a discriminatory housing practice against Petitioner.

On April 1, 2020, Ms. Williams filed a Petition for Relief with FCHR, again alleging that Respondents had committed a discriminatory housing practice against her based on her race. FCHR transmitted the Petition to DOAH and assigned the undersigned to conduct an evidentiary hearing.²

On July 16, 2020, the undersigned conducted a telephonic pre-hearing conference with all of the parties. During that conference call, the undersigned reminded the parties of the deadline to exchange witness and

¹ All statutory references are to the 2019 codification of the Florida Statutes, unless otherwise indicated.

² The Petition also alleges the FCHR investigator who was assigned to Ms. Williams's complaint was bias and discriminated against Ms. Williams. That issue was not properly raised in this proceeding, nor is it addressed in this Recommended Order.

exhibit lists, the deadline to provide the undersigned with potential exhibits, and the method to submit the potential exhibits to DOAH prior to the hearing.

The undersigned conducted the final hearing on July 23, 2020. Orion's counsel participated remotely by telephone; Petitioner and the Housing Authority appeared by video.

Petitioner presented her own testimony; the testimony of LiMarys Rivera, a Hispanic female and the Property Manager for Orion; and La Shanda Lovett, an African American female and the Executive Director of the Housing Authority. None of Petitioner's exhibits were admitted into evidence because she did not timely disclose them to Respondents and did not provide them to the undersigned until an hour before the hearing, contrary to the instructions provided in the Notice of Hearing and Pre-Hearing Instructions. Orion presented the testimony of Ms. Rivera and Orion's Exhibits OR2 through OR7 were admitted into evidence. The Housing Authority put on no witnesses and offered no evidence.

Although there was a court reporter at the final hearing, the parties did not order a transcript. At the conclusion of the hearing, the undersigned instructed the parties that they had ten days from the date of the final hearing to submit their proposed recommended orders (PROs), or by no later than August 3, 2020. The Housing Authority timely submitted a PRO, and it has been considered in the preparation of this Recommended Order. Orion's PRO was filed on August 4, 2020, and is considered untimely. Petitioner failed to timely submit a proposed recommended order.

FINDINGS OF FACT

1. Ms. Williams, an African American female, lives in an apartment in the Meadows, a low-income housing complex located in Winter Park, Florida.

2. The Housing Authority is a governmental entity that provides low-income housing through federal funds provided by the United States Department of Housing and Urban Development. It contracts with outside companies to manage the properties it owns. The Housing Authority owns the Meadows.

3. Orion is a real estate services company that manages residential properties for landlords and investors. At the time relevant to these proceedings, Orion managed the Meadows for the Housing Authority.

4. Ms. Williams had to climb up a stairwell to reach her unit. Her apartment was located above one unit and next to another. She shared a front porch with her next-door neighbor.

5. The Meadows housed 300 residents during the relevant time period. Of those residents, 264 identified themselves as "Black" and 280 identified themselves as "Ethnic." There was no testimony or evidence as to how many identified as Hispanic.

6. The Housing Authority claims it took no action against Ms. Williams, and therefore cannot be liable for discrimination. The Community Manager for the Meadows, LiMarys Rivera, testified she was an employee of Orion. However, she issued documentation on letterhead titled "The Housing Authority of the City of Winter Park." Ms. Rivera's signature line states that her title is "Property Manager Agent for the Winter Park Housing Authority." As such, the undersigned finds Ms. Rivera was a dual agent for both Orion and the Housing Authority.

7. Ms. Rivera testified that once she received a complaint against a tenant, regardless of who made the complaint, it was standard procedure to first reach out to the alleged violator by telephone as a courtesy, and then if there was a subsequent complaint to send out a written "Notice to Cure" or

"Notice of Material Non-Compliance with Opportunity to Cure and Proposed Adverse Action" (non-compliance notice) to that tenant.

8. Respondents provided numerous non-compliance notices to tenants regarding various types of complaints. Ms. Rivera testified these non-compliance notices were issued to tenants of all races, and both Hispanic and non-Hispanic tenants.

9. Over the course of a year to 18 months, Ms. Williams had made somewhere between 20 and 29 complaints against her next-door neighbor and her downstairs neighbor. Ms. Williams described both of these neighbors as Hispanic.

10. Ms. Williams complained that her next-door neighbor was noisy and would smoke (and allow guests to smoke) on the front porch even though her building was designated as a non-smoking area. Ms. Williams also complained that the downstairs neighbor left items on the stairwell causing a hazard. These items included pizza boxes, shoes, rugs, and bags of trash.

11. As a result of these complaints, both of Ms. Williams's neighbors were issued non-compliance notices. The downstairs neighbor received a non-compliance notice for leaving pizza boxes, trash, and the other objects outside her front door. Similarly, the next-door neighbor received a non-compliance notice for smoking in her apartment and common areas.

12. Additionally, Respondents issued community flyers to all the tenants in the Meadows reminding them of basic rules, including not smoking, not leaving trash and debris outside, and keeping front porches clean.

13. Ms. Williams also complained to Respondents that workmen who were performing maintenance in her unit were speaking Spanish. She requested that Respondents provide workmen that speak only English while on the Meadows property.

14. At some point, Ms. Williams's neighbors made noise complaints against her. Respondents did not initially issue a non-compliance notice to

Ms. Williams because she and her neighbors had numerous complaints against each other.

15. Instead, Ms. Rivera attempted to hold a conciliation or mediation meeting with all of them. Ms. Williams refused. She did not see the point of the meeting, and believed Ms. Rivera would take the neighbors' side because Ms. Rivera, like the neighbors, was Hispanic.

16. After Ms. Williams refused to meet, Respondents issued her a non-compliance notice for excessive noise. There was no evidence that she was required to pay any fees or fines as a result of the non-compliance notice against her.

17. Ms. Williams testified she felt Ms. Rivera gave preferential treatment to Hispanics. When asked how they were treated better, Ms. Williams testified that her neighbors were not evicted despite the complaints made against them. Ms. Williams admitted, however, that Respondents did not evict her either.

CONCLUSIONS OF LAW

18. The undersigned and DOAH have jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.569, 120.57(1), and 760.35(3)(b), Florida Statutes.

19. The FHA makes it 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." § 760.23(2), Fla. Stat.

20. The FHA is patterned after Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988. As such, discriminatory acts prohibited under the federal Fair Housing Act are also prohibited under the FHA, and federal case law interpreting the federal Fair Housing Act is applicable to proceedings brought under the FHA. *See generally, Glass v. Captain Katanna's, Inc.*, 950 F. Supp. 2d 1235, 1244 (M.D. Fla. 2013)("a

Florida law mirrored after a federal law generally will be construed in conformity with the federal law.").

21. In cases involving claims of rental housing discrimination, the complainant has the burden to prove a *prima facie* case of discrimination by a preponderance of the evidence. § 760.34(5), Fla. Stat.; *Fla. Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981). A "preponderance of the evidence" means the "greater weight" of the evidence, or evidence that "more likely than not" tends to prove the fact at issue. *Gross v. Lyons*, 763 So. 2d 276, 289 n.1 (Fla. 2000).

22. Petitioner's allegations amount to a claim of disparate treatment in the terms of enforcement of the rules and regulations of the Meadows.

23. To establish a *prima facie* case of disparate treatment, Petitioner must present evidence that she was treated differently than similarly-situated tenants. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1216 (11th Cir. 2008). She can do so either by direct evidence, or through circumstantial evidence established through the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Noel v. Aqua Vista Townhomes Condo. Ass'n, Inc.*, 2019 WL 4345903 at *3 (S.D. Fla. Sept. 12, 2019).

24. Direct evidence is that which, if believed, would prove the existence of discriminatory intent without resort to inference or presumption. *Denney v. City of Albany*, 247 F.3d 1172, 1182 (11th Cir. 2001). "Direct evidence encompasses conduct or statements that both (1) reflect directly the alleged discriminatory attitude, and (2) bear directly on the contested [housing] decision." *Noel*, 2019 WL 4345903 at *3. As to the nature of the evidence, "only the most blatant remarks, whose intent could be nothing other than to discriminate ... will constitute direct evidence of discrimination." *Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1358-59 (11th Cir. 1999) (citations omitted).

25. Ms. Williams presented no direct evidence of discrimination by Respondents related to, or affecting the terms of, her tenancy at the Meadows, or in the way she was treated by Respondents.

26. Alternatively, Ms. Williams must show that she: (1) is a member of a protected class; (2) was treated differently in the enforcement of rules and regulations than other tenants; and (3) this different treatment was based on her race or non-Hispanic status. *See McDonnell Douglas Corp.*, 411 U.S. at 802-4. She must also show that as a result of the differential treatment, she was denied services or access protected by the FHA, which were available to other tenants. *See Savanna Club Worship Serv., Inc. v. Savanna Club Homeowners' Ass'n, Inc.*, 456 F. Supp. 2d 1223, 1232 (S.D. Fla. 2005)(plaintiff alleging housing discrimination must prove denial of access to use of facilities or common areas available to other homeowners based upon religion).

27. Ms. Williams established the first element: she is a member of a protected class because she is African American and non-Hispanic.

28. Ms. Williams, however, did not establish the remaining elements of a *prima facie* case. She presented no credible or persuasive evidence that Respondents treated her differently than other tenants or that such treatment was because of her race and she was not Hispanic. She was issued a non-compliance notice, just as Hispanic tenants and tenants of other races had been. Moreover, although she complained her neighbors were not evicted as a result of their violations, neither was she.

29. Ms. Williams also presented no credible evidence that she was denied any services by Respondents. Although she received a non-compliance notice, she was not fined or evicted.

30. Ms. Williams failed to meet her burden to establish a *prima facie* case of discrimination or disparate treatment under the FHA. Ms. Williams failed to present persuasive evidence that any actions or inactions by Respondents were influenced by her race or her non-Hispanic status.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby RECOMMENDS that the Florida Commission on Human Relations issue a final order dismissing the Petition for Relief filed by April Williams.

DONE AND ENTERED this 21st day of August, 2020, in Tallahassee, Leon County, Florida.



HETAL DESAI
Administrative Law Judge
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Filed with the Clerk of the
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this 21st day of August, 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.