

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KARENLEE KRASON,

Petitioner,

vs.

Case No. 20-3110

BREVARD COUNTY HOUSING AUTHORITY,
ET AL,

Respondent.

_____ /

SUMMARY RECOMMENDED ORDER OF DISMISSAL

This case is before the undersigned on Respondent's Motion for Summary Recommended Order and Incorporated Memorandum of Law ("Motion"), filed October 12, 2020. Through its Motion, Respondent contends, *inter alia*, that there is no genuine issue as to any material fact, and that Petitioner cannot show any evidence that she was discriminated against because of her disability.

APPEARANCES

For Petitioner: KarenLee Krason, pro se
c/o General Delivery
Melbourne, Florida 32901

For Respondent: Michael D. Begey, Esquire
Rumberger, Kirk & Caldwell, P.A.
Suite 1400
300 South Orange Avenue
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STATEMENT OF THE ISSUE

Whether, on the basis of her handicap, Respondent discriminated against Petitioner as alleged in Petitioner's Housing Discrimination Complaint, in violation of the Florida Fair Housing Act ("FFHA").

PRELIMINARY STATEMENT

Petitioner, KarenLee Krason, filed her Housing Discrimination Complaint ("Complaint") with the Florida Commission on Human Relations ("FCHR") on February 25, 2020. This is an action alleging housing discrimination brought pursuant to the FFHA, as amended, and codified in sections 760.20-.37, Florida Statutes. Respondent is a Public Housing Agency ("PHA"), under the U.S. Department of Housing & Urban Development ("HUD"), which administers vouchers provided in Brevard County, Florida, as part of the Housing Choice Voucher Program ("HCV Program"), also known as Section 8. Petitioner was one of Respondent's HCV Program clients. Petitioner alleges in her Complaint that she was discriminated against based on her disability and she was treated differently than non-disabled voucher holders. Petitioner further alleges she continues to be harassed by Respondent's employees and receives threats that her voucher will be terminated.

FCHR investigated Petitioner's claims and on June 12, 2020, FCHR issued a determination finding "no cause" for Petitioner's Complaint against Respondent. FCHR found that Petitioner failed to state a claim for harassment based on her disability because there was no evidence of discrimination.

Furthermore, FCHR concluded Petitioner was not currently qualified to receive the voucher due to her failure to conform to the terms of Respondent's policies. Lastly, FCHR found Respondent could not be found to have discriminated by refusing to sell or rent a property to Petitioner because

Respondent was not responsible for providing housing, and Petitioner failed to make a bona fide offer to Respondent for the purchase or rental of a property.

Dissatisfied with the Commission's determination, on July 13, 2020, Petitioner filed the Petition for Relief ("Petition") which is the subject of this proceeding. The Petition was referred to the Division of Administrative Hearings ("DOAH") that same day, and assigned to the undersigned administrative law judge.

The undersigned scheduled the final hearing for September 28, 2020, but on September 23, 2020, Respondent filed a Motion, and Amended Motion, for Continuance. That motion was granted and this matter was rescheduled for final hearing on October 28, 2020.

On October 12, 2020, Respondent filed the Motion for Summary Recommended Order ("Motion"), which is now before the undersigned. Petitioner did not file a response to the Motion within the allowable response period. Due to the potentially dispositive nature of the Motion, and the short time remaining prior to the scheduled final hearing, on October 21, 2020, the undersigned determined that in all fairness to Petitioner, the final hearing should be cancelled to allow time for Petitioner to respond to the Motion. In the Order entered on that date, the undersigned expressly ruled that Petitioner may file a written response to the Motion within ten days of the date of the Order, and should she so choose, also file sworn affidavits in support of her response to the Motion.

On October 22, 2020, Petitioner responded by e-mail to the Motion, stating in full, "I contest the latest Request for summery [sic] judgment." No

affidavits or other documents were attached to Petitioner's response to the motion.

The Motion invokes the procedure in section 120.57(1)(i), Florida Statutes, which provides as follows:

When, in any proceeding conducted pursuant to this subsection, a dispute of material fact no longer exists, any party may move the administrative law judge to relinquish jurisdiction to the agency. An order relinquishing jurisdiction shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with supporting and opposing affidavits, if any, that no genuine issue as to any material fact exists. If the administrative law judge enters an order relinquishing jurisdiction, the agency may promptly conduct a proceeding pursuant to subsection (2), if appropriate, but the parties may not raise any issues of disputed fact that could have been raised before the administrative law judge. An order entered by an administrative law judge relinquishing jurisdiction to the agency based upon a determination that no genuine dispute of material fact exists, need not contain findings of fact, conclusions of law, or a recommended disposition or penalty.

Attached to Respondent's Motion is the affidavit of Cheryl Disco, a manager of the Housing Authority of Brevard County ("HABC").¹ This affidavit contains multiple factual statements that are material and relevant to the disposition of this case. None of those statements have been rebutted by Petitioner, and accordingly, to the extent relevant, they have been incorporated in the Findings of Fact herein.

¹ As noted by Respondent, the case style incorrectly names the Respondent. The correct name is the "Housing Authority of Brevard County."

The undersigned has determined from the pleadings and affidavit on file that no genuine issue as to any material fact exists with regard to the dispositive issues raised by the Motion, and that, based on the un rebutted facts, the Petition should be dismissed.

While it is recognized that, per section 120.57(1)(i), this Order “need not” contain findings of fact, conclusions of law, and recommended disposition, the undersigned chooses to do so here, to fully explain the bases for these determinations and to offer the legal analysis leading to the recommended disposition.

Unless otherwise noted, all citations to the Florida Statutes are to the 2020 version.

FINDINGS OF FACT

1. HABC is a PHA that administers vouchers used in Brevard County, Florida, as part of the HCV Program.
2. Petitioner, Karenlee Krason, began receiving an HCV Program voucher ("voucher") in 2009. In 2019, she rented a two-bedroom house at 407 Ward Road Southwest, Melbourne, Florida, 32980 ("Ward Unit").
3. HABC granted a reasonable accommodation to Petitioner by approving a second bedroom for her oxygen equipment.
4. On July 30, 2019, Petitioner's landlord notified her in writing that her lease would not be renewed for the Ward Unit.
5. Ms. Alysha Connor, a Section 8 Technician at the HABC, scheduled a relocation appointment on October 9, 2019, to assess Petitioner's plan for finding new housing. HABC issued Petitioner a voucher authorizing her to find new housing within 60 days.

6. HABC is not responsible for finding suitable housing for voucher recipients. However, HABC repeatedly attempted to assist Petitioner in finding a new place to reside.

7. Petitioner notified HABC that she found a place to rent at Las Palmas Apartments, located at 1915 Agora Circle, Unit 101, Palm Bay, Florida 32909 ("Agora Circle Unit").

8. In an e-mail dated November 5, 2019, Petitioner requested that her voucher include reimbursement for expenses relating to her certified service animal.

9. A Request for Tenancy Approval was submitted for the Agora Circle Unit for a potential move-in date of December 1, 2019.

10. All rental units must meet minimum standards of health and safety and pass a Housing Quality Standard ("HQS") inspection, as determined by HABC in cooperation with HUD.

11. The Agora Circle Unit failed an inspection conducted by HABC on November 18, 2019. HABC identified the conditions/items needing to be addressed in order to pass inspection.

12. In the meantime, HABC obtained an extension on Petitioner's Ward Unit lease with her landlord. The lease would not expire until December 31, 2019. An additional inspection of the Agora Circle Unit was performed on November 27, 2019, at which time the Agora Circle Unit passed HABC's re-inspection. However, Petitioner communicated to HABC that she no longer wanted to rent the Agora Circle Unit.

13. Petitioner now expressed a desire to rent a unit at 409 Mercury Avenue Southeast, Unit 103, Palm Bay, Florida ("Mercury Unit"). The Mercury Unit passed HABC's inspection on December 11, 2019. However, issues arose with Petitioner refusing to submit an application for her daughter's background check. HABC had offered to pay the required application fee, but the landlord revoked Petitioner's application approval

because she failed to comply with the landlord's request for the background check.

14. By this time, Petitioner's lease extension for the Ward Unit had expired, as of December 31, 2019. However, Petitioner was still residing in the unit. On January 9, 2020, HABC attempted to obtain another extension on Petitioner's lease, but the landlord refused the request. Nonetheless Petitioner continued to live in the Ward Unit as she searched for alternative housing.

15. On February 3, 2020, Petitioner's realtor, Bruce Reilly, contacted HABC regarding a unit located at 1642 Lizette Street Southeast, Palm Bay, Florida ("Lizette Unit"). Mr. Reilly inquired whether Petitioner could afford the unit. HABC provided Mr. Reilly its calculations on what Petitioner could qualify for. There were no further communications from Mr. Reilly.

16. During this time, Petitioner's landlord at the Ward Unit provided her with notice to vacate the unit by February 29, 2020. Furthermore, the landlord communicated to HABC that he would no longer accept rent from HABC for the following month.

17. Two days before her deadline to vacate the Ward Unit, Petitioner sent an email to HABC advising that she had located a unit at 3025 Thrush Drive, Unit 101, Melbourne, Florida ("Thrush Unit"). Petitioner advised HABC that the property needed to be inspected the following day.

18. The Request for Tenancy Approval ("RFTA") packet submitted by Petitioner for the Thrush Unit was incomplete. Although HABC was closed for business on Friday, February 28, 2020, HABC made arrangements for one of its employees to inspect the Thrush Unit that day. In addition, HABC's CEO, Michael Bean, accelerated the process to allow Petitioner to relocate to the Thrush Unit immediately so she would not become homeless.

19. Later that day, Petitioner notified HABC that the Thrush Unit had been rented to another individual.

20. Throughout the relocation process, Petitioner was granted numerous extensions on her voucher.

21. At the end of each year, HABC conducts a mandatory review of the financial information provided by Section 8 voucher recipients through the Enterprise Income Verification (“EIV”) system. EIV provides a comprehensive online system for the determination and verification of various resident information and income that PHAs use to determine rental subsidies.

22. On or about January 2020, EIV reported that Petitioner's daughter was working at Cumberland Farms. Petitioner had failed to disclose this fact. Upon contacting Petitioner to discuss this omission, Petitioner continued to assert that her daughter was not employed. HABC proceeded to investigate this matter further.

23. Throughout its investigation, HABC retrieved employment records from Cumberland Farms. This documentation confirmed that Petitioner’s daughter indeed worked at Cumberland Farms. Moreover, Florida Power and Light billing records disclosed that Petitioner’s daughter no longer resided at the residence occupied by Petitioner.

24. In light of the above revelations, HABC began the process of terminating Petitioner's voucher because she had violated HABC's policies and regulations. Specifically, Petitioner violated HABC’s policy by failing to disclose additional household income and by failing to disclose that her daughter was no longer living at the Ward Unit.

25. On February 3, 2020, HABC emailed Petitioner, outlining its findings, and notifying her that HABC would be terminating her voucher effective March 31, 2020. HABC informed her she had the option to request a hearing before termination. Petitioner elected to have an informal hearing to contest her termination from the program.

26. The informal hearing was held on February 14, 2020. Petitioner appeared by telephone. At the hearing, Petitioner was combative and refused to answer questions posed by Hearing Officer G. Phillip J. Zies. She abruptly

ended the telephone call before the conclusion of the hearing. At the hearing, HABC recommended the Hearing Officer not terminate Petitioner's voucher.

27. On the same day as the hearing, the Hearing Officer decided to make Petitioner's status "conditionally eligible" subject to her making arrangements with HABC to stay in the HCV Program within seven (7) days of the hearing.

28. On February 19, 2020, HABC reached out to Petitioner via email providing a list of documents she needed to complete, including:

- A. A Retroactive Payment Plan;
- B. Nicole Krason's tax returns from 2017, 2018, and 2019 tax years;
- C. Copies of updated driver's licenses from Petitioner and Nicole Krason; and
- D. An Updated Lease Agreement from Nicole Krason.

29. As of October 9, 2020, the date of Ms. Disco's affidavit, Petitioner has failed to provide any of the documents requested above. Notwithstanding Petitioner's failure to comply with HABC's documentation requests, HABC has extended Petitioner's voucher until December 31, 2020.

30. Petitioner's voucher originally expired on November 30, 2019, but has been extended through December 31, 2020. During the period of the extension, Petitioner was required to complete her annual recertification in order to remain eligible under the HCV Program. HUD mandates HABC must conduct an annual re-examination of a participant's eligibility for the HCV Program. The purpose of the annual re-examination is to establish that every family's eligibility for assistance is based on their income, as determined in accordance with program rules.

31. During the annual recertification process, Petitioner requested that her daughter be deemed a "live-in aid" so that her daughter's income would

not count towards the household income. However, Petitioner declined to continue with this process because she wanted the voucher to transfer to her daughter.

32. According to HUD guidelines, Petitioner's daughter would not qualify as a live-in aide, eligible for rental assistance or occupancy in a subsidized unit, because her daughter had lived as an "other household adult" between 2008 and 2019. HABC's administrative plan does not allow prior, or current, household adults to be live-in aides.

33. Participants must provide information requested by HABC because changes in income or family composition can affect the amount of assistance a tenant is eligible to receive. Those who fail to cooperate in providing such information can have their voucher terminated.

34. On or about July 30, 2020, HABC sent Petitioner an annual recertification packet in order for her to complete the annual recertification process. This packet needed to be completed by September 1, 2020.

35. On September 17, 2020, HABC sent a letter to Petitioner advising her she had not completed the annual recertification packet and that she would need to complete the packet in order to remain eligible under the HCV Program.

36. On September 23, 2020, Petitioner returned the packet, but it was incomplete. Specifically, Petitioner did not provide proper documentation for her out-of-pocket medical expenses. HABC requested the proper documentation be submitted to complete the annual recertification process.

37. Petitioner did provide HABC with a letter from Health First Alliance Group confirming her continued need for medical equipment.

38. Independent of the proceedings before FCHR, HUD also investigated the handling of Petitioner's case by HABC. The scope of HUD's investigation was to determine whether HABC discriminated against Petitioner in violation of Section 504 of the Rehabilitation Act of 1973, and its implementing regulations found at 24 CFR, Part 8. Section 504 provides that

no otherwise qualified individual with disabilities shall, solely on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance from HUD.

39. HUD's investigation led to a finding that there were no reasonable grounds to believe that an unlawful discriminatory housing practice had occurred.

CONCLUSIONS OF LAW

40. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1).

41. Petitioner filed a Complaint against HABC alleging housing discrimination under the FFHA. According to Petitioner, HABC allegedly discriminated against her based on her disability when she reapplied for eligibility under the HCV Program (also called the annual recertification/re-examination process). The FFHA provides a private right of action for "[a]ny person who claims to have been injured by a discriminatory housing practice." The FFHA is patterned after the federal Fair Housing Act and the courts have recognized it to be construed consistently with federal law. *Woolington v. 1st Orlando Real Estate Servs., Inc.*, 2011 WL 3919715 at *2 (M.D. Fla. 2011); *Loren v. Sasser*, 309 F.3d 1296, 1300 n.9 (11th Cir. 2002). Petitioner has neither alleged nor demonstrated any direct evidence of discrimination.² Accordingly, discrimination claims under either Act are subject to the burden-shifting analysis set forth in *McDonnell Douglas*

² Alternatively, Petitioner's burden may be satisfied with direct evidence of discriminatory intent. *See Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111 (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 for in McDonnell Douglas are designed to assure that the 'plaintiff [has] his day in court despite the unavailability of direct evidence.'")

Corporation v. Green, 411 U.S. 792 (1973). *Head v. Cornerstone Residential Mgmt., Inc.*, 2010 WL 3781288 at *6 (S.D. Fla. 2010).

42. Under the three-part *McDonnell Douglas* burden-shifting analysis, a petitioner must first prove a prima facie case of discrimination by a preponderance of the evidence. *Head*, 2010 WL 3781288 at *6. If she can sufficiently establish a prima facie case, a rebuttable presumption of discrimination arises and the burden shifts to the respondent to articulate some legitimate, nondiscriminatory reason for its action. *Id.* Finally, if the respondent articulates a legitimate, nondiscriminatory reason for its action, to avoid summary judgement (in this context, summary recommended order), the petitioner must then create a genuine issue of material fact as to whether the advanced reasons are pretextual. *Id.*

43. Section 760.23 provides in relevant part:

760.23 Discrimination in the sale or rental of housing and other prohibited practices.—

(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, disability, 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, disability, familial status, or religion.

44. Petitioner has failed to establish a prima facie case of housing discrimination under section 760.23(2). To establish a prima facie case of housing discrimination under this section, Petitioner must establish four elements: 1) that she belonged to a protected class; 2) that she was qualified to receive HCV Program housing assistance for the unit in question; 3) that

she was rejected despite her qualifications; and 4) that Respondent continued to approve other similarly situated applicants outside of her protected class for HCV Program housing assistance. *See Martin v. Palm Beach Atlantic Ass'n, Inc.* 696 So. 2d 919, 921 (Fla. 4th DCA 1997); *see also Head*, 2010 WL 3781288 at *6; *Alley v. Les Cateaux Condo. Ass'n, Inc.*, 2010 WL 2774178 at *3 (M.D. Fla. 2007).

45. While HABC does not dispute that Petitioner is disabled, Petitioner was not qualified to receive HCV Program housing because she failed to abide by HABC's policies. Her failure to submit necessary paperwork requested as part of HABC's annual recertification process constituted non-compliance under the terms and policies of the HCV Program. Petitioner was "required to provide information [to HABC] when requested, and to cooperate in efforts to verify the information provided." The documents requested were: (1) a copy of the driver's license for Petitioner and her daughter; (2) documentation related to her certified service animal; (3) expenses for her certified service animal; and (4) her out-of-pocket medical expenses. A "failure to comply with the PHA's annual reexamination requirements is grounds for terminating assistance." Despite her initial noncompliance, Petitioner was granted numerous extensions to submit the necessary paperwork. However, she never submitted the documents needed. These documents are necessary to determine Petitioner's eligibility in the HCV Program because HUD establishes income limits by family size and household income. Pursuant to HUD's regulations and guidelines, HABC was required to request and obtain such documents from Petitioner.

46. HABC's document requests were related to determining Petitioner's eligibility and had nothing to do with her disability. There is no evidence Petitioner was treated unfavorably compared to others in the HCV Program. Despite her noncompliance with HABC's documentation requests, Petitioner was given numerous opportunities to submit the necessary paperwork. Her possible termination from the HCV Program was due to her noncompliance

with HABC's policies, not her disability. Accordingly, HABC has clearly articulated legitimate, nondiscriminatory reasons for terminating Petitioner's voucher.

47. Petitioner's claim must also fail because section 760.23(1) is inapplicable under the facts of this case. Under the FFHA, 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 ... handicap..." § 760.23(1), Fla. Stat. (emphasis added).

48. To establish a prima facie case of refusal to rent based on a handicap or disability, a petitioner must allege and prove, by a preponderance of the evidence that, (1) petitioner is handicapped as defined by the FFHA; (2) Respondent was aware of it; (3) petitioner was ready, willing, and able to rent the apartment; and (4) respondent refused to allow her to do so. *Martin v. Palm Beach Atlantic Ass'n, Inc.*, 696 So. 2d at 921 (noting that in order to make out a prima facie case of a violation of sub-section 3604(a) for discriminatory housing refusal, a plaintiff must show that he is a member of a statutorily protected class who applied for and was qualified to rent or purchase housing and was rejected although housing remained available.); *see also Jackson v. Comberg*, 2007 WL 2774178 at *3 (M.D. Fla. 2007); *Alley*, 2010 WL 4739508 at *5. (citations omitted).

49. In the present case, Petitioner never made a bona fide offer to rent or buy a dwelling from HABC. Most significantly, HABC was not responsible for providing housing to Petitioner, and neither did Petitioner request public housing from HABC. Instead, this case involved her eligibility under the HCV Program. Accordingly, based on the undisputed material facts, HABC cannot be found to have violated section 760.23(1).

50. The un rebutted evidence establishes that Petitioner was afforded numerous opportunities to comply with HABC's policies, and she simply failed to do so. HABC's requests for documentation are related to assessing

her eligibility under the HCV Program, rather than her disability. Despite HABC's having grounds to terminate her voucher, HABC has and continues to allow Petitioner the opportunity to remain in the HCV Program.

51. Petitioner has not established a prima facie case that she was discriminated against because of her disability. To the contrary, there is no evidence that she was treated differently than others outside of her protected class. In fact, HABC and its representatives attempted to assist Petitioner in keeping her voucher. HABC has proffered a legitimate, non-discriminatory reason for HABC's request for documentation under the annual recertification process, and Petitioner has failed to come forward with any evidence inconsistent with the proffered reason for requesting such documentation, namely to assess her eligibility under the HCV Program. Therefore, Petitioner's claim that she was discriminated against on the basis of her disability fails, and the entry of a Summary Recommended Order of Dismissal is appropriate under the facts of this case.

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 Petitioner's Petition for Relief.

DONE AND ENTERED this 24th day of November, 2020, in Tallahassee,
Leon County, Florida.



W. DAVID WATKINS
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Filed with the Clerk of the
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this 24th day of November, 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.