

October 23, 2018

**Determination**

**Case Name:** Michael & Marinela Velasquez v. Highland Glen of Clearwater HOA, Inc., et al.

**Case Number:** 04-18-2707-8/PC-18-044

I. Jurisdiction

A complaint was filed on May 30, 2018 alleging that the complainant(s) was injured by a discriminatory act. It is alleged that the respondent(s) was responsible for: Discriminatory terms, conditions, privileges, or services and facilities; and Discriminatory refusal to sell. It is alleged that the respondent(s)'s acts were based on National Origin; and Handicap. The most recent act is alleged to have occurred on April 10, 2018, and is continuing. The property is located at: 1514 Talisker Dr., Clearwater, FL 33755. The property in question is not exempt under the applicable statutes. If proven, the allegation(s) would constitute a violation of Sections 804b or f, and 804a or f of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

It is not known if the respondent(s) receive federal funding.

II. Complainant Allegations

Michael Velasquez (CP1) and Marinela Velasquez an Albanian female (CP2) a couple that was interested in purchasing a home located at 1514 Talisker Dr., Clearwater, FL 33755. The home is owned by Kyle Cey (AP1) and Stephanie Benson (AP2). The property is governed by Highland Glen Homeowners Association, Inc., (R1), with a President by the name of Karen Todd (R2).

CPs states they were due to close on their new home on April 13, 2018. CPs state on April 10, 2018, they met with R2 at a Starbucks location in what they thought was a welcome to the neighborhood/get to know each other meeting. However, it was the exact opposite. CPs state once R2 inquired about R1s employment and learned he was a disabled Veteran the vibe of the conversation turned into bad vibes. CPs state R2 repeatedly stated ALL of the things CPs would NOT be able to do (no stepping over the property line into the neighbor's yards, no kids are forbidden to cross the property line, same goes for any type of house animal they may have). CPs state she kept mentioning that maybe they would decide not to move there after she would tell us about all of the restrictions. CPs state R2 totally disregarded CP2 and any questions CP2 would ask R2 would disregard as if she was not even there.

CPs state R2 went on a rampage when CP1 mentioned during a casual conversation that he might brew beer in the garage. CPs state R2 said he could not do that and that she does not want someone stinking up the neighborhood. CPs state when R2 made that statement CP1 asked if she had the same feeling towards people using grills. CPs state R2 started shaking, stood up from her chair and raised her voice stating "she is the President and she decides who gets to live in the community". CPs state she went on saying that she does not like CPs and had a bad feeling about them and therefore would not approve their application. CP2 asked R2 was she being a little too subjective and R2 replied, "Yes, I'm being subjective" and grabbed her belongings and left.

CPs state the official denial stated, "during the initial interview you communicated that you would break the rules of the Association if you lived at Highland Glen." CPs state this is not true. CPs state they signed an application stating they would abide by all rules and regulations set by R1.

CPs believes that the Respondent's actions constitute a violation of the Fair Housing Laws.

III. Respondent Defenses

The respondent stated, "It is respondents position that during the April 10, 2018 meeting complainants advised respondent of their disagreement with being governed by use restrictions for property in which they would own.....Respondent, Karen Todd, then discussed the meeting with the remaining members of the board of the association and the board came to the decision to disapprove the complainants application for occupancy within the community." (C-1)

IV. Findings and Conclusions

**A. FINDINGS:**

1. 4/8/2018 Complainants submit application to respondent management company; (C-2)
2. 4/10/2018 Complainants meet with Respondent Karen Todd at Starbucks for an initial interview, on 4/10/2018. (A-1)
3. 4/12/2018 Complainants told by the management company they were denied for having "communicated that you would break the rules of the association if you lived at Highland Glen." (B-2)
4. 5/29/2018 Complainants file complaint of discrimination on the basis of disability and national origin. (A-1)

**B. LAW & ANALYSIS:**

The Complainants were alleging a refusal to rent, and different terms and conditions:

Disability:

1. Membership in protected category;
2. Respondent knew of membership;
3. Complainants, to include a disabled veteran, was rejected;
4. Others, not disabled veterans, were not rejected despite having the same or similar qualifications;

During the investigation, the Complainant clarified he believed the respondent president objected to him as a disabled veteran, as opposed to his status as disabled. He believed the communication of this profile is when her demeanor allegedly changed towards him. (B-3)

Complainant husband Michael Velasquez stated that upon the respondent president asking him what he did for a living he replied he was a disabled veteran with PTSD. Although he was not sure what he placed on his application as employment, he believed it was along the lines of "VA Disability." In their initial response, the respondent was silent as to any knowledge of the Complainant's disabled status. Upon being asked, the respondent stated that, "it was possible that during the occupancy interview, Mr. Velasquez stated that he was a disabled veteran." (C-2) The Complainant did not have a copy of his application, and the respondents declined to submit one.

In light of the Complainants being denied occupancy approval, it appears the first three elements have been met.

In attempting to assess element number 4, the respondent declined to provide information necessary for the investigation. This is discussed further below.

As further information, the Complainant recounted the interview in question with the respondent president. The Complainant stated that upon meeting at a Starbucks, the respondent president sat

down with a sheet of paper and went over the rules with them. The Complainants stated that as she went through the rules, she would suggest they might want to change their mind about living there. According to the Complainants, the respondent president had used the words, "I am letting you know of all the restrictions now, so maybe you will change your mind and decide for yourselves that you don't want to live in this subdivision." (B-3)

The Complainants stated that after discussing the various rules at the complex, they noticed the president was getting irritated. When they attempted to calm her concerns, she reportedly got up, and stated "I don't have a good feeling, I don't like you." When the wife replied that this was a subjective decision, and that she could not do this, the respondent president reportedly stated, "Yes, it is a subjective decision", that she decided who lived there, and that they "would not get the property." (B-3)

Respondent's position:

The respondent stated, "It is respondents position that during the April 10, 2018 meeting complainants advised respondent of their disagreement with being governed by use restrictions for property in which they would own.....Respondent, Karen Todd, then discussed the meeting with the remaining members of the board of the association and the board came to the decision to disapprove the complainants application for occupancy within the community." (C-1)

In response to a RFI, the respondents stated they did not know if the subsequent purchaser was a disabled vet, disabled, had an Albanian occupant, or non-US born. The respondent claimed not to know if the complex had any disabled vets, disabled persons, Albanians or non-US born persons. (C-2)

The respondent stated the board members were Karen Todd, Jeanne Clark, Tim Link and Zofia Bajgier. All had been board members since 2010, except for Bajgier, who began in 2013. (C-2)

Regarding what the Complainants had stated to show their disagreement with being governed by the complex rules, the respondent wrote the Association had discussed the use of one (1) portable propane tank for use with an outdoor barbeque grill but otherwise restricts any oil tanks or bottled gas tanks from being maintained on a property within the community, without first obtaining board approval for same." The respondent stated they discussed the association's parking restrictions and types of vehicles that are restricted from being maintained within the community, unless maintained in a garage. The respondent stated that the "Complainants advised of their desire to use the garage for brewing beer in which respondent advised that the use restrictions prohibit a garage from being used as any other purpose other than a garage." The respondent wrote, "[f]urther, complainants advised of their desire to build an addition onto the property for which respondent advised the complainants of the Association's Architectural Control pursuant to the Declaration that required the association's approval prior to any additions to the property being made." (C-2)

The respondent further denied that the president engaged in the statement suggesting they should reconsider living at the complex. (C-2)

Other information: Witnesses:

During the investigation, the seller (Bensons), their realtor (Cindy Hoover) and respondent's property manager (Tim Hendrix) were interviewed.

The sellers (Bensons) stated the president liked having power, and enforced the parking rules as a "stickler", mentioning she would have people towed. They stated she "thrived on power." (D-4) The sellers recounted their interview, also at a Starbucks with respondent President Todd, stating she began their interview by asking what they did for a living. The sellers thought the question was irrelevant, and stated the president proceeded to ask them if they were married, and when told no, if they were engaged. The president also wanted to know what kind of dogs they had. The sellers

stated they were notified by their realtor of the Complainant's denial, and that they were told, "that he wasn't going to follow the rules", with no elaboration. The sellers stated that after being told of the denial, they contacted the Complainant directly to ascertain what had happened. They stated the Complainant told them the respondent "president had been 'standoffish' from the beginning, and that he asked questions which the president didn't like it. The final straw was the question about beer, wherein she said no. The Complainant told the sellers that his wife had [an] accent, [and] was treated poorly. The seller denied having witnessed or observed any statements or actions indicating a bias towards disabled vets, Albanians or foreigners by anyone at the complex. (D-4)

The seller's realtor, Ms. Cindy Hoover, believed it was a case of discrimination but was not specific as to the basis. She stated they were told that the woman who interviewed the Complainant 'felt they would not be a good fit, or good homeowner in the association'. Hoover stated the Complainant added that his wife had an accent, and that the president was not even talking to her. Hoover stated the Complainant reportedly halted the interview at one point to ask why his wife was not being addressed.

The realtor added that the sellers of the unit, the Bensons, nor the neighbors, liked how the association was being run. The realtor stated the "woman caused several people hardship." She stated the sellers did not like the president "because she changed rules and did things without asking others. She would ticket their car, [and] bother about curbing" the dog. The realtor added that perhaps the president was "power hungry". The realtor stated that the subsequent purchaser of the unit almost backed out because the association was talking about changing the rental rules. The realtor did not know of other disabled vets, disabled persons or Albanians at the complex. However, she had seen foreigners at the complex, but was not sure if they were residents. The realtor stated she had never dealt with the board, but only the president, and did not claim to have witnessed or observed any statements or actions indicating a bias towards disabled vets, Albanians or foreigners by anyone in the complex. (D-5)

Property manager Tim Hendrix stated they had changed the interviewing process because of the fair housing complaint, to include at least one other person in the interviewing process. He stated it was a strict board in a small community, saying it was strict, but fair. For example, he stated they required covers over the BBQ grill, and if not covered, persons would receive a notice. Hendrix stated the whole case had to do with the applicant's questions about the rules. He believed this had to do with the Complainant wanting to do something in his garage with fumes, but couldn't remember what it was.

He estimated they had roughly two application transactions a month. Upon receiving an application, he would do the background checks and share the information by email with the board members for their review. He stated at times they would have questions. He stated the interview process in the past had been the same until recently, which was one person, normally respondent president Todd, doing face to face interviews. He stated that after completing the interview, the president would send out an email to the board with her recommendations. Hendrix stated the main purpose of the meeting was to go over the rules, especially the parking rules.

Hendrix believed he was told of the Complainant's denial by respondent president Todd's email to the board. He understood the applicant had been denied because he questioned the rules and did not seem to want to follow the rules, saying it didn't seem he would abide. Hendrix did not recall if it had been about the beer. Hendrix stated he had the president's denial email in his possession, which he read to the investigator. He stated he would check with his client to see if he could release a copy to the investigator. (A copy was never received.)

Regarding whether others had been denied for similar reasons, he remembered a recent situation wherein a person who had damaged the grass had wished to purchase into the complex. However, because he damaged the grounds twice, he was denied.

Hendrix did not know whether the complex had disabled vets, disabled persons, Albanians or foreigners. Hendrix denied having witnessed or observed any statements or actions indicating a bias towards disabled vets, Albanians or foreigners. (D-6)

Analysis:

Regarding the issue of whether the respondent knew of the Complainant's disabled status, it is believed the respondent did ask the question of what the Complainant did for a living. During the seller's (Bensons) own interview with the respondent president years ago when they originally purchased, the sellers stated they were also asked that question initially by President Todd. Thus, it would appear consistent with the Complainant's claimed experience. As the Complainant does not work due to disability, it appears logical he would have identified his disabled status. (D-4, B-3)

Overall, the respondent denied knowing if the person who had purchased the subject unit after the Complainant's denial was a disabled veteran, and stated it was unknown whether they had other disabled vets, or disabled persons at the complex.

The Complainant stated he had lived in HOAs before, and therefore knew about following rules. Regarding the issue of having disclosed he was a disabled veteran, the Complainant stated that respondent president Todd indicated that her brother had been in Vietnam. The Complainants deny they ever indicated they would not follow the rules, and simply asked questions. (B-3)

Complainant wife Marinela stated that the respondent president got agitated at the husband's many "what if" questions. As an example, the husband recounted how he had asked the president if he needed to notify her at midnight, if his sister would arrive at 8am, about staying the night when it had not been 24 hours. He stated he simply liked to know. The Complainant husband stated they also spoke about the parking, whereupon he mentioned the president got agitated as well. (B-3)

Others got the same impression, particularly the seller, from the Complainant's own statement upon them speaking after the denial. This may simply reflect a subjective decision maker. However, the motive is unknown.

During the investigation, on August 27, 2018, the investigator requested to interview the respondent board president Ms. Todd so as to obtain more information. On August 29, 2018, the respondent president declined to be interviewed. As an alternative, on August 29, 2018, the investigator asked whether any other board member wished to be interviewed, but there was no response. (C-4)

As a third attempt for information, on September 4, 2018, an RFI was sent to the respondent requesting copies of all approvals and denials for the past two years, a copy of the Complainant's application, a copy of the comparative's application (burnt grass), and a copy of the respondent president's email recommendation to the board concerning the Complainant. Any responses from the other board members was also sought. On September 10, 2018, the respondent declined to provide the information. (D-5)

Therefore, by certified and regular mail letter dated September 18, 2018, the respondent was asked for the RFI requested information again, but under threat of Adverse Inference. The respondent was reminded of their need to participate in the investigation, and if they did not submit the information, such non-submitted information could be deemed to be adverse to their interest and possibly used against them. As the information is within the respondent's control, essential to the case, and not available elsewhere, their failure to submit the information can be used against them. If not, all respondents could similarly refuse to submit essential information solely within their possession, resulting in No Causes due to lack of evidence.

Ultimately, as the respondent has declined to submit necessary information for the completion of the investigation, a determination must be made on the available information.

As the Complainants were denied, and in light of the respondent answer not being corroborated, the respondent's answer is not worthy of belief. Instead, the Complainant's allegation of disability discrimination remains as the motive.

A Cause finding is recommended on the Complainant's allegations of a denial due to being a disabled veteran.

National origin: Albanian:

The Complainants had alleged that the wife's Albanian background, or status as a foreigner, was a sole or contributing factor in the denial. The PF elements would be:

1. Membership in protected category;
2. Respondent knew of membership;
3. Complainants, whose wife is Albanian/foreigner, was rejected;
4. Others, not Albanian/US foreigners, were not rejected despite having the same or similar qualifications;

As the wife is Albanian, known to the respondent and rejected after application, the Complainant has met the first three elements. During the investigation, the Complainants clarified their belief that it was not necessarily due to being Albanian, but instead status as a foreigner, which led to the denial.

Respondent's position:

As indicated above, the respondent took the position that during the April 10, 2018 meeting, the complainants advised respondent of their disagreement with being governed by use restrictions for property in which they would own. As such, they were denied. The only difference in positions was that the respondent admitted to knowing of the Complainant spouse's Albanian background. (C-2)

In an RFI, the respondents stated the complex was a diverse community with many people from outside of the United States. (B-5)

Analysis:

According to the sellers (Bensons) of the unit, they replied yes to the question whether the complex had other foreigners. The Bensons stated there was a person from France living a couple doors down. Their realtor, Cindy Hoover, also saw foreigners at the complex, but was not sure if they were residents. Property manager Tim Hendrix stated he did not know. (D-4/5/6)

As the sellers indicated there was another person from France residing a few doors down, it would appear, at least initially, that there is no prima facie case. However, without comparative or identifying information, this is speculation. The respondents could easily dispel the suspicions by submitting information (previous applications) that would be relevant about the respondent's actual practice and motivation. However, they have declined to do so.

As stated above, as the respondent has information that cannot be found elsewhere, and because the information would be determinative in this analysis, the lack of production by the respondent can only be attributed to them.

As such, due to the respondent's failure to submit the requested information, it is deemed adverse to their interest, and supportive of the Complainant's case.

A finding of Cause is recommended for the Complainant's allegations of national origin discrimination.

**C. CONCLUSIONS:**

Therefore, based on the available evidence, we conclude that there is CAUSE to believe that the

Respondent may have violated Article II, Division 3 of Chapter 70 of the Code of Ordinances of Pinellas County, Florida on the Complainant's allegations.

CAUSE  
Determination

Jeff Loyck  
Jeff Loyck, Compliance Manager

10-26-2018  
Date

V. Additional Information

Notwithstanding this determination by the Pinellas County Office of Human Rights, the Fair Housing Act provides that the complainant may file a civil action in an appropriate federal district court or state court within two years after the occurrence or termination of the alleged discriminatory housing practice. The computation of this two-year period does not include the time during which this administrative proceeding was pending. In addition, upon the application of either party to such civil action, the court may appoint an attorney, or may authorize the commencement of or continuation of the civil action without the payment of fees, costs, or security, if the court determines that such party is financially unable to bear the costs of the lawsuit.

The Department's regulations implementing the Act require that a dismissal, if any, be publicly disclosed, unless the respondent requests that no such release be made. Such request must be made by the respondent within thirty (30) days of receipt of the determination to the Field Office of Fair Housing and Equal Opportunity at the address contained in the enclosed summary. Notwithstanding such request by the respondent, the fact of a dismissal, including the names of all parties, is public information and is available upon request.

A copy of the final investigative report can be obtained from:

Paul V. Valenti, Human Rights/E. E. O. Officer