

MEMORANDUM

To: Paul Valenti, Director, Pinellas County Office of Human Rights
From: Michelle Wallace, Senior Assistant County Attorney *MW*
CC: Mark Esparza, Senior Equal Opportunity Coordinator
Date: February 18, 2016
Re: Review of Final Investigative Report/Determination
Case Name: Vivenzio, Melissa v. Palladini, Edward
Case No.: 04-15-0215-8

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OFFICE OF HUMAN RIGHTS

I have reviewed the Final Investigative Report/Determination issued by the Pinellas County Office of Human Rights in the above matter.

The complaint alleged a violation (or violations) of:

- The Fair Housing Act (42 U.S.C. §3601, et seq.) (copy attached)
- Chapter 70 of the Pinellas County Code of Ordinances

The complaint alleged discrimination based on one or more of the following prohibited bases:

- | | |
|--|---|
| <input type="checkbox"/> Race | <input type="checkbox"/> Sex |
| <input type="checkbox"/> Color | <input checked="" type="checkbox"/> Familial Status |
| <input type="checkbox"/> Religion | <input type="checkbox"/> Sexual Orientation |
| <input type="checkbox"/> National Origin | <input type="checkbox"/> Gender Identity/Expression |
| <input type="checkbox"/> Disability | |

Specifically, the complaint alleged the following discriminatory act(s):

- | | |
|---|---|
| <input checked="" type="checkbox"/> Refusing to rent or sell | <input type="checkbox"/> "Steering" |
| <input type="checkbox"/> Falsely denying availability of housing | <input type="checkbox"/> "Blockbusting " |
| <input type="checkbox"/> Refusing to negotiate for housing | <input checked="" type="checkbox"/> Intimidation, interference or coercion |
| <input checked="" type="checkbox"/> Discriminatory housing terms/conditions | <input type="checkbox"/> Lending Discrimination |
| <input checked="" type="checkbox"/> Discriminatory advertising | <input type="checkbox"/> Denying a reasonable
accommodation/modification |
| <input type="checkbox"/> Other: | |

I have determined that the housing opportunity which is the subject of the complaint is not exempt under the Fair Housing Act or Chapter 70 of the Pinellas County Code of Ordinances.

Refusing to Rent or Sell

I have determined that the Final Investigative Report/Determination issued by the Pinellas County Office of Human Rights does/ does not establish direct evidence of discrimination. Specifically:

- Complainant's daughter, Charlene Echeverri (Echeverri), stated that Respondent had a "melt down" upon seeing her and her son in the apartment. She stated that he questioned how long the child would be staying, asserting he did not allow "f---ing infants" in his unit and "wanted the 'f---ing kid' out of there now."
- Echeverri also stated that Respondent indicated he would be calling Complainant to cancel everything and that he wanted the "f---ing kid" out of there immediately.
- In Respondent's answer he stated that his mother said to Echeverri that they do not rent that unit to people with small children.

Discriminatory Housing Terms/Conditions

I have determined that the Final Investigative Report/Determination issued by the Pinellas County Office of Human Rights does/ does not establish direct evidence of discrimination. Specifically:

In Respondent's answer he stated that his mother told Echeverri, "We DO NOT rent this condo to people with small children and Ms. Vivencio was informed of this before she paid 1/2 of required deposit."

Discriminatory Housing Terms/Conditions

I have determined that the Final Investigative Report/Determination issued by the Pinellas County Office of Human Rights does/ does not establish direct evidence of discrimination.

In the absence of direct evidence of discrimination, case law provides that allegations of discrimination should be assessed by use of a "burden-shifting" analysis first adopted by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Proper use of this "burden-shifting" analysis requires the complainant(s) to first establish a prima facie case of discrimination. If the complainant establishes a prima facie case of discrimination, the burden then shifts to the respondent(s) to articulate a neutral and non-discriminatory reason or reasons for their action(s). If respondent(s) articulate(s) a neutral and non-discriminatory reason or reasons for their action(s), the burden then shifts to

complainant(s) to demonstrate that the articulated neutral and non-discriminatory reason is a pretext for discrimination¹.

The elements for establishing a prima facie case of discrimination in this case are:

1. Complainant has membership in a protected category;
2. Complainant satisfied Respondent's terms and conditions for rental;
3. Respondent with knowledge of the Complainant's familial status refused to rent to the Complainant, or allow her grandchild to stay;
4. Per Respondent's policy, those without small children were allowed to rent, and/or have guests.

I have determined that the Final Investigative Report/Determination issued by the Pinellas County Office of Human Rights does establish a prima facie case of discrimination, as follows:

Facts in the investigative file suggest that an adult guest would have been allowed to remain without interference from Respondent.

Having determined the Final Investigative Report/Determination issued by the Pinellas County Office of Human Rights establishes a prima facie case of discrimination, the burden then shifts to respondent(s) to articulate a neutral and non-discriminatory reason or reasons for their act(s).

My review of the Final Investigative Report/Determination issued by the Pinellas County Office of Human Rights establishes the respondent(s) has/ has not articulated a neutral and non-discriminatory reason or reasons for their act(s), as follows:

Respondent refused to answer any questions necessary to make a determination.

Discriminatory Advertising

I have determined that the Final Investigative Report/Determination issued by the Pinellas County Office of Human Rights does/ does not establish direct evidence of discrimination.

Respondent admitted telling Echeverri that he did not rent that unit to people with "small children." This clearly places a limitation on who can rent.

¹ *Texas Dept. Commun. Affairs v. Burdine*, 450 U.S. 248 (1981), at 252, 253.

Intimidation, Interference or Coercion

I have determined that the Final Investigative Report/Determination issued by the Pinellas County Office of Human Rights does/ does not establish direct evidence of discrimination. Specifically:

- Complainant declared that Respondent "angrily" stated that everyone had to leave, and was "forcefully banging on the door with his hands, screaming and shouting to the point" her daughter locked the door and called 911, then further locked herself in the back room.²
- Complainant additionally stated Respondent called her numerous times after the fact, telling her he would have her daughter arrested for trespassing, and to get her items and child out of the condo.
- It is noted Respondent allegedly stated that "they did not want to mess with him," which would appear to be an indirect threat.
- In light of these events, it would appear Respondent landlord interfered with Complainant's tenancy by terminating it due to the presence of a child, and further intimidated Complainant and her guests with his yelling and door banging due to the presence of Complainant's grandson.

Therefore, based on my review of the Final Investigative Report/Determination issued by the Pinellas County Office of Human Rights, I concur in the reasonable cause determination, and find there is a sufficient legal basis for establishing a violation of law.

² The issue of the landlord yelling and banging on the door was contemporaneously reported by the daughter to the police on the day and time in question, giving credence to the fact it occurred in that manner.