

October 09, 2017

Determination

Case Name: Marjorie Blaylock/Linda Byars/Richard Leachman v. Seville Condominium 8, Inc.

Case Number: 04-17-7756-8

I. Jurisdiction

A complaint was filed with HUD on April 12, 2017 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; Otherwise deny or make housing unavailable; and Discriminatory acts under Section 818 (coercion, Etc.). It is alleged that the respondent(s)'s acts were based on Race. The most recent act is alleged to have occurred on March 27, 2017, and is continuing. The property is located at: Seville Condominium 8, Inc. , 3527 Palm Harbor Blvd. , Palm Harbor, FL 34683. 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, 804a, and 818 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

CP's states they feel as if they are being targeted and treated differently due to the race of CP Leachman.

CP Blaylock states she has been living in her unit since 2004. CP Blaylock states that all the problems began when CP Leachman arrived at the unit in the middle of last year.

CP Blaylock states the first offense that they were accused of once CP Leachman arrived was causing a leak from the 3rd floor to the 2nd floor below. CP's state they hired 2 different professionals, each professional stated the problem was not caused by CP's. The professionals stated the building itself was the problem and the cause of the leaks. CP's state they are now having leaks in their newly painted living room and bedroom walls. R's took a long time to respond to CP's complaints about their leak issue. R's are now asking to fix it, however, if the roof has not been repaired it would be pointless because it will continue to leak and cause damages.

Upon CP Leachmans arrival, he brought a service animal for CP Blaylock. CP's took the proper steps in having the animal approved by the board. R's are now saying that there are 3 animals in the home which are against the rules and regulations. CP's state there are only 2 animals in the unit and other residents have 2 animals and nothing is said about it. R's are also stating that one of the animals in the unit is over the allowed pet weight limit, which CPs state is not true. CP's state her animal is only 7 ½ pounds and there are others with animals weighing over the 20-pound limit and nothing has been said or done in this instance either.

CP's state that R's continuously refer to CP Leachman as a renter and not CP Byars husband. R's have refused to give CP's an application for him to complete, even after they have requested to have one several times, the latest request made February 10, 2017. CP's feel they are denying them an application based on CP Leachmans race.

CP's states they are constantly sending notices to their home as a way of harassing them. The most

recent letter was sent on March 27, 2017, demanding payment for services that were rendered on April 13, 2016, to the unit underneath their unit. R's state the damage was caused by CP's water softener that broke. CP's state they never had a water softener so that is a false allegation. CP's state they have a professional that can attest that they never had a water softener.

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

III. Respondent Defenses

As to the leak, it was confirmed by the Association that the leak was coming from the subject unit, and not the roof. If the Complainants believe there are issues with the leaks in the common elements, they need to advise the Association so that those items can be examined, and, if necessary, corrected. The timing of the leaks have nothing to do with Mr. Leachman's arrival as indicated by the Complainants.

It is the Association's position and belief based on information provided that there are currently three dogs at the property. Pursuant to that Association's governing documents, only one dog, not to exceed 15 pounds at maturity, may be kept in the unit.

Contrary to the allegations of the Complainants, an application has been sent to the Complainants three times: January 27, 2017, March 10, 2017, and March 24, 2017. No application has been submitted, so therefore there is no denial of application that does not exist.

Any notices sent are not harassing in nature. Notices are sent in writing as, often, pursuant to Chapter 718, the Condominium Act, that is what is required by law.

IV. Findings and Conclusions

INVESTIGATIVE FINDINGS

- Marjorie Blaylock is the life tenant/owner of the property. (D-1) Blaylock has owned unit #306 since 2004. (B- 1) Linda Byars is Ms. Blaylock's daughter and remainderman to Ms. Blaylock's life estate, although she has no ownership interest in the property before Ms. Blaylock's death. (D-1)
- Byars has been her mother's caregiver for approximately six years. (B-5)
- Sometime in early October 2016, Byars' husband, Richard Leachman, moved into the condo. (B-5)
- Between October 17, 2016 – October 26, 2016, a number of emails were written by Byars and Tri Morocco, mainly concerning an alleged leak from the CP's condo. Morocco works on behalf of the Board of Directors for the Association. (B-2)
- October 17, 2016 – Byars writes to Morocco in regards to three letters her mother received on Saturday, October 15, 2016. First, she addresses a close family friend (Robert Stewart/Caucasian) who watches her mother and does the heavy lifting for her. Secondly, Byars indicates that she was unaware of any leaks her unit caused to the second floor. She stated that she would be calling to get an estimate from two companies. She acknowledged that if her unit had caused the leak, they would be happy to make the repairs. The last item, "the most sensitive of all," was the two dogs owned by Blaylock. Notification that "Ricky" is a registered service dog and photos of water damage were forwarded to Morocco. (B-2)
- October 29, 2016 – Blaylock completed a Condominium/Cooperative Complaint against the Association in regards to a leak in her condo. It was filed with the Department of Business and Professional Regulation (DBPR) Division of Florida Condominiums, Timeshares, and Mobile Homes on October 31, 2016. (B-2)

- November 8, 2016 – The DBPR acknowledged receipt of Blaylock’s complaint against Seville Condominium. (B-2)
- November 18, 2016 – Byars emailed Morocco in regards to an unknown charge of \$383.39. She also inquired as to who should be charged for the leak in the bedroom. (B-2)
- January 11, 2017 – Blaylock filed a complaint with the Florida Commission on Human Relations. (B-2)
- January 16, 2017 – Association’s counsel sent a violation notice in regards to Leachman being an authorized guest with a dog in excess of 15 pounds. “Further, it has come to the attention of the Association that Blaylock was renting a room to Leachman which is prohibited.” Demand was made that the required application for Leachman be submitted within 10 days and await the Board’s approval. Further, Blaylock was to give Leachman 30 day notice to vacate the property and provide the office with confirmation of such within five days. The dog was to be removed within 10 days. (B-2)
- February 10, 2017 – Byars acknowledged receipt of letter from Association’s counsel. She furnished a letter from St. Luke’s Eye Institute written by Stephen R. Deppermann, MD. Dr. Deppermann stated that Blaylock is hearing impaired and nearly blind. Her service dog alerts her of a light blinking, showing someone is at the door. The dog also notifies her of other items for her own protection. Byars also indicated that she and her husband were closing on a house in Tampa and planned to move as of April 15, 2017. In the meantime, she requested that the condo association send them an application for Leachman to complete. Lastly, no one had contacted the family in regards to the leak in her mother’s bedroom. (B-2)
- February 17, 2017 – Respondent acknowledges receipt of CP’s letter February 10, 2017, to establish need for an accommodation. Association approved the request for a support animal and enclosed a Waiver and Animal Registration Form for Blaylock’s signature. Respondent noted that two unauthorized dogs were still in the unit, in violation of the Association’s pet restrictions. Demand was also made to submit the required application for Leachman. (B-2)
- February 23, 2017 –The Florida Commission on Human Relations acknowledged receipt of Blaylock’s complaint. (B-2)
- March 24, 2017 – Blaylock received notice from the Association’s counsel indicating that she had not returned the executed Waiver and Registration Form in relation to the approved accommodation request for a support animal. Additionally, she was in violation for having three dogs in the unit. Lastly, Mr. Richard Leachman remained as an unauthorized resident of the community. (B-2)
- March 27, 2017 – Blaylock received a Demand for Reimbursement. The Respondent asserts that on April 13, 2016, the CP’s water softener broke which caused damage to the unit below. Demand was made to reimburse the Association \$170 for the repair. An invoice from the Dunedin Plumbing, Inc. was remitted. (B-2)
- The CPs stated that they have never owned a water softener. The work order reads “Found water heater leaking in upstairs unit and turned off water.” (B-2)
- A copy of the above referenced invoice was also furnished by the Respondent. The repairs total \$70, not \$170 as told to the CPs. (D-2)

ANALYSIS

The Charging Party (CP), Marjorie Blaylock (CP1) is a Caucasian/disabled condo owner that resides at 2612 Pearce Drive, #306 Clearwater, FL 33764. She has been an occupant of the community since 2004. (B-1) Her daughter, Linda Byars (Caucasian) (CP2) has served as her caregiver for approximately 6 years. (B-5) CP1 is hearing impaired and nearly blind. (B-1)

Sometime in early October 2016, Byars’ husband Richard Leachman (African-American) (CP3) moved into the dwelling. (B-5) Shortly thereafter, violation notices were sent to Blaylock. (B-2)

The Respondent has also accused the CPs of causing water damage to the unit below. The Respondent claims that the damage is as a result of a leak coming from the subject unit, and not the roof. (D-1) However, according to the CPs, the professionals that they hired opined that the damage was as a result of a leak in the roof which would ultimately be the Respondent's responsibility to repair/replace. (B-2)

The CPs also claim that the Respondent has refused to give them an application for residency for Leachman despite several attempts. CP2 requested the application on October 18, 2016 and again on February 10, 2017. (B-2)

Lastly, the CPs assert that they are not in violation of the Association's rules in regards to their animals. Presently, there are only two dogs in the unit. One is a service animal and the other is a small dog under the 20 pound limit. At one point there was a third dog in the home, however it was relocated to Tennessee in July 2016. (B-5)

In rebuttal, the Respondent furnished a work order dated April 13, 2016, from the Association's contractor indicating "found water heater leak in upstairs unit (#306) and turned off water." (D-2)

Contrary to the allegations of the Complainants, an application has been sent to the Complainants three times, January 27, 2017, March 10, 2017 and March 24, 2017. The Complainants have, to date, failed to provide the required application for Mr. Leachman. No application has been submitted, so there is no denial of application that does not exist. (D-1)

Finally, the Complainants have not provided the Association with confirmation as to whether the third dog has been removed from the unit. The Respondent states they can neither confirm nor deny the current number of animals being maintained within the unit at the present time. (D-2)

In order to meet the prima facie elements of a disparate treatment claim when CP3 alleges that he was treated differently based on his race (African-American), he must prove the following:

1. The CP3 is a member of a group protected by law;
Richard Leachman identifies himself as African-American.
2. Respondent knew he was a member of a protected class;
The Respondent does not deny knowing CP3's race.
3. Leachman was subjected to different terms in regards to the approval process;
The Respondent asserts that all occupants in Seville 8, not just Mr. Leachman, are required to complete an application if they reside in the unit more than four weeks. This is true of all occupants. Though the Respondent claims that it made three attempts to send the CPs a rental application (D-1), it is unbelievable that CP2 would have requested an application on a least two separate occurrences; which were verified by email (B-2); and
4. Similarly situated employees outside of his protected class were treated more favorably;
Byars (Caucasian) stated that she was never asked to complete an application despite residing in her mother's condo for approximately six years. When the Investigator requested a copy of CP2's rental application (B-5), Respondent stated "Respondent is unable to provide a copy of Ms. Byars' nor Mr. Leachman's application as the Complainant has failed to provide an application for either guest/resident. (B-1) The Respondent does not explain why the four notifications allegedly sent on January 16, January 27, February 17, and March 24, do not indicate CP2 as similarly violating the Association's Bylaws.

All four prima facie elements have been met.

The CPs state that it was not until Leachman's arrival that the Respondent began

harassing them by accusing them of having a leak causing damage to the condo beneath their unit.

The CP filed a complaint alleging:

- Discriminatory acts under Section 818 (coercion, etc.)

In order to meet the prima facie elements of a harassment claim, when the CP alleges that they were treated differently after acquiring an African American occupant, the following three elements must be proven. They are:

1. CPs were subjected to unwelcome comments or conduct based upon his or her protected class;
CP1 asserts that shortly after CP3's arrival, she began receiving violation notices by the Association's attorney. (B-1)
2. CPs suffered an adverse housing action;
Four violation notices were sent between January 16 and March 24. Additionally, the Respondent demanded reimbursement for damages that were allegedly done in April 2016; and
3. There is a causal connection between the two.
Though the Respondent claims that the Association's contractor found a leak in the CP's unit in April 2016, it was not until after CP3's arrival (October 2016) that CP1 was put on notice that reimbursement was expected, which occurred approximately six months later.

All three prima facie elements have been met.

CONCLUSION

In conclusion, based on the available evidence, the Investigator is of the opinion that the Charging Parties have met the burden of proving that Richard Leachman was subjected to different terms and conditions than those of his Caucasian counterparts, particularly Linda Byars. Byars was not required to complete an application nor did she receive violation notices.

Concerning the retaliation claim, the Respondent could have notified Blaylock of the alleged damage done to the second floor condo beneath her unit in mid-April 2016; however, no one from the Association made her aware of the leak and resulting damage until after Leachman's arrival in October 2016.

A Cause Finding is being recommended on the basis of:

- Discriminatory terms, conditions, privileges, or services and facilities;
- Otherwise deny or make housing unavailable; and
- Discriminatory acts under Section 818 (coercion, etc.).

V. Additional Information

Notwithstanding this determination by HUD, 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

