

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: April 19, 2016
Re: Review of Final Investigative Report/Determination
Case Name: James Paige v. Eagles Nest Residents, Inc., Lamont Management, Inc., Robert Kohler, William Rogers, Doris Eitel, Costa Chelikas and Sue Lamont
Case No.: PC-16-002/HUD No. 04-16-4065-8

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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.)
- Chapter 70 of the Pinellas County Code of Ordinances

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

- Race
- Color
- Religion
- National Origin
- Disability
- Sex
- Familial Status
- Sexual Orientation
- Gender Identity/Expression

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

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

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.

Denying a Reasonable Accommodation/Falsely Denying Available of Housing

Sec. 804. [42 U.S.C. 3604] Discrimination in sale or rental of housing and other prohibited practices

As made applicable by section 803 of this title and except as exempted by sections 803(b) and 807 of this title, it shall be unlawful--

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
 - (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--
 - (A) that buyer or renter,
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that buyer or renter.
 - (2) 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 with such dwelling, because of a handicap of--
 - (A) that person; or
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that person.
 - (3) For purposes of this subsection, discrimination includes--
 - (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
 - (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or ...

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. (If applicable)

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 a disability or is a person associated with a disabled person;
2. Respondent knew of the disability or could have been reasonably expected to know of it;
3. Complainant requested a reasonable accommodation in Respondent's rules, policies, practices or services;
4. Accommodation of the disability may be necessary to afford complainant an equal opportunity to use and enjoy the dwelling;
5. Respondent refused to make the requested accommodation or failed to respond such that it amounted to denial;
6. Respondent's refusal made housing unavailable to Complainant.

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:

- Respondents do not dispute that: Complainant is disabled; that they were put on notice that he has or might have a disability; that they received a reasonable accommodation request² and that an exemption to the "no dogs" policy would be necessary.
- On September 1, 2015, Respondent told Complainant that a decision on the request could take as long as 60 days.
- In the interim, Complainant sought alternative housing so that he could have his dog with him.

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

² The request was made on August 15, 2015.

- Email exchanges between Respondents and their attorney indicate that on August 17, 2015, Respondents approved Complainant's request to keep the dog, although it conditioned that approval with unlawful restrictions.³
- That decision was not communicated to the Complainant at that time. In fact, Respondent refused to engage in the interactive process, much less allow Complainant to remain in his unit with the dog pending a decision.

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).

While Respondent did not necessarily articulate a neutral and non-discriminatory reason for its actions, it did assert that Complainant moved out of the community before their request could be considered and prematurely filed the Complaint, since the 60 days had not expired.

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

As previously stated, Respondent did not articulate a neutral and non-discriminatory reason for its actions.

As respondent(s) articulated a neutral and non-discriminatory reason or reasons for their act(s), the burden then shifts to complainant(s) to demonstrate the neutral and non-discriminatory reason or reasons articulated by respondent(s) are pretext. The Final Investigative Report/Determination issued by the Pinellas County Office of Human Rights establishes the respondent(s) neutral and non-discriminatory reason or reasons for their act(s) are/ are not pretext for the following reason(s):

- Complainant was well within his rights to file a complaint if he believed that he was being discriminated against.
- Complainant left the community with his dog in order to avoid being in violation of the "no dogs" policy.
- Respondent made a decision shortly after the reasonable accommodation request was made and never communicated that decision to Complainant. Even if that decision had been communicated, it was conditioned with unlawful restrictions.

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.

³ Such as a not having a dog over 15 pounds, keeping the dog indoors at all times, carrying the dog to and from the car, not walking the dog in the park and not allowing the dog to bark. See U. S. Departments of Justice and Housing and Urban Development's Joint Statement on Reasonable Accommodations Under the Fair Housing Act.