April 18, 2020

Determination

Case Name: Emma Ortiz v. Casa Del Sol Association, Inc. *et al*

Case Number: 04-19-8060-8; 19-062

I. Jurisdiction

A complaint was filed on August 01, 2019, 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 acts under Section 818 (coercion, Etc.). It is alleged that the respondent(s)'s acts were based on National Origin; and Retaliation. The most recent act is alleged to have occurred on July 06, 2019. The property is located at: Casa Del Sol Alhambra, 2440 Winding Creek Blvd., 207, Clearwater, FL 33761. 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 818 of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

The respondent(s) receive no federal funding.

II. Complainant Allegations

The complainant is a Hispanic female who resides at the respondent complex. The complainant states she is the only Hispanic resident at the complex.

The complainant states that upon leaving out of the country on December I, 2018, she left her car in her assigned parking space. The complainant
states she informed her two neighbors to her right and left that she was on a trip to Colombia.

Upon returning on January 14, 2019, the complainant could not find her car in the parking lot.

Upon asking the association President, he informed the complainant they had towed her car. He stated the towing company informed him the car would be sold, so he went and purchased it. He then told me I would have to pay him $8,000 to buy my car back from him. When the complainant asked why she needed to pay him for the car, he then asked the complainant to pay $800 in total; The complainant then refused to pay this and wanted to know why her car was left with the towing company for more than 32 days. The complainant states she was never notified of any work being done in the parking prior to her departure.

After recovering her car, the complainant was still mandated to pay an increasing amount of monies by the association. The complainant believes this decision was done due to her being Hispanic.

After filing a complaint with Pinellas County Consumer Protection Office, the complainant was further charged for the meeting with the respondent's attorney.

AMENDMENT: After filing a fair housing complaint, the original invoice requested from the association went from $1200 to $7000. I believe I am being charged for the defense of my fair housing claim by the respondent association. I believe this is unlawful retaliation for having filed a complaint as an exercise of my rights under the Fair Housing Act.

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

III. Respondent Defenses

Rs denied any discrimination, stating that they notified all residents well in advance of the upcoming seal-coating of all the community parking lots by letter and postings on the community's five bulletin boards during the two months preceding the project. C did not inform Rs she would be out of the county for six weeks. Rs were obliged to tow her unattended car. Other vehicles towed during the seal-coating were recovered by their owners the same day. The Association paid to have C's car released before it went up for auction then levied an assessment for reimbursement. Rs' attorney asserts that C also owes more than $7,000 in legal fees for defending Rs in her complaints to the offices of the Pinellas County Office of Consumer Protection and Office of Human Rights.

IV. Findings and Conclusions

OF THE PINELLAS COUNTY OFFICE OF HUMAN RIGHTS

804(b)--Terms or Conditions of Residency

To establish a *prima facie* case of discrimination in discriminatory terms, conditions and services, the following elements must be proven:

1. The Complainant (C) is a member of a protected class.

2. C is the owner of the condo managed by Respondents (Rs).

3. Rs imposed unfavorable or less favorable terms or conditions on C's residency.

4. Rs did not impose such terms or conditions on similarly situated residents not of C's protected class.

The instant Charge of Discrimination was filed by Emma Ortiz (C), who is Hispanic, which is undisputed. (B-1) Thus, C has established that she is a member of a protected class based on national origin.

Since 2004, C has owned the subject condo located at 2440 Winding Creek Blvd. #307, in Clearwater, Fl. (B-2) The condo is one of 24 units in the three-story Alhambra building, (D-7), situated among four other buildings located within the Casa del Sol community. Said community is subject to the governing documents of the Casa del Sol Condominium Association, Inc., whose Board President is Ed Curran. (D-7) The association's management company is Ameri-Tech, Inc. (D-1) Thus, C has established that she is an owner in Rs' condo community.

As background, in August 2018, the Board reviewed and accepted seal-coating proposals for work to be completed in two phases. In September 2018, the Board decided that seal-coating for the Barcelona and Cadiz buildings would take place from December 3 thru December 5, 2018, followed by C's building (Alhambra) and the Madrid building on December 6 thru December 7, 2018. (D-3)

Thus, from August to October 2018, the monthly Casa Del Sol Newsletter was posted online and on five bulletin boards within the community, notifying owners of the seal-coating project and the dates each building would be affected. The newsletter also referenced the fact that a letter had recently been sent to all owners as a reminder of the upcoming projects. (D-4)

In her Charge of Discrimination, C recounted that she, along with her 96-year-old mother, left the

country on December 1, 2018, for Colombia, as she had done for many years prior. Before her departure C informed the post office to hold her mail until January 14, 2019, her return date. She also told her neighbor in #306 that she would be away; however, she refused her neighbor's request to leave her keys to check C's mail, since C had already arranged a mail-hold with the post office. (B-1)

When C returned to her unit on the evening of January 14, 2019, she discovered that her car, a 2005 Chevy sedan, was missing. She questioned Board President Curran. She explained that she was able to converse with him, since she understands English well but speaks it poorly. From Mr. Curran she learned that her car had been towed by A-1 Recovery and that she owed Mr. Curran $800 for his having recovered it. (C-1) The towing and storage notice she received indicated that her car had been towed at the request of the property manager (Ameri-Tech) on December 8, 2018, and that storage charges accumulated at a rate of $20 per day. A public sale had been scheduled for 9:00 am. for January 13, 2019, the day before C's return to the country. (C-4)

As of December 14, 2018, the aforementioned notice indicates total charges on towing and storing the vehicle were $321.00. Since the vehicle would not be recovered for another thirty days, additional charges of $20 per day storage would have accrued, for another $600, bringing the total cost to $921.00. (C-4)

In their answer, Rs denied any discrimination. They asserted that all community residents, including C, had ample, advanced notice of the seal-coating projects, from August thru November 2018, mainly as a result of the monthly newsletters posted online and on the five community bulletin boards. (D-1 and D-4) Further, Rs noted that C never informed them that she would be out of the country for a month and a half. The Association chose to pay the towing company's charges of $821 so that C could keep her vehicle. Those charges were placed against C as an assessment for reimbursement, for which C is currently responsible. (D-2) No lien has been placed on her property nor has any action been taken to foreclose on her condominium. (D-1)

In March 2019, C filed a complaint with the Pinellas County Office of Consumer Protection (OCP) which, in part, regulates towing companies. (# 1903034) According to the investigator, Gregory Parker, no violations of towing laws were uncovered. Further, OCP does not charge for its services, nor does it investigate discrimination cases. Investigator Parker recounted that mediation was held on June 11, 2019, and an agreement was reached in theory. When the parties failed to follow through on a written agreement, the case was closed with no compromise. (F-2) A copy of file was sent to PCOHR upon request. (F-3) Among the documents was C's complaint, which listed "discrimination" as her reason for filing the complaint with OCP. (F-3)

In explaining the impasse in the OCP case, Rs' attorney stated that the Board refused to accept a payment plan whereby C would pay $20 monthly. (D-7)

In July 2019, C filed the instant Housing Discrimination Complaint which alleged discrimination and retaliation. Among other issues C alleged that C she was charged for having had mediation with OCP, which was why she declined mediation with the Office of Human Rights, under the mistaken notion she would be charged in this venue, despite assurances to the contrary. Rs' attorney argued that C's discrimination charge with PCOHR was an attempt to avoid paying legal fees incurred as a result of representing Rs in the OCP case. (D-1 and D-2)

According to the recorded Declarations of the Casa Del Sol Condominium Association, R Association has the right to enforce collection of assessments and fees by way of a lien on the lot of the named owner, with the lot securing not only the principal amount due but also any interest, collection costs and reasonable attorney fees associated with same. (D-9, p.10)

Public records also reflect that the Association has previously taken action against rules violators via two civil actions that included attorney fees: A 2017 mortgage foreclosure action, stemming

from a non-payment of assessment fees, which included costs for filing the lien ($350) and additional efforts to collect on delinquent funds and communicate with the homeowner, for which the attorney (Rs' same attorney in the instant case) was compensated at a rate of $250 for a total of $7, 910.29, which was due and payable. In a 2014 case involving collection of a lien, stemming from overdue monthly and special assessments, the plaintiff/Association invoked Section 718.116 of Florida Statutes, which expressly provides that a claim of lien shall secure all unpaid assessments, interest, costs and attorney's fees. The latter amount was not specified in the complaint. (F-5)

Thus, the evidence indicates that Rs have a practice of pursuing violators based on non-payment of fees and assessments, which has yet to result in legal action in the instant case.

During the investigation, C reiterated her claims of discrimination in an in-person interview in Spanish with the investigator. She said the interview would serve as her rebuttal. (C-2) She acknowledged that she had read the seal-coat project notices on the bulletin board but didn't understand them. At this juncture she raised the claim, without corroboration, that a white sedan under a tarp--whose picture she took upon her return, since the plate # was then visible--had remained in the same spot for the past 8 months, and she opined that it had not been towed during the seal-coating projects. (C-6)

When Rs' attorney was asked about C's claims, he asserted that three or four others, guests or renters in the community, also had their cars towed during the seal-coating projects. However, these persons promptly recovered their vehicles personally, such that no assessments were necessary. Also, no other owner, besides C, owes money to the Association for towing or storage charges. (D-2) As for C's claim about the car under the tarp, the attorney disputed that the car is an apt comparator, since C was out of the country for six weeks, when the seal-coating projects occurred. He argued that she could not possibly know whether the car was moved during the time in question. (F-1)

C was asked to comment on Rs' assertion that others were towed during the seal-coating projects, but her response did not dispute this claim. Her only answer was to complain via email in Spanish that PCOHR had not helped her resolve her 10-month old "problem" with Rs. (C-7)

The investigator obtained the towing invoices directly from A-1 Recovery, which verified Rs' assertions that two other vehicles were towed during the seal-coating project of December 8, 2019. (F-4)

Thus, C has not established that Rs imposed less favorable terms and conditions on her due to her national origin or that others outside C's protected class were treated more favorably.

Accordingly, C has not established a *prima facie* case of discrimination based on national origin.

818—Intimidation, Coercion, Retaliation

To establish a *prima facie* case of intimidation or retaliation, C must establish the following elements:

1. C is a member of a protected class.

2. Rs coerced, intimidated or interfered with C's right to enjoy housing.

3. Rs treated others outside C's protected class more favorably.

It is undisputed that C is a member of a protected class based on national origin (Hispanic).

As previously mentioned, on March 3, 2019, C filed a complaint against Rs with the Pinellas County Office of Consumer Protection (OCP). (Case No. 19-03034) She alleged "discrimination" by Rs for having towed her car on December 8, 2019, during seal-coating of the community parking lots which occurred while C was in Colombia. She further recounted that the Association president, Ed Curran, demanded $800 for her car plus interest and told her that if she didn't pay, in two months' time he could sell the condo unit she has owned for the past 15 years and, essentially, "*put her on the streets.*" (F-3)

C has limited English proficiency. Further, she tried to communicate with the Association president, who speaks no Spanish. Still, Mr. Curran denied any discrimination. Rs also argued that C never notified them she would be out-of-the-county, and that the fees being sought as reimbursement were actual costs incurred by Rs for paying A-1 Recovery to tow and store C's car for more than a month. (F-1)

As a result of the mediation impasse at OCR, on July 25, 2019, the Association's attorney, Daniel Pilka, demanded that C pay the total amount of $1,865, which is higher than the OCP settlement amount discussed: $1,271. The latter amount represented $821.00 for vehicle recovery plus $450 attorneys' fees, which C had verbally offered to pay in $20 monthly payments, which the Board rejected. (C-5)

On July 30, 2019, C filed her instant charge of discrimination, citing the fact that her fees had increased since the OCP mediation. Again, she claimed discrimination. (B-1) The ensuing investigation found that C had received adequate notice of the seal-coating project and that others in the community, presumably non-Hispanic, had also been towed, which ruled out her claim of national origin bias. The remaining issue, however, was the increase in fees.

During the investigation Rs' attorney advised that an offer to settle the case for $1,865 was extended to C, and that his clients were also willing to work out a payment plan for attorney fees and costs. (D-5) However, at the eleventh hour, the attorney stated that C owes the Association $7,328.65 in legal fees incurred to date, October 16, 2019, to defend against C's "various complaints." (emphasis added) (D-6)

This disclosure resulted in 100-day letters sent to the parties (B-8) C was informed of the need to amend her charge, which she did on February 14, 2020. Concurrently, PCOHR staff, including Director Paul Valenti, sent query emails to Rs' attorney, Mr. Pilka, seeking clarification on and itemization of the fees which C supposedly owes. (D-7) Although Director Valenti opined to Mr. Pilka that PCOHR considers these fees to be retaliatory, Mr. Pilka stated in answer to the amended charge, that his clients are justifiably seeking reimbursement for costs, and that a collection action would be equally justified under Florida statute and the Association's governing documents. (D-8)

Thus, there is insufficient evidence of discrimination based on national origin.

However, there is sufficient evidence that C complained about discrimination and was intimidated and punished--via ever-increasing, retaliatory fees, whose total amount is as of yet unknown--for exercising her civil rights to complain about discrimination.

Therefore, it is the recommendation of this Investigator that there is REASONABLE CAUSE to believe that the Respondents retaliated against C in violation of Chapter 70 of the Pinellas County Code, as amended.

V. Additional Information

Notwithstanding this determination, 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:

Jeffery Lorick, Compliance Manager

Jeffery Lorick Date: 4-20-2020

NO CAUSE BASED ON NATIONAL ORIGIN
CAUSE FINDING ON RETALIATED