

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: March 11, 2016
Re: Review of Final Investigative Report/Determination
Case Name: Amanda Hebden v. Ronald Anderson
Case No.: 04-15-0716-8

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:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Race | <input type="checkbox"/> Sex |
| <input type="checkbox"/> Color | <input 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 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 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.

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. The Associated Person² is a member of a group protected by law.
2. Respondent knew he was a member of a protected class.
3. The Associated Person was subjected to different terms in regard to the approval process; and
4. Similarly situated renters outside of his protected class were treated more favorably.

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:

- Michael Peart (Peart) identifies himself as Black.
- Respondent does not deny knowing the Associated Person's race.
- Respondent required the Associated Person to complete an application for residency. In previous instances, this had not been a practice that was applied to second occupants, i.e. roommates.
- Jeff Perro (Perro) (Caucasian) and Aniko Evans (Evans) (Caucasian) were not required to complete applications.

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

² An aggrieved person (AP) includes any person who:

- (1) claims to have been injured by a discriminatory housing practice; or
- (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

- Complainant stated that she had been paying her rent on the third of each month without incident.³ It wasn't until after Peart moved in that Respondent began hassling her about paying the rent on the first of the month.
- Complainant and Evans overheard Respondent using racial slurs toward Blacks.
- Evans stated that Respondent does not rent to Blacks. She said that he has turned them away in the past, claiming that he did not have any units available.

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.

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 discrimination.

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

1. She engaged in protected activity.
2. She suffered an adverse housing action.
3. There is a causal connection between the two.

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:

- Complainant opposed the Respondent's behavior in regard to his views of Blacks.
- Shortly after Peart's arrival in July 2015, Complainant was issued a non-renewal notice.
- Though Respondent claims that Complainant had "been a problem for him for quite some time," he did not terminate her lease until after Peart's arrival. Considering her tenancy was month to month, her lease could have been terminated during the summer of 2014, when the two could no longer get along.

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). Respondent articulated the following reason:

³ The third of the month is when she received her disability benefits.

"Ms. Hebden has been a problem for me for some time. She refused to speak to me and did not even acknowledge simple pleasantries such as good morning, good afternoon, etc. Ms. Hebden's continued tenancy would only prove disruptive going forward. It is for this reason I terminated her lease. It was all done in accordance with all laws. There was never any discrimination involved."

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 follows:

Respondent could have terminated the Complainant's lease any time after she allegedly became "a problem" for him being that she was a monthly tenant. The two were no longer able to communicate in person after a conversation during the summer of 2014. However, it was not until after Peart's arrival that the CP was issued a non-renewal notice.

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):

Peart was subjected to different terms and conditions than those of his Caucasian counterparts. Neither Perro nor Evans were required to complete an application or submit to a background check.

Based upon the remarks Respondent has made in regard to Blacks, is it believable that he applied his rental policy to them differently and ultimately may have denied Peart's application had he completed one.

There are no Black tenants in the complex. Evans' eye witness account, revealed that Respondent does not rent to potential Black tenants. He has turned them away in the past, claiming that he did not have any units available.

Finally, in an in person interview with Respondent was conducted by Senior Housing Investigator, Mark Esparza on October 5th. During this interview Respondent admitted to using racial slurs toward Blacks.

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.