

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 30, 2016
Re: Review of Final Investigative Report/Determination
Case Name: Octavia Stewart v. Holly Berry Gifts, Inc./Mike Prusinski, Mgr.
Case No.: PC-16-004/HUD: 04-16-0164-8

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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.

Discriminatory Advertising

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--

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

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 complainant is a member of a protected class;**
- 2. The respondent made, printed or published a notice, statement or advertisement with respect to the sale or rental of a dwelling;**
- 3. The notice, statement or advertisement indicated a preference, limitation or discrimination based on a protected class.**

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:

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

- Complainant is black.
- Respondent Prusinski (Prusinski) left a racially derogatory message on her voice mail and sent her a racially derogatory text message.
- Three witnesses confirmed that Prusinski told Complainant that he was going to throw her "black a--" out. One of the witnesses was Complainant's mother.
- Another witness was Herbert DeLoach. He stated both verbally and in writing that he heard Prusinski make the comment. He stated that he heard the comment in person and on a voice mail message.
- A third witness, Kelli Dean (Dean) confirmed verbally and in writing that she heard Prusinski make the statement. Dean also stated that Prusinski called Complainant a n---- on a voice mail message.
- The evidence demonstrates that Prusinski threatened to throw Complainant's "black a--" out on more than one occasion.
- The racially descriptive term accompanied Prusinski's statement that he would kick Complainant out of her apartment.

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).

Prusinski did not articulate any reason for making the statement. He did deny making the statement.

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).

Intimidation, Interference or Coercion

Sec. 818. [42 U.S.C. 3617] Interference, coercion, or intimidation; enforcement by civil action:

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of this title.

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 discrimination².

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

1. The complainant is a member of a protected class;
2. The respondent subjected the complainant to unwelcome harassment;
3. The harassment complained of was because of the complainant's protected class;
4. The harassment was sufficiently severe or pervasive to interfere with the complainant's use or enjoyment of her home.

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 is black.
- Multiple witnesses confirmed that Prusinski threatened to throw Complainant's "black a--" out. It was said in person and left on a voice mail message that was heard by two witnesses. Additionally Dean stated that she saw n--- in a text message sent by Prusinski.
- DeLoach explained that Complainant was afraid Prusinski follow through on his threat because he had come into her apartment without notice before. He stated that this fear caused Complainant to change the locks on the front door.

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).

Prusinski did not articulate any reason for making the statement. He did deny making the statement.

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).

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