

COMMISSION AGENDA:

10-8-13 #26

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Authority for County Attorney to Initiate Litigation On Behalf of Joseph Dippre
in the Claim of Joseph Dippre v. Cypress Run Property Owners' Association,
Inc., HUD Case #04-13-0194-8; PC Case #13-005

DATE: October 8, 2013

RECOMMENDATION: IT IS RECOMMENDED THAT THE BOARD OF COUNTY COMMISSIONERS AUTHORIZE THE COUNTY ATTORNEY'S OFFICE TO INITIATE LITIGATION ON BEHALF OF JOSEPH DIPPRE IN THE ABOVE-STYLED FAIR HOUSING COMPLAINT.

DISCUSSION: On December 3, 2012, Joseph Dippre filed a charge of housing discrimination with the United States Department of Housing and Urban Development (HUD) alleging that he was subjected to housing discrimination by the Respondent, Cypress Run Property Owners' Association, Inc. In accordance with the agreement between HUD and the Pinellas County Office of Human Rights (PCOHR), the Complaint was forwarded to PCOHR for handling and investigation.

In his complaint, Mr. Dippre alleged that the Respondent, the property owner's association where Mr. Dippre resides, refused to continue to communicate with him regarding his reasonable accommodation request. Specifically, Mr. Dippre requested and was denied permission to build a screen room/lanai on his villa.

Following an investigation by the PCOHR, on July 11, 2013, the PCOHR issued a finding of reasonable cause to believe that Mr. Dippre was a victim of unlawful discrimination based on interference, coercion, or intimidation, etc., in violation of the pertinent provisions of the *Fair Housing Act Amendments of 1988* (FHAA) and Chapter 70 of the *Pinellas County Code*. Attempts to conciliate the matter between the parties were unsuccessful.

In accordance with Section 70-146 of the *Pinellas County Code*, the County Attorney's Office is required to file a civil action on behalf of an aggrieved party seeking appropriate relief following a reasonable cause determination. Therefore, it is recommended that the Board authorize the County Attorney's Office to initiate such civil action through the existing contract with Gulfcoast Legal Services, Inc.

A detailed memorandum setting forth the facts and applicable case law that led to the reasonable cause determination is attached.

JLB:MAW:elb

Attachment

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MEMORANDUM

TO: Paul Valenti, Human Rights/EEO Officer

FROM: Michelle Wallace, Senior Assistant County Attorney *MW*

RE: Joseph Dippre v. Cypress Run Property Owners' Association, Inc.
Case Nos.: HUD 04-13-0194-8; PC 13-005

DATE: August 6, 2013

I have been asked to review the Final Investigative Report and supporting documentation regarding the above-styled fair housing complaint, and to render an opinion as to whether there is a legal basis for a finding of reasonable cause to believe that the Respondent engaged in unlawful housing discrimination. Briefly, it is my legal opinion that there is a legal basis for a finding of reasonable cause to believe that the Respondent engaged in unlawful housing discrimination in violation of the *Fair Housing Act Amendments of 1988 (FHAA)*, 42 U.S.C. § 3617, and a similar provision located in Chapter 70 of the *Pinellas County Code*, Section 70-183.

SUMMARY OF FACTS

On December 3, 2012, the Complainant, Joseph Dippre, filed a charge of unlawful discrimination in housing with the U.S. Department of Housing and Urban Development (HUD). The focus of his charge was an alleged violation of 42 U.S.C. § 3617 of the *FHAA*, which prohibits interference, coercion, intimidation, or threats against a person in the exercise of their rights protected under the *FHAA*. In accordance with its work-sharing agreement with Pinellas County, HUD referred the complaint to the Pinellas County Office of Human Rights (PCOHR) for investigation and handling.

In his charge of discrimination, Complainant alleged that he was subjected to retaliation by the Cypress Run Property Owners' Association, Inc., (Respondent), because he previously filed a housing discrimination complaint (February 20, 2012) against it. The previous complaint resulted in a No Cause finding.

The Complainant is the owner of the property located at 2602 Royal Liverpool Dr, Tarpon Springs, FL 34688.

The essence of the prior complaint was the denial of a reasonable accommodation. The Complainant wanted to build a screen room/lanai on his villa. Respondent denied the request because the room and roof would intrude into the common areas of the community creating a cost burden for the Respondents. They also maintain that it would upset the "aesthetic harmony of the community." The Complainant alleges that since filing the initial complaint, he has made multiple attempts to submit new plans for the room, which would not create such a burden or upset the harmony.

The Complainant asserts that since filing his complaint, Respondent has refused to deal with him regarding the approval of his request for the additions. This is evidenced by a vote taken at one of Respondent's Board meetings in which they voted to accept the advice of counsel and reject any further applications that would change the footprint of the unit or that involve a screen porch (patio) addition to the villa. The vote took place after a discussion of the Complainant's prior complaint and the cost expended by the Respondent to defend that complaint. The Complainant believes that Respondent is retaliating against him by refusing to deal with him regarding his request.

The Respondent asserts that it is not retaliating against the Complainant. It maintains that it is simply exercising its clear legal rights under its governing documents to deny the request.

APPLICABLE LAW

The allegations set forth in the Complainant's charges allege a violation of the *FHAA*, 42 U.S.C. § 3617, which reads, in pertinent part, as follows:

"Sec. 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 Sec. 803, 804, 805, or 806 of this title."

A similar provision is contained at Chapter 70 of the *Pinellas County Code*, § 70-183, which reads as follows:

"Sec. 70-183. Interference, coercion, or intimidation.

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 this subdivision."

ANALYSIS

To establish a claim of interference, coercion, or intimidation under the *FHAA*, a Complainant must provide proof of the following elements:

- (1) That the Complainant was engaged in an activity protected by the Act;
- (2) That the Respondent took some adverse action against the Complainant; and

- (3) That a causal connection existed between the protected activity and Respondent's adverse action.

Walker v. City of Lakewood, 272 F. 3d 1114, 1128 (9th Cir. 2001), *cert. denied*, 122 S. Ct. 1607 (2002); *Hall v. Lowder Realty Co., Inc.*, 160 F. Supp. 2d 1299, 1322 (N.D. Ala. 2001).

Case law has recognized that it is illegal to retaliate against persons exercising their fair housing rights. *Krueger v. Cuomo*, 115 F. 3d 487, 490-492 (7th Cir. 1997).

The Complainant stated that he was engaged in an activity protected by the *FHAA* and Chapter 70 of the *Pinellas County Code* by filing his administrative complaint on February 28, 2012.

Based upon the above, and since the Respondent has not challenged the Complainant's position that he was engaged in a protected activity, it is my legal opinion that the Complainant satisfied the first required element for his prima facie complaint.

The second required prima facie element is a showing that the Respondent took some adverse action against the Complainant. Since filing the original complaint, the Complainant has made multiple attempts to obtain the approval to make the additions to his home, which the Respondent continues to refuse to consider.

Considering all of the above, it is my legal opinion that the above behavior fulfills the requirement of an adverse action to satisfy the second requirement for the Complainant's prima facie complaint. The Respondent's contentions to the contrary are disingenuous at best and misrepresentations at worst.

The final required element for the Complainant's prima facie case is a causal connection between the Complainant's protected activity and the Respondent's adverse actions. The undisputed facts in the case appear to satisfy this required element.

The Complainant has repeatedly offered to redesign the dimensions of the lanai in an effort to appease the Respondent, while still being able to meet his needs. The Complainant has also offered to change the style of the roof or to even put in an awning instead of a roof.

Additionally, he has made several attempts to try to understand Respondent's definition of "aesthetic harmony of the community," so that he can assure that his proposed changes fit within it. It has proven difficult for him to understand since no two patios or screen rooms in the community are alike and no one will discuss his proposed changes with him.

PCOHR has also tried to intervene by submitting a proposal to the Respondent on behalf of the Complainant. To date all efforts have met with the same rejection.

Considering the statements made at the Board meeting and in light of the selective enforcement towards the Complainant, a causal connection between the filing of the complaint and

Respondent's continued rejection of the Complainant's applications has been made; thus the third element is met.

In light of all the foregoing, it is my legal opinion that there is a legally sufficient basis for a finding of reasonable cause to believe that the Respondent engaged in unlawful housing discrimination in violation of 42 U.S.C. § 3617 of the *FHAA*, and a similar provision found at § 70-183, of the *Pinellas County Code*.

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