


10.21.14 #23

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

FROM: James L. Bennett, County Attorney 

SUBJECT: Authority for County Attorney to Initiate Litigation On Behalf of
Melissa Wiltshire in the Claim of Melissa Wiltshire v. Avalon at
Clearwater Condominium Association, Inc.
HUD Case #04-13-0510-8; PC Case #13-014

DATE: October 21, 2014

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

DISCUSSION: On March 12, 2013, Melissa Wiltshire filed a charge of housing discrimination with the United States Department of Housing and Urban Development (HUD) alleging that she was subjected to housing discrimination by the Respondent, Avalon at Clearwater Condominium 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 her complaint, Ms. Wiltshire alleged that she was subjected to unlawful housing discrimination by the Respondent on the basis of her son's race. Specifically, Ms. Wiltshire alleged she received several notices from Respondent stating that her son could not ride his bicycle on the grass nor play on the sidewalk.

Following an investigation by the PCOHR, on October 14, 2013, the PCOHR issued a finding of reasonable cause to believe that Ms. Wiltshire was a victim of housing discrimination based on race, in violation of the *FHAA*, 42 U.S.C. § 3604(b), and § 70-176(b) 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: Melissa Wiltshire v. Avalon at Clearwater Condominium Association, Inc.
Case Nos.: HUD 04-13-0510-8; PC 13-014

DATE: March 24, 2014

I have been asked to review the Final Investigative Report and supporting documentation regarding the above-styled fair housing complaint, and render an opinion as to whether there is a 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 on the basis of race under the *Federal Fair Housing Act* (FFHA), 42 U.S.C. § 3604(b), and a similar provision located in Chapter 70 of the *Pinellas County Code*, Sec. 70-176(b).

Summary of Facts

On March 12, 2013, Complainant, Melissa Wiltshire, filed a Complaint with the United States Department of Housing and Urban Development (HUD) alleging she was subjected to unlawful housing discrimination on the basis of her son's race by the Respondent. During the period of the alleged discrimination, the Complainant resided at Avalon at Clearwater Condominium, which is owned by the Respondent, Avalon at Clearwater Condominium Association, Inc.

The Complainant is a white female with a bi-racial son, who is seven years old. In her Complaint, she stated that she received several notices from Respondent stating that her son cannot ride his bike on the grass and that he cannot play on the sidewalk. She said that there are white families whose white children play with her son quite frequently. She also stated that none of those families had received notices informing them that their children could not ride their bicycles on the grass or play on the sidewalk.¹

She stated that she has been told that she is not supervising her son when, in fact, she said all of the children play in front of her Unit and she watches them while she is inside.

¹ Jim Williams, white and the father of Jaren (10), also white, stated that his son plays with the Complainant's son often. He also stated that he never received any notices regarding his son's behavior. Additionally Bonnie French, white and the mother of Sean (7) and Dylan (9), both also white stated that her sons too, play with the Complainant's son often. She maintained that she never received a notice regarding her sons' behavior prior to receiving one after the Complainant complained of different treatment. She believes she only received the notice because the Complainant complained of different treatment. She said that the maintenance worker would usually just tell her sons not to play on the sidewalk.

The Complainant stated that on January 15, 2013, she received a seven day notice to vacate the premises because her son was seen allegedly damaging Respondent's and other residents' property and littering. She said that the notice informed her that the Respondent had previously notified her, on numerous occasions, about these and other violations.

The Complainant further stated that after she received the notice, she emailed Stephan C. Nikoloff (Nikoloff), Respondent's attorney to ask him why she was being singled out, asking specifically, "Why was I the only one getting notices, because there are two other families that my son plays with and both parties said they have received not letters from Avalon?". She also asked "Do I get notices because my son is black and the other parties are white?". She maintained that within a day of her sending that email, a violation notice was given to one of the white families.

The Complainant stated that she believes her son is being singled out due to his racial makeup. She said that all of the children play together, yet her family is the only family given violation notices, as well as a seven day notice to vacate.

The Respondent replied to the Complainant's allegations in correspondence from its attorney. The Respondent stated that pursuant to the Declaration of Condominium of the Avalon at Clearwater, A Condominium (Declaration), "all occupants under 18 years of age shall be supervised by an adult to ensure that they do not become a source of unreasonable annoyance to other residents." Additionally the Declaration states "no Owner shall use his Unit, or permit it to be used, in a manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another Unit, or which would not be consistent with the maintenance of the highest standards for a first class residential Condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each Unit shall be consistent with existing laws and the Condominium Documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner."

The Respondent said that beginning in April 2010, it sent the Complainant two notices asking her to have her son ride his bicycle on the sidewalk instead of the grass, one notice about her son running up and down the stairs and running into residents' doors, one notice about her son being outside unsupervised hitting tennis balls at vehicles, one notice about her son being outside playing street hockey on the sidewalk and one notice about cigarette butts littering the area outside her entryway.

The Respondent stated that on November 14, 2012, the Complainant was advised that failure to comply with the Respondent's policies would leave the Board of Directors (Board) with no alternative but to evict her. It further stated that the Complainant's continued violations of the Declaration and inability to comply with Respondent's policies are the basis for the eviction.

Lastly, the Respondent stated that it always applies its rules uniformly with regard to all residents. It strongly denies any allegations of discrimination and that based on its responses and attached documentation, it is apparent that it has engaged in no such conduct. Respondent maintained that the Complainant is merely making this complaint because she is unhappy with the rules.

APPLICABLE LAW

The alleged activities of the Respondent may be in violation of the *FFHA*, 42 U.S.C. § 3604(b), which reads as follows:

"U.S.C. § 3604 discrimination in sale or rental of house and other prohibited practices.

As made applicable §3603 of this title and except as exempted by § 3603(b) and § 3607 of this title, it shall be unlawful –

(b) 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 therewith, because of race, color, religion, sex, familial status, or national origin."

A similar provision is located at Sec. 70-176(b), which reads as follows:

"Sec. 70-176. sale or rental

(b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in providing services or facilities in connection with such sale or rental, because of race, color, handicap, religion, sex, familial status, or national origin."

Elements of a Prima Facie Complaint and Discussion

Courts have held that in order to establish a Prima Facie Complaint for violation of the *FFHA*, 42 U.S.C. § 3604(b): "...Plaintiff must make a modest showing that a member of a statutorily protected class was not offered the same terms, conditions, or privileges of rental of a dwelling or not provided the same services or facilities in connection therewith made available to others under circumstances giving rise to a reasonable inference of prohibited discrimination." *US v. Town Hall Terrace Ass'n*, 1997 WL 128353(W.D.N.Y.).

In essence in this Complaint, the Complainant has alleged the Respondent violated § 3604(b) by engaging in disparate treatment of her in the enforcement of the Respondent's rules. The Respondent has admitted issuing the pertinent notices to the Complainant. It also admitted that it issued a notice to a white family regarding their sons, but denied that it was after the Complainant complained. The Respondent maintains that there is no evidence putting forth the Complainant's allegations of disparate treatment due to her son's race.

However, in my legal opinion there is compelling evidence that gives rise to an inference of discrimination based upon race. The fact that other children in the association engaged in behavior that violated Respondent's rules, but only one was noticed strongly indicates selective

enforcement of Respondent's rules.² Additionally, it seems that the Respondent only counseled the other children about their behavior and did not subject them to written notification of rule violations.

Based upon the above, it is my legal opinion that the Complainant has established a prima facie complaint of housing discrimination on the basis of race. Additionally, in light of the compelling evidence of disparate treatment by the Respondent in enforcement of the Respondent's rules, it is my legal opinion that there is reasonable cause to believe that Respondent engaged in unlawful housing discrimination on the basis of race, in violation of the *FFHA*, 42 U.S.C. § 3604(b), and § 70-176(b) of the *Pinellas County Code*.

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² See footnote 1

NOTICE

WITH THE ISSUANCE OF THE ATTACHED CHARGE OF DISCRIMINATION BY THE PINELLAS COUNTY OFFICE OF HUMAN RIGHTS, CERTAIN RIGHTS AND RESPONSIBILITIES HAVE BEEN GIVEN TO YOU. THE FOLLOWING PARAGRAPHS ARE AN OUTLINE OF THOSE RIGHTS. PLEASE READ THE PROVISIONS OF THIS NOTICE CAREFULLY AND, IF YOU DO NOT UNDERSTAND ITS CONTENTS, OR IF YOU HAVE ADDITIONAL QUESTIONS, CONTACT MICHELLE A. WALLACE, SENIOR ASSISTANT COUNTY ATTORNEY, PINELLAS COUNTY ATTORNEY'S OFFICE, 315 COURT STREET, SIXTH FLOOR, CLEARWATER, FL 33756, TELEPHONE NUMBER (727) 464-3354.

I. ELECTION OF CIVIL ACTION.

UNLESS ONE OF THE PARTIES ELECTS WITHIN TWENTY (20) DAYS FROM THE DATE THEY RECEIVE THIS NOTICE TO HAVE THE CLAIMS ASSERTED IN THIS CHARGE DECIDED IN A CIVIL ACTION IN FEDERAL OR STATE COURT, AN ADMINISTRATIVE HEARING WILL BE AUTOMATICALLY SCHEDULED FOR A TIME AND PLACE DESIGNATED BY ORDER OF A DOAH HEARING OFFICER. Such administrative hearing will be conducted in accordance with Chapter 120, Florida Statutes, and the Pinellas County Human Rights Ordinance. Pinellas County will provide an attorney to commence and maintain the action on behalf of the aggrieved person. The DOAH hearing officer may order appropriate relief, including actual damages, reasonable attorney's fees, costs, and other injunctive relief, and may also assess a civil penalty.

If any person elects to proceed in federal or state court, Pinellas County will provide an attorney to commence and maintain this action on behalf of the aggrieved person. Additionally, the aggrieved person retains the right to be represented by counsel of his/her own choice. Any party may choose to have the case decided by a jury. The federal or state court may award injunctive and/or other equitable relief as well as monetary relief (including actual and punitive damages). The election to proceed in federal or state court must be filed with the Pinellas County Office of Human Rights not later than the 20th day after the date of receipt by the electing person of the determination of reasonable cause and charge of discrimination. Such election shall not be considered filed until received by the Pinellas County Office of Human Rights at the following address:

Director, Pinellas County Office of Human Rights
400 S. Ft. Harrison Avenue, Fifth Floor
Clearwater, FL 33756

Persons making such election must also serve written notification of the election on the individuals listed below:

COMPLAINANT: Melissa Wiltshire
1238 S. Missouri Ave.
Unit 111
Clearwater, FL 33756

RESPONDENTS: Avalon at Clearwater Condominium Association, Inc.
1220 S. Missouri Ave.
Clearwater, FL 33756

Stephan Nikoloff, Esq.
Cianfrone & DeFurio, P.A.
1964 Bayshore Blvd., Ste. A
Dunedin, FL 34698

OFFICIALS: Paul Valenti
Office of Human Rights
400 S. Ft. Harrison Avenue, Fifth Floor
Clearwater, FL 33756

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the "Determination of Reasonable Cause and Charge of Discrimination" and the accompanying "Notice" were sent on this 6th day of October, 2014, by first class mail, postage prepaid, and by certified mail, return receipt requested, to the following:

Melissa Wiltshire
1238 S. Missouri Ave.
Unit 111
Clearwater, FL 33756

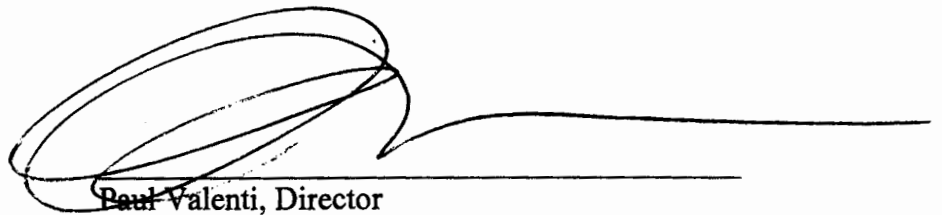
Avalon at Clearwater
Condominium Association, Inc.
1220 S. Missouri Ave.
Clearwater, FL 33756

Stephan Nikoloff, Esq.
Cianfrone & DeFurio, P.A.
1964 Bayshore Blvd., Ste. A
Dunedin, FL 34698

Don Vargas, GTM
Equal Opportunity Specialist
909 S.E. First Avenue, Suite 500
Miami, FL 33131

Carlos Osegueda
HUD Director, Region IV
Office of Fair Housing and Equal Opportunity
40 Marietta St.
Atlanta, GA 30303-2806

Gulfcoast Legal Services, Inc.
641 First St. South
St. Petersburg, FL 33701

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Paul Valenti, Director
Pinellas County Office of Human Rights
400 S. Ft. Harrison Ave., Fifth Floor
Clearwater, FL 33756
(727) 464-4880

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Pinellas County Office of Human Rights

400 S. Fort Harrison Ave
Fifth Floor
Clearwater, FL 33756
(727) 464-4880
Fax: (727) 464-4157
Text Phone/TDD: (727) 464-4062

MELISSA WILTSHIRE

v.

AVALON AT CLEARWATER CONDOMINIUM ASSOCIATION, INC.

HUD CASE NO. 04-13-0510-8

PC CASE NO. 13-014

DETERMINATION OF REASONABLE CAUSE AND CHARGE OF DISCRIMINATION

I. JURISDICTION.

Melissa Wiltshire, an aggrieved person, filed a complaint of housing discrimination on the basis of race with the U.S. Department of Housing and Urban Development (HUD) on March 12, 2013. HUD referred the complaint to the Pinellas County Office of Human Rights (PCOHR) for further investigation in accordance with HUD procedures for having complaints of housing discrimination investigations conducted by local agencies certified by HUD as substantially equivalent under federal law.

This office, in conjunction with the Pinellas County Attorney's Office, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in violation of the *Fair Housing Act Amendments of 1988 (FHAA)*, 42 U.S.C. § 3604(b) & § 3617, and a similar provision located in Chapter 70 of the *Pinellas County Code*, Section 70-176(b). Therefore, the issuance of this charge of discrimination has been authorized.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE.

Based upon the investigation of this complaint by the PCOHR, it has been determined that there is reasonable cause to believe the Respondent engaged in unlawful discrimination on the basis of race, as evidenced by the Respondent giving Complainant several notices stating that her son could not ride his bicycle on the grass nor play on the sidewalk. Based upon its actions, there is reasonable cause to believe the Respondent violated the *Fair Housing Act Amendments of 1988 (FHAA)*, 42 U.S.C. § 3604(b) & § 3617, and a similar provision located in Chapter 70 of the *Pinellas County Code*, Section 70-176(b).


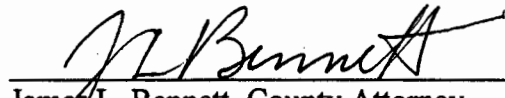
III. FINAL INVESTIGATIVE REPORT.

The information supporting this reasonable cause determination and charge is more specifically contained in the investigator's Final Investigative Report (FIR) completed for this complaint. A copy of the FIR will be provided to any aggrieved person and any respondent upon written request filed with Paul Valenti, Director, Pinellas County Office of Human Rights, 5th Floor, 400 S. Ft. Harrison Ave., Clearwater, FL 33756, telephone number (727) 464-4880.

IV. CONCLUSION.

Wherefore, based upon the above, the PCOHR, in conjunction with the Pinellas County Attorney's Office, and pursuant to *Pinellas County Code*, §§ 70-140 and 70-141, issues this charge of reasonable cause to believe that the Respondent engaged in unlawful housing discrimination on the basis of race, in violation of the *Fair Housing Act Amendments of 1988 (FHAA)*, 42 U.S.C. § 3604(b) & § 3617, and a similar provision located in Chapter 70 of the *Pinellas County Code*, Section 70-176(b), and will pursue such relief on behalf of the aggrieved person as may be appropriate under the applicable fair housing laws and ordinances.

Respectfully submitted,


Paul Valenti, Director
Pinellas County Office of Human Rights
James L. Bennett, County Attorney
Pinellas County, Florida
315 Court Street, Sixth Floor
Clearwater, FL 33756
Phone: (727) 464-3354

DATE: Oct. 6, 2014