

June 7, 2013

DETERMINATION

CASE NAME: Potter, Isaac and Deveda vs. Pointe Vista II, LTD, et al

CASE NUMBER: 04-13-0195-8

FCHR NUMBER: 2013H0111

I. JURISDICTION

A complaint was filed with HUD on December 5, 2012 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; other discriminatory acts; and discriminatory acts under section 818 (coercion, etc.). It is alleged that the respondent(s)'s acts were based on race. It is alleged that the respondent coerced, intimidated, threatened or interfered with a person in the exercise or enjoyment of fair housing rights or assisting another in enjoying such rights. The most recent act is alleged to have occurred on August 31, 2012, and is continuing. The property is located at: 2000 Cabo San Lucas drive, # 105, Orlando, FL 32839. 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, 804a or b 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 federal funding in the form of:

Tax Credit

II. COMPLAINANT ALLEGATIONS

Complainants Isaac and Deveda Potter have identified their races as being African American. Therefore, the complainant belongs to a class of persons whom the Fair Housing Act (the Act) as amended protects from unlawful because of their race. Complainant Potter currently resides at Pointe Vista Apartments located 2000 Cabo San Lucas Drive Apt. 105 located in Orlando Fl. Complainant Potter asserts that the apartments are Low Income Housing Tax Credit (LIHTC) apartments and they provides incentives for tenants to become home owners. The Pointe Vista Apartments II are owned by Respondent Pointe Vista LTD whose general partner is Respondent BRM Pointe Vista II, LLC and managed by Respondent AGPM Service, LLC by and through Respondent Vicki Aimable (Haitian Decent)

Complainant Potter asserts he has been tenant at Pointe Vista Apartments for three years and now have eligibility to participate in placing a down payment on a home in the Home ownership incentive program. On December 20, 2011, Complainant Potter filed a grievance against Respondent Aimable because his apartment had been burglarized. Complainant Potter believed he

should be compensated in the amount of \$800.00; due to his home being broken into. Complainant alleged the break in occurred as a result of Aimable's actions for terminating the security on duty. In retaliation, Complainant Potter believed he was targeted by Respondent Aimable, to be forced to move because of retaliation and due to his race. Complainant Potter asserted Respondent Aimable instructed her assistant manager, to issue him a Notice of Non-Renewal of Lease on August 31, 2012. Furthermore, Complainant Potter alleged Respondent Aimable would not adequately make repairs to his apartment. Complainants Potter had made several requests to provide a new stove, because only two burners worked and the other two burners had electrical shortages. Complainant Potter believed Respondent Aimable treated Haitians more favorably and helped them to complete the home ownership program.

Complainants Deveda and Isaac Potter believed Respondents discriminated and retaliated against them based on their race African in violation of section 804a, 804b and section 818 of the Fair Housing Act.

III. RESPONDENT DEFENSES

Respondent denies the allegations made by Complainant that he was discriminated because of his race (African American) or any other protected class. Respondent asserts that Complainant moved into the community on or about October 20, 2009. Respondent stated on or about September 15, 2011, Complainant filed a police report with Orange County Sheriff's Office, which stated Complainant's front bedroom window was broken and several items were stolen from Complainant's apartment. According to Respondent, on or about January 12, 2012, Complainant filed a Declaration of Judgment against Respondent in the amount of 895.00, and alleged Respondent was negligent and did not provide proper security on the property, and should be held accountable. According to Respondent, it was determined they were not liable for the break in and was not deemed to reimburse Complainant for the claim. Respondent stated Complainant expressed the reason for the request to move was a form of retaliation.

Respondent stated Complainant's lease agreement with them expired on September 30, 2012, which several notices and reminders were provided to Complainant to renew their lease. Respondent stated on or about October 30, 2012, Complainant was served with a seven day notice to cure, providing them an opportunity to cure the noncompliance and inform management of their intentions, regarding renewal. Respondent stated in addition, they have served several other seven day notices to cure to other tenants, requesting they inform management of their renewal intentions, within seven days of the notice. Respondent states they serve notices to each resident that does not comply with their lease agreement. Respondent states the notices are included but are not limited to seven day notices to cure Landlord's written warnings.

According to Respondent, Complainant failed to comply with this notice and failed to provide management with their intentions

regarding of their lease agreement. Respondent states residents must renew their lease agreement in order to remain a resident, as month to month tendencies are not permitted. Additionally, pursuant to Complainant's lease agreement, "If resident fails to provide landlord any of the required documents, resident's failure shall be deemed a material and a serious violation of the lease agreement and shall be cause for Resident's lease termination by seven day notice, without opportunity to cure, pursuant of State Statutes". Respondent asserts they have not acted out of retaliation by requesting that Complainant comply with their lease agreement.

IV. FINDINGS AND CONCLUSION

In order to conclude there is reasonable cause to believe a violation of 804(b) of the Fair Housing Act has occurred, all of the elements of the case must be met. First, Complainant must belong to a class of persons covered by the Fair Housing Act. Second, Complainant must have been qualified, ready, willing, and able to receive the services or use facilities consistent with the terms, policies, and procedures of Respondent. Third, Complainant must have requested services or use of facilities, or attempted to use facilities consistent with the terms and conditions, policies, and procedures established by Respondent for all persons who were qualified or eligible for services or use of facilities. Fourth, Respondent, with knowledge of Complainant's protected class, must have willfully failed or refused to provide services to Complainant or permit use of the facilities under the same terms and conditions that were applicable to all persons who were qualified or eligible for services or use of the facilities.

Regarding the elements of this case, the investigation revealed the following:

1. Does Complainant belong to a class of persons covered by the Fair Housing Act?

Yes. Complainants belong to a protected class by virtue of their race. Complainants have identified themselves as being African-American. Therefore, they belong to a class of persons whom the Fair Housing Act protects from unlawful discrimination because of their race.

Respondents are not disputing that Complainants are African-American or that they belong to a protected class.

Therefore, it can be concluded that Complainants are African-American and belong to a protected class.

2. Was Complainant qualified, ready, willing, and able to receive services or use facilities consistent with the terms, policies, and procedures of Respondent?

Yes. Complainants rented an apartment located in a community under the control of Respondents for over three years. As residents of the community, Complainants were qualified to receive services or use the facilities consistent with the terms, policies, and procedures of Respondents.

3. Did Complainant request the services or use of facilities, or attempt to use facilities consistent with the terms and conditions, policies, and procedures established by Respondent for all persons who were qualified or eligible for services or use of facilities?

Yes. The investigation revealed that Complainants made service requests to Respondents for maintenance to their unit. Respondents provided several work orders which were submitted by Complainants from 2012 and earlier. Complainants did not provide any evidence to support that they made any requests other than those represented by the work orders. The investigation thus revealed that service requests were made by Complainants.

4. Did Respondent, with knowledge of Complainant's protected class, willfully fail or refuse to provide services to Complainant or permit use of the facilities under the same terms and conditions that were applicable to all persons who were qualified or eligible for services or use of the facilities?

No. The investigation revealed that Respondents completed several service requests made by Complainants. A review of the work orders revealed that Respondents completed service requests of Complainants within a reasonable time frame. The investigation further revealed that there is no evidence that Respondents failed or refused to provide services to Complainants. Complainants believe that they were discriminated against based on race, but they did not provide evidence to support their assertions. When interviewed by the Investigator, Complainants could not identify any one who was treated more favorably than them with regard to services, and they could not articulate any solid reason to believe that they were discriminated against based on their race. A review of the requests that Complainants did make indicates that Respondents responded to their requests in a timely fashion.

Complainants also blamed Respondents for a break-in that occurred in their unit. Complainants indicated that Respondents terminated the security services for the community. However, the removal of security affected the entire community and exposed all residents, not just Complainants, to threat of break-ins. Complainant Isaac Potter admitted that all residents and units were affected by the lack of security. That issue affected all residents, regardless of race.

Complainants alleged that Respondents refused to grant them a renewal of their lease. Complainants alleged that they made several attempts complete the necessary documentation to have their lease renewed. However, Complainants could not provide any evidence of this; neither could they provide any precise dates or times on which they allegedly made such attempts. On the other hand, Respondents provided documentation as well as verbal confirmation during interviews that several requests were made by them to Complainants that Complainants renew their lease and come to the rental office to complete the paperwork to do so. Respondents indicated that Complainants' lease was not renewed because Complainants never acted on Respondents' notifications to them that they needed to indicate their intentions regarding the renewal of their lease and complete the paperwork to actually renew it. Furthermore, Respondents provided names of numerous other residents to whom Respondents sent similar notices requesting that they take action and complete paperwork in order to obtain a new lease agreement, including: Verginaud Aimable, Daniel Solis, Tasha Johnson, Diedre Barnes, Cendi Lee, Marie Laurent, and Christopher Reid. Respondents provided copies of the notices sent to them. Respondents even sent Complainant a written reminder on October 30, 2012, which was a month after their lease had already expired, asking them to provide Respondents with their intentions regarding renewal of their lease. Complainants did not provide any evidence or precise information to show that they took any action regarding these reminders to renew their lease. Respondents asserted that Complainants' eviction was unrelated to their race. Moreover, Complainants alleged in their complaint that they believed that part of the reason they were "forced" from their home was because they had filed a grievance against the Property Manager, which is not related to race or any other protected class.

Therefore, based on the foregoing, the Commission finds that there is not reasonable cause to believe that a discriminatory housing practice occurred in violation of section 804(b) of the Fair Housing Act, as amended.

In order to conclude there is reasonable cause to believe a violation of section 818 of the Fair Housing Act has occurred as a result of the Complainant's involvement in a protected activity, all the elements of the case must be met. First, the investigation of this case must show that Complainant was involved in a protected activity. The Complainant must have exercised, attempted to exercise, or assisted, attempted to assist, or encouraged another person in the exercise of a right or activity protected under the Fair Housing Act. Second, Respondents must have known Complainant was engaged in a protected activity, or based on the facts and circumstances, Respondents should have known that Complainant was engaged in a

protected activity. Third, Respondents must have undertaken one or more substantial actions against Complainant to discourage Complainant or to punish Complainant for Complainant's involvement in the protected activity.

Regarding the elements of this case, the investigation revealed the following:

1. Was Complainant involved in a protected activity? Did Complainant exercise, or attempt to exercise, or assist, attempt to assist, or encourage another person in the exercise of a right or activity protected under the Fair Housing Act?

No. The investigation revealed that Complainants did not engage in a protected activity. They have not filed a previous fair housing complaint, and there is no evidence that they were ever involved with filing or assisting in the investigation of such a complaint. Complainants alleged that the source of the retaliation was that they filed a grievance against Respondent Aimable, the Property Manager of the subject community, because their apartment had been burglarized. However, filing a grievance with Ms. Aimable's employer because of a break-in that allegedly resulted from her alleged decision to remove certain security services from the entire community, which affected all residents regardless of race, is not an activity protected by the Fair Housing Act and is not related to any protected class.

2. Did Respondent know that Complainant was engaged in a protected activity, or based on the facts and circumstances, should Respondent have known that Complainant was engaged in a protected activity?

No. Based on the evidence concluded through this investigation, Complainants did not engage in a protected activity. Therefore, Respondents did not have knowledge of such an activity.

3. Did Respondent undertake one or more substantial actions against Complainant to discourage Complainant or to punish Complainant for Complainant's involvement in the protected activity?

No. Complainants alleged that they were retaliated against because they filed a grievance against Ms. Aimable. Complainants alleged that they were forced to move from their unit in retaliation for filing the grievance against Ms. Aimable. However, not only is that not a protected activity, but Complainants did not provide any evidence to support their allegation that that was the reason for the non-renewal of their lease. On the other hand, Respondents have demonstrated, as stated above, that they non-renewed Complainants' lease because Complainants failed to take actions to renew the lease in

accordance with the multiple reminders to do so. Respondents gave Complainants the opportunity to renew their lease even after it had expired, but Complainants failed to do so. Complainants could not articulate a reason why they failed to do so, and they failed to provide any precise information or evidence that they attempted to do so. This issue is unrelated to an activity protected by the Fair Housing Act, and it is unrelated to Complainants' race.

Furthermore, there is no evidence or reason to believe that there is a nexus or connection between Complainants' non-renewal and the alleged grievance against Ms. Aimable.

Therefore, based on the foregoing, the Commission finds that there is not reasonable cause to believe that a discriminatory housing practice occurred in violation of section 818 of the Fair Housing Act, as amended.

Additionally, Complainants alleged violation of Section 804(a) of the Fair Housing Act based on the same set of facts. However, the investigation revealed that this is not a refusal to rent case. Rather, it is a non-renewal of lease case and a case of alleged failure to render services, which issues have been thoroughly analyzed above under Sections 804(b). Furthermore, Respondents did in fact rent to Complainants and rented to them for over three years, knowing that they are African-American. There is no evidence or reason to believe that any of the alleged actions in this case were related to Complainants' race.

V. ADDITIONAL INFORMATION

Notwithstanding this determination by HUD, 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:
Florida Commission on Human Relation 2009 Apalachee Parkway,
Suite 100 Tallahassee, Florida 32301.