

City of Chicago
COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF:

M. Concepcion Prado

Complainant,

v.

Triview Property Management

Respondent.

Case No.: 16-H-21

Date of Ruling: January 10, 2019

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On June 9, 2016, Complainant M. Concepcion Prado (“Prado” or “Complainant”) filed a complaint against Respondent Triview Property Management (“Respondent or “Triview”) in which she alleged that Respondent discriminated against her based on her Mexican ancestry in violation of the Chicago Fair Housing Ordinance (CFHO).

Respondent filed its Response to the Complaint on July 18, 2016. The Commission entered an Order Finding Substantial Evidence on June 30, 2017,¹ and appointed the Hearing Officer on September 15, 2017.

An administrative hearing was held on May 24, 2018, at the offices of the Commission. Both parties were represented by counsel. On July 19, 2018, the parties filed and served their post-hearing, closing argument briefs.

On October 22, 2018, the Hearing Officer issued her recommended ruling. On November 13, 2018, Complainant filed objections to the recommended ruling which were considered in reaching this Final Ruling.

II. FINDINGS OF FACT

Prado’s Ancestry, Heritage, and Family

1. Maria Concepcion Prado is Mexican American. She grew up on the southwest side of Chicago in the Little Village and Pilsen neighborhoods. Her parents were born in Mexico and Spanish is her first language. (Tr. 19). She has two daughters – Alejandra and Montserrat, who, at the time of the hearing, were 13 and 9 years old, respectively. (Tr. 21).

2. Prado’s Mexican culture, heritage and traditions are very important to her. She is from a large family with six brothers and sisters, was raised by immigrants in a “Spanish dominant

¹ The Order Finding Substantial Evidence refers to a violation of the CFHO based on source of income discrimination. (*See* Order dated June 30, 2017). This appears to be a typographical error. The Complaint alleges discrimination based on ancestry. Further the parties’ pre-hearing memorandum, evidence presented at the hearing, and closing briefs frame this case as one based on ancestry discrimination rather than source of income. Accordingly, the claim at issue in this ruling concerns ancestry discrimination as alleged in the Complaint.

speaking household” and celebrates cultural holidays, including Name Days and Day of the Dead. (*Id.*). She has intentionally passed these traditions down to her children. (Tr. 22).

3. At the hearing, Prado explained that Name Days are part of Mexican culture. There is a special Mexican calendar that includes the name of a saint for each day. (Tr. 22). Generally, children are named for name of saint that corresponds to their date of birth. (*Id.*). Name Days are then celebrated annually by the family.

4. Prado testified that while celebrating Name Days is a tradition within her and other Mexican families, the general public may not know about them. (*Id.* at 23).

River Village Town Homes

5. Between 2006 and 2016, Prado lived in The River Village Town Homes (RVTH), a mixed-income property located in the Cabrini-Green neighborhood. (Tr. 27). There are approximately 119 condominium units at the property. (Tr. 245). Prado testified that she was aware of only one other Mexican family that lived at the property. (Tr. 36). Prado was initially a tenant, but her brother and sister-in-law (Gustavo and Marisol Prado) purchased the property on Prado’s behalf in 2007. (Tr. 27-28).

6. Prado testified that the doors of the condo units are glass with wood framing. Residents, including Prado, frequently decorated their doors with holiday and other displays. (Tr. 31).

7. Triview Property Management took over the management of RVTH in 2014. (Tr. 190). Triview oversaw assessment billings and payments, the issuance of fines, and maintenance of common areas. (Tr. 190-191).

8. At the request of the condominium association (Association), Triview began to strictly enforce the condominium rules, including those that covered displays on unit doors and windows. (Tr. 191).

9. Matthew Dorsch, who was a property manager for RTVH, testified that he and other Triview staff scheduled monthly walks around the property and took pictures of any rule violations. (*Id.*). Given the number of condominiums and owners, when Dorsch conducted these property walks, he rarely knew the name of the unit owners associated with each unit. (Tr. 200). After taking pictures of the violations, Dorsch would return to the office, cross check the unit number with the name of the owner and then send notices of violation. (*Id.*). Dorsch testified further that a person’s language or heritage was not always clear from their name alone. (Tr. 227).

10. There were several steps in the violations process. First, an owner would receive a courtesy note advising them of the violation. The owner was then given seven (7) to ten (10) days to correct the violation. If it was not corrected, the owner would be fined. An owner could request a hearing if found to be in violation of the rules. (Tr. 198-199).

Prado's Notices and Fines

11. On December 24, 2014, Prado received a courtesy notice of violation addressed to Gustavo and Marisol Prado, her brother and sister-in-law, who owned the property. (See Compl. Ex. 3). The notice claimed that Prado had violated the Condominium Association Rules and Regulations which stated, in part,

No "For Sale" or "For Rent" signs, advertising or other display shall be maintained or permitted on any part of the property, including the windows of the individual units except at such location and in such form as shall be determined by the board. (*Id.*).

12. The notice included a picture of the display on Prado's door, which was children's hand-drawn art work. In reviewing the photo, Dorsch testified that the display looked like "a paper mache rainbow and some leaves." He saw it as art and not as a holiday decoration. (Tr. 201).

13. Prado testified that the artwork was a holiday display drawn by her daughter, Montserrat. Her family celebrated Thanksgiving on December 31st, and the artwork was "multi-cultural and symbolic of a rainbow starting the new year." (Tr. 41). She was upset about the notice from Triview because she had never received one for these displays. (Tr. 42). In fact, Prado had little interaction with Triview or the condominium association prior to December 2014 because she had never had a reason to talk to them. She set up automatic payments for assessments that were regularly paid. (Tr. 39-40).

14. After receiving the notice, and instead of addressing the violation by taking the artwork down, Prado contacted then Triview property manager, Roberta Morris, about next steps. (Tr. 43-44). She requested a hearing. On December 29, 2014, Prado received a letter from Morris confirming her request and scheduling the hearing for February 18, 2015, in the evening. (Compl. Ex. 5).

15. On January 23, 2015, Prado followed up on the letter in an e-mail exchange with Triview staff. (Compl. Ex. 6). Prado asked, "[w]ho submitted the violation complaint about the children's artwork display on my unit door?" (*Id.*). In that e-mail exchange, Prado did not mention or describe the artwork as an expression of her ancestry or Mexican heritage. (*Id.*).

16. Prado was told that the source of the complaint would be provided at the hearing. (*Id.*). Prado testified that she was not able to attend the hearing because it was scheduled late in the evening on a school night. (Tr. 45). She did, however, request minutes from the hearing, only to be told that minutes were not kept for the proceeding. (Tr. 48, Compl. Ex. 6). Prado never discovered who filed a complaint about the artwork. (*Id.*). She saw this as a violation of her rights. (*Id.*).

17. Dorsch testified that the condominium association purposely refused to release the names of "complaining witnesses" to avoid "community fights with other [owners]." (Tr. 204-205).

18. During this time period, Prado asked several neighbors if they had received violation notices for their holiday displays. Of those she spoke to, none of them had received a violation notice. (Tr. 50).

19. However, a report generated by Triview showed that they issued 600 violations to property owners from the time they assumed management RVTH in 2014 through January 2018. (Resp. Ex. 2).

20. For example, on December 22, 2014, Triview issued a notice of violation to DeAnnah Byrd for displaying a "For Rent" sign in her window. (Resp. Ex. 3). Byrd had a hearing, but was still fined. (Resp. Ex. 5).

21. On December 24, 2014, Triview issued a notice of violation to Nathan Yackel and Clara Schroedl for displaying children's artwork on their window. (Resp. Ex. 6).

22. Between January and October 2015, Triview issued notices of violation to at least five other unit owners for displaying an unauthorized dog sign, decorations on entry doors or windows, and even a Cubs "W" flag in a window. In each instance, Triview cited a violation of the same provision of the condominium rules and regulations cited in the notice issued to Prado on December 24, 2014. (Tr. 210-216, Resp. Ex. 7-12). Triview even issued notices of violation to board members of the Association. (Tr. 203-204).

23. On April 8, and July 24, 2015, Prado received two additional notices of violation for displaying her children's artwork. (Comp. Ex. 10-12, Resp. Ex. 1). Respondent's Exhibit 1 is a photo of one of the pieces of artwork taken by Prado in July 2015. (Tr. 169). It is a drawing of what appear to be guitars, a female figure, stars, hearts, turtles, and butterflies.

24. When questioned during the hearing, Prado could not specify the religious or cultural significance of the drawing. (Tr. 169-170). When asked if it represented a Name Day, and if so, to whom, Prado testified, "I have a very large family. Name Days are celebrated throughout the year." (Tr. 170).

25. Prado was fined for displaying the artwork. Subsequently, she also received notices of violation and fines for having items on the roof membrane instead of the roof deck, and for having unauthorized items on the balcony or patio. (Compl. Ex. 13).

26. In total, Prado received five fines at \$100 each and was assessed late fees when she failed to pay the fines. (Compl. Ex. 14).

Prado Contests the Notices and Fees

27. Between February 2015 and September 2015, Prado sent correspondence to Triview staff and the condominium association contesting the violations and the late fees. (Compl. Ex. 6-9). She requested changes to the condominium rules regarding putting holiday displays and decorations on windows and doors of the units. (Compl. Ex. 15). During this time period, Prado repeatedly stated in her correspondence that displaying "children's artwork" or "xmas/holiday signs" should not be a violation of the association's rules. (Compl. Ex. 6-8).

28. In correspondence to the Association Board, dated September 13, 2015, Prado argued that her children's artwork was the same as her neighbors' Halloween displays. She asserted that

Triview's application of the rules is "sending a message against families and instituting intolerance for differences." (Compl. Ex. 9).

29. In e-mail correspondence sent to Association Board President Eric Vastag on September 20, 2015, Prado sent several links that address a condominium owner's right to display religious artwork. She also asserted for the first time that "the art on my windows can be considered a religious practice." (*Id.*).

30. On September 29, 2015, Vastag responded noting "After reviewing all the docs and information relating to this, including legal review, there is no change in policy or enforcement as it relates to your situation." (Compl. Ex. 9). However, Vastag agreed to meet with Prado in person to further discuss her concerns. (*Id.*, See also Tr. 171).

31. The matter was not resolved through that meeting and Prado's fines remained intact. However, in correspondence dated November 30, 2015, Vastag agreed to seek the Board's feedback on changing the rules for window/door displays. (Compl. Ex. 15).

32. Despite these representations, changes to the rules were not made. In fact, sometime between Prado's late 2015 correspondence with Vastag and April 2016, the Board met and voted to keep the rules in place. Holiday and other displays on windows and doors remained prohibited under the Association's rules. (Compl. Ex. 33).

33. Prado received another warning notice on April 18, 2016, for displaying artwork on her door. (Compl. Ex. 30). In response, Prado sent an e-mail to the Association Board and Triview staff stating "as a multi-cultural family, the art on my windows falls under the IL statute protecting my right to have religious artifacts on my door." (Compl. Ex. 34).

34. Prado retained legal counsel who also sent correspondence to Dorsch on April 21, 2016, in which he advised that Illinois law prohibits residential associations from interfering with the display of religious items. (Compl. Ex. 32).

35. In response, Triview's legal counsel attached a picture of the children's artwork at issue. In the correspondence, he noted:

Judging from the pictures on your client's front entryway door....they do not appear to relate to any sort of religious practice such that the association must permit their display.... If you believe the Board is mistaken, please present any additional information or evidence you may have to demonstrate that the display of what appears to be "artwork" is connected with the religious affiliation of Ms. Prado and her family. (*Id.*).

36. Prado's attorney forwarded the e-mail to her and stated "this is what I was concerned about. I don't see the religious content either. Your children's artwork is not religious. Please explain." (*Id.*).²

² During the hearing, Complainant's counsel objected to cross-examination of Prado regarding Attorney Shapiro's comments. (See Tr. 174-175). However, any claim of privilege was waived, first because the e-mail containing the Prado-Shapiro exchange was forwarded to third parties, including Triview staff and Association Board Members. Second, the exhibit containing these communications was offered into evidence by Complainant's counsel during direct examination and without any effort to preserve the privilege.

37. Prado then contended that the artwork was “a spiritual expression to celebrate my loved ones with a home alter [sic].” (*Id.*). She also wrote:

If a few pieces of art is not sufficient to allow the practice to continue, I can create a more elaborate home alter[sic] with additional artifacts on the door. I can include curators descriptions of a Mexican home alter [sic] for onlookers. (*Id.*)

38. Prado then attached a link to an article that explained Mexican home altars. (Compl. Ex. 31). In pursuing this matter, Prado also contacted Univision, in hopes that they would support her position. (*See* Tr. 120, Exhibit 36). Univision declined to do so after speaking with Triview. (Tr. 121). By e-mail dated April 27, 2016, Prado’s attorney advised Triview that he no longer represented her. (Compl. Ex. 32).

39. Prado testified that the Association failed to apply the rules equally. (Tr. 187). That others were allowed to show their holiday and seasonal displays, while she was not allowed to do so even after she explained that from her perspective, the children’s artwork was a representation of her Mexican culture. (*Id.*). For her, this was “blatant discrimination.” (*Id.*). She was “being penalized for being Mexican American. [Her] daughter was being marginalized for her artwork, while other children in the same complex are not.” (Tr. 119).

40. Prado took pictures of her neighbors’ displays on their units. While the exact dates of the photos are unclear, the displays included wreaths, pumpkins, skeletons, and snowmen. (Compl Ex. 21-28). Prado testified that these photos showed that other unit owners had holiday displays (Tr. 90-96).

41. However, a violation report dated June 23, 2017, also listed multiple violation notices for “architectural control” -- the rule governing displays on window units and doors. (Compl. Ex. 42). The report covered the January 2015 through March 2017 time period. (*Id.*).

Prado Moves from RVTH

42. Foreclosure proceedings were filed against the property at the end of 2016 (Tr. 126). Prado moved in February or March of 2017 and the unit was sold. (*Id.*). As part of the sale proceedings, RVTH issued a final statement for \$2,041.11, which included outstanding home owners association fees, and fees and penalties related to the prior rule violations. (Compl. Ex. 40). Prado’s brother paid the fees. (Tr.127).

43. Ultimately, the Association changed its rules and regulations, effective July 1, 2017, to include the following language:

Unit Owners may display temporary holiday decorations on their windows and doors up to four weeks in advance and no later than two weeks after any holiday. (Compl. Ex. 4 at 9, Tr. 224).

III. DISCUSSION

Section 5-8-030 of the Chicago Fair Housing Ordinance provides:

It shall be an unfair housing practice and unlawful for any owner, lessee, sublessee, assignee, managing agent, or other person, firm or corporation having

the right to sell, rent, lease or sublease any housing accommodation, within the City of Chicago, or any agent of any of these, or any real estate broker licensed as such:

* * *

A. To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago or in the furnishing of any facilities or services in connection therewith, predicated upon the...ancestry... of the prospective or actual buyer or tenant thereof....

Complainant has the burden of proving unlawful discrimination by a preponderance of the evidence. She can satisfy this burden by presenting either direct or circumstantial evidence of discrimination. *Rivera v. Pera, et. al.*, CCHR No. 08-H-13 (June 15, 2011) *citing to Castro v. Georgeopoulos*, CCHR No. 91-H-6 (Dec. 18, 1991). A “preponderance of the evidence” means a showing that the fact or matter at issue is more likely true than not. *Mendez v. El Rey del Taco & Burrito*, CCHR No. 09-E-16 (Oct. 20, 2010) *citing to Wehbe v. Contracts & Specs et al.*, CCHR No. 93-E-232 (Nov. 20, 1996).

Here, Prado asserts that she was discriminated against because of her ancestry – Mexican American. She has alleged that Respondent failed to apply the association rules and regulations equitably and fairly when it issued notices of violation and fees for displaying art work on the door of her condominium. To be clear, this case does not involve direct evidence of discrimination. Complainant has introduced no direct evidence of written or verbal statements to establish discrimination based on ancestry. *See e.g. Matias v. Zachariah*, CCHR No. 95-H-110 (Sept. 18, 1996) (complainant presented direct evidence of ancestry discrimination when respondent told her he would not rent the apartment to her because he received threats about renting to Hispanics), *Figueroa v. Fell*, CCHR No. 97-H-5 (Oct. 21, 1998) (complainant presented direct evidence of ancestry discrimination when respondent repeatedly made offensive statements based on her Hispanic heritage). Instead, the analysis of Complainant’s claim is based on circumstantial evidence.

To establish a *prima facie* violation of the CFHO here, Prado must show that: (1) she is a member of a protected class; (2) Respondent was aware of that fact; and (3) she was treated differently than others because of her protected class status. If Prado establishes a *prima facie* case, the burden shifts to Respondent to show a non-discriminatory reason for treatment of the complainant. *Rivera* at 6. A respondent can satisfy this burden by articulating one or more legitimate, non-discriminatory reasons that explain its action. *Id.*, *citing to Thomas v. Prudential Biros Real Estate et al.*, CCHR No. 97-H-59/60 (Feb. 18, 2004). The ultimate burden still rests with Complainant to show that a discriminatory reason more likely than not motivated Respondent’s actions or that Respondent’s reason is not worthy of credence. *Wehbe* at 35.

While Prado can establish the first prong of this *prima facie* analysis, her case falters at the second and third prongs and she cannot establish a violation of the CFHO.

Prado Established that She is a Member of a Protected Class

Prado testified about her family history and cultural practices. She is a proud Mexican American and has taken great lengths to ensure that her children are aware of their cultural roots. She testified that her parents are from Mexico and only speak Spanish. She grew up in Little Village and Pilsen - neighborhoods with high populations of Mexican Americans. She observes cultural traditions such as Name Days, the Day of the Dead, and the use of home altars. All of this testimony establishes that Prado is a member of a protected class based on her ancestry -- Mexican American.

Prado Did Not Establish Respondent's Knowledge of Her Ancestry

Before December of 2014, Prado had little interaction with Respondent. She paid her assessments and parking through automatic payments. Complainant testified that prior to receiving the first notice of violation, she never had an issue or a reason to talk to anyone at Triview or the Association.

Her engagement with Respondent began in earnest after she received the first notice of violation dated December 24, 2014, for displaying her daughter's artwork on the door of her unit. Between December 2014 and April 2016, the evidence shows a series of e-mail exchanges between Prado, Triview staff, and the Association regarding the violations and fees she received. Prado did not mention her ancestry in this correspondence. Similarly, there is no evidence that Prado met with Triview staff in person or informed them in any other way that she is Mexican American, prior to April 2016.

Property Manager Matthew Dorsch testified credibly that there are over 119 units at the property and he did not know each of the owners. He and other Triview staff conducted monthly walks around the property in search of rule violations, but they did not know the identity of the owners of any particular unit until they returned to the office and cross-checked names.

Prado argues that her name alone signified her Mexican ancestry, but Respondent would not have known her name until after the first violation was issued, which undercuts her position. Further, the unit was held in the name of Gustavo and Marisol Prado. Dorsch testified credibly that he did not automatically associate these names or Complainant's name with her Mexican American heritage.

Prado also has offered no evidence showing that Respondent was aware of her ancestry when they issued subsequent violations for displaying artwork on her door. In fact, the first time that Complainant informed Respondent of her ancestry was in an e-mail dated April 22, 2016. There, Prado commented that her children's artwork was a representation of her Mexican ancestry. After that revelation, Respondent no longer issued violation notices to Prado for the artwork displays.

Importantly, there was nothing about the artwork itself that *signified* Prado's ancestry. The evidence presented at the hearing included what appeared to be a child's hand drawings of animals and other depictions. Prior to her April 22, 2016 correspondence, Prado herself referred to the drawings as "children's artwork." She also changed her position several times regarding the artwork. At one point, she stated it was a reflection of her religious beliefs, and then the artwork was a reflection of her ancestry. Finally, it represented home altars, which are significant to Mexican American culture. Yet, while the artwork may have appeared to be related to

Mexican ancestry, a religious faith or cultural beliefs from Prado's perspective, there was no indication of that for others, including Respondent and the Hearing Officer. Indeed, even Prado's prior counsel told her he could not glean religious content from the children's artwork.

Prado Cannot Show She was Treated Differently

Prado has also failed to prove that she was treated differently from other unit owners by Respondent due to her ancestry. Prado testified that from her perspective, the rules regarding artwork displays were not applied equitably. In short, Prado believed that she received violations and fees for her holiday displays because she is Mexican American, while her neighbors did not, despite hanging their own holiday or other displays outside of their units. But the evidence does not support this belief.

First, as set forth above, to the average observer, it is unclear what holiday(s) the artwork in evidence represented. They appear to be general hand drawings. Triview or anyone else would not readily know that the drawings represented holidays celebrated by Prado based on her ancestry. Second, the evidence shows that in late 2014, the condominium association made the decision to aggressively enforce rules that prohibited window and door displays of any kind. Triview carried out that decision by walking the property monthly looking for violations. Dorsch testified, and documentary evidence shows, that Triview issued 600 violations between 2014 and January 2018. Many property owners received notices of violation for window and door displays that cited the same "architectural controls" rule cited in Prado's violation notices.

For example, Triview issued a notice of violation to Nathan Yackel and Clara Schroedl for displaying children's artwork on their window. This violation alone undercuts Prado's argument because these owners received the same treatment that she received. Triview even issued notices of violation to Association board members. Thus, the evidence shows that Triview zealously enforced the rules against many property owners, not just Prado and not because of her ancestry.

In *Arellano & Alvarez v. Plastic Recovery Technologies Corp.*, CCHR No. 03-E-37/34 (July 21, 2004), the Commission declined to find a violation of the CHRO based on ancestry when the complainant "alluded to acts of harassment based on ancestry," but failed to introduce evidence of such acts.

Additionally, in *Perez v. Kmart Auto Service, et al.*, CCHR No. 95-PA-19/28 (Nov. 20, 1996), the Commission found that complainants failed to establish a *prima facie* case of national origin discrimination because they could not show they were treated differently due to their ethnic backgrounds. Such is the case here.

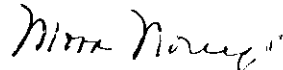
In her Objections, Complainant argues that the Hearing Officer's ruling was not supported by the evidence presented during the hearing. Additionally, Complainant argues that the Hearing Officer did not consider relevant "direct evidence" that was presented during the hearing. The Hearing Officer's role is to determine which facts are pertinent and which should be disregarded. The Hearing Officer is not required to include every piece of documentary or testimonial evidence in the recommended ruling. That Complainant would have preferred reliance on some facts and evidence rather than others is not a viable objection or a basis upon which to disregard the Hearing Officer's recommended ruling. See *Claudio v. Chicago Baking Co.*, CCHR No. 99-E-76 (July 17, 2002); *Mahaffey v. University of Chicago Hospitals*, CCHR No. 93-E-221 (July 22, 1998).

Accordingly, because Prado has failed to establish a *prima facie* case of discrimination, the burden of proof does not shift to Triview, and there is no need to engage in any additional analysis of their motivations. The Commission finds that Prado cannot show a violation of the CFHO.

IV. CONCLUSION

Accordingly, the Commission adopts the recommendation of the Hearing Officer and finds in favor of Respondent Triview Property Management and against Complainant M. Concepcion Prado on Complainant's ancestry discrimination claim. Therefore, this Complaint is DISMISSED.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Mona Noriega, Chair and Commissioner
Entered: January 10, 2019