



U.S. Department of Housing and Urban Development

Region IV, Miami Field Office
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Miami, FL 33131-3042

March 16, 2011

S. Nicole Bates, Esquire
Hialeah Housing Authority
75 East 6th Street
Hialeah, FL 33010

Shavon L. Jones, Esquire
3332 NE 190th Street, Suite 1211
Aventura, FL 33180

RE: Hialeah Housing Authority v. Retonya Screen, et al.
Case No.: 07-15137 CC 05 (08)

Dear Ms. Bates and Ms. Jones:

This letter requests that the Hialeah Housing Authority take steps to correct the record in the matter of *Hialeah Housing Authority v. Retonya Screen, et al.* Our request concerns the Order Denying Defendant's Motion To Dismiss (the "Order"), issued by a Miami-Dade County on January 19, 2011. The Order was based in part upon representations made by the Hialeah Housing Authority (the "HHA") in a Memorandum presented to the court on August 10, 2010.

From our reading of the HHA's Memorandum, it appears that the court issued the Order based on misguided facts and law as represented by the HHA. If left undisturbed, the ruling contained in the Order may impact well settled law relating to the relationship between United States Department of Housing and Urban Development ("HUD" or the "Department") and Public Housing Agencies ("PHAs") within the State of Florida.

BACKGROUND

The HHA filed an eviction complaint against Retonya Screen and her family, (hereafter "Defendants"). In response, Defendants filed a motion to dismiss the complaint claiming that the HHA's eviction action was barred by Fla. Stat. § 83.56 (5), generally known as the "45- day rule." Fla. Stat. § 83.56 (5) waives the landlord's right to institute eviction proceedings, if eviction action is not instituted within 45 days of the alleged lease default. During the eviction proceedings, the court ruled that the HHA's eviction action was not instituted within 45 days of the lease default. The

court however, withheld adjudication pending review of Memoranda of Law from each party, on whether the “federal Public Housing Act and its implementing regulations” [sic] preempt Fl. Stat. § 83.56(5).”

Subsequently, in its Memorandum to the court, the HHA asserted that it (i.e., the HHA) was a public housing agency, created pursuant to the Federal Public Housing Act therefore, “the standard for eviction ... is a matter of federal, not state law. The HHA also argued that Fla. Stat. § 83.56(5) conflicts with HUD’s applicable regulations. As such, the HHA claimed, the “federal Public Housing Act and its implementing regulations” [sic] preempt the Florida 45-day rule.

Following the receipt of Memoranda of Law from both parties in this case, the court ruled that, (a) the Hialeah Housing Authority is a public housing agency created pursuant to the federal Housing Act of 1937 [sic]; and, federal regulations preempt the state’s Landlord and Tenant civil practice and procedure for eviction.

DISCUSSION

The Hialeah Housing Authority advanced several errors of fact and law in its Memorandum to the court. Namely, the “Federal Public Housing Act or the Public Housing Act” as cited in the HHA’s Memorandum is a misnomer. In fact, the Section 8 program is authorized by the National Housing Act of 1937, at 42 U.S.C. §1437 *et seq.* (the “Act” or the “Housing Act”) not the “the Federal Public Housing Act,” as stated in the Memorandum.

The HHA also incorrectly asserted that the HHA was created pursuant to federal law. The HHA is a public body created by state statute, in particular, Fla. Stat. § 421.04 (1) which provides, “In each city, as herein defined, there is hereby created a public body corporate and politic to be known as the “Housing Authority” of the city...”¹ Additionally, the National Housing Act of 1937 defines a public housing agency as, “any state, county, municipality or public body... which is authorized to engage in or assist in the development or operation of public housing.”² The statute does not declare that a housing authority is a federal agency.³ Moreover, the HHA, like other PHAs in Florida, apply for and receive funds from the federal government pursuant to Florida law.⁴ However, “it would be an overly broad reading of the state statute to suggest that authorization to receive funds from the federal government and the requirement to be monitored by the federal government thereby renders a public housing authority a federally chartered corporation or federal “agency.”⁵ Thus, although the public housing program is congressionally authorized, the Hialeah Housing Authority is not a federal agency.

The HHA’s Memorandum also offered flawed arguments to advance its claim of conflict preemption. First, the HHA represented its own interpretation of the law as the “agency interpretation.” Secondly, contrary to the HHA’s claim of preemption, the Department’s

¹ Fla. Stat. § 421.04 (1) (2011)

² 42 U.S.C. 1437a (6)(A)

³ *City of Daytona Beach v. Gombillion*, 639 So. 2d 117, 121,122 (Fla. 5th DCA 1994).

⁴ Fla. Stat. § 421.21 (2011)

⁵ *Id.*

regulations and guidance acknowledge that eviction procedures adopted by a PHA is a matter of state law. Indeed, the plain language of the regulations contemplates application of local law to public housing leases, eviction and other issues arising thereunder. Moreover, HUD's regulations and guidance do not provide extensive or detailed rules over a PHA's day-to-day business such as eviction.⁶ In particular, 24 CFR § 966.4 (l) (1), outlines Procedures for Termination of Tenancies, and specifies, "the Lease shall state the procedures to be followed by the PHA and by the tenant to terminate the tenancy". In addition, 24 CFR § 966.4 (l) (4) which is titled, How Tenant is Evicted, states, "The PHA may evict the tenant from the unit either (i) By bringing a court action or; (ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action..." Further, review of these regulations confirms that neither a particular process nor a time frame for effecting an eviction is prescribed.

The HHA's argument of preemption is also negated by the Department's guidance interpreting its regulations. The Department's Public Housing Occupancy Guidebook (the "Guidebook") provides PHAs with guidance on leases and evictions. The Guidebook instructs that "HUD regulations governing leases give PHAs ...flexibility to tailor their leases to local situations...so long as the HUD-required provisions are included.... **PHAs must also consider the requirements imposed by state or local laws.**"⁷ The HUD guidebook further explains to PHAs that "in the case of any conflict between the proposed HUD lease and state law, the lease adopted must follow the rule that is the most beneficial to the tenant."⁸

Finally, the HHA mistakenly relies on two cases whose rulings are not applicable to the procedural matter at issue in the instant case. In *City of South San Francisco Housing Authority v. Gillory*,⁹ and *Burton v. Tampa Housing Authority*,¹⁰ the court considered federally mandated standards as *cause* for eviction. In contrast, Defendant Retonya Screen challenged the **procedure** of the eviction as an affirmative defense to the HHA's eviction complaint. Admittedly, the court in *Burton* concludes its discussion with a broad statement, namely; "...Florida Residential Landlord and Tenant Act is preempted to the extent that it conflicts with the ...Act."¹¹ The court however, neither identifies nor discusses particular provisions of Florida law which may conflict with federal law. Nevertheless, it is our position that *Gillory* and *Burton* do not provide comparable guidance relative to the HHA's claim that Fla. Stat. § 83.56 (5) is preempted by federal law.

⁶ See *City of Daytona Beach v. Gomillion*, 639 So. 2d 117, 121,122 (Fla. 5th DCA 1994).

⁷ See *Public Housing Occupancy Guidebook*, U.S Department of Housing and Urban Development, Office of Public Housing (June 2003).

⁸ *Id.* at Chapter 17.

⁹ 49 Cal. Rptr. 2d. 367 (Cal App. Dep't Super. Ct. 1995)

¹⁰ 171 F. Supp. 2d 1314 (M.D. Fla. 2000)

¹¹ *Id.* at 1319.

Accordingly, please inform this office of actions taken by the HHA to correct the record in this case. Also, please provide us with copies of any information communicated to the court and any resulting Orders.

Should you have any questions regarding this matter, please contact Sorella Jacobs at (305)-520-5103.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon M. Swain". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sharon M. Swain,
Chief Counsel

cc: Nicole Walsh, Esquire ✓
Legal Services of Greater Miami, Inc.

Donnie Murray, Regional Counsel
HUD, Office of General Counsel, Region 4

James Blackmon, Associate Regional Counsel
HUD, Office of General Counsel, Region 4

Jose Cintron, Director
PIH, Miami

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MAR 18 2011
By _____