VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 276-3-20 Cncv

Spinette vs. The University of Vermont and et al

DECISION ON MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Sarah Spinette applied to rent an apartment at the Redstone Apartments, located on the campus of the University of Vermont and State Agricultural College ("UVM"). The manager of the apartments, Catamount Commercial Services, Inc. ("Catamount"), denied her application. Ms. Spinette sued UVM, Catamount, and the owner of the apartments, Catamount/Redstone Apartments, LLC ("Redstone"), alleging that they discriminated against her in denying her application, and that Catamount and Redstone made discriminatory statements in the process. The court previously granted summary judgment on the discrimination claims, leaving the discriminatory statement claims for later resolution. Catamount and Redstone now move for summary judgment on those claims. The court grants the motion.

Facts

The Redstone Apartments sit on land that UVM leases to Redstone. The ground lease provides that only full-time junior, senior, or graduate students at UVM—or, in limited instances, students from other area colleges with the same seniority—may rent units at the Apartments. Catamount manages the Apartments. Per its agreement with Redstone, Catamount must market and lease those units in a manner consistent with the ground lease.

In early 2018, Ms. Spinette was pursuing a masters at Brandeis University when she accepted a two-month summer internship from the UVM Medical Center. On March 18, 2018, she sent an email to studentleasing@redstonevt.com, asking if the recipient would post her inquiry seeking a summer sublet in or around Burlington. Her email indicated that she sought a one- or two-bedroom apartment and that her seven-year-old daughter would be living with her half of the time. Defs.' Ex. B, 4. In an email dated March 19, 2018, Sophie Jankowski, an Administrative Assistant at Catamount, responded:

> Hello Sarah, Thank you for being in contact. Unfortunately, our housing is for students only, so we will not be able to accommodate your request. We often tell people that it

> is a good idea to check and post on Craigslist and the UVM Off Campus Housing website [URL].

Id. at 3. Ms. Spinette later admitted that she received this email from Ms. Jankowski and so understood that Redstone's housing was for students only. Defs.' Ex. C (Spinette Dep.), 77:7-24. Nevertheless, shortly after, she submitted an application to sublet at the Redstone Apartments. On March 26, 2018, Ms. Jankowski sent the following email to Ms. Spinette:

> Hello Sarah, I'm not sure if you received my previous email from last week. I saw that you submitted a Sublet Application for Redstone Apartments. Unfortunately, we can not process this request if you plan to sublet with your child. Our agreement with UVM does not allow us to have minors living on our property. I apologize that we could not accommodate your housing request.

Defs.' Ex. B, 2–3. Ms. Spinette replied almost immediately, requesting an explanation of the Redstone housing policy. *Id*. Later that afternoon, Beth Perlongo, Catamount's Director of Student Housing, sent an email to Ms. Spinette stating, in relevant part:

> The lease agreement that our residents hold at the Redstone Apartments notes that no more than one person may occupy a bedroom space unless a guest has been registered. The item goes on to provide details about the frequency of overnight guests in the space (no more than three consecutive nights and no more than six total days per month.) We are unable to approve any sublet arrangements that would increase the occupancy of a bedroom beyond the one person limit. Our occupancy limitations are set by the University of Vermont, the City of Burlington, and by applicable fire codes.
>
> Redstone holds a ground lease with UVM that specifically outlines our ability to operate a student housing community on their campus. It indicates that our permitted tenants be "full time Junior, Senior, or Graduate Students enrolled at the University as defined by University rules and regulations." The University does provide some flexibility for our students to sublet to non-UVM students during the summer term, but does require that those subtenants be "students at other area institutions who have achieved the status of Junior, Senior or Graduate Student." We have received a similar sublet request recently and I have spoken to my contacts at Campus Planning Services and Residential Life at UVM directly regarding approval to house a minor. They have confirmed these conditions of our ground lease agreement.

Id. at 1–2. This suit followed.

Discussion

Ms. Spinette alleges that these statements violated federal and state fair housing laws—specifically, that they expressed a preference based on familial status. The federal Fair Housing Act ("FHA") makes it unlawful to "make, print, or publish . . . any notice, statement, or advertisement,

with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . [*inter alia*] familial status . . . ." 42 U.S.C. § 3604(c). The Vermont Fair Housing and Public Accommodations Act ("FHPA") contains a virtually identical prohibition, only substituting "because a person intends to occupy a dwelling with one or more minor children" for "based on . . . familial status." 9 V.S.A. § 4503(a)(4).[1] Indeed, the FHPA was "patterned on" the FHA. *Human Rights Comm'n v. LaBrie*, 164 Vt. 237, 243 (1995). Accordingly, when construing the FHPA, the court looks to cases construing the analogous provisions of the FHA. *Id.*

In deciding claims under Section 3604(c) of the FHA, courts first inquire whether a statement or advertisement is "facially discriminatory"—i.e., whether it suggests to an ordinary reader or listener an unlawful discriminatory preference. *See Soules v. U.S. Dep't of Housing & Urban Dev.*, 967 F.2d 817, 824 (2d Cir. 1992); *Ragin v. New York Times Co.*, 923 F.2d 995, 999 (2nd Cir. 1991) (adopting standard set forth in *United States v. Hunter*, 459 F.2d 205, 215 (4th Cir. 1972)); *Rodriguez v. Vill. Green Realty, Inc.*, 788 F.3d 31, 52–54 (2d Cir. 2015). "The ordinary reader 'is neither the most suspicious nor the most insensitive of our citizenry.' " *Soules*, 967 F.2d at 824 (quoting *Ragin*, 923 F.2d at 1002). The court must also be mindful that that the ordinary reader or listener "does not apply a mechanical test," *Ragin*, 923 F.2d at 1002, and "hears statements in context," *Mancuso v. Douglas Elliman, LLC*, 808 F. Supp. 2d 606, 625 (S.D.N.Y. 2011). The cases further make clear that a statement is facially discriminatory only if it unequivocally suggests an impermissible preference. *See Soules*, 967 F.2d at 824 ("standing alone, an inquiry into whether a prospective tenant has a child does not constitute an FHA violation"); *Hunter*, 459 F.2d at 215 (looking to ordinary reader's "natural interpretation"); *Lopez v. William Raveis Real Estate, Inc.*, 272 A.3d 150, 161 (Conn. 2022) (the initial inquiry is whether the statement "is plainly discriminatory on its face") (construing Second Circuit case law); *Hawn v. Shoreline Towers Phase I Condo. Ass'n, Inc.*, No. 3:07-cv-97/RV/EMT, 2009 WL 691378, at *3 (N.D. Fla. Mar. 12, 2009) ("[A] sign that says 'no animals' instead of 'no pets' simply does not, by itself, reflect an intentional preference, limitation, or discrimination based on handicap in violation of the FHA."), *aff'd* 347 Fed. Appx. 464 (11th Cir. 2009); *cf. Housing Opportunities Made Equal, Inc. v. Cincinnati Enquirer, Inc.,* 943 F.2d 644, 646 (6th Cir.1991) (single advertisement using all-white models is insufficient to state a claim under Section 3604(c)).

Viewed through this lens, none of Catamount's statements is facially discriminatory.[2] The first and third emails above clearly express no preference based on "familial status." Rather, any ordinary

[1] The FHA defines "familial status" as "one or more individuals (who have not attained the age of 18 years) being domiciled with" a parent, custodian, or their designee. 42 U.S.C. § 3602(k)(1).

[2] There is no evidence that Redstone made any statements; rather it is sued as a principal whose agent, Catamount, made allegedly discriminatory statements.

person would have understood from the first email that Catamount's "housing is for students only"; indeed, as noted above, that is how Ms. Spinette understood it. Similarly, while the word, "minor," does appear in the third email, that email, read in its entirety, also makes clear that any "preference" is based on student status. As this court has previously held, however, non-student status "clearly is not a protected class" under either the federal or state statute. *Spinette v. University of Vermont*, No. 276-3-20 Cncv, slip op. at 5 (Vt. Super. Ct. Feb. 18, 2022).

Only the second email could even plausibly be read to express a preference based on familial status. Arguably, the statement, "we can not process this request if you plan to sublet with your child," could be read as expressing a preference based on familial status. In the fuller context of the email, however, not even "the most suspicious . . . of our citizenry" could believe that the statement indicated a preference based on familial status. Rather, at worst, the second email could be read as expressing a preference based on age: "Our agreement with UVM does not allow us to have minors living on our property." But Ms. Spinette has not alleged age discrimination. And read in the broader context of the emails that both preceded and followed it, even the inference of a preference based on age disappears. *See, e.g., Mancuso*, 808 F. Supp. 2d at 625–26 (reading transcript of entire phone conversation to conclude that realtor's initial articulation of a strict "no pet" policy to a disabled tenant with a service dog was not clearly discriminatory); *Rodriguez*, 788 F.3d at 53–54 (reviewing series of text messages to determine that ordinary listener could have interpreted them as stating landlord's preference not to rent to a person with a disability); *Lopez*, 272 A.3d at 154–57, 162 (reviewing lengthy, back-and-forth exchange of emails and texts, to determine that real estate agent's statements were not facially discriminatory). Indeed, the only way to educe a preference based on familial status from any of Catamount's emails is to ignore plain language and read isolated words out of context. Reading the emails together and giving effect to all words, the indication of a preference based not on familial but student status is obvious. As noted above, that preference is not impermissible.

The conclusion that no ordinary listener could fairly read the Catamount statements as stating a preference based on familial status does not necessarily end the inquiry. "That statements are not facially discriminatory . . . does not mean that they do not indicate an impermissible preference in the context in which they were made." *Soules*, 967 F.2d at 824. "Evidence that the author or speaker intended his or her words to indicate a prohibited preference obviously bears on the question of whether the words in fact do so. Thus, if such proof exists, it may provide an alternative means of establishing a violation . . . ." *Jancik v. Dep't of Housing & Urban Dev.*, 44 F.3d 553, 556 (7th Cir. 1995). Here, having been fairly challenged to come forward with proof of discrimination, Ms. Spinette

has failed to adduce anything beyond the words themselves. *See Gross v. Turner*, 2018 VT 80, ¶ 8, 208 Vt. 112 ("Once a claim is challenged by a properly supported motion for summary judgment, the nonmoving party may not rest upon the allegations in the pleadings, but must come forward with admissible evidence to raise a dispute regarding the facts."). The words themselves, however, make clear that Catamount intended to articulate a permissible preference—for students, regardless of familial status or other considerations. Thus, Ms. Spinette has no evidence of an impermissible preference.

ORDER

The court grants the motion. Count I of the Second Amended Complaint is dismissed with prejudice. The court having previously dismissed the other counts, it will enter final judgment for all Defendants. The entire case is now dismissed with prejudice.

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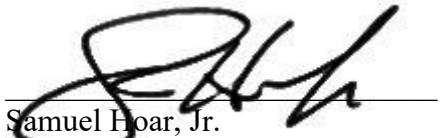

Samuel Hoar, Jr.
Superior Court Judge