

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY,
FLORIDA

NORTHBRIDGE APARTMENT HOMES/
CONCORD MANAGEMENT LIMITED,

CASE NO.: 2006-CA-386-O
WRIT NO.: 06-04

Petitioner,

v.

CONSOLIDATED WITH
CASE NO.: 2006-CA-387-O
WRIT NO.: 06-05

HUMAN RELATIONS BOARD OF
THE CITY OF ORLANDO, FLORIDA,

Respondent.

Petition for Writ of Certiorari
from the Orlando Human Relations
Board, Jan Zimmerman, Chairman.

Keith F. White, Esquire, and Kimberly Doud, Esquire,
for Petitioner.

Amy T. Iennaco, Chief Assistant City Attorney,
for Respondent.

Before THORPE, MIHOK and LATIMORE, J.J.

PER CURIAM.

FINAL ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Petitioner Northbridge Apartment Homes/Concord Management Limited
(hereinafter "Concord") seeks certiorari review of the Respondent Orlando Human
Relations Board's (hereinafter "OHR") denial of the Petitioner's motion for protective
order. This Court has jurisdiction pursuant to Florida Rule of Civil Procedure
9.030(c)(3).

On March 23, 2005, Henry McCone filed a housing discrimination complaint with OHR alleging Concord discriminated against him on the basis of race and sex in denying his application for an affordable housing apartment. On June 1, 2005, Carmen Diaz filed a housing discrimination complaint with OHR alleging Concord discriminated against her on the basis of national origin in denying her application for an affordable housing apartment. On September 21, 2005, OHR issued two subpoenas duces tecum without deposition to Concord. One for Henry McCone and one for Carmen Diaz. The subpoenas requested the same information.

The first paragraph of the subpoena duces tecum requested all lease and rental files covering units leased pursuant to the affordable housing tax credit program from Northbridge Apartment Homes from January 2004 through June 2005 including “leases, rental applications, drivers license photos, background check information, credit check reports and credit reports, reference check forms/information, eviction reports, employment verification, memoranda, notices, correspondence and eviction notices.”

The second paragraph requested all written documentation for the same time period regarding applicants whose affordable housing unit applications were denied including “rental applications, drivers license photos, background check information, credit check reports and credit reports, reference check forms/verification, eviction reports, employment verifications, telephone message slips, memoranda and correspondence.”

The third paragraph requested “all documents listing policies relating to and criteria for rental of the affordable housing units at Northbridge . . . that would have governed the rental of the affordable housing units in December 2004.” The last

paragraph requested “all documents and reports summarizing information about applicants for Northbridge for the period of January 2004-June 2005.”

On October 10, 2005, Concord filed a motion seeking a protective order from the information requested in paragraphs one and two of the subpoena duces tecum. Concord objected on the basis that the request was overbroad, ambiguous, unduly burdensome and irrelevant. Concord also asserted a privacy interest of former and current tenants. Concord agreed to produce the documents listed in paragraphs three and four of the subpoena duces tecum.

On November 29, 2005, OHR held a hearing on the motion for protective order. At the hearing, Concord argued that the former and current tenants had a privacy interest in the requested information and that the requested information would not lead to admissible evidence. In addition, Concord asserted that it would have to produce 1,954 files in order to comply with the subpoena duces tecum. On December 15, 2005, OHR denied Concord’s motion for protective order in both cases and ordered that Concord produce the requested records within fourteen days. This petition followed.

A party seeking review of a denial of a protective order must show that that the ruling is a departure from the essential requirements of the law and that the ruling would cause irreparable harm leaving the petitioner with no adequate remedy. Gov’t Employees Ins. Co. v. Rodriguez, 960 So. 2d 794 (Fla. 3d DCA 2007).

Concord argues that the subpoena duces tecum seeks information from nonparties that is private and confidential. As such, Concord asserts that the current and former tenants and applicants have a reasonable expectation of privacy in the information sought in the subpoena duces tecum. In addition, Concord contends that the information sought

in the subpoena is irrelevant in determining whether Mr. McCone and Ms. Diaz have been victims of discrimination and will not lead to admissible evidence in either case. Furthermore, Concord maintains that disclosure of the information sought in the subpoena deuces tecum may result in irreparable harm to these nonparties. Lastly, Concord asserts that subpoena is unduly burdensome because it would have to produce approximately 1,954 files in order to comply with the subpoena.

OHR asserts that it needs access to leasing records to determine whether Concord is treating similarly situated applicants differently based on race, sex, or national origin. OHR also asserts that it has the responsibility to determine whether housing providers are engaging in a pattern of behavior that violates the Fair Housing Act and that the public policy of the City outweighs the privacy interests that Concord has in its business records. Lastly, OHR asserts that no irreparable harm will occur and that the social security numbers of the nonparties are protected from disclosure by Florida law.¹

“Article I, section 23 of the Florida Constitution specifically provides a constitutional right of privacy broader in scope than the protection provided in the United States Constitution.” Berkeley v. Eisen, 699 So. 2d 789,790 (Fla. 4th DCA 1997) (citations omitted). Orders that compel discovery may intrude on the constitutional right to privacy. Id. “Where a discovery order compels production of matters which implicate privacy rights, irreparable harm is demonstrated.” Florida First Fin. Group, Inc. v. Castro, 815 So. 2d 789, 790 (Fla. 4th DCA 2002) (citation omitted).

A party seeking a protective order has the burden of demonstrating good cause for the issuance of such order. Towers v. City of Longwood, 960 So. 2d 845 (Fla. 5th DCA

¹ The Court notes that OHR fails to cite any law supporting the arguments it makes in the response to the petition for writ of certiorari.

2007) (citation omitted). “In deciding whether a protective order is appropriate in a particular case, the court must balance the competing interests that could be served by granting discovery or by denying it.” Aetna Life Ins. Co. v. Hausman, 598 So. 2d 223, 224 (Fla. 5th DCA 1992) citing Rasmussen v. S. Fla. Blood Serv., Inc., 500 So. 2d 533 (Fla. 1987). A party who seeks discovery of confidential information must demonstrate that the necessity for such information outweighs the interest in protecting the confidential information. CAC-Ramsay Health Plans, Inc. v. Johnson, 641 So. 2d 434 (Fla. 3d DCA 1994).

In CAC-Ramsay Health Plans, a former employee filed a racial discrimination complaint against CAC and requested that CAC produce files of all black and Hispanic employees and files of employees who were fired or disciplined from “October 1, 1988, to the present.” 641 So. 2d at 435. CAC objected to the request on the basis that producing the files would violate the employees’ right to privacy. Id. The trial court ordered CAC to produce the files. Id.

The appellate court found that the trial court erred in ordering the production of the personnel files that contained employees’ confidential information such as “social security numbers, home addresses, telephone numbers, background investigations, drug test results, counseling reports, [and] evaluations” which were not related to the pending case. Id. Furthermore, the production of the complete personnel files of all black and Hispanic employees and other former employees “would reveal extensive personal information which is not reasonably calculated to lead to the discovery of admissible evidence.” Id. Thus, the former employee failed to establish a necessity for each employee’s entire personnel file that outweighed the employee’s interest in protecting the

confidential information. Id. at 435-36; see also Seta Corp. of Boca, Inc. v. Office of the Attorney General, 756 So. 2d 1093 (Fla. 4th DCA 2000) (finding that the trial court departed from the essential requirements of the law when requiring the production of entire personnel files).

While OHR does not seek personnel files, the information contained in the files that it seeks is similar to the information contained in the personnel files in CAC-Ramsay Health Plans. For example, the subpoena duces tecum requests all lease and rental files from January 2004 through June 2005 leased pursuant to the tax credit program and all written documentation regarding applicants who were denied an affordable housing unit during the same period and specifically requests information such as background investigations, credit reports, reference check information, eviction reports, and employment information. Further, like the employees in CAC-Ramsay Health Plans, the applicants and tenants are not parties to the proceeding in the lower tribunal. In addition, there is no indication that the nonparty tenants and applicants consented to the disclosure of the information requested in the subpoenas. Lastly, production of the information requested in the subpoena duces tecum would reveal personal information that is not reasonably calculated to lead to the discovery of admissible evidence.

Although OHR may be entitled to some of the documentation and information requested in the subpoena duces tecum, it has not demonstrated a necessity for the production of the confidential information contained in those files that outweighs the privacy interest in maintaining the confidentiality of that information.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is **GRANTED** and OHR's order denying the motion for

protective order is **QUASHED**. Broward County v. G.B.V. Int'l Ltd., 787 So. 2d 838 (Fla. 2001) (when an order is quashed, it leaves the controversy pending before the administrative tribunal as if no order were entered and the parties stand upon the pleadings and proof that existed when the order was made with the rights to proceed further). This matter is **REMANDED** for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this the 4 day of March, 2008.

/S/
JANET C. THORPE
Circuit Court Judge

/S/
A. THOMAS MIHOK
Circuit Court Judge

/S/
ALICIA L. LATIMORE
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to: **Amy T. Iennaco, Chief Assistant City Attorney**, 400 South Orange Avenue, Orlando, Florida 32801 and **Keith F. White, Esquire, and Kimberly Doud, Esquire**, 390 North Orange Avenue, Ste 1100, Orlando, Florida 32801 the 4 day of March, 2008.

/S/
Judicial Assistant