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SUPREME COURT OF THE STATE
OF FLORIDA

CASE NO. 68,626

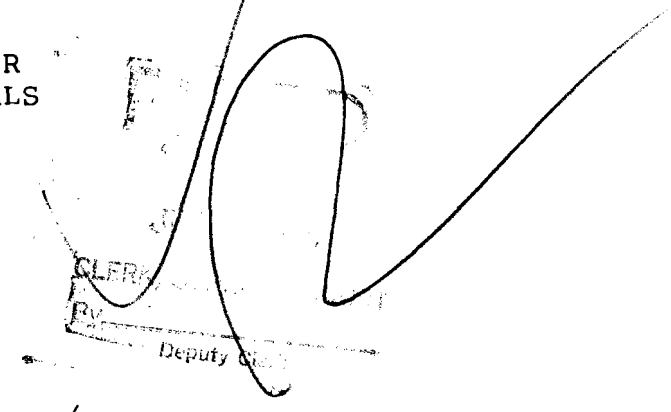
METROPOLITAN DADE COUNTY FAIR
HOUSING AND EMPLOYMENT APPEALS
BOARD,

Petitioner,

- vs -

SUNRISE VILLAGE MOBILE HOME
PARK, INC.,

Respondent. /



BRIEF OF RESPONDENT, SUNRISE VILLAGE MOBILE HOME PARK, INC.

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PREFACE

Respondent, SUNRISE VILLAGE MOBILE HOME PARK, INC., shall be referred to as "Respondent" or "Sunrise". Petitioner, METROPOLITAN DADE COUNTY FAIR HOUSING AND APPEALS BOARD, shall be referred to as "Petitioner" or "The Board". References to the Record on Appeal shall be denoted "R". References to the Appendices of Respondent shall be denoted by "Res. App." An Appendix has been attached to this Brief. Contained in the Appendix are the opinions of the Third District Court of Appeal (Res. App. 1); the opinion on the Circuit Court sitting in its appellate capacity (Res. App. 2); and the final Order of the Fair Housing and Employment Appeals Board (Res. App. 3).

Respondent believes that it is incumbent upon it to point out to the Court, as was noted by footnote number 2 of Judge Schwartz' dissenting opinion (R 307, Res. App. 1), that there is presently pending before this Court the case of Southern Records and Tape Service v. Goldman, 458 So.2d 325 (Fla. 3rd DCA 1984), review granted, Florida Case No. 66,290, September 20, 1985 (argued January 13, 1986). The Court's decision in Southern Records might well entirely moot the constitutional issue on certified question before this Court by rendering the administrative decision of The Board of no meaning by making it unenforceable.

The issue in Southern Records, i.e., the jurisdiction of the Circuit Court to enforce the Board's decisions, was also addressed by the Fourth District Court in

Winn-Dixie Stores, Inc. v. Ferris, 408 So.2d 650 (4th DCA Fla. 1981) review denied, 419 So.2d 1197 (Fla. 1982) and Broward County v. La Rosa, 484 So.2d 1374 (4th DCA Fla. 1986). The Fourth District, in both Winn-Dixie and Broward County, noted that the Circuit Court did not have the authority to enforce the Broward County Human Rights Board's decisions, as well as noting, in La Rosa, various other ways the Broward County ordinance violated the provisions of the Florida Constitution.

No enforcement in the Circuit Court has been attempted in the Sunrise case, and, as this particular issue is not specifically addressed in the question certified to this Court, the enforcement issue will not be argued in this Brief. It is mentioned in this Preface to bring to the Court's attention the pending Southern Records and Tape Service v. Goldman case, as well as the fact that this Court's decision in that case may well render the case sub judice moot.

The person who brought the claim of discrimination against your Respondent, JAMES REID, JR., is not a party to these proceedings, as he has chosen not to seek certiorari regarding the decision of the Dade County Circuit Court, Appellate Division (Res. App. 2).

STATEMENT OF THE CASE AND OF THE FACTS

Respondent, Sunrise, accepts the statement of the case presented by the Petitioner. Respondent would reiterate the statement of the facts contained in its Brief before the Circuit Court (R 75-83), which had been accepted by The Board in the proceedings before the Circuit Court, Appellate Division (R 85). Said statement of facts is set out herein, in toto, including references to the original record and transcript.

STATEMENT OF THE FACTS

"Mr. and Mrs. Felix owned a mobile home situated on Lot No. 182 of Sunrise Village Mobile Home Park owned by Appellant, Sunrise. The mobile home itself was owned by the Felixes, but the lot was owned by Sunrise, and was rented by Sunrise to the Felixes. The other lots in the park were, respectively, rented to various other mobile home owners. Mr. and Mrs. Felix decided they wanted to move and desired to sell their mobile home. They put their mobile home up for sale, and they advised the Management of Sunrise Village of their intention to sell their home. Appellee, JAMES REID, JR., and the young lady accompanying him, CATHERINE COX, spoke to the Felixes about purchasing the mobile home. Mr. Reid and Catherine Cox, originally thought by the Appellant, Sunrise, to be Mrs. Reid, (R 508 - 509, T 6/1/83 pg. 206 - 207 R 513 - 515, T 6/1/83 pg. 141 - 143) were informed by the Felixes that they would be willing to sell them their mobile home, but that an interview was necessary with the Park management before they could become tenants of the Park (R 418 - 420, T 5/18/83 pg. 46 - 48, R 292 - 293, T Reid8, 5/18/83 pg. 4 - 4).

For several years prior to Apellee, JAMES R. REID, JR., purchasing the Felixes mobile home, the Appellant, Sunrise, had been developing Sunrise Village Mobile Home Park into a retirement community. It had not evicted any of the existing tenants who did not comply with criteria of a retirement community, but made an effort to assure that new tenants were either retired or looked upon the Park as their retirement home. This development of the Park into a retirement park was in effort to create a community which could better cater to the desires of this particular segment of the population, which was so prevalent in the Leisure City, Dade County, area where the Park was located (R 552 -

561, T 6/1/83 pg. 180 - 189, R 595 - 602, T 6/1/83 pg. 223 - 230, R 602 - 607, T 6/1/83 pg. 230 - 235, R 607 - 611, T 6/1/83 pg. 235 - 239).

After Appellee, Reid, decided he desired to purchase the Felixes mobile home, but prior to purchasing same, he contacted the mobile home park office and spoke to "Daisy", the park manager, (R 293 - 294, T Reid 5/18/83 pg. 5 -6, R 515 - 518, T 6/1/83 pg. 143 - 146, R 420 - 421, 433 - 434, T 5/18/83 pg. 48 - 49, 61 - 62). The Appellee, JAMES REID, JR., and Catherine Cox, were in their twenties or thirties and were not retired, nor near retirement, but were actively engaged in normal work pursuits (R 523 - 524, T 5/18/83 pg. 51 - 52). The park manager, Daisy, initially indicated to the Appellee, JAMES REID, JR., that he appeared to be too young for the retirement park (R 546 - 547, T 6/1/83 pg. 174 - 175, R 294 - 295, T Reid 5/18/83 pg. 6 - 7), and that their entry into the park would be contrary to the retirement community being developed by the Park and would inhibit the gradual development of the retirement community at SUNRISE.

Mr. Reid filed a charge of discrimination against SUNRISE with the Board (R 55 - 56). Appellant, SUNRISE, initially answered the complaint and alleged that it did not engage in illegal age discrimination (R 67 - 68). Without Appellant's, SUNRISE'S, permission for entry into the Park, and with the knowledge that Appellant, SUNRISE, opposed the entry of Appellee, JAMES REID, JR., in the mobile home park, Appellee, JAMES REID, JR., nevertheless purchased the Felixes mobile home (R 517 - 518, T 6/1/83 pg. 145 - 146, R 326, T Reid 5/18/83 pg. 38).

After an accommodation was negotiated, Appellant, SUNRISE, determined that Appellee, JAMES REID, JR., had made misrepresentations to SUNRISE concerning his marital status, his prior living arrangements and tenancy, his employment status, and details concerning the purchase price of the mobile home. His application had been received, and the information given, under an attempt at accommodation which preserved the right of Appellant, SUNRISE, to contest the age discrimination charge. After learning of the above described misrepresentations, Appellant, SUNRISE, further objected to Mr. Reid as a tenant in the Park after the misrepresentations were made on his application. This is more specifically referred to in that certain letter dated October 27, 1982, further answering the complaint (R, Appl) (R 561 - 565, T 6/1/83 pg. 189 - 193, R 519 - 521, R 530 - 537, T 6/1/83 pg. 147 - 149, 158 - 165).

The Executive Director, on November 30, 1982, issued her investigative report, which included allegations, findings and conclusions, analysis, and recommendations, and orders (R 52 - 54). In said document, the Executive Director

stated that the Appellant had engaged in age discrimination; recommended compensation in the amount of $7,000.00 for humiliation, embarrassment and mental distress to the Appellee, JAMES REID, JR.; made recommendations concerning reporting procedures and requirements for SUNRISE, as well as recommending that SUNRISE be ordered to desist from its alleged age discrimination practices. Further, the recommendations of the Executive Director, in part, stated as follows:

> "However, the more important aspect of this rebuttal of a retirement restriction is its desparate impact on persons over the age of 18. This requirement effectively excludes a substantial number of Dade County's over 18 population. A 1980 census figure indicates that 1.2 million residents of Dade County are older than 18 years. One assumes normal retirement age to be 65, the Respondent's retirement qualifications would exclude over 980,000, or 81% of the County's residents who are over 18 years old." (R 53)

The Appellant, SUNRISE, after this finding, filed its appeal of the investigative report of the Fair Housing and Employment Appeals Board (R 83 - 84). A separate hearing was held before the Board on JAMES REID'S request for injunction proceedings with less than one day's notice to Appellant (R 99 - 122, T 5/18/83). Appellant, SUNRISE, collaterally, prepared a Complaint and an Amended Complaint (App 7) for declaratory and injunctive relief, which was filed in the Circuit Court of Dade County, Florida, (R 186 - 196), which was denied by the Circuit Court (App 4) due to failure to exhaust Administrative remedies. A final hearing was begun on May 18, 1983 (R 372 - 489, T 5/18/83, T Reid 5/18/83). The hearing was completed on June 1, 1983 (R 490 - 699, T 6/1/83). Additionally, between the May 18, 1983, hearing and the June 1, 1983, completion of the hearing, the Board filed an action to require SUNRISE to permit JAMES REID, JR., to move into the Park, Metropolitan Dade County Fair Housing and Employment Appeals Board ex rel JAMES REID, JR., vs. SUNRISE VILLAGE MOBILE HOME PARK, INC., Dade County Circuit Court Case No. 83-19311, CA 27 (App 5), resulting in an order granting temporary injunction being entered on June 17, 1983, requiring SUNRISE to permit JAMES REID, JR., to move into the Park (App 6).

On June 1, 1983, the hearing was completed, the Appellant's Motions to dismiss and strike were denied (R 673, T 6/1/83 pg. 301), and the Board deliberated its decision publicly (R 682 - 698, T 6/1/83 pg. 310 - 326). After such deliberations, the Board reached a decision resulting in its final order of July 20, 1983 (R 276 - 277), basically adopting the Executive Director's findings of fact,

conclusions, and recommendations in her investigative report of November 30, 1982, (R 52 - 54).

The Appellant, SUNRISE, timely filed their Notice of Administrative Appeal and Amended Notice of Administrative Appeal (R 282, 283).

ISSUE PRESENTED FOR REVIEW

Under the principles enunciated in White Egret Condominium, Inc. v. Franklin, 379 So.2d 346 (Fla. 1979), is Chapter 11A-3 of the Code of Metropolitan Dade County an unconstitutional exercise of the county commission's police powers insofar as the ordinance prohibits reasonable age discrimination in housing? R. 306.

SUMMARY OF ARGUMENT

The Circuit Court of Dade County, Florida, Appellate Division (Res. App. 2), a panel of the Third District Court of Appeal (R 121), and a plurality of the Third District Court of Appeal, sitting en banc (R 301 - 310, Res. App. 2), all were of the opinion that the principles enunciated by this Court in White Egret Condominium, Inc. v. Franklin, 379 So.2d 346 (Fla. 1979) were applicable to the consideration of the constitutionality of Chapter 11A, Section 11A-3, Code of Metropolitan Dade County. They also found that the ordinance prohibited persons, such as the Respondent and those desiring to live in a retirement community, from establishing and living in such communities. These Courts found this was an unreasonable and unnecessary interference with the constitutionally protected rights of such persons and organizations and did not have a real and substantial relationship to the avowed or ostensible purpose of providing equal opportunity to all persons to live in decent housing facilities.

The Circuit Court, Appellate Division, held as follows:

> "We reverse the Board's decision upon a holding that it results in an unconstitutional restraint on the right of the mobile home park owner to use its property for a legitimate purpose, namely, the creation of a retirement community. To the extent that Chapter 11A, Section 11A, of the Dade County Code, requires the Board's finding, it is deemed unconstitutional". (Res. App. 2)

The Third District Court of Appeal, sitting en banc, expressed similar reasoning in the following statements contained in its plurality opinion:

> "According to article I, section 2 of the Florida Constitution, all persons have the right to possess property and to use that property in any legitimate manner not in conflict with the public welfare. Palm Beach Mobile Homes, Inc. v. Strong, 300 So.2d 881 (Fla. 1974); Miller v. MacGill, 297 So.2d 573 (Fla. 1st DCA 1974), cert. denied, 307 So.2d 183 (Fla. 1975). A statute or regulation which limits or restrains a property owner's use of his property may infringe on the property owner's constitutional rights. See Palm Beach Mobile Homes; Miller. Although the legislature or county commission may, in the exercise of its police powers, promulgate statutes and ordinances regulating property use, Palm Beach Mobile Homes; Moviematic Industries Corp. v. Board of County Commissioners, 349 So.2d 667, 671 (Fla. 3d DCA 1977); Miller, the regulation must bear a substantial relationship to the public health, safety, morals, and general welfare. Coca Cola Co., Food Division v. State, Department of Citrus, 406 So.2d 1079, 1984-85 (Fla. 1981), dismissed sub nom. Kraft, Inc. v. Florida, Department of Citrus, 456 U.S. 1002, 102 S.Ct. 2288, 73 L.Ed.2d 1297 (1982); Palm Beach Mobile Homes. If the means employed do not have a real and substantial relationship to the avowed or ostensible purpose, the law-making body has exceeded the legitimate bounds of its police power. Palm Beach Mobile Homes, 300 So.2d at 885 (quoting Atlantic Coastline Railroad v. City of Goldsboro, 232 U.S. 548, 34 S.Ct. 364, 58 L.Ed. 721 (1914)).
>
> The ordinance in question states that its goal is to assure equal opportunity to all persons to live in decent housing facilities. Ch. 11A, Sec. 11A-1, Metropolitan Dade County. Although the commission, in promulgating the ordinance, adopts a laudatory policy, it utilizes extreme methods to implement its goal. The effect of the ordinance is to eliminate all adult and retirement housing in its jurisdiction, a drastic means of fulfilling its purpose of assuring decent

housing." (R 304, Res. App. 1).

The Dade County Commission, in adopting Chapter 11A-3 of the Dade County Code, has prohibited the establishment of any type of retirement community, as well as prohibiting any type of reasonable distinction based upon age, in housing. This ordinance is contrary to the principles enunciated in White Egret. This overly broad ordinance is an unreasonable and unnecessary interference with the constitutionally protected rights of Petitioner and others, as well as not having a real and substantial relationship to the avowed purpose of the goal of assuring equal opportunity to all persons to live in decent housing facilities. It, therefore, results in an unconstitutional restraint upon the Petitioner's use of its property, let alone the restraints placed upon persons desiring to live in a retirement community, and, therefore, must be found, and has been found, contrary to the constitution of the State of Florida and the United States.

The ordinance in question does not fail because the Courts who have considered this matter differ with the philosophy of Metropolitan Dade County Commission. It fails because the ordinance in question chooses a method to accomplish its purpose that does not have a real and substantial relationship to its purpose of providing decent housing facilities, as well as resulting in an unreasonable and unnecessary interference with the constitutionally protected rights of Respondent and others who desire to

establish and live in retirement communities.

ARGUMENT

I. CH. 11A, SEC. 11A, CODE OF METROPOLITAN DADE COUNTY, IS AN UNCONSTITUTIONAL EXERCISE OF THE COUNTY COMMISSION'S POLICE POWER, INSOFAR AS IT PROHIBITS RETIREMENT HOUSING.

The Third District Court of Appeal, en banc, both in the plurality decision and in the dissenting opinion, has certified to this Court the following question as being of great public importance, to-wit:

> "Under the principles enunciated in White Egret Condominium, Inc. v. Franklin, 389 So.2d 346 (Fla. 1979), is Chapter 11A-3 of the Code of Metropolitan Dade County Code an unconstitutional exercise of the county commission's police powers insofar as the ordinance prohibits reasonable age discrimination in housing?"

It is respectfully submitted that the legislative purpose, when read and interpreted with the consitutions of the State of Florida and the United States in mind, is laudable and a proper area of governmental concern, but that the method of carrying out this policy, as stated in the ordinance, does not bear a reasonable and rational relationship to this purpose and results in unreasonable and unnecessary infringement upon constitutionally protected rights.

Chapter 11A, Section 11A-1, provides, as its declaration of policy, as follows:

> "Sec. 11A-1. Declaration of policy.
>
> It is hereby declared to be the policy of Dade County in the exercise of its police power for the public safety, public health, and general

> welfare to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, ancestry, national origin, age, sex, physical handicap, marital status, or place of birth, and, to that end, to prohibit discrimination in housing by any person."

It is respectfully urged that the following words should be considered to follow the above stated declaration of policy, if not in black and white, certainly in the presumed intent of the legislative body, to-wit:

> ....to the extent that this does not unreasonably or unnecessarily interfere with constitutionally protected rights.

It is submitted that the method of carrying out the declaration of policy ignores the above statement and is, therefore, in violation of the Florida and United States Constitutions.

The fact that retirement housing is desired by a large segment of the community, and that there is a need for such housing, has been recognized by statute, in Court opinions, and in learned treatises (2 USC Sec. 1701-1750 (g), 42 USC Sec. 1485, Cal. Civ. Code Sec. 51.2, Sec. 51.3, White Egret Condominium, Inc. v. Franklin, 379 So.2d 346 (Fla. 1979), State of Washington ex rel Seattle Title Trust Co. v. Roberge, 278 U.S. 116, 49 S.Ct. 50 (1928), Sasso v. Ram Property Management, 431 So.2d 204 (1st DCA, Fla. 1983), approved, 452 So.2d 932 (Fla. 1984) appeal dismissed __ US __ 105 S.Ct. 498, 83 L.Ed. 391 (1984), Village of Belle Terre v.

Boraas, 416 U.S. 1, 94 S.Ct. 1536 (1974), Southern Cooperative Development Fund v. Driggers, 527 F. Supp. 927, USDC, M.D. Dist. 1981), Del Valle v. Biltmore II Condominium Association, Inc., 411 So.2d 1356 (3rd DCA, Fla. 1982), Reilly v. Stoves, 520 P. 2d 747 (C. of A. Div. 2, Ariz. 2, 1974), Pacheco v. Lincoln Palace Condominium, Inc., 410 So.2d 543 (3rd DCA, Fla. 1982), Shepard v. Woodland Township Committee and Planning Board, 346 A. 2d 1005 (N.J. 1976), Taxpayers Association of Weymouth Township v. Weymouth Township, 364 A. 2d 1016, (1976), Schwager v. Sun Oil Company of Pennsylvania, 591 F. 2d 58 (10th Cir. 1979), O'Connor v. Village Green Owners Association, 183 Cal Reptr. 111 (App. 2d Dist. Div. 2, 1982), Everglades Plaza Condominium Association, Inc. v. Butler, 462 So.2d 835 (4th DCA Fla. 1984), Pomerantz v. Woodland Section 8 Association, Inc., 479 So.2d 794 (4th DCA Fla. 1985), Estates of Ft. Lauderdale Property Owners Association, Inc. v. Kalaet __ So.2d __ (Fla. 4th DCA Case Numbers 84-1428 and 84-1462, Opinion filed February 5, 1986), Retirement communities: The Nature and Enforceability of Residential Segregation by Age 76 Mich. L. Rev. 64, 105 (1977), Suffer the Little Children - But not in my Neighborhood: A Constitutional View of Age Restrictive Housing, 40 Ohio State Law Journal 295, (1979).

The ordinance in question, which prohibits such desired retirement communities, provides for methods of carrying out its purpose which are not reasonably or rationally related to its declared purpose of providing

"decent housing facilities", as well as unnecessarily and unreasonably infringing upon the constitutionally protected rights of Respondent and others who desire to establish and live in such retirement communities.

The Third District Court of Appeal, en banc, in its plurality decision (R 304), notes the ordinance is in violation of Article 1, Section 2 of the Florida Constitution guaranteeing all persons the right to possess property and use that property in a legitimate way, not in conflict with the public welfare. That Court cites various cases supporting the principle that any infringement upon such rights must bear a substantial relationship to the public health, safety, morals and general welfare and, if such statute has no real and substantial relationship to the avowed purpose, the legislative body has exceeded the boundary of its police power (Palm Beach Mobile Homes, Inc. vs. Strong, 300 So.2d 881 (Fla. 1974), Miller v. MacGill, 297 So.2d 573 (Fla. 1st DCA 1974), cert. denied, 307 So.2d 183 (Fla. 1975), Coca Cola Co., Food Division v. State, Department of Citrus, 406 So.2d 1079, 1084-85 (Fla. 1981), dismissed sub nom. Kraft, Inc. v,. Florida, Department of Citrus, 456 U.S. 1002, 102 S.Ct. 2288, 73 L.Ed.2d 1297 (1982), Atlantic Coastline Railroad v. City of Goldsboro, 232 U.S. 548, 34 S.Ct. 364, 58 L.Ed. 721 (1914).

The principle that an ordinance, such as the one now before the Court, must be drafted in such a manner so as to not be unnecessarily broad and invading areas of protected

freedoms, when it is not necessary to do so, is noted by the Supreme Court of the United States in Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1768 (1965). In Griswold the U.S. Supreme Court stated as follows:

> "Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to State regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms"."

This danger of broadness has been addressed by the Supreme Court of the United States and various other courts (Moore v. City of East Cleveland, Ohio, 431 U.S. 494, 52 L.Ed. 2d 531, 92 S.Ct. 1932 (1977), Sawyer v. Sandstrom, 615 F.2d 1311 (5th Cir. 1980), Record Revolution No. 6, Inc. v. City of Parma, 638 F.2d 916 (6th Cir. 1980), Dike v. School Board of Orange County, Florida, 650 F.2d 783 (5th Cir. 1981), City of Pompano Beach v. Capalbo, 455 So.2d 468 (4th DCA Fla. 1984), Hardwick v. Bowers, 760 F.2d 1202, (11th Cir. 1985), Roberts v. United States Jaycees, 104 S.Ct. 3244 (1984).

Although the District Court of Appeal in its en banc decision directed itself to Article 1, Section 2, of the Florida Constitution, regarding the right to possess property, the ordinance in question is so broad in its provisions that, not only is it not reasonably and rationally related to its objective purpose, but it infringes upon not only the right to possess property guaranteed by the Florida and United States constitutions, but it infringes upon

numerous other areas of constitutionally protected rights. These include, but are not limited to, the right of privacy, the right of association, the right to contract, the right to acquire, possess and protect property, the right of assembly, the right to trial by jury, and the right of due process and equal protection. These rights are guaranteed by the First, Fifth and Fourteenth Amendments of the United States constitution and are guaranteed by various sections of the Florida constitution (West, F.S.A. Const., Article 1, Section 2, Article 1, Section 5, Article 1, Section 9, Article 1, Section 10, Article 1, Section 22, Article 1, Section 23). The ordinance further attempts to carry out its purpose by giving The Board power far beyond that which it may have under the Florida Constitution so as to result in violation of due process and separation of powers. (West, F.S.A. Const., Article 1, Section 18, West, F.S.A Const., Article 2, Section 3, West,F.S.A. Const., Article 5, Section 1, Article 5, Section 5(b), Article 5, Section 6(b), F.S. 26.012(2), 34.01 (1)(b), Broward County v. La Rosa, 484 So.2d 1374 (4th DCA, Fla. 1986).

It is respectfully submitted that this ordinance is an abuse of the police power of the Dade County Commission and unncessarily and improperly infringes upon the constitutionally protected rights of the Petitioner and those desiring to live in retirement communities, and, therefore, must not stand (South Florida Blood Service, Inc. v. Rasmusson, 467 So.2d 798 (3rd DCA Fla. 1985)).

II. CH. 11A, SEC. 11A, CODE OF METROPOLITAN DADE COUNTY, IS CONTRARY TO THE PRINCIPLES ENUNCIATED IN WHITE EGRET.

This Court's decision in White Egret Condominium v. Franklin, 379 So.2d 346 (Fla. 1980) has been referred to in Florida, and nationwide, for its finding that there are different needs for different age groups, in particular referring to senior citizens. It further holds that age is a "non suspect" area (see also Sasso v. Ram Property Management, 431 So.2d 204 (1st DCA, Fla. 1983), approved, 452 So.2d 932 (Fla. 1984), appeal dismissed, __US __ 105 S.Ct. 498, 83 L.Ed. 391 (1984) and should restrictions regarding age be reasonably and fairly applied, there is no constitutional prohibition against them. This Court's statement regarding same is quoted in the Circuit Court Appellate Division's opinion in this case (App. 2), where it quotes this Court's opinion in White Egret as follows:

> ..."Age limitations or restrictions are reasonable means to accomplish the lawful purpose of providing appropriate facilities for the differing housing needs and desires of the varying age groups. We note that Congress has established age limitations in recognizing the needs for senior citizen housing by including an age minimum of 62 years for occupancy of certain housing developments 2/ (Citations omitted) White Egret Condominium v. Franklin, supra, at p. 351."

The ordinance in question prohibits such age distinctions. Should the ordinance in question prohibit such legal activity as creating and living in retirement communities geared to retired persons, when such prohibition

is not reasonably related to the purpose of the ordinance, and unnecessarily and unreasonably infringes upon constitutionally protected rights, such an ordinance is invalid.

The Petitioner attempts to argue that, as there is an ordinance on the books which apparently prohibits retirement communities in Dade County, the establishment of such a community is not "lawful", and is, therefore, not accomplishing a "lawful purpose", and, therefore, White Egret does not apply. It is respectfuly submitted that this is not valid reasoning.

If the ordinance itself is an invalid use of the police power, as is contended and as has been found by the Dade County Circuit Court and the Third District Court of Appeal, then, certainly, White Egret comes into play. The importance of the White Egret decision, as noted in the plurality decision of the Third District Court of Appeal, en banc, (R 304 - 305) and the Circuit Court, Appellate Division, (Res. App. 2, p.2) is that the establishment of a retirement community is a constitutionaly permissible activity.

When reading the ordinance in light of the United States and Florida constitutions, the findings in White Egret are indeed instructive in establishing the constitutionally permissible activity. It is this constitutionally permissible activity noted in White Egret which is unnecessarily and unreasonably prohibited by the

ordinance, as well as not being reasonably and rationally related to its purpose of providing decent housing, that results in the ordinance being flawed, due to the constraints upon legislative police power contained in the Florida and United States constitutions.

CONCLUSION

Although the purpose of providing decent housing is certainly a laudable one and one proper for consideration of a legislative body, such as Dade County Commission, the goals of providing such decent housing must be accomplished through legislative enactments that are reasonably and rationally related to such goals and do not unnecessarily and unreasonably infringe upon constitutionally protected rights. The method chosen by the Dade County Commission to accomplish its goal of providing "decent housing facilities",i.e., by an ordinance so broad as to prohibit retirement housing and almost any type of specialized housing, does not bear reasonable relation to this goal, as well as unnecessarily and unreasonably infringing upon those constitutional rights protected by the United States and Florida constitutions which permit persons to be provided with, and live in, housing geared to their needs. The rather bizarre result of the ordinance in question is that the desire to provide and encourage appropriate housing facilities for persons in Dade County is frustrated by the ordinance in question, as it prohibits persons from providing, or living in, housing appropriate for the needs of an evergrowing population of

retired persons.

The importance of the White Egret decision to the issues presented by the question certified to this Court is that this Court has recognized the needs of retired persons, as far as housing is concerned, and the constitutionally permissibility of satisfying of those needs on a fair and even-handed basis.

It is respectfully submitted that under the principles enunciated in White Egret Condominium, Inc. v. Franklin, 379 So.2d 346 (Fla. 1979), Ch. 11A-3 of the Code of Metropolitan Dade County is an unconstitutional exercise of the County Commission's police powers, insofar as the ordinance prohibits reasonable age discrimination in housing, and that this Court, as have the Dade County Circuit Court, Appellate Division, and the District Court of Appeal of Florida, Third District, en banc, should answer the question on appeal by finding said Ch. 11A-3 an unconstitutional exercise of the County Commission's police power, insofar as said ordinance prohibits reasonable age discrimination in housing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief and following Appendix was mailed this 5th day of June, 1986, to John McInnis, Esq., Assistant County Attorney, Metro-Dade Center, Suite 2810, 111 N.W. 1st Street, Miami, Florida 33128, to Keith C. Fischler, Esq., Haben, Parker, Skelding, Costigan, McVoy, Labasky, 318 Monroe Street, Tallahassee, Florida 32301 and to Michael R. Fishman, Esq., 10700 Caribbean Boulevard, Suite 202, Miami, Florida 33189.

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