STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARYHELEN MEACHAM,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 05-0091
	)	
DELORES MADDOX, MANAGER, KINGS MANOR ESTATES, AND UNIPROP CORPORATION,	)	
	)	
Respondents.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on March 28, 2005, by video teleconference at sites in Fort Lauderdale and Tallahassee, Florida, before Stuart M. Lerner, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Maryhelen Meacham, pro se
12620 Southwest 6th Street, Lot 78
Fort Lauderdale, Florida 33325

For Respondents: Ernest A. Kollra, Esquire
1995 East Oakland Park Boulevard
Suite 300
Fort Lauderdale, Florida 33306

STATEMENT OF THE ISSUE

Whether the discriminatory housing practices alleged in Petitioner's amended housing discrimination complaint were committed by Respondents and, if so, what relief should the Florida Commission on Human Relations (Commission) provide Petitioner.

PRELIMINARY STATEMENT

On September 3, 2004, Petitioner filed a signed and dated (August 28, 2004) amended housing discrimination complaint with the Commission. The complaint was docketed by the Commission as Case Number 24-90408H. It read as follows:

1. Complainants

Maryhelen Meacham
12620 SW 6 Street
Davie, FL 33325

Representing Maryhelen Meacham

Sharon Ammons
Housing Opportunities for Excellence, Inc.
1061 W. Oakland Park Blvd, Suite 104
Ft. Lauderdale, FL 33311
Phone: . . . . Fax:

2. Other Aggrieved Persons

None

3. The following is alleged to have occurred or is about to occur:

Discriminatory terms, conditions, privileges or services and facilities.

Discriminatory acts under Section 818 (coercion, Etc.)
Failure to permit reasonable modification.
Failure to make reasonable accommodation.

4. The alleged violation occurred because of:

Race and handicap.

5. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

Davie, FL

6. Respondent(s)

Delor[e]s Maddox
Kings Manor Mobile Home Park
12500 State Road 84
Davie, FL 33325

Representing Delor[e]s Maddox

Ernest Kollra
1995 E. Oakland Park Blvd, Suite #300
Fort Lauderdale, FL 33306-1138
Phone: . . . Fax: . . .

VHS Realty, Inc.
777 Dedham St.
Canton, MA 02021-1484

7. The following is a brief and concise statement of the facts regarding the alleged violation:

The Complainant alleges that the Respondent discriminated against her by at first denying, and then unreasonably delaying her reasonable modifications to install a wheelchair ramp leading to her front door.

Complainant states that after the Respondent gave her permission to install the ramp, the

property staff harassed her and retaliated against her for asserting her disability rights. Complainant states that Patricia Silver informed other residents that she had not paid her rent when the rent payments were escrowed. Complainant also alleges that Patricia Silver threatened to throw her rent payment money orders away so that her rent would be unpaid and she would be evicted. Complainant states that Patricia Silver also made derogatory remarks about the Complainant's national origin, Native American.

Additionally, Complainant insists that the Respondent's property is not compliant with the Fair Housing Act and several of the accessibility ramps are not maneuverable by wheelchair.

8. The most recent date on which the alleged discrimination occurred:

November 6, 2003

9. Types of Federal Funds identified:

None

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Sections 804b or f, 818, 804f3A and 804f3B of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988

On December 28, 2004, following the completion of its investigation of Petitioner's allegations of housing discrimination, the Commission issued a Determination of No Reasonable Cause.

Petitioner, on January 7, 2005, filed with the Commission a

Petition for Relief. In her petition, Petitioner identified "Delores Maddock [sic] c/o Uniprop" as the "Respondent" and alleged that the "Respondent" had "violated the Florida Fair Housing Act, as Amended, in the [following] manner":

> Harassment & retaliation directly related to an initial complaint dealing with a ramp being installed due to my disability.

On January 12, 2005, the Commission referred the matter to the Division of Administrative Hearings (DOAH) for the assignment of a DOAH administrative law judge to "conduct all necessary proceedings required under the law and submit recommended findings to the Commission. The Commission's Transmittal of Petition, in its style, indicated that the "Respondent" in the case was "Deloris Maddon/Kins Manor Mobile Home Park" [sic]. On February 3, 2005, the Commission sent an Amended Transmittal of Petition to correct the style of its original submission to reflect that "Delores Maddox, Manager, Kings Manor Estates & Uniprop" were the "Respondent[s]" in the case.

As noted above, the final hearing in this matter was held on March 28, 2005. Seventeen witnesses testified at the hearing: Melinda Rychewaerk, Robert Rychewaerk, Cindy Angelo, Brian Dillon, Respondent Delores Maddox, Norma Price, Daralyn Brody, Susann Zimmer, Alicia Feliciano, Joan Russell, Sharon Ammons, Karen Dippilitto, Joanne Morgan, Petitioner, Hazel

Crain, Kaylyn Griffo, and Josephine Patricia Silver. In addition, 17 exhibits (Petitioner's Exhibits 1, 2, 3, 4, 5A, 5B, 5C, 5D, and 5E, and Respondents' Exhibits 1, 2, 3, 4, 5, 6, 7, and 8) were offered and received into evidence.

Following the conclusion of the evidentiary portion of the hearing on March 28, 2005, the undersigned established an April 28, 2005, deadline for the filing of proposed recommended orders.

Petitioner filed post-hearing submittals on April 26, 2005, and April 29, 2005.[1] Respondents filed their post-hearing submittal on April 27, 2005.

FINDINGS OF FACT

Based on the evidence adduced at the final hearing and the record as a whole, the following findings of fact are made:

1. Petitioner is a woman of Native American heritage. The record evidence, however, does not reveal that, at any time material to the instant case, anyone outside of her family, including Respondents, was aware of Petitioner's Native American background; nor does the record evidence establish that Petitioner was ever subjected to derogatory remarks about being of Native American descent.

2. At all times material to the instant case, Petitioner has suffered from health problems that have substantially

limited her ability to walk and have required her to use a motorized wheelchair to ambulate.

3. Petitioner is now, and has been at all times material to the instant case, a resident of Kings Manor Estates (Park), a residential community of single-family mobile homes that is located in Davie, Florida.

4. The Park is one of various mobile home communities that Respondent Uniprop Corporation (Uniprop) owns and operates.

5. Like the other residents of the Park, Petitioner owns the mobile home in which she resides and pays rent to Uniprop for the use of the lot on which home is situated.

6. Petitioner's home occupies lot 78 in the Park.

7. As a resident of the Park, Petitioner has use of the Park's common areas and facilities, which include a swimming pool. There has been no showing that Petitioner has been denied access to any of these common areas or facilities due to her handicap.

8. Residents of the Park must comply with the Park's rules and regulations. These rules and regulations reasonably require, among other things, that residents obtain, in addition to any permits they may need from the Town of Davie, the approval of Uniprop (referred to as "design approval") before constructing any improvements on their lots, including wheelchair ramps.

9. To obtain such "design approval," a resident must submit to Park management a completed "design approval" application form and any supporting documentation.

10. The application form provides a space for the resident to provide a "[d]escription, [d]rawing [l]ocation & [s]ize of [the proposed] [a]ddition." Immediately underneath this space on the form is the following pre-printed language:

> It is the Resident's responsibility to obtain all governmental approvals, to make certain the proposed improvement is suitable for the purpose intended and that the improvement complies with all applicable codes, standards and governmental requirements. Approval by Management of any improvement is limited to considerations of appearance.
>
> Resident agrees to have their home improvements built to the specifications listed above and illustrated in the space above and/or attached drawings, exhibits and permits.

11. It is the responsibility of the Park's property manager, with the help of the Park's assistant property manager, to enforce the Park's rules and regulations.

12. The duties of the Park's property manager and assistant property manager (whose work stations are located in the Park's business office) also include collecting rent from the Park's residents and taking appropriate action when residents are delinquent in their rental payments.

13. There is a "drop off box" located outside the Park's

business office in which residents can place their rental payments when the office is closed and the Park's property manager and assistant property manager are unavailable.

14. Neither the property manager nor the assistant property manager is authorized to give residents "design approval." Only the Uniprop regional supervisor has such authority. The property manager and assistant property manager merely serve as "conduits" between the resident and the Uniprop regional supervisor in the "design approval" process. They take the completed "design approval" application form from the resident, provide it to the Uniprop regional supervisor, and, after hearing back from the regional supervisor, communicate the regional supervisor's decision to the resident.

15. At all times material to the instant case, Respondent Delores Maddox was the Park's property manager. Ms. Maddox no longer works for Uniprop.

16. Hazel Crain is now, and has been at all times material to the instant case, the Park's assistant property manager.

17. At all times material to the instant case, Milton Rhines was the Uniprop regional supervisor having authority over the activities at the Park. Mr. Rhines was based in Ft. Myers, Florida, on the other side of the state from the Park.

18. Josephine Patricia Silver is now, and has been at all times material to the instant case, employed as a sales

consultant for Uniprop. In this capacity, she engages in activities designed to facilitate the sale of mobile homes manufactured by Uniprop (to be placed in the Park and other mobile home communities Uniprop owns and operates). Although her office is located in the Park, she plays no decision-making role in Park management. Notwithstanding that it is not her job responsibility to accept rental payments, she sometimes will do so as a courtesy to Park residents when she is at the Park on weekends or during the evening hours and the business office is closed. Although Ms. Silver and Petitioner do not get along, Ms. Silver has never threatened to "throw away" Petitioner's rental payments; nor has she ever told any of Park's residents that Petitioner was not paying her rent. Ms. Silver, however, has "gossiped" and made derogatory comments about Petitioner, but no showing has been made that Petitioner's handicap, her Native American heritage, or her having exercised any of her rights under Florida's Fair Housing Act played any role in Ms. Silver's having made these comments.

19. In August of 2002, Petitioner mentioned to Ms. Crain about her interest in having a wheelchair ramp constructed on her lot.

20. Ms. Crain suggested to Petitioner that she contact the Town to discuss the feasibility of such a project.

21. Petitioner subsequently telephoned Brian Dillon, the Town's chief structural inspector.

22. Mr. Dillon not only attempted to assist Petitioner in her efforts to obtain a permit from the Town to construct the wheelchair ramp, he also helped her make arrangements to have a boy scout troop construct the ramp for her with donated materials.

23. The Town would not issue Petitioner a permit for the ramp unless and until she obtained the written approval of the Park owner, Uniprop.

24. The ramp was constructed for Petitioner by the boy scouts during a weekend in mid-November 2002, without Petitioner's having first obtained Uniprop's "design approval" or a permit from the Town.

25. Prior to the construction of the ramp, Petitioner had received a "design approval" application form from Ms. Crain and, on or about November 12 or 13, 2002, with Ms. Crain's assistance, had begun the application process. Petitioner, however, did not wait to receive the "design approval" she had applied for from Uniprop before giving the boy scouts the go ahead to start constructing the ramp.

26. After discovering that the ramp had been constructed, Park management attempted to "work" with Petitioner to enable

her to complete the paperwork necessary to obtain (belatedly) "design approval" for the ramp.

27. On November 21, 2002, Petitioner submitted to Park management the following note from her physician, James Milne, D.O.:

> Due to Medical Necessity, my patient Mary Helen Meacham requires use of a motorized wheelchair, and it is necessary for her to have ramp access.
>
> If you have any questions, please feel free to call my office.

28. By December 5, 2002, Petitioner had yet to submit the design plans needed to obtain "design approval" for the ramp.

29. Accordingly, on that date, Uniprop's attorney, Ernest Kollra, Esquire, sent Petitioner, by certified mail, a Notice of Violation of Community Covenants, which read as follows:

> Please be advised the undersigned represents Kings Manor Estates with respect to your tenancy at the Community.
>
> This Notice is sent to you pursuant to Florida Statute, Chapter, 723.061, Et Seq.
>
> Park Management has advised the undersigned that you are in violation of the following Community Covenants of Kings Manor Estates:
>
> 7. Improvements: Before construction of any type is permitted on the homesite or added to a home, the Resident must obtain written permission from Management in the form of a Design Approval. Additional permits may be required by the municipality in which the Community is located.

> 10. Handicap Access: Any Residents requiring handicap access improvements such as ramps are permitted. All plans for such ramps must be approved by Management and comply with all other Community Covenants and governmental standards.
>
> You are in violation of the above Community Covenants, in that you have failed to submit plans to Management prior to the construction of your ramp. Park Management has been apprised by the Town of Davie that permits are required and none was obtained by you prior to construction, in compliance with Town of Davie governmental standards.
>
> In order to correct the above violation, you must within seven (7) days from delivery of this Notice, remove the ramp from your homesite. Delivery of the mailed notice is deemed given five (5) days after the date of postmark. If you fail and/or refuse to comply with this Notice, your tenancy will be terminated in accordance with Florida Statute Chapter 723.061.[2]
>
> If you have any questions concerning any of the above, you may contact Park Management at . . . .

30. Petitioner did not remove the ramp by the deadline imposed by the December 5, 2002, Notice of Violation of Community Covenants. Park management, however, took no action to terminate her tenancy.

31. After receiving the December 5, 2002, Notice of Violation of Community Covenants, Petitioner stopped making rental payments to Uniprop and, instead, deposited these monies with the Florida Justice Institute to be held in escrow until the controversy concerning the ramp was resolved.

32. In or around mid-January 2003, Park management received from Petitioner corrected design plans for the ramp (that had been prepared by Doug Amos of Doug Amos Construction).

33. On January 15, 2003, Ms. Maddox sent to Mr. Rhines, by facsimile transmission, a copy of these plans.

34. Petitioner was subsequently granted "design approval" for the ramp. It has not been shown that there was any unreasonable or excessive delay involved in the granting of such approval.

35. On February 19, 2003, Ms. Maddox wrote the following letter to the Town's Building Department:

> Please be advised that MaryHelen Meacham Woods is authorized to have permits issued for site #78 at 12620 SW 6th Street Davie, Florida 33325 for the Installation of a handicapped ramp.
>
> Thank you for your consideration in this matter.

36. Following an inspection, the Town, in March 2003, issued a permit for the ramp.

37. Petitioner has had use of the ramp since mid-November 2002 when it was first built (notwithstanding that she did not obtain Uniprop's "design approval" and a permit from the Town until some months later).

38. On or about May 30, 2003, Petitioner authorized the Florida Justice Institute to deliver to Uniprop the rental

payments it was holding (at Petitioner's request) in escrow.

39. Uniprop accepted these rental payments when they were delivered.

40. Petitioner has had raw eggs thrown at her wheelchair ramp. She suspects that Ms. Maddox's children were responsible for this vandalism, but there is insufficient record evidence to identify the culprits, much less ascertain their motives.

41. On or about August 31, 2004, at a time when Hurricane Frances was approaching the Florida peninsula from the southeast, Park management sent Petitioner a Notice of Violation of Community Covenants, which read as follows:

> Pursuant to Florida Statute 723.061 et seq, you are hereby advised that you are in violation of the following Community Covenant(s) of which the Community first became aware on August 30, 2004.
>
> **SECTION I: HOME AND SITE MAINTENANCE - Each resident shall keep his/her site and home in a clean and neat condition and free of any fire hazards, there is no storage permitted around or under the home or in screened rooms. ALL items must be stored inside the home or storage shed.**
>
> Although you have previously been furnished a copy of the Community Covenants of the park, and said Community Covenants are posted in the recreation center and business office, a copy of the rule(s) of which you are in violation is attached to this notice for your convenience.
>
> Specifically, you are in violation of the above Community Covenant(s) in that **Your home, trim and utility shed are dirty, there**

is growth in the gutters and there is a window air conditioner on the home.

In order to correct the above violation of the Community Covenant(s) you must **Wash your home, trim and utility shed, paint with colors approved by management, clean the growth from the gutters and remove the window air conditioner**

within seven (7) days from delivery date of this letter.

If you fail and/or refuse to correct the violations of the Community Covenant(s) in the manner listed above, the park will pursue all its rights and remedies pursuant to 723.061 et seq.

PLEASE GOVERN YOURSELF ACCORDINGLY

It has not been shown that Park management took this action to retaliate against Petitioner for having requested permission to construct a wheelchair ramp on her lot or that such action was motivated by any other improper purpose.

42. Park management has not pursued the matter the further.

43. At no time has Park management initiated legal action to terminate Petitioner's tenancy and evict her.

44. The record evidence is insufficient to establish that Respondents, or anyone acting on their behalf, have said or done anything having the purpose or effect of disadvantaging Petitioner based on her handicap, her Native American heritage,

or her having asked to be allowed to build a wheelchair ramp on her lot.

CONCLUSIONS OF LAW

45. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto pursuant to Chapter 120, Florida Statutes.

46. Florida's Fair Housing Act (Act) is codified in Sections 760.20 through 760.37, Florida Statutes.

47. Section 760.22, Florida Statutes, defines various terms used in the Act. It provides, in pertinent part, as follows:

> As used in ss. 760.20-760.37, the term: . . . .
>
> * * *
>
> (2) "Covered multifamily dwelling" means:
>
> (a) A building which consists of four or more units and has an elevator; or
>
> (b) The ground floor units of a building which consists of four or more units and does not have an elevator.
>
> (3) "Discriminatory housing practice" means an act that is unlawful under the terms of ss. 760.20-760.37.
>
> (4) "Dwelling" means any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location on the land of any

such building or structure, or portion thereof.

* * *

(7) "Handicap" means:

(a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment; or

(b) A person has a developmental disability as defined in s. 393.063

(8) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

* * *

48. Petitioner's mobile home and lot do not constitute a "covered multifamily dwelling," as defined in Section 760.22(2), Florida Statutes, but they do constitute a "dwelling," as defined in Section 760.22(4), Florida Statutes.

49. Persons like Petitioner, who must use a wheelchair because of a physical impairment that substantially limits their ability to walk, have a "handicap," within the meaning of Section 760.22(7)(a), Florida Statutes. See Sutton v. United Air Lines, Inc., 527 U.S. 471, 488, 119 S. Ct. 2139, 2149 (1999)

("[I]ndividuals who use . . . wheelchairs may be mobile and capable of functioning in society but still be disabled because of a substantial limitation on their ability to walk or run."); Bauer v. Muscular Dystrophy Association, Inc., 268 F. Supp. 2d 1281, 1283 (D. Kan. 2003)("Gina Bauer has Muscular Dystrophy and uses a power wheelchair. She is substantially limited in the major life activity of walking. . . . Suzanne Stolz has Muscular Dystrophy and sometimes uses a power wheelchair. She is substantially limited in the major life activity of walking."); and Witt v. Northwest Aluminum Co., 177 F. Supp. 2d 1127, 1131 (D. Or. 2001)("Factfinders do not need expert testimony to understand that a person confined to a wheelchair is substantially limited in the major life activity of walking.").

50. Among other things, the Act makes certain acts "discriminatory housing practices" and gives the Commission the authority, if it finds (following an administrative hearing conducted by an administrative law judge) that such a "discriminatory housing practice" has occurred, to issue an order "prohibiting the practice" and providing "affirmative relief from the effects of the practice, including quantifiable damages[3] and reasonable attorney's fees and costs." § 760.35(3)(b), Fla. Stat.

51. To obtain such relief from the Commission, a person who claims to have been injured by a "discriminatory housing practice" must "file a complaint within 1 year after the alleged discriminatory housing practice occurred." § 760.34(2), Fla. Stat.; however, "an otherwise time-barred claim may be considered timely if it and a timely-filed claim are treated as a single claim directed at continuing discriminatory conduct, part of which occurred within the statutory filing period." LeBlanc v. City of Tallahassee, 2003 WL 1485063 *2 (N.D. Fla. 2003).

52. The "discriminatory housing practices" prohibited by the Act include those described in Section 760.23(2), Florida Statutes, which provides as follows:

> It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, or religion.

53. Race, color, national origin, sex, handicap, familial status, or religion-based harassment that creates a hostile housing environment constitutes a "discriminatory housing practice" prohibited by Section 760.23(2), Florida Statutes. "[A hostile housing environment] claim is actionable when the offensive behavior unreasonably interferes with use and enjoyment of the premises. The harassment must be sufficiently

severe or pervasive to alter the conditions of the housing arrangement. It is not sufficient if the harassment is isolated or trivial. Casual or isolated manifestations of a discriminatory environment . . . may not raise a cause of action." Honce v. Vigil, 1 F.3d 1085, 1090 (10th Cir. 1993)(citations and internal quotations omitted). The "'mere existence of uncomfortable rumors in the [neighborhood] is not the type of hostile environment' that [Section 760.23(2), Florida Statutes] was meant to redress." Hott v. VDO Yazaki Corp., 1996 WL 650966 *2 (W.D. Va. 1996).

54. "Discriminatory intent may be established through direct or indirect circumstantial evidence." Johnson v. Hamrick, 155 F. Supp. 2d 1355, 1377 (N.D. Ga. 2001).

55. "Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to inference or presumption." King v. La Playa-De Varadero Restaurant, No. 02-2502, 2003 WL 435084 *5 n.9 (Fla. DOAH 2003)(Recommended Order).

56. "Direct evidence of intent is often unavailable." Shealy v. City of Albany, Ga., 89 F.3d 804, 806 (11th Cir. 1996). For this reason, those who claim to be victims of discrimination "are permitted to establish their cases through inferential and circumstantial proof." Kline v. Tennessee Valley Authority, 128 F.3d 337, 348 (6th Cir. 1997).

57. Where a complainant attempts to prove intentional discrimination using circumstantial evidence, a "shifting burden framework" is applied. "Under this framework, the [complainant] has the initial burden of establishing a prima facie case of discrimination. If [the complainant] meets that burden, then an inference arises that the challenged action was motivated by a discriminatory intent. The burden then shifts to the [respondent] to 'articulate' a legitimate, non-discriminatory reason for its action. If the [respondent] successfully articulates such a reason, then the burden shifts back to the [complainant] to show that the proffered reason is really pretext for unlawful discrimination." Schoenfeld v. Babbitt, 168 F.3d 1257, 1267 (11th Cir. 1999)(citations omitted.); see also Massaro v. Mainlands Section 1 and 2 Civic Association, Inc., 3 F.3d 1472, 1476 n.6 (11th Cir. 1993)("Fair housing discrimination cases are subject to the three-part test articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973)."); and Secretary of the United States Department of Housing and Urban Development on Behalf of Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990)("We agree with the ALJ that the three-part burden of proof test developed in McDonnell Douglas [for claims brought under Title VII of the Civil Rights Act] governs in this case

[involving a claim of discrimination in violation of the federal Fair Housing Act].")

58. Proof that, in essence, amounts to no more than mere speculation and self-serving belief on the part of the complainant concerning the motives of the respondent is insufficient, standing alone, to establish a prima facie case of intentional discrimination. See Lizardo v. Denny's, Inc., 270 F.3d 94, 104 (2d Cir. 2001)("The record is barren of any direct evidence of racial animus. Of course, direct evidence of discrimination is not necessary. However, a jury cannot infer discrimination from thin air. Plaintiffs have done little more than cite to their mistreatment and ask the court to conclude that it must have been related to their race. This is not sufficient.")(citations omitted.); Reyes v. Pacific Bell, 21 F.3d 1115 (Table), 1994 WL 107994 *4 n.1 (9th Cir. 1994)("The only such evidence [of discrimination] in the record is Reyes's own testimony that it is his belief that he was fired for discriminatory reasons. This subjective belief is insufficient to establish a prima facie case."); Little v. Republic Refining Co., Ltd., 924 F.2d 93, 96 (5th Cir. 1991)("Little points to his own subjective belief that age motivated Boyd. An age discrimination plaintiff's own good faith belief that his age motivated his employer's action is of little value."); Elliott v. Group Medical & Surgical Service, 714 F.2d 556, 567 (5th Cir.

1983)("We are not prepared to hold that a subjective belief of discrimination, however genuine, can be the basis of judicial relief."); Jackson v. Waguespack, 2002 WL 31427316 *3 (E.D. La. 2002)("[T]he Plaintiff has no evidence to show Waguespack was motivated by racial animus. Speculation and belief are insufficient to create a fact issue as to pretext nor can pretext be established by mere conclusory statements of a Plaintiff that feels she has been discriminated against. The Plaintiff's evidence on this issue is entirely conclusory, she was the only black person seated there. The Plaintiff did not witness Defendant Waguespack make any racial remarks or racial epithets."); Sporn v. Ocean Colony Condominium Association, 173 F. Supp. 2d 244, 251 (D. N.J. 2001)("This evidence, even when viewed in the light most favorable to Plaintiffs, amounts to nothing more than repeated statements of Plaintiffs' subjective beliefs of discrimination and is therefore insufficient to survive summary judgment."); Coleman v. Exxon Chemical Corp., 162 F. Supp. 2d 593, 622 (S.D. Tex. 2001)("Plaintiff's conclusory, subjective belief that he has suffered discrimination by Cardinal is not probative of unlawful racial animus."); Cleveland-Goins v. City of New York, 1999 WL 673343 *2 (S.D. N.Y. 1999)("Plaintiff has failed to proffer any relevant evidence that her race was a factor in defendants' decision to terminate her. Plaintiff alleges nothing more than

that she 'was the only African-American male [sic] to hold the position of administrative assistant/secretary at Manhattan Construction.' (Compl.¶ 9.) The Court finds that this single allegation, accompanied by unsupported and speculative statements as to defendants' discriminatory animus is entirely insufficient to make out a prima facie case or to state a claim under Title VII."); Umansky v. Masterpiece International Ltd., 1998 WL 433779 *4 (S.D. N.Y. 1998)("Plaintiff proffers no support for her allegations of race and gender discrimination other than her own speculation and assumptions. The Court finds that plaintiff cannot demonstrate that she was discharged in circumstances giving rise to an inference of discrimination, and therefore has failed to make out a prima facie case of race or gender discrimination."); Gavin v. Spring Ridge Conservancy, Inc., 934 F. Supp. 685, 687 (D. Md. 1995)("Turning first to the plaintiff's claims of intentional discrimination and retaliation, there is no evidence at all, other than perhaps the plaintiff's own subjective beliefs, of intentional discrimination or retaliation. Such beliefs are, of course, insufficient to show an intentional discriminatory animus."); and Lo v. F.D.I.C., 846 F. Supp. 557, 563 (S.D. Tex. 1994)("Lo's subjective belief of race and national origin discrimination is legally insufficient to support his claims under Title VII.").

59. The "discriminatory housing practices" prohibited by the Act also include those described in Section 760.23(8)(a), Florida Statutes, which provides that "[i]t is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of: [t]hat buyer or renter." According to Section 760.23(9), Florida Statutes:

> For purposes of subsection[] . . . (8), discrimination includes:
>
> (a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; or
>
> (b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

"In order to prevail on [a] claim of discrimination [of the type described in Section 760.23(9)], [a complainant] must prove (1) that she is handicapped as defined in the Florida Fair Housing Act; (2) that the [r]espondent[] knew or reasonably should have known of her handicap; (3) that she requested a reasonable modification to [the premises she occupies] or a reasonable accommodation under the [governing] rules and regulations

necessary to afford her an equal opportunity to use and enjoy her [premises]; and (4) that the [r]espondent[] [although having the authority to grant the request] refused to [do so]." Thornhill v. Watkins, Nos. 00-3014 and 02-1056, 2004 WL 395861 *27 (Fla. DOAH 2004)(Recommended Order); see also Tsombanidis v. West Haven Fire Department, 352 F.3d 565, 579 (2d Cir. 2003)("A governmental entity must know what a plaintiff seeks prior to incurring liability for failing to affirmatively grant a reasonable accommodation [under the federal Fair Housing Act]."); Progressive Mine Workers v. National Labor Relations Board, 187 F.2d 298, 304 (7th Cir. 1951)("There was no finding that the company had refused to reinstate them, as evidently there could not be in the absence of a request by the employees."); Winfield Mutual Housing Corporation v. Middlesex Concrete Products & Excavating Corporation, 120 A.2d 655, 657 (N.J. App. 1956)("There could not be a refusal in the absence of a request, express or implied, for performance, ..."); and Application of Spanierman, 58 N.Y.S.2d 10, 11 (N.Y. Sup. Ct. 1945)("There can be no 'refusal' in the absence of a request for the statement.").

60. An unreasonable or excessive delay in responding to a request to allow a reasonable modification or a request to make a reasonable accommodation can constitute, for purposes of Section 760.23(9), Florida Statutes, a discriminatory refusal.

Cf. Groome Resources Ltd., L.L.C. v. Parish of Jefferson, 234 F.3d 192, 199-200 (5th Cir. 2000)("While never formally denying the request, the Parish's unjustified and indeterminate delay had the same effect of undermining the anti-discriminatory purpose of the FHAA."); Krocka v. Riegler, 958 F. Supp. 1333, 1342 (N.D. Ill. 1997)("[A]n unreasonable delay in implementing a 'reasonable accommodation' can constitute a discriminatory act."); and Cohen v. Montgomery County Department of Health and Human Services, 817 A.2d 915, 925 (Md. Ct. Spec. App. 2003)("The County contends that, because appellant ultimately received the accommodation she requested, no controversy now exists between the parties and thus the circuit court correctly dismissed the complaint as moot. We disagree. Simply because appellant received the accommodation she requested does not make that accommodation, no matter how belated, a 'reasonable accommodation.' We therefore hold that appellant alleged in her complaint a cause of action for disability discrimination based on the County's purported failure to timely accommodate her disability.").

61. Physically handicapped persons living in certain "covered multifamily dwellings," as defined in Section 760.22(2), Florida Statutes, are also protected by Section 760.23(10), Florida Statutes, which provides as follows:

(10) Covered multifamily dwellings as defined herein which are intended for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by commission rule. Such buildings shall also be designed and constructed in such a manner that:

(a) The public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons.

(b) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.

(c) All premises within such dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling.

2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

3. Reinforcements in bathroom walls to allow later installation of grab bars.

4. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as ANSI A117.1-1986, suffices to satisfy the requirements of paragraph (c).

> State agencies with building construction regulation responsibility or local governments, as appropriate, shall review the plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of this subsection.

Because Petitioner does not reside in a "covered multifamily dwelling," the provisions of Section 760.23(10) are inapplicable to the instant case (notwithstanding that the mobile home park in which her mobile home is located does have common areas).

62. Another "discriminatory housing practice" prohibited by the Act is described in Section 760.37, Florida Statutes, which provides:

> It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of her or his having exercised, or on account of her or his having aided or encouraged any other person in the exercise of any right granted under ss. 760.20-760.37. This section may be enforced by appropriate administrative or civil action.

To establish a violation of Section 760.37, Florida Statutes, a complainant must prove that the respondent "coerced, intimidated, threatened, or interfered with her exercise of a right under the Florida Fair Housing Act; discriminatory animus is inherent in a retaliation claim." Thornhill v. Watkins, 2004 WL 395861 *28.

63. Regardless of the type of "discriminatory housing practice" being alleged, "preponderance of the evidence" is the

standard of proof the complainant must meet (at the administrative hearing) to prove his or her case. § 120.57(1)(j), Fla. Stat. ("Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute,[4] . . . .").

64. In the instant case, Petitioner has alleged that, in violation of the Act, Respondents have discriminated against her on the basis of her Native American heritage, as well as on the basis of a physical handicap from which she suffers necessitating the construction of a wheelchair ramp leading to the front door of her mobile home. She has also suggested that, in further violation of the Act, Respondents have retaliated against her for requesting permission to build to such a wheelchair ramp. Furthermore, Petitioner makes the additional claim that the Park property is "not compliant" with the Act because it is not, in certain areas, wheelchair accessible.

65. Through her evidentiary presentation at the final hearing in this case, Petitioner did establish that, at all times material to the instant case, she was protected under the Act from discrimination on the basis of her Native American background, as well as "handicap," as that term is defined in Section 760.22(7)(a), Florida Statutes, and she also enjoyed the protection of Section 760.37, Florida Statutes, by virtue of her

having requested permission to build a wheelchair ramp on her lot.

66. Petitioner, however, failed to prove by a preponderance of the evidence that Respondents in any way, including, but not limited to, the manner in which they responded to her request for "design approval" of the wheelchair ramp,[5] unlawfully discriminated against her based on her protected status (as a Native American and handicapped person); neither did she make a sufficient showing that Respondents have engaged in any conduct in retaliation against her for her having made her "design approval" request. Petitioner may genuinely suspect that she has been the victim, at the hands of Respondents, of discriminatory and retaliatory conduct in violation of the Act, but her mere suspicions are insufficient to prove that the acts in question constituted "discriminatory housing practices."

67. Concerning Petitioner's additional claim that parts of the Park property are "not compliant" with the Act because they lack wheelchair accessibility, even if the factual underpinnings of this claim were accepted as true, there would still not be a "discriminatory housing practice" subject to the Commission's remedial authority inasmuch as the allegedly inaccessible areas are not located in a "covered multifamily dwelling," as that

term is defined in Section 760.22(2), Florida Statutes, and used in Section 760.23(10), Florida Statutes."

68. In view of the foregoing, no "discriminatory housing practice" should be found to have occurred, and Petitioner's amended housing discrimination complaint should therefore be dismissed.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Commission issue a final order finding that Respondents are not guilty of any "discriminatory housing practice" and dismissing Petitioner's amended housing discrimination complaint based on such finding.

DONE AND ENTERED this 5th day of May, 2005, in Tallahassee, Leon County, Florida.

STUART M. LERNER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of May, 2005.

ENDNOTES

[1] Petitioner appended to her post-hearing submittals various documents that were neither offered nor received into evidence at the final hearing. Because they are outside the scope of the evidentiary record in this case, these documents cannot provide a basis for any finding of fact. See General Development Utilities, Inc. v. Hawkins, 357 So. 2d 408, 409 (Fla. 1978)("The Commission selected a ratio which nowhere appears in the record, apparently fabricating one for the company based on information it has compiled for water companies generally. The arbitrary selection of this ratio as a 'fact' comes from outside the record of the proceeding and plainly violates the notions of agency due process which are embodied in the administrative procedure act."); and Section 120.57(1)(j), Florida Statutes ("Findings of fact . . . shall be based exclusively on the evidence of record and on matters officially recognized.").

[2] Section 723.061, Florida Statutes, provides as follows:

> (1) A mobile home park owner may evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home only on one or more of the grounds provided in this section.
>
> (a) Nonpayment of lot rental amount. If a mobile home owner or tenant, whichever is responsible, fails to pay the lot rental amount when due and if the default continues for 5 days after delivery of a written demand by the mobile home park owner for payment of the lot rental amount, the park owner may terminate the tenancy. However, if the mobile home owner or tenant, whichever is responsible, pays the lot rental amount due, including any late charges, court costs, and attorney's fees, the court may, for good cause, deny the order of eviction, provided such nonpayment has not occurred more than twice.
>
> (b) Conviction of a violation of a federal or state law or local ordinance, which violation may be deemed detrimental to the

health, safety, or welfare of other residents of the mobile home park. The mobile home owner or mobile home tenant will have 7 days from the date that notice to vacate is delivered to vacate the premises. This paragraph shall be grounds to deny an initial tenancy of a purchaser of a home pursuant to paragraph (e) or to evict an unapproved occupant of a home.

(c) Violation of a park rule or regulation, the rental agreement, or this chapter.

1. For the first violation of any properly promulgated rule or regulation, rental agreement provision, or this chapter which is found by any court having jurisdiction thereof to have been an act which endangered the life, health, safety, or property of the park residents or employees or the peaceful enjoyment of the mobile home park by its residents, the mobile home park owner may terminate the rental agreement, and the mobile home owner, tenant, or occupant will have 7 days from the date that the notice is delivered to vacate the premises.

2. For a second violation of the same properly promulgated rule or regulation, rental agreement provision, or this chapter within 12 months, the mobile home park owner may terminate the tenancy if she or he has given the mobile home owner, tenant, or occupant written notice within 30 days of the first violation, which notice specified the actions of the mobile home owner, tenant, or occupant which caused the violation and gave the mobile home owner, tenant, or occupant 7 days to correct the noncompliance. The mobile home owner, tenant, or occupant must have received written notice of the ground upon which she or he is to be evicted at least 30 days prior to the date on which she or he is required to vacate. A second violation of a properly promulgated rule or regulation,

rental agreement provision, or this chapter within 12 months of the first violation is unequivocally a ground for eviction, and it is not a defense to any eviction proceeding that a violation has been cured after the second violation. Violation of a rule or regulation, rental agreement provision, or this chapter after the passage of 1 year from the first violation of the same rule or regulation, rental agreement provision, or this chapter does not constitute a ground for eviction under this section.

No properly promulgated rule or regulation may be arbitrarily applied and used as a ground for eviction.

(d) Change in use of the land comprising the mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use, provided all tenants affected are given at least 6 months' notice of the projected change of use and of their need to secure other accommodations. The park owner may not give a notice of increase in lot rental amount within 90 days before giving notice of a change in use.

(e) Failure of the purchaser, prospective tenant, or occupant of a mobile home situated in the mobile home park to be qualified as, and to obtain approval to become, a tenant or occupant of the home, if such approval is required by a properly promulgated rule. If a purchaser or prospective tenant of a mobile home situated in the mobile home park occupies the mobile home before approval is granted, the mobile home owner or mobile home tenant shall have 7 days from the date the notice of the failure to be approved for tenancy is delivered to vacate the premises.

(2) In the event of eviction for change of use, homeowners must object to the change in

> use by petitioning for administrative or judicial remedies within 90 days of the date of the notice or they will be barred from taking any subsequent action to contest the change in use. This provision shall not be construed to prevent any homeowner from objecting to a zoning change at any time.
>
> (3) The provisions of s. 723.083 shall not be applicable to any park where the provisions of this subsection apply.
>
> (4) A mobile home park owner applying for the removal of a mobile home owner, tenant, occupant, or a mobile home shall file, in the county court in the county where the mobile home lot is situated, a complaint describing the lot and stating the facts that authorize the removal of the mobile home owner, tenant, occupant, or the mobile home. The park owner is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on the calendar.
>
> (5) Any notice required by this section must be in writing, and must be posted on the premises and sent to the mobile home owner and tenant or occupant, as appropriate, by certified or registered mail, return receipt requested, addressed to the mobile home owner and tenant or occupant, as appropriate, at her or his last known address. Delivery of the mailed notice shall be deemed given 5 days after the date of postmark.

[3] Such "quantifiable damages" do not include damages for emotional injuries. See Metropolitan Dade County Fair Housing and Employment Appeals Board v. Sunrise Village Mobile Home Park, Inc., 511 So. 2d 962, 966 (Fla. 1987)("[W]e hold that section 11A-7(5)(f)(ii) of the instant ordinance is unconstitutional to the extent that it authorizes administrative awards of common law damages for such nonquantifiable injuries as humiliation, embarrassment, and mental distress."); Broward County v. La Rosa, 505 So. 2d 422, 424 n.5 (Fla. 1987)("We see a

significant distinction between administrative awards of quantifiable damages for such items as back rent or back wages and awards for such nonquantifiable damages as pain and suffering or humiliation and embarrassment."); and Hotelera Naco, Inc. v. Chinea, 708 So. 2d 961, 962 (Fla. 3d DCA 1998)("We also conclude that the trial court erred in allowing the jury to award damages for mental anguish and loss of dignity, and awarding appellee, Maria E. Chinea, attorney's fees. The ordinance in effect at the time the cause of action arose only allowed for the award of quantifiable damages.").

[4] Section 760.34(5), Florida Statutes, provides that, "[i]n any proceeding brought pursuant to this section or s. 760.35, the burden of proof is on the complainant," but neither it, nor any other provision in the Act, prescribes a standard of proof the complainant must meet.

[5] Petitioner's "design approval" request was ultimately approved, and no showing has been made that there was any unreasonable, prejudicial delay in granting such approval.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.