STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LINDA PARAH AND ANDREW LOVELAND, SR.,	)	
Petitioners,	)	
vs.	)	Case No. 05-2445
DONNA MORRISON, RANDY MORRISON AND HILLSIDE MOBILE HOME PARK,	)	
Respondents.	)	

RECOMMENDED ORDER

Pursuant to notice and in accordance with Section 120.57, Florida Statutes (2004), a final hearing was held in this case on September 1, 2005, in Dade City, Florida, before Fred L. Buckine, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: Linda Parah, pro se
Andrew Loveland, Sr., pro se
36928 Happy Days Drive, Lot 120
Zephyrhills, Florida 33541-2892

For Respondents: Matthew J. Schlichte, Esquire
Law Office of Ray A. Schlichte, Jr., P.A.
2134 Hollywood Boulevard
Hollywood, Florida 33020

STATEMENT OF THE ISSUE

Whether Respondents, Donna and Randy Morrison, managers of Hillside Mobile Home Park, discriminated against Petitioners,

Linda Parah and Andrew Loveland, Sr., by failing to make reasonable accommodation for Petitioners' service animal necessary to afford equal opportunity to use and enjoy the rental premises in violation of the Fair Housing Act, Sections 760.20 through 760.37, Florida Statutes (2004).[1]

PRELIMINARY STATEMENT

On April 25, 2005, Petitioners filed a Housing Discrimination Complaint with the Florida Commission on Human Relations (Commission), alleging:

> The complainant [Linda Parah] possesses a mental impairment that qualifies her as a disabled person within the meaning of the Fair Housing Act, and therefore belongs to a class of persons whom the law protects from unlawful discrimination. Hillside Mobile Home Park [Respondent] knew or should have known that the Complainant was a disabled person. The Complainant requested a reasonable accommodation for her service animal. The requested accommodation was necessary to afford the Complainant an equal opportunity to use and enjoy her premises. The Respondent denied the Complainant's request for a reasonable accommodation.

On July 8, 2005, Petitioners filed a timely request for hearing pursuant to Section 120.569 and Subsections 120.57(1) and 760.11(7), Florida Statutes. On July 8, 2005, the Commission referred this matter to the Division of Administrative Hearings, and, on that date, the Initial Order was entered.

On July 14, 2005, Respondents' Response to the Initial Order was filed.

On July 20, 2005, a Notice of Hearing, scheduling the final hearing for August 26, 2005, in Dade City, Florida, and an Order of Pre-hearing Instructions were entered.

On August 15, 2005, Respondents' Witness and Exhibit List and Notice of Demand for Attorney's Fees and Costs against the Petitioners were filed.

On August 24, 2005, Respondents filed a Motion for Continuance, and, on August 25, 2005, an Order Granting Continuance and Re-scheduling Hearing, re-scheduling the final hearing for September 1, 2005, in Dade City, Florida, was entered.

On September 1, 2005, Petitioner, Linda Parah, testified in the narrative and was given opportunity to cross-examine Respondents' solo witness, Donna Morrison. Petitioner, Andrew Loveland, Sr., though present, did not testify. Petitioners' Exhibits A through C, E through I, and O were accepted into evidence. Petitioners' Application for Tenancy to Hillside Mobile Home Park, Inc., dated June 24, 2004, and signed only by Petitioner, Andrew Loveland, Sr., was marked as ALJ Exhibit 1 and was accepted into evidence. Respondents presented only the testimony of Donna Morrison. Respondent, Randy Morrison, though

present, did not testify. Respondents' Exhibits 1 through 7 were accepted into evidence.

Neither party ordered a transcript of this proceeding. Though advised of the opportunity, Petitioners elected not to file a proposed recommended order. The undersigned considered Respondents' Proposed Recommended Order filed on September 6, 2005, to include management's request for assessment of attorney's fees and costs against Petitioners pursuant to Section 57.105, Florida Statutes.

FINDINGS OF FACT

Based upon observation of the witnesses' demeanor and manner while testifying, character of the testimony, internal consistency, and recall ability; documentary materials received in evidence; stipulations by the parties; and evidentiary rulings during the proceedings, the following relevant and material facts are found:

1. On June 24, 2004, Andrew Loveland, Sr., made application for tenancy at Hillside Mobile Home Park, Inc. (Hillside), 39515 Bamboo Lane, Zephyrhills, Florida 33542, when he completed and signed Respondents' "Application for Tenancy" form. The prospective tenants listed were Andrew Loveland, Sr., and Linda Parah. Ms. Parah did not sign the application. As of June 24, 2005, Petitioners listed their then-current address as 5824 23rd Street, Lot 1, Zephyrhills, Florida 33542.

2. The application for tenancy form listed Ms. Parah as one of the persons to reside in the rental dwelling and, as such, was a "person associated with the intended renter," Mr. Loveland. The tenancy application signed by Mr. Loveland contained the following acknowledgement:

> [U]nder penalty of perjury, I declare that I have read the foregoing and the facts alleged are true to the best of my knowledge and belief. I hereby acknowledge that I have received a copy of the Prospectus and Rules and Regulations of Hillside Mobile Home Park, Inc.

Mr. Loveland, though present at the proceeding, chose not to challenge his written acknowledgment of receiving a copy of the Prospectus and the Rules and Regulations of Hillside, and the undersigned accordingly finds that Mr. Loveland received a copy of the Prospectus and the Rules and Regulations of Hillside on June 24, 2004, and was fully informed of his duties and obligations as a tenant of Hillside therein contained.

3. On June 24, 2004, neither Mr. Loveland nor Ms. Parah informed or advised management of any medical disability(s) suffered, requiring companionship (living in the trailer) of a dog (comfort or service). Petitioners did not, at that time, request Respondents to make any reasonable accommodations for any mental and/or physical disability(s) that required the presence of their service dog in the rented premises. No copy of management's park prospectus or rules was offered in

evidence, and, accordingly, a finding of receipt thereof is made, but no findings herein are based on the specific content therein.

4. On or after June 24, 2004, Petitioners and their dog occupied the leased premises 6528 Pecan Drive, Hillside Mobile Home Park, Zephyrhills, Florida 33542. The credible evidence of record convincingly demonstrated management had knowledge that Petitioners and several other park tenants owned dogs. Tenants, often times together, walked their dogs about the trailer park in sight of management and other residents. Based upon the above, it is concluded that management was or should have been aware that other tenants, including Petitioners, had dogs in the trailer park.

5. On October 21, 2004, management, by and through its attorney, by certified mail, made demand upon Petitioners to cure noncompliance within seven days (October 28, 2004) or vacate premises for noncompliance with the park prospectus or rules, to wit:

> You have been driving your golf cart behind and between mobiles. Residents must govern themselves in a manner that does not unreasonably disturb or annoy other residents. We have had several complaints regarding this issue. Please drive and walk on the streets only. (Emphasis added)

6. Ms. Parah acknowledged the golf car incident, explaining that Mr. Loveland occasionally drove his golf cart

through the trailer park and not always on the walkways during the evening hours. She insisted, however, that after receipt of the October 21, 2004, notice to cease from management, Mr. Loveland discontinued driving his golf cart behind and between mobile homes during the evenings and nights and, during the day, restricted his cart driving to only the park roadways.

7. By letter dated November 5, 2004, to Mr. Loveland, Respondents issued a "Notice of Termination of Tenancy," for failure to correct the (October 21, 2004, notice of violation--driving golf cart) within seven days. Accordingly, his tenancy was to be terminated 35 days from the postmarked date of delivery of the notice.

8. On November 11, 2004, S. D. Hostetler, a tenant whom management did not call to testify, allegedly filed the following hand-written complaint letter to management:

> On 11-3-04 at around 3 am I was awaken by a loud sound. I got up to see what it was and it was an older red golf cart going through the camping section, it must not have a muffler on it, that morning I did complain to the management about some one going around the Park that early in the morning with such a noisey [sic] scooter. I later found out it was Andrew Loveland.

9. The above-written document was not notarized; the author was not made available and subject to cross-examination. This document therefore is unsupported hearsay and insufficient to support and establish the factual content therein to wit:

"[O]n 11-3-04 around 3 a.m., Mr. Loveland was driving his golf cart through the camping section and, thus, failed to correct the October 21, 2004, notice of violation--driving golf cart, within 7 days." This complaint did, however, establish the fact that management received a complaint about Mr. Loveland from another tenant after having given him notice to cease and desist.

10. On November 18, 2004, two weeks after the golf cart notice of noncompliance termination, Respondents, by certified mail delivered on November 22, 2004, made demand upon Petitioners to cure noncompliance within seven days or vacate premises for a second noncompliance with the park prospectus or rules, to wit: "(A) You have a dog and dogs are not allowed in the park."

11. The November 22, 2004, copy of the notice to cure noncompliance was received by Mr. Loveland as evidenced by a copy of a U.S. Certified Mail delivery receipt signed by Mr. Loveland.

12. In the December 13, 2004, letter from Attorney Schlichte addressed to Andrew Loveland (only), Re: Notice of Termination of Tenancy (reference November 18, 2004, 1st Notice of Rule Violation; i.e. you have a dog and dogs not allowed), Petitioners were given 30 days to vacate the premises. It is significant and noted that as of December 13, 2004, Ms. Parah

had not made a demand or request upon management for "reasonable accommodations for her service animal necessary to afford the Petitioner an equal opportunity to use and enjoy the rental premises," as alleged in the administrative complaint.

Ultimate Factual Determinations

13. On February 28, 2005, 76 days after receipt of management's December 13, 2004, first Notice of Rule Violation (no dog allowed) and filing of Eviction Compliant in Pasco County Court,[2] Petitioners made their first written request to management for reasonable accommodation under the American Disabilities Act as follows:

> Dear Sir:
>
> I am requesting reasonable accommodation under the American with Disability Act to have rules and regulations of the Park (Hillside) sent to me. On my pet. I have documentation from my physician Joseph Nystrom, M.D. on my service, my comfort dog. And this can be furnished upon request! Rules and Regulations were not clear to fact that Mr. Andrew Loveland, Sr. never had them unless you can show pictures on the grass 10/21/2004. I feel that your violating Mr. Loveland and my civil right under fair housing rules. [sic] Please acknowledge our reasonable accommodation as stated above by Tuesday of next week 3/8/2005.
>
> Accordingly,
> Linda Alan Parah
> Andrew Alton Loveland, Sr.
> cc: C.J. Miles Deputy Dir. Fair Housing Continu [sic], Inc., 1-888-264-5619.

14. Having provided a copy of the Prospectus and the Rules and Regulations of Hillside on June 24, 2004, to Mr. Loveland, management's refusal to provide a second copy was a reasonable nondiscriminatory business decision. The offer to provide "documentation from my physician Joseph Nystrom, M.D. on my service, my comfort dog," imposed no obligation upon management to accept such offer. Within the totality of circumstances then present, ignoring Petitioners' offer to provide medical and/or willingness statements regarding their medical, physical, and mental disabilities, requiring the presence of a service/comfort dog by Respondents, is not found to have been discriminatory.

15. On or about May 19, 2005, Pasco County Court entered Final Judgment of Eviction against Andrew Loveland and Unknown Tenant (i.e. Linda Parah). The Pasco County Sheriff's Office, pursuant to Final Judgment of Eviction for Removal of Tenant entered by the Pasco County Court, evicted Petitioners from Respondents' rented premises of Hillside, 39515 Bamboo Lane, Zephyrhills, Florida 33542.

16. Petitioners submitted an abundance of credible evidence relating to their physical and mental health conditions. As to Mr. Loveland, Dr. Nystrom's written and signed notation concluded that Mr. Loveland's condition required: "Motorized wheelchair multi-level spinal stenosis-medically necessary and due to his illness, the presence of his

little Dog is medically necessary." The document contained hearsay evidence to which counsel for Respondents did not raise an objection and is, thus, accepted by the undersigned. This document was dated after the date Mr. Loveland received his second notice regarding failure to correct and the filing of the complaint for eviction.

17. As to Ms. Parah, Tracey E. Smithey, M.D., East Pasco Medical Group, reported her medical conclusion stating in part that: "Linda Parah, was seen in my office on 11-20-03, 01-19-04 and today (April 8, 2004). She had been diagnosed with Bipolar Disorder, Depressed type. She is prescribed Paxi, Xanax, and Ambien. She has been referred for psychotherapy also." Dr. Smithey did not include in her written document that Ms. Parah had to have a dog for her condition. Dr. Smithey, as had Dr. Nystrom, signed the document. The document contained hearsay evidence to which counsel for Respondents did not raise an objection and is, thus, accepted by the undersigned.

18. Had Petitioners made their request for reasonable accommodations and presented their medical reports, evidencing their medical conditions and limitations, to include the need of Mr. Loveland for his comfort dog, to Respondents on or before June 24, 2004, or even as late as on or about November 18, 2004, Petitioners would have, arguably, established the requisite basis for finding of a request for reasonable accommodation.

There is, however, insufficient evidence of record to support a finding that Petitioners, Mr. Loveland nor Ms. Parah, made a reasonable accommodation request to Respondents for the housing of the comfort dog for Mr. Loveland. The sequence of dated events and documented evidence is an inference that after receiving the notice to vacate for the two alleged rule violation(s), Petitioners did not make a request for reasonable accommodation to management for Mr. Loveland's dog, but rather offered to provide medical support of Mr. Loveland's need for a comfort dog should Respondents request such proof. Respondents were under no duty or obligation to do so and did not make such a request.[3]

19. Petitioners failed to establish that either Mr. Loveland or Ms. Parah: (1) made a request for reasonable accommodation based upon the demonstrated disability of Mr. Loveland; (2) the animal in question was a medically required service (comfort dog) animal for Mr. Loveland; (3) the requested accommodation was necessary to permit full enjoyment by Mr. Loveland of the rental premises; and (4) thereafter, management denied their reasonable accommodation request for Mr. Loveland.

20. In short, and based upon the findings of fact herein, Respondent did not unlawfully discriminate against Petitioners; rather, management terminated Petitioners' tenancy for

legitimate, nondiscriminatory reasons, to wit: off-road driving of a golf cart and unapproved dog within the rental unit in violation of park rules and regulations after written notice to correct the noted violations.

Management's Counsel's Motion for Attorney's Fees and Costs

21. There is not a scintilla of evidence to substantiate a finding that Petitioner, Mr. Loveland, who did not testify, knew or should have known that his claim and defense presented during this proceeding was not supported by material facts. Likewise, Respondent made no query of Ms. Parah (referred to in the eviction complaint as "unnamed tenant") that elicited statements or acknowledgements from which reasonable inference could be drawn to demonstrate that within the situational circumstances Ms. Parah knew or should have known the claim herein made was not supported by material facts.[4]

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction of the parties to and the subject matter of this proceeding. §§ 120.569, 120.57(1), 760.20, and 760.35(3)(b), Fla. Stat. (2005).

23. Under Florida's Fair Housing Act (Act), Sections 760.20 through 760.37, Florida Statutes, it is unlawful to discriminate in the sale or rental of housing. Among other prohibited practices:

> (1) It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.
>
> * * *
>
> (7) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:
> (a) That buyer or renter;
> (b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
> (c) Any person associated with the buyer or renter.

§ 760.23(1) and (7), Fla. Stat.

24. For purposes of Subsection (7) above, the term "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.

§ 760.23(9), Fla. Stat.

25. In the instant case, Petitioners have alleged, in effect, that Hillside's management discriminated against them by declining to make a reasonable accommodation with respect to Ms. Parah's service dog.

26. In cases involving a claim of rental housing discrimination on the basis of handicap, such as this one, the complainant has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. A prima facie showing of rental housing discrimination can be made by establishing that the complainant applied to rent an available unit for which he or she was qualified, the application was rejected, and, at the time of such rejection, the complainant was a member of a class protected by the Act. See Soules v. U.S. Dept. of Housing and Urban Development, 967 F.2d 817, 822 (2d Cir. 1992).[5] Failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1012 n.6 (Fla. 1st DCA), aff'd, 679 So. 2d 1183 (1996)(citing Arnold v. Burger Queen Systems, 509 So. 2d 958 (Fla. 2d DCA 1987)).

27. If, however, the complainant sufficiently establishes a prima facie case, the burden then shifts to the respondent to articulate some legitimate, nondiscriminatory reason for its action. If the respondent satisfies this burden, then the complainant must establish by a preponderance of the evidence

that the reason asserted by the respondent is, in fact, merely a pretext for discrimination. See Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc., 3 F.3d 1472, 1476 n.6 (11th Cir. 1993), cert. denied, 513 U.S. 808, 115 S. Ct. 56, 130 L. Ed. 2d 15 (1994)("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)."); Secretary, U.S. Dept. 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].").

28. In this case, Petitioners failed to make a prima facie showing of discrimination. Although Ms. Parah has some medical issues and Mr. Loveland is handicapped and, thus, protected by the Act, Ms. Parah never made a direct request or written application to management requesting accommodation for her comfort dog. Ms. Parah's testimony established that after receiving notice of eviction she wrote management, not requesting accommodation for her comfort dog, but rather offering to supply medical support of her need for a comfort dog should management require. Petitioners were tenants who, in the

recent past, violated park rules found in the Prospectus and the Rules and Regulations of Hillside, given them by management when their application was approved and before they moved into the mobile home park, by the failure of Mr. Loveland to cease and desist from driving his golf cart around and between mobile homes after written warning from management.

29. But even if Petitioners had made a prima facie showing of discrimination, management satisfied its burden to articulate a legitimate, nondiscriminatory reason for evicting Mr. Loveland and Ms. Parah, namely, the repeated violation of the park's rules and regulations after written warning and notice to correct. Petitioners failed to present persuasive evidence that their eviction was merely a pretext for discrimination by the denial of accommodation for Ms. Parah's comfort dog, a request that was, in fact, not made to management before receiving notice to vacate for violation of park rules.

Attorney's Fees and Costs

30. Counsel for Respondents, in his response to the Administrative Compliant filed herein, included a claim for attorney's fees and costs pursuant to Section 57.105, Florida Statutes, which provides:

> (a) The provisions of this subsection are supplemental to, and do not abrogate, other provisions allowing the award of fees or costs in administrative proceedings.

(b) The final order in a proceeding pursuant to s. 120.57(1) shall award reasonable costs and a reasonable attorney's fee to the prevailing party only where the no prevailing adverse party has been determined by the administrative law judge to have participated in the proceeding for an improper purpose.

(c) In proceedings pursuant to s. 120.57(1), and upon motion, the administrative law judge shall determine whether any party participated in the proceeding for an improper purpose as defined by this subsection. In making such determination, the administrative law judge shall consider whether the no prevailing adverse party has participated in two or more other such proceedings involving the same prevailing party and the same project as an adverse party and in which such two or more proceedings the no prevailing adverse party did not establish either the factual or legal merits of its position, and shall consider whether the factual or legal position asserted in the instant proceeding would have been cognizable in the previous proceedings. In such event, it shall be rebuttably presumed that the no prevailing adverse party participated in the pending proceeding for an improper purpose.

(d) In any proceeding in which the administrative law judge determines that a party participated in the proceeding for an improper purpose, the recommended order shall so designate and shall determine the award of costs and attorney's fees.

(e) For the purpose of this subsection:

1. "Improper purpose" means participation in a proceeding pursuant to s. 120.57(1) primarily to harass or to cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation, licensing, or securing the approval of an activity.

> 2. "Costs" has the same meaning as the costs allowed in civil actions in this state as provided in chapter 57.
>
> 3. "No prevailing adverse party" means a party that has failed to have substantially changed the outcome of the proposed or final agency action which is the subject of a proceeding. In the event that a proceeding results in any substantial modification or condition intended to resolve the matters raised in a party's petition, it shall be determined that the party having raised the issue addressed is not a no prevailing adverse party. The recommended order shall state whether the change is substantial for purposes of this subsection. In no event shall the term "no prevailing party" or "prevailing party" be deemed to include any party that has intervened in a previously existing proceeding to support the position of an agency.

31. The burden to show that sanctions should be imposed under Subsection 120.57(1), Florida Statutes, is on the moving party. See Friends of Nassau County, 752 So. 2d at 52. Under the circumstances of this case, that burden has not been met. Based upon counselor's reasonable inquiry of Ms. Parah during this proceeding, it cannot be concluded that Ms. Parah or Mr. Loveland (of whom no inquiry was made) filed their Administrative Complaint for improper or frivolous purposes, primarily to harass Respondents. In accordance with the above statutory restriction, the threshold issue is whether this record reflects evidence that Petitioners, non-prevailing party(s), participated in this proceeding for an improper purpose. "Improper purpose" means primarily to harass or to

cause unnecessary delay or for frivolous purpose or to needlessly increase the cost of litigation. Attorney's fees and costs incurred during the course of the eviction proceeding in Pasco County Court were independently accrued separate and apart from the Administrative Complaint filed in this proceeding.

32. As stated above, there is not a scintilla of evidence to substantiate a finding of fact that Petitioners, Ms. Parah and Mr. Loveland, who did not testify, knew or should have known their claim was not substantiated by material facts. Respondents made no query of Petitioners, and Ms. Parah made no statement or acknowledgement from which a reasonable inference could be drawn to demonstrate she knew or should have known their claim was not supported by material facts. Accordingly, for the want of evidence in support of the motion, Respondents' counsel's motion for attorney's fees and costs, pursuant to Section 57.105, Florida Statutes, is denied.

RECOMMENDATION

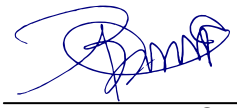
Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that the Commission enter a final order:

(1) Dismissing Petitioners', Linda Parah and Andrew Loveland's, Petition for Relief; and

(2) Denying Respondents' counsel's motion for an award of attorney's fees and costs.

DONE AND ENTERED this 16th day of March, 2006, in Tallahassee, Leon County, Florida.



FRED L. BUCKINE
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of March, 2006.

ENDNOTES

1/ All references are to Florida Statutes 2004, unless otherwise specified.

2/ The circumstances surrounding the county court eviction proceedings are unclear. It is clear that Petitioners' documentary evidence regarding their respective medical conditions was dated after the Pasco County Court entered the Order of Eviction.

3/ This eviction action was filed against Petitioners on or about February 25, 2005. Eviction--Matter styled Hillside Mobile Home Park, Inc. vs. Andrew Loveland and Unknown Tenant, if any, Case No. 51-2005CC-547(ES). This one-count eviction complaint alleged: (A) October 21, 2004, 7-day notice to cure, i.e. "driving your golf cart behind and between mobiles," and (B) November 5, 2004, 7-day notice to cure, i.e. "A. You have a dog and dogs are not allowed in the park."

4/ Counsel for Respondent and co-owner of Hillside Mobile Home Park, Inc., pursuant to Section 723.068, Florida Statutes (2005), filed his Motion for Award of Attorney Fees and Costs for 12.8 hours devoted at $225.00 per hour for a total of $2,880.00 fees and $282.00 cost in the Pasco County eviction

proceeding and not in the Chapter 120, Administrative proceeding. Counsel offered no evidence in this Section 120.57, Florida Statutes, fact-findings proceeding reflecting Pasco County Court's ruling on his Motion for Fees and Cost. Counsel's Motion for Attorney Fees and Costs against Petitioners was filed pursuant to Section 57.105, Florida Statutes. The burden to show that sanctions should be imposed under Section 120.57, Florida Statutes, is upon the party seeking the attorney award. Counsel offered no evidence in support of his motion, and the motion is denied.

5/ Alternatively, complaints' burden may be satisfied with direct evidence of discriminatory intent. See Tans World Airlines, Inc. v. Thurston, 105 S. Ct. 613, 621 (1985)("[T]he McDonnel Douglas test is inapplicable were the plaintiffs direct evidence of discrimination" inasmuch as "[t]he shifting burdens of proof set forth in McDonnel Douglas are designed to assure that the 'plaintiff [has] his day in court despite the unavailability of direct evidence.'").

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.