STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PEGGY SYMONS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 10-3393
	)	
GRANDEVILLE ON SAXON, LTD., CAROL WERBLO, AND CAMBRIDGE MGMT. SERVICES, INC.,	)	
	)	
Respondents.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held before Diane Cleavinger, an Administrative Law Judge of the Division of Administrative Hearings, on October 31, and November 1 and 2, 2011, in Daytona Beach, Florida.

APPEARANCES

For Petitioner: Peggy Symons, pro se
1410 Chris Avenue
Deland, Florida 32724

For Respondent: David D. Eastman, Esquire
Carol S. Grondzik, Esquire
Lutz, Bobo, Telfair, Eastman, Gabel & Lee
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STATEMENT OF THE ISSUE

Whether Petitioner has been the subject of discrimination in housing due to a handicap.

PRELIMINARY STATEMENT

Around December 21, 2009, Petitioner, Peggy Symons (Petitioner), through the United States Department of Housing and Urban Development, filed an Amended Housing Discrimination Complaint with the Florida Commission on Human Relations (FCHR) alleging that Respondents, GrandeVille on Saxon, Ltd., Cambridge Management Services, Inc., and Carol Werblo committed a discriminatory housing practice against her. Specifically, the Complaint alleged that Respondents discriminated against Petitioner by refusing to rent an apartment and or misrepresenting the availability of an apartment to the Petitioner due to her mental handicap.

FCHR investigated Petitioner's Complaint. On February 17, 2010, FCHR issued its Notice of Determination and found that there was reasonable cause to believe that Respondents discriminated against Petitioner in violation of section 760.23(8), Florida Statutes, and 42 U.S.C. section 3605(f)(2). The Notice also advised Petitioner of her right to a formal administrative hearing.

Thereafter, FCHR, on Petitioner's behalf, attempted to conciliate Petitioner's Complaint. On June 18, 2010, FCHR filed a Notice of Failure of Conciliation and again advised Petitioner of her right to have FCHR file a Petition for Relief and seek a

formal administrative hearing on her Amended Housing Discrimination Complaint.

Petitioner elected to file a Petition for Relief, and on June 21, 2010, FCHR filed a Petition for Relief on behalf of Petitioner. Essentially, the Petition was similar to the earlier Amended Housing Complaint of Discrimination. The Petition was referred to the Division of Administrative Hearings (DOAH) for a formal hearing. On July 26, 2010, due to irreconcilable differences between FCHR and Petitioner, FCHR's Motion to Withdraw from the proceeding was granted.

Prior to the hearing and contrary to clearly established law, FCHR instituted a policy to not provide an official means to preserve the testimony at the final hearing, either by sending a court reporter or a recording device with someone to operate it. See §120.57(1)(g), Fla. Stat.; Fla. Admin. Code R. 28-106.214. The parties were informed of the agency's policy to not provide an official means of preserving the testimony at the final hearing, and Respondents provided a court reporter.

At the hearing, Petitioner testified in her own behalf and presented the testimony of two witnesses. Additionally, Petitioner offered 12 exhibits into evidence, of which only Petitioner's Exhibits 1-11 were admitted into evidence. Petitioner's Exhibit 12 was marked for identification and was accepted as a proffer. Respondents presented the testimony of

two witnesses and offered 9 exhibits into evidence, of which Respondent's Exhibits 1-9 were admitted.

After the hearing, Petitioner filed a Proposed Recommended Order on November 30, 2011. Respondents filed a Proposed Recommended Order on November 28, 2011.

FINDINGS OF FACT

1. Petitioner is a 52-year-old female who has a mental disability which impairs her ability to manage her money and stay organized. She is unemployed and relies on Social Security and a special needs trust to support herself. Her sister, Katherine Newman, is the trustee of Petitioner's trust. However, Petitioner's outward presentation is of an intelligent, capable, and non-disabled person.

2. Until 2009, Petitioner, when not hospitalized, either lived with her mother or resided with another person. For a variety of reasons and with the concurrence of those involved in her care, in 2009, Petitioner, at around age 50, decided to attempt living by herself.

3. Respondent, GrandeVille on Saxon, Ltd. (GrandeVille), is the owner of GrandeVille on Saxon, a large apartment complex located at 741 Saxon Boulevard, Orange City, Florida. GrandeVille contracted with Respondent, Cambridge Management Services, Inc. (Cambridge), to manage the GrandeVille apartment complex.

4. During 2009 and 2010, Respondent, Carol Werblo, was an employee of Cambridge Management Services, Inc., and acted as a leasing agent for the GrandeVille apartment complex. In the past, she was recognized as the outstanding leasing agent for the GrandeVille apartment complex, as well as for all properties managed by Cambridge. She continues as a leasing agent for the apartment complex to date and has earned several Certificates of Achievement in Fair Housing Training over the years of her employment.

5. Indeed, all employees of Cambridge receive fair housing training upon employment. Thereafter, all employees receive annual fair housing training.

6. In 2009, GrandeVille required a prospective lessee to submit a completed application, and pay $299.00 in application, administrative and reservation fees (collectively the "application fees"). GrandeVille would not reserve an apartment or enter into a lease with a prospective lessee without a completed application and payment of all application fees. Additionally, GrandeVille required all applicants to be screened for rental history or mortgage payment history, employment history, credit history, and criminal background prior to approval of the application.

7. After approval of an application, the prospective lessee may enter into a Reservation Agreement with GrandeVille

to reserve a specific apartment within the complex and establish an anticipated move-in date. The Reservation Agreement identified the applicant's future address, as well as, provided information concerning utilities, services and move-in procedures. The Reservation Agreement also notified prospective lessees that they were required to secure electric service and renter's insurance before signing a lease and moving in. Additionally, the Reservation Agreement required an appointment prior to a lessee taking possession of an apartment in order to execute a formal lease agreement.

8. In general, the application process at the GrandeVille apartment complex could take anywhere from a day to a longer period of time to complete, depending on the day and time the application is given to the facility. Importantly, applications could not generally be approved over a weekend since the person with authority for such approval did not generally work over the weekend and some of the screening process could not be completed. If there was an emergency housing situation over a weekend, the person responsible for application approval could be called by telephone to review the application, if they were available. However, the evidence did not demonstrate any housing emergency during the time period relevant to this action since Petitioner always had places she could live supplied by either family or friends available to her.

9. Cambridge manages the inventory of apartment units at the GrandeVille complex by use of “availability reports” that are computer generated and printed daily. Leasing agents at the complex use the reports to locate apartments that can be shown and are available to rent.

10. The availability reports list the apartment complex's inventory by floor, apartment number, number of bedrooms, type, and availability to rent. The number of bedrooms an apartment has is represented by a letter, with "A" designating a one bedroom apartment. The type of an apartment is, also, represented by a letter, with "I" designating an apartment with a glassed-in area known as an imagination room and "S" designating an apartment with a screened-in lanai. Additionally, the availability reports separate apartments into various categories. The categories under which apartments are separated are 1) vacant, not leased, and ready to show; 2) vacant, not leased, not ready to show; 3) occupied, but have received notices to vacate and are not leased; 4) occupied, but have received notices to vacate and are leased; and 5) vacant, still under lease, but ready to show. Since the apartments in categories three and four are still occupied, they cannot be shown to prospective tenants and are not available to lease. Apartments in category two cannot be shown to prospective tenants because they are not ready to show since, necessary

repairs, painting, replacement and maintenance have not been completed after their occupants moved out. These units are not available for immediate occupancy and repairs are highly dependent on the workload and schedule of maintenance personnel or subcontractors. Units in categories one and five may be shown to prospective tenants and are available to lease, subject to the apartments lease status. Importantly, only apartments in category one are available for immediate or near immediate occupancy if a prospective lessee first applies, reserves, and pays all of the application fees.

11. Around January 9, 2009, Petitioner was looking for a one-bedroom apartment. She saw an advertisement in a local rental magazine for the GrandeVille apartment complex.

12. On January 9, 2009, she visited the complex. During this visit she was shown two one-bedroom apartments by Respondent Carol Werblo. Ms. Werblo followed her standard process in showing apartments to a prospective lessee. One apartment shown to Petitioner had an imagination room. According to the availability reports for that day, the apartment which Petitioner viewed was apartment 10118. The apartment was under a current lease but could be shown since it was vacant. Occupancy was subject to the terms of its current lease. The other apartment shown to Petitioner had a screened-in lanai. According to the availability reports for that day,

the lanai apartment which Petitioner viewed was either apartment 10217 or 10219. Apartment 10217 was vacant and could be leased and occupied. Apartment 10219 was under a current lease, but could be shown since it was vacant. Occupancy of 10219 was subject to the terms of its current lease.

13. Upon seeing the two apartments, Petitioner fell in love with the imagination room apartment. She told Ms. Werblo that she wanted to rent the apartment she had seen. In fact, Petitioner was only interested in renting a one bedroom, imagination room apartment. She was not interested in renting any other type of apartment.

14. Following the viewing, Ms. Werblo again followed her usual procedure and discussed the application and leasing process and the rents charged by GrandeVille with Petitioner. Petitioner, per standard practice, was also provided a rate sheet showing market rent for the various apartments. Handwritten on the sheet were reduced rent rates for the one-bedroom and two-bedroom apartments based upon rent promotions or specials that were available on January 9, 2009. These promotions are limited in time and often change depending on apartment availability. The promotional rates can only be locked in by reserving an apartment while they are in effect and are one reason for reserving an apartment early in the application process.

15. The evidence was unclear and did not establish that Petitioner told Ms. Werblo that she was disabled or handicapped or, if she did, the nature of that disability or handicap. Petitioner did advise Petitioner that she wanted to talk to her sister, Katherine Newman, about leasing the apartment and that her sister handled her money. The evidence was again unclear and did not establish that Petitioner told Ms. Werblo that she had a trust that supplied her income or that her sister was the trustee of that trust. The evidence was clear that, even after discussing the application and leasing process with Ms. Werblo, Petitioner did not complete an application or pay any application fees on January 9, 2009, so that an application could be processed and, if approved, an apartment reserved for her. Therefore, she did not apply for a lease or reserve any apartment on that day and Respondents were not obligated to hold an apartment for her.

16. Additionally, there was no evidence introduced at the hearing as to any specific threshold requirements that a prospective lessee must meet. Petitioner's ability, at substantially later times, to qualify to rent an apartment at another apartment complex or obtain a mortgage on her mother's home does not establish that Petitioner met Respondents' requirements in January of 2009. Given this lack of evidence, it cannot be concluded that Petitioner met Respondents'

screening requirements and Petitioner has, therefore, failed to establish that she was qualified to lease an apartment from GrandeVille.

17. There was also no evidence that Petitioner may not have fully understood the application and leasing process. Indeed, Petitioner admitted that she did not fill out an application or pay the application fees because she felt such financial matters were her sister's area of responsibility. Even if Petitioner did not understand the application process, there was no evidence that Respondents could or should have known about Petitioner's lack of understanding. Given these facts, there was no evidence that any of the Respondents discriminated against Petitioner during her visit to the apartment complex on January 9, 2009.

18. As stated above, Petitioner decided she wanted to rent the imagination room apartment and told her family and friends she was going to move into this apartment even though she did not know or have an apartment number. Petitioner told Ms. Newman about the apartment and the amount of rent under the rent promotion. She asked her sister to contact the apartment complex so that she could rent the apartment.

19. As indicated, Ms. Newman is the sister of Petitioner and is the trustee of her special needs trust. She is a licensed Certified Public Accountant in Florida. She often

advises Petitioner on financial matters. She perceives her duty as trustee to conserve the funds and make sure dollars are not spent unwisely. As such, she was in favor of Petitioner's living independently, but was reticent about the amount of rent and expenses such independent living would entail. Ms. Newman felt the promotional rent was somewhat high for the area. However, she did feel the apartment complex met Petitioner's need for a secure living environment.

20. On January 14, 2009, Ms. Newman telephoned the GrandeVille complex to inquire about one-bedroom apartments and to negotiate a better deal for Petitioner. She spoke with Carol Werblo. The conversation took about 10 or 15 minutes. Ms. Newman told Ms. Werblo that she handled Petitioner's financial affairs and that rent would be paid from a special needs trust. The evidence was unclear and did not establish that she advised Ms. Werblo that her sister was disabled or the nature of the disability. However, the evidence did establish that Ms. Newman thought the rent at the apartment complex was too high and communicated that belief to Ms. Werblo. Her position about the rent also made her less than pro-active in assisting her sister in going through the application and leasing process. Ms. Newman did attempt to negotiate a lower rate. The negotiation was unsuccessful. She knew Petitioner had "terrible credit" and correctly believed Petitioner could

not pass the application screening process for renting an apartment without providing financial information about her trust. Ms. Newman did not provide any documentation to Respondents about the trust that would have supported any potential application for Petitioner. She did not complete an application to lease the apartment for her sister because her sister was legally capable of completing the application herself. However, she did not ascertain any of the steps that Petitioner needed to take to apply, reserve, or lease an imagination room apartment. She did not pay any application fees and did not transfer any funds to either Petitioner or GrandeVille to cover the application fees or monthly rental amount. Indeed, there was no credible evidence introduced at hearing that either Petitioner or Ms. Newman had demonstrated to Respondents that Petitioner had the financial capability to rent an apartment. In fact, there was no evidence that any of the Respondents discriminated against Petitioner on January 14, 2009, since neither Ms. Newman nor Petitioner provided any financial documentation to Respondents or otherwise completed any of the steps necessary to reserve or lease an apartment at the GrandeVille complex. Additionally, given this lack of evidence and since the only significant contact Ms. Werblo had with Petitioner or her sister occurred on January 9 and 14,

2009, the charges of discrimination against Ms. Werblo should be dismissed.

21. In the interim, Petitioner mistakenly believed the imagination room apartment was hers for leasing at the rent she had discussed with Ms. Werblo on January 9, 2009. Since her visit she had bought furnishings for the apartment. In an e-mail to Ms. Newman dated January 28, 2009, Petitioner stated, "I want to sign a lease the first week of February." In a January 30, 2009, e-mail, Petitioner told Ms. Newman she had obtained a telephone number for the apartment and was "going to the apartments to get lease papers and look one more time at the apt." Petitioner was excited and looking forward to living on her own. Interestingly, Ms. Newman never informed Petitioner that she had not completed any steps necessary to financially enable Petitioner to apply for or reserve the imagination room apartment. At best, it appears both Petitioner and her sister wrongly assumed the other had performed or completed the rental process required by Respondents for all prospective lessees.

22. Sometime between January 29, 2009, and January 31, 2009, Emily Tyler completed an application, and was approved to lease apartment 10219. The apartment was one of the two apartments Petitioner had looked at on January 9, 2009. It was the last lanai-style apartment on either the first or second floor of the apartment complex where Petitioner was interested

in renting. After approval, Ms. Tyler reserved the apartment and paid all of the required application fees on January 30 or 31, 2009. Given this transaction and according to the availability reports, there were no imagination room-style apartments on the first or second floor available for leasing on January 31, 2009. There was one lanai-style apartment on the third floor. However, Petitioner was not interested in leasing a lanai apartment or leasing an apartment on the third floor.

23. After the second floor unit was reserved by Ms. Tyler, Petitioner, on Saturday, January 31, 2009, returned to the GrandeVille apartment complex to sign a lease and rent the one-bedroom imagination apartment she had viewed. Petitioner assumed the apartment she wanted would be ready for her when she visited the apartment complex. Indeed, she had arranged for family and friends to help her move in that weekend. Upon entering the building, Petitioner asked the leasing agent, Patrick Smith, who was a young college student, for "the lease documents" so that she could sign the lease to rent the apartment on that day. Mr. Smith was not familiar with Petitioner and met her for the first time on that day. She did not speak with Ms. Werblo who was busy with other clients. However, no application had been submitted, no application fee had been paid, no application screening had been done, no lease had been prepared for her, and no move-in date was scheduled for

Petitioner. Additionally, the person who could approve an application was not present at the complex since the weekend was her scheduled time off and she would not return to work until Monday. Additionally, Petitioner did not have any means to pay the required application fees of $299.00 with her and did not offer to pay the application fees. Given these facts, Petitioner has failed to demonstrate that she was qualified to lease an apartment from GrandeVille on January 31, 2009, and has failed to demonstrate that Respondents discriminated against her by not leasing her the apartment she had viewed.

24. Mr. Smith told Petitioner that the only one-bedroom unit available that could be rented by Petitioner for immediate or near immediate occupancy on January 31, 2009, was a third-floor screened lanai unit. Mr. Smith offered to show Petitioner the third-floor lanai unit. He also checked and printed out the apartment complex's availability report which showed only one one-bedroom lanai apartment available and ready to rent on January 31, 2009. Petitioner became upset. She was not interested in the lanai apartment and so informed Mr. Smith. She told Mr. Smith that she only wanted to rent the imagination room apartment that she had been shown and she wanted to move in over that weekend. Petitioner testified that Mr. Smith indicated, based on the availability report for January 31, 2009, that the apartment she had seen was not available and

ready to rent that day and further the only one-bedroom apartment available to rent that day was the third-floor lanai apartment, not an imagination room apartment. The statement was accurate since no apartment of the type and location Petitioner was interested in was available for immediate occupancy over the weekend. Mr. Smith could not give Petitioner a lease since she had not completed the required application process. He tried to explain to Petitioner that she must qualify to lease an apartment by first completing an application. Moreover, there were no units available for occupancy over the weekend that met Petitioner's style and location criteria.

25. After talking with Mr. Smith, Petitioner became confused and did not know what to do. She stepped outside the building and telephoned Ms. Newman. She returned to the lobby of the GrandeVille complex, asserted the leasing agent knew she was disabled, demanded copies of the availability report, contested the truthfulness of the leasing agent’s information, and threatened to sue. She also demanded rent records for the apartment complex. At the time, Petitioner was not entitled to the private records of the apartment complex and was denied copies of these records.

26. Petitioner again telephoned Ms. Newman who suggested she was being discriminated against and told her to leave. Petitioner then left the premises.

27. The evidence did show that there were three apartments on January 31, 2009, that might have been made available to rent at a near future date. These apartments were 16213, 16214, and 16217. These apartments were vacant, but none were available to move in over the weekend of January 31, 2009, since all needed some sort of repair or maintenance since last occupied. In fact, the evidence indicated that none of the apartments was ready for occupancy until over a month later. The rent offers they were available at had not changed since January 9, 2009. However, at no time did Petitioner attempt to apply or reserve an apartment of the type she desired. She simply demanded to sign a lease on January 31, 2009, for a one-bedroom imagination room apartment on the first or second floor so that she could move in that weekend. No such apartments were immediately available to meet Petitioner's demands. Respondents did not misrepresent the availability of any apartments or information about its rent specials on January 31, 2009, and did not otherwise, discriminate against Petitioner. Additionally, Respondent never complied with Respondent's requirements to lease an apartment. Given these facts, the Petition for Relief should be dismissed.[1/]

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2011).

29. Section 760.23(1), Florida Statutes, provides as follows:

> (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.

30. As the complainant, Petitioner has the burden to establish by a preponderance of the evidence that Respondents violated the Federal and Florida Fair Housing Acts. § 760.34(5), Fla. Stat. (2011) and 42 U.S.C. 3605(f)(2). See also U.S. Dep't of Hous. & Urban Dev. v. Blackwell, 908 F. 2d 864 (11th Cir. 1990).

31. In this case, there is no direct evidence of discrimination against Petitioner based on her mental handicap. In the absence of such direct evidence of discrimination, the well-established, three-part burden of proof test developed in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), is used in analyzing cases brought under both the Florida and Federal Fair Housing Acts. Under that analysis, the Petitioner, first, has the burden of proving a prima facie case of discrimination

by a preponderance of the evidence. If the Petitioner sufficiently establishes a prima facie case, the burden of persuasion shifts to the Respondent to "articulate some legitimate, nondiscriminatory reason" for its action. If the Respondent satisfies this burden, the Petitioner has the opportunity to establish by a preponderance of the evidence that the legitimate reasons asserted by the Respondent are in fact mere pretext. Blackwell, 908 F.2d at 870 (quoting Pollitt v. Bramel, 669 F. Supp 172, 175 (S.D. Ohio 1987)). At all times, the ultimate burden of proof remains with the Petitioner to establish the alleged discrimination occurred.

32. To establish a prima facie case, Petitioner must show 1) she applied to rent an available unit for which she was qualified, 2) the application was rejected although housing remained available, and, 3) at the time of such rejection, the complainant was a member of a class protected by the Act. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Hill v. Seaboard Coast Line R.R., 885 F.2d. 804 (11th Cir. 1989); Selden Apartments v. U.S. Dep't of Hous. & Urban Dev., 785 F. 2d 152 (6th Cir. 1986) Martin v. Palm Beach Atlantic Ass'n, Inc., 696 So. 2d 919 (Fla. 4th DCA 1997); Walters v. Sterling Baldwin, B.A., Case No. 09-2805 (Fla. DOAH Sept. 28, 2009; FCHR Dec. 15, 2009) (citations omitted).

33. In this case, the parties stipulated, and Petitioner established, that she is handicapped. However, Petitioner did not establish that she was qualified to lease an apartment from GrandeVille because she did not complete the required application or pay the required application fees. Since no application was made, no application for rental of an apartment by Petitioner was rejected by Respondents. Additionally, the evidence did not show that she reserved the apartment she was interested in or that a similar apartment was available for occupancy over the weekend of January 31, 2009. Moreover, Respondents did not falsely deny the rental of an apartment to Petitioner on January 31, 2009, because no units of the type desired by Petitioner were available to rent at that time. Further, Petitioner never made a bona fide offer to rent. She never applied for an apartment prior to January 31, 2009, and never received approval or denial from the Respondents for her tenancy. She never took steps to qualify to lease at the GrandeVille complex. The fact that imagination room units could have been made available in the near future is of no consequence because Petitioner never applied to lease an apartment and was not denied the opportunity to complete such an application. Therefore, Petitioner has failed to establish a prima facie case of housing discrimination. Finally, since Petitioner failed to establish a prima facie case of housing discrimination, the

burden does not shift to Respondent to articulate a legitimate, nondiscriminatory reason for their actions. Texas Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248 (1981). Given these facts, Petitioner has failed to establish a prima facie case of housing discrimination, or otherwise establish that she was discriminated against by Respondents on the basis of her handicap. Therefore, the Petition for Relief should be dismissed.

RECOMMENDATION

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

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing Petitioner's Petition for Relief.

DONE AND ENTERED this 30th day of December, 2011, in Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of December, 2011.

ENDNOTES

[1/] There was some indication in the evidence that Petitioner's sister in California called the apartment complex sometime in early February 2009, pretending to be a potential lessee, to inquire about the availability of one bedroom apartments and was told they had some units available. There was also some indication in the evidence that Petitioner's elderly Mother visited the complex sometime in early February 2009, and was either shown some one-bedroom apartments or told some were available. Neither of the people testified at the hearing and the nature of these conversations is hearsay which was not corroborated by other evidence at the hearing. Moreover, none of this evidence was specific to the type or floor location of the apartments being inquired about or whether such apartments met Petitioner's type and location requirements.

Petitioner also complained that she endured a lengthy deposition during discovery in this action which caused a disruption in her medication regime. There was no record evidence that this deposition was overly long given Petitioner was the main witness in a three-day hearing. Respondents' engaging in legitimate discovery in an action brought by Petitioner does not constitute discrimination and was not investigated by FCHR.

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.