STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PIERRE AND EMMANUELLA WOOLLEY,	)	
	)	
Petitioners,	)	
	)	
vs.	)	Case No. 12-2030
	)	
STONEBROOK II HOA, INC.,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

On November 30, 2012, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Pierre Woolley, pro se
Emmanuella Woolley, pro se
2033 Northwest 178th Way
Pembroke Pines, Florida 33029

For Respondent: Margaret H. Mevers, Esquire
Teresita M. Perez, Esquire
Lydecker | Diaz
1221 Brickell Avenue, 19th Floor
Miami, Florida 33131

STATEMENT OF THE ISSUE

The issue is whether Respondent is guilty of committing a discriminatory housing practice against Petitioners, based on

their national origin, in violation of the Florida Fair Housing Act, sections 760.20-769.37, Florida Statutes.

PRELIMINARY STATEMENT

On February 28, 2012, Petitioners filed a housing complaint with the U. S. Department of Housing and Urban Development, which forwarded the complaint to the Florida Commission on Human Relations. On May 16, 2012, the Florida Commission on Human Relations conducted an investigation and, on May 16, 2012, issued a Notice of Determination of No Cause.

On June 11, 2012, Petitioners timely filed with the Florida Commission on Human Relations a Petition for Relief. The petition alleges that Respondent committed a discriminatory housing practice against Petitioners when it denied Petitioners an access card for the parking area on the ground that Petitioners are Haitian. Impliedly admitting that they had violated the bylaws or covenants governing their community association, Petitioners alleged that Respondent discriminated against them by denying them a parking access card, even though Respondent did not deny access cards to other, nonHaitian residents who had violated the same homeowner documents.

At the hearing, Petitioners called four witnesses and offered into evidence two exhibits: Petitioners Exhibits 1-2. Respondent called one witness and offered into evidence ten exhibits: Respondent Exhibits 1-10. All exhibits were admitted

into evidence. Petitioners Exhibit 1 is attached to the Petition for Relief. Petitioners Exhibit 2 is the Notice of Determination of No Cause by the Florida Commission of Human Relations, which the commission transmitted to the Division of Administrative Hearings with the initial file.

The court reporter filed the transcript on January 4, 2013. Respondent filed a proposed recommended order.

FINDINGS OF FACT

1. In 2006, Petitioners purchased the single-family detached residence located at 1360 Northeast 41st Place in Homestead, Florida. The home is located behind an access gate that requires a card to operate. The card is serviced by Respondent through its management company, The Continental Group.

2. Petitioners claim that Respondent's harassment forced them to move out of their home in October 2012. It is likely, though, that the timing of their relocation was influenced by a foreclosure judgment entered on March 7, 2012. The foreclosure judgment calculated interest on the unpaid mortgage note from September 1, 2008, suggesting that Petitioners had not made mortgage payments for the four years immediately preceding their moving out of the house.

3. Petitioners' residence is subject to a declaration of covenants and bylaws. Respondent and The Continental Group are

responsible for enforcing the provisions of these homeowner documents.

4. Petitioners have a long history of violations of the homeowner documents dating as far back as at least late 2008. A notice dated December 31, 2008, advised Petitioners of a noncompliant lease. Notices dated June 30 and December 15, 2009, advised Petitioners that their landscaping lacked mulch. Notices dated August 10 and 25, 2009, advised Petitioners of a vehicle blocking the sidewalk. A notice dated September 24, 2009, advised Petitioners of a driveway that required pressure-cleaning.

5. The notices became more numerous in 2010 and 2011. Claimed violations included an oil stain on the driveway, mildew on one or more exterior walls, and more landscaping issues, almost all of which involved shrubs that needed trimming. On occasion, the inspector cited the failure to trim dead branches or small amounts of grass growing between driveway pavers, but, mostly, she cited the failure to trim live vegetation.

6. The evidentiary record contains 18 citations for overgrown shrubs, even though the photographs that are part of the citations reveal only a conventional foundation planting under the front windows that at no time extends above the bottom of the window frame. There are seven citations for grassy driveway pavers, although only one photograph clearly reveals

any such grass--perhaps one linear foot of a few blades of grass wedged between a few pavers immediately in front of the garage door. A similar pattern of citations extended into 2012.

7. Petitioners do not ground their claim of discrimination of these violations, though. Respondent produced a thick written summation of citations and fines that it imposed on homeowners in 2011-12, and Petitioners do not stand out in this document. Respondent clearly enforced the homeowner documents closely, so all that can be gleaned from Petitioners' long citation history is that relations between Petitioners, on the one hand, and Respondent and The Continental Group, on the other hand, may have been strained at times.

8. In any event, the evidentiary record discloses that Petitioners were fined 17 times for untrimmed shrubs and 11 times for failing to remove the mildew from exterior walls. This record of fines is illustrative, not exhaustive. Petitioners believe they have been fined about $10,000. Regardless whether this figure is correct, Petitioners have been fined a substantial amount of money, but they have never paid any of these fines.

9. Petitioners also failed to stay current on their homeowner assessment and maintenance fees. By August 12, 2011, Petitioners overdue balance on these items totaled $1,145 plus

another $1,000 in costs in connection with filing a lien against their residence.

10. In mid-August 2011, Respondent sent a notice to all homeowners that their access cards would be deactivated, necessitating the reregistration of the vehicles and recoding of their cards. The notice warned that Respondent would recode only the cards of residents who were current with their maintenance fees.

11. Shortly after receiving this notice, Petitioners visited the management office to reregister their two vehicles and have The Continental Group recode their two access cards. Petitioners first met Ivan Arguello, who is an administrative assistant for The Continental Group.

12. Mr. Woolley presented his access card to Mr. Arguello, so he could recode it. Pursuant to Respondent's policy, Mr. Arguello checked Petitioners' account and found them delinquent, so, again pursuant to Respondent's policy, Mr. Arguello informed them that he could only activate one card, not both cards, unless they paid their balance in full or entered into a payment plan approved by Respondent or its attorney.

13. Mr. Woolley was irate and retrieved his card from Mr. Arguello. Mr. Woolley proceeded to address the issue with Mr. Arguello's supervisor, Mr. Gonzalez, who, at the time of the

hearing, no longer was employed with The Continental Group. Petitioners stepped into Mr. Gonzalez's office, which was near the desk occupied by Mr. Arguello. Mr. Woolley and Mr. Gonzalez became angry and argued loudly.

14. Although Mr. Woolley was aware that he could have obtained the recoding of one card, he was unwilling to accept this offer and instead left without the recoding of either card. All of the evidence offered by Petitioners' witnesses of the inconvenience posed by having no access card was entirely attributable to Mr. Woolley's decision not to accept the offer to recode one of his and his wife's two cards. At no time after this confrontation in the office did either Petitioner ever ask an employee of The Continental Group or Respondent to recode one of their access cards; Mr. Woolley merely retained an attorney to pursue the matter.

15. For their part, Mr. Gonzalez did not direct Mr. Arguello to recode one of Petitioners' cards, nor did Mr. Arguello choose to do so on his own. The policy of the management company or Respondent was to require that the resident produce the card to be recoded, and Mr. Woolley had done that when he had handed his card to Mr. Arguello. Although Mr. Woolley left with his card, the actual recoding required Mr. Arguello, who had noted the card number, only to enter some information on his computer.

16. Under Respondent's policy, Petitioners were entitled to the recoding of one of their cards. Under Mr. Arguello's personal policy, which he testified that he has applied to other loudly confrontational residents, he would not recode a card of a vocally abusive resident. When asked if the resident had to return to the office "contrite," Mr. Arguello answered: "No, no. They just have to come back not yelling." Tr. 57-58.

17. No evidence suggests that the failure of The Continental Group to recode the one card was due to discrimination based on national origin. Petitioners alleged that The Continental Group and Respondent selectively enforced these policies against Petitioners, but they produced absolutely no proof to support this claim, even as to Mr. Arguello's personal policy. At the time of the incident in the office, Petitioners had already incurred a number of unpaid fines and maintenance fees. When Mr. Woolley became irate at the prospect of being restricted to a single access card, despite his failure to meet all of his financial obligations to the community association, it is an easy inference that Mr. Gonzalez and Mr. Arguello found Mr. Woolley's attitude inappropriate and decided not go out of their way to help Mr. Woolley, such as by activating one of his cards, unless he asked again in a more civilized fashion.

18. Essentially, the only evidence of discrimination in this case is that Petitioners are Haitian, they did not get two access cards when they visited the management company's office, and The Continental Group did not complete the recoding of one of their cards after they left the office.

19. Respondent argues that none of the representatives of Respondent or The Continental Group knew that Petitioners are Haitian. Certainly, this is the testimony of these witnesses. Both petitioners are dark-complected and speak English with a French accent, but it is unnecessary to determine if these facts are sufficient to support an inference of a different national origin because two additional facts stand between Petitioners and a prima facie case.

20. First, even if The Continental Group employees knew that Petitioners are Haitian, there is no evidence of discrimination based on this place of origin. There is no evidence that Mr. Arguello or Mr. Gonzalez treated Petitioners differently from other residents who did not pay their fines and fees when it came to recoding access cards. This is true as to Respondent's policies and Mr. Arguello's personal policy.

21. Second, there is no proof of any harm to Petitioners that they did not cause to themselves. At any time, in a normal tone of voice, they could have obtained a single access card, but they chose not to do so.

22. If Mr. Arguello had not implemented his personal policy, Respondent perhaps could have proved that Petitioners commenced this proceeding for an improper purpose--namely, to harass Respondent. Respondent's policies restricting the availability of access cards based on whether residents were current on their obligations to the community association was written and disseminated among the residents. Thus, if Petitioners' claim of discrimination had been based exclusively on the implementation of these sensible, written policies, they might have exposed themselves to paying Respondent's reasonable attorneys' fees and costs.

23. However, Mr. Arguello's implementation of his personal policy--while understandable--raises a different issue in requiring the analysis of the intent and effect of another tier of decisionmaking by Respondent or, in this case, The Continental Group. Ultimately, as noted above, Mr. Arguello's implementation of his personal policy does not support a finding of a prima facie case of discrimination, but his policy's subjective standard makes the inference of an intent to harass on the part of Petitioners more difficult to make--to the point that such an inference cannot be made.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction. §§ 120.569, 120.57(1), and 760.35(3), Fla. Stat.

25. Section 760.23(2) prohibits discrimination on the basis of national origin, among other things, in the provision of services or facilities in connection with the sale or rental of a dwelling. This prohibition applies to post-acquisition discrimination. Savanna Club Worship Service, Inc. v. Savanna Club Homeowners' Ass'n, Inc., 456 F. Supp. 2d 1223 (S.D. Fla. 2005).

26. Petitioners have the burden of proving the material allegations by a preponderance of the evidence. §§ 760.34(5) and 120.57(1)(j), Fla. Stat.

27. Absent direct evidence or statistical evidence, Petitioners are left to prove by circumstantial evidence their claim of discrimination. Circumstantial evidence is best analyzed under the burden-shifting framework of McDonnell Douglas Corp. v. Green, 41 U.S. 792 (1973), in which Petitioners must show a prima facie case of discrimination. If they do, an inference of discrimination arises, which Respondent may rebut by showing a legitimate, nondiscriminatory reason for its acts and omissions. If Respondent does so, the burden shifts back to Petitioners to show that the proffered reason is pretextual for unlawful discrimination.

28. For the reasons set forth above, Petitioners have failed to prove a prima facie case of discrimination.

29. At the conclusion of the hearing, the Administrative Law Judge orally denied Respondent's Motion for Attorneys' Fees and Costs, which was filed on November 27, 2012. Section 120.595(1)(c) and (e), which was cited in the motion, requires the showing of an improper purpose--here, in the form of an intent to harass. For the reason set forth above, Respondent was unable to make the required showing.

RECOMMENDATION

It is

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

DONE AND ENTERED this 30th day of January, 2013, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
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 January, 2013.

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.