STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

INA LUDKA,

Petitioner,

vs. Case No. 13-3704

WINSTON TOWERS 600 CONDO ASSOCIATION, INC.,

Respondent.
_____/

RECOMMENDED ORDER

This case came before Administrative Law Judge Todd P. Resavage for final hearing on November 6, 2013, in Miami, Florida, and continued on December 16 through 17, 2013 (via video teleconference), and concluded on March 28, 2014 (via video teleconference).

APPEARANCES

For Petitioner: Ina Chambers Ludka, Pro se
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STATEMENT OF THE ISSUE

Whether Respondents committed the unlawful housing discrimination practices alleged in the Housing Discrimination Complaint filed with the Florida Commission on Human Relations ("FCHR") and, if so, what relief should Petitioner be granted.

PRELIMINARY STATEMENT

On February 22, 2013, Petitioner filed against Winston Towers 600 Condominium Associations, Inc. ("Association"), Winston Towers Board of Directors, Jorge Nunez, and Monica Zarante, a Housing Discrimination Complaint ("Complaint") with FCHR.[2/] The Complaint, in its entirety, is set forth below:

> Complainant Ina Ludka belongs to a class of persons whom the Act protects from unlawful discrimination because of her race and sex. Complainant owns a condominium unit located at 210-174th Street #0310 Sunny Isles Beach, FL 33160 Miami-Dade County under the rules and regulations of Winston Towers 600 Condominium Association, Inc.
>
> According to Complainant sometime in 2012 she was denied her right to participate on Association committees because of her race. Complainant also alleged she was denied access to the association financial records and records that related to a particular unit. Complainant alleged according to the association documents the requested records should be made available to all unit owners. Complainant made a request to review the records on July 30, 2012 and November 01, 2012. Complainant alleged on her first request was denied and after her second request she was made to pay for the documents that she wanted to view. Complainant alleged

> no other unit owner is required to pay for the requested documents.
>
> Complainant was given an appointment of November 15, 2012 at 9 am to come to the office and inspect the requested documents. Complainant alleged all the documents were not provided and when she requested the missing documents the Property Manager Monica Zerante became irate and called the police. In addition, Complainant alleged on multiple occasions her son was denied access to her home when he attempted to visit her. Complainant alleged the most recent denial of access in the community was on February 04, 2013. In addition, Complainant also alleged she was also denied access to the property, and her home and Respondents called the police on her when she attempted to let herself onto the property and into her home. Complainant believes Respondents have placed a lien on her home because of her race but have not placed liens on other similarly situated persons of another race.
>
> Complainant believes she was denied the right to view documents, given different terms and conditions, and she and her visitors were denied access in to the community because of their race, in violation of the Fair Housing Act.

On August 21, 2013, following the completion of its investigation of the Complaint, FCHR issued a Notice of Determination: No Cause.

Petitioner elected to pursue administrative remedies, timely filing a Petition for Relief with FCHR on September 19, 2013. Subsequently, on September 24, 2013, FCHR referred the matter to DOAH for further proceedings.

The final hearing was scheduled, and initially conducted, in Miami, Florida, on November 6, 2013. The hearing did not conclude on November 6, 2013, and, therefore, was continued on December 16 and 17, 2013. The hearing did not conclude on December 17, 2013, and was ultimately continued and concluded on March 28, 2014.[3/]

The final hearing Transcript was filed on May 8, 2014. The identity of the witnesses and exhibits and the rulings regarding each are as set forth in the Transcript. On May 15, 2014, Respondents filed a Motion for Extension of Time to File Proposed Order, and same was granted on May 19, 2014. On May 22, 2014, counsel for Petitioner filed a Notice of Appearance and a Motion for Extension of Time to File Proposed Order. On that same date, the undersigned issued an order granting Petitioner's motion and ordering that proposed recommended orders shall be submitted on or before June 2, 2014.

Petitioner timely filed her Proposed Recommended Order on June 2, 2014, which was considered in preparing this Recommended Order. On June 3, 2014, Respondent filed a Motion for Second Extension of Time to File Proposed Order. On that same date, the undersigned denied said motion. On June 5, 2014, Respondent filed a Motion for Reconsideration of Court Order Entered June 3, 2014. On that same date, the undersigned denied said motion. On June 6, 2014, Respondent filed a Motion to Accept Proposed Order

Reflecting Findings of Fact and Conclusions of Law. On June 6, 2014, the undersigned denied said motion.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time of the alleged violations.

FINDINGS OF FACT

1. Petitioner is an African-American female.

2. Petitioner is a "unit owner" of a condominium located at 210-174th Street #310, Sunny Isles Beach, Florida. Said unit is located in the Winston Towers 600 Condominium ("Condominium").

3. Respondent, the Association, is a Florida non-profit corporation and the entity responsible for the operation of the Condominium.

4. Respondent, Board of Directors, possesses the powers and duties necessary for the administration of the affairs of the Condominium. Pursuant to the Association By-Laws, the affairs of the Association are to be governed by a board of initially three, and not less than three, nor more than nine directors.

5. Respondent, Jorge Nunez, was the President of the Association's Board of Directors at all times material to the Complaint. During his tenure, Mr. Nunez was also the chairman of the financial committee.[4/]

6. Respondent, Monica Zarante, possesses a Florida Community Association Manager ("CAM") license and at all times material was the Association's manager.

Condominium Facilities and Services

7. Pursuant to the Condominium prospectus, the following facilities have been constructed in the Condominium, and form a part of the "common elements" of the Condominium and are to be used exclusively by the unit owners, their tenants, and guests: (a) clubroom and entertainment areas (billiard room, library, men's and women's card rooms, meeting room and kitchen, bicycle room, and large screen television room); (b) main lobby; (c) mail room; (d) laundry room and vending machine room; (e) association office; (f) four elevators; (g) recreational facilities (tennis court, recreation pavilion, men and women's health clubs, party room, and sun deck); (h) L-shaped swimming pool; (i) jogging trail; (j) two shuffleboard courts; and (k) an irregularly-shaped reflecting pool.

8. Pursuant to the Condominium prospectus, the following are the delineated utilities and services available to the Condominium: electricity, telephone service, waste disposal, domestic water supply, sanitary sewage, storm drainage, and master antenna service.

Association Committees

9. As noted above, Petitioner's Complaint alleges that, "sometime in 2012 she was denied her right to participate on Association committees because of her race."

10. Association By-Law 5.2 addresses committees and provides as follows:

> Committees. The Board of Directors may designate one or more committees which shall have the powers of the Board of Directors for the management of the affairs and business of the Association to the extent provided in the resolution designating such a committee. Any such committee shall consist of at least three members of the Association, at least one of whom shall be a Director. The committee or committees shall have such name or names as may be determined from time to time by the Board of Directors, and any such committee shall keep regular minutes of its proceedings and report the same to the Board of Directors as required. The foregoing powers shall be exercised by the Board of Directors or its contractor, manager or employees, subject only to approval by Unit Owners when such is specifically required.

11. Respondent Nunez credibly testified that the availability to participate on committees is open to all unit owners. If an owner wishes to be on a committee, he or she simply needs to communicate that desire to the particular committee chairperson. Mr. Nunez, at some point in time, was apparently the chairman of the financial committee.

12. In Petitioner's direct examination of Respondent Nunez, the following exchange occurred:

> Q. Okay. Did you say, "You sit at this table with us, never?"
>
> A. Never. I can't say that. I can't say "never." I cannot reject anybody to belong to any committee. I can't. It's impossible.
>
> Q. Okay.
>
> A. I like you, I don't like you, you want to be on the committee, you have a right to be on the committee.

13. Petitioner testified that she was denied access to the financial committee to which Mr. Nunez chaired. Petitioner failed, however, to present sufficient evidence for the undersigned to determine whether this alleged denial occurred during the time relevant to the allegations of Petitioner's Complaint. Even if relevant, outside of her bare assertion, which is not credited, Petitioner failed to present sufficient evidence to establish that she was ever denied the right to participate on any Association committee.

14. As a subset, Petitioner argues that she was denied "meaningful participation" on the committees, and thus, in condominium decision-making. In support of this contention, Petitioner references the testimony from Association Board Member Audrey Bekoff. In response to Petitioner's question of "why did the Petitioner point her finger at you?," Ms. Bekoff responded as follows:

> I haven't got the slightest idea. When you get angry, you pull your hair, you scream,

> you yell, you wipe the things off Monica's desk. You knock the things off. Everybody knows you on the Board. When you come into the meeting, everybody leaves.

15. Petitioner contends that the "refusal to allow her to participate arose from Respondents' extreme dislike for her, and this extreme dislike was likely based, at least in part, on her race." Petitioner's contention, however, is belied by the record evidence. Indeed, audio recordings of various Association meetings provide multiple examples of Petitioner's robust participation in a variety of condominium issues.

16. Assuming, arguendo, that Petitioner provided evidence to support the position that she is not well-liked, aside from her bald allegation, she failed to present any evidence of discriminatory animus in regards to Association committee participation.

Association Records

17. Petitioner claims she was denied access to the Association's financial records (in general) and records related to a particular condominium unit, Unit 2007, on the basis of her race. Petitioner alleges that the records requests were made on July 30, 2012, and November 1, 2012.

18. Monica Zerante testified that the Association's protocol for requesting records from the Association included submitting a request in writing, and, thereafter, the Association

provides a copy of the requested document or the requesting party may be given access to find the document. She further explained that the Association's policy is to charge 25 cents per copy; however, that charge is frequently waived.

19. Mr. Nunez provided the further detail that once the Association receives a records request, the Association has ten days to accommodate the request. Although the Association has established rules regarding the frequency and time of record inspections and copying, Mr. Nunez credibly testified that same were not enforced concerning Petitioner.

20. It is undisputed that on at least one occasion, while Petitioner was present in the Association's office for the purpose of inspecting/reviewing Association documents, a conflict arose between Petitioner and Monica Zerante such that Ms. Zerante requested law enforcement assistance.

21. In support of her contention that she was treated differently because of her race, Petitioner testified as follows:

> A. Okay. Mr. Nunez, while not on the Board, goes to the office and he gets a monthly statement of the Association operating budget on a monthly basis and he is entitled to that. I go and request the same thing and I'm told I have to pay for it. And if I object to paying for it, then the police is called.
>
> * * *

> Q. You have no evidence that Mr. Nunez, when he was off the Board, did not similarly have to pay for records, correct?
>
> A. I have seen with my eyes that he has not.
>
> Q. Well, you have no idea if he actually paid for those records separately, do you?
>
> A. I've never seen him pay for that.

22. Inconsistently, Petitioner subsequently testified that, at times, like Mr. Nunez, she was also provided documents free of charge.

23. Petitioner failed to present sufficient evidence to establish that any document that the Association was required to maintain (and not prohibited from disclosure) was not, in fact, provided or made available for inspection. Respondents' witnesses credibly testified that Petitioner had access to all available documents, and their testimony was buttressed by the record evidence. Furthermore, a review of the record reveals that Respondents' legal counsel, on multiple occasions, provided written responses to Petitioner's document requests.[5/]

24. Even if Petitioner had presented sufficient evidence to establish that she was denied access to the Association's records, Petitioner failed to present sufficient evidence to establish that any such denial was due to any discriminatory animus on the basis of her race.[6/]

Access to Property

A. Petitioner's Access

25. The original Condominium Rules and Regulations provided that, "[a]utomobiles belonging to residents must at all times bear the identifying garage sticker provided by the Association."

26. On July 27, 2011, Ms. Zarante, on behalf of the Condominium, authored a memorandum to all residents. The contents of the memorandum are as follows:

> DEAR RESIDENT, PLEASE BE INFORMED THAT AS OF TODAY, YOU MUST DISPLAY THE CAR BARCODE LABEL IN YOUR CARS AT ALL TIMES, WHILE COMING INTO THE BUILDING SO YOU CAN USE THE RESIDENT'S ENTRANCE GATE AND WHILE YOUR CAR IS PARKED IN YOUR ASSIGNED PARKING SPACE. ALSO, THE DRIVER SIDE OF THE CAR'S WINDSHIELD MUST DISPLAY THE WINSTON TOWERS LABEL SHOWING THE SPACE NUMBER. IN CASE YOU DO NOT HAVE THE BARCODE LABEL OR THE WINSTON TOWERS LABEL, PLEASE, STOP BY THE OFFICE IN ORDER TO GET THEM.
>
> IF YOU ALREADY HAVE THE CAR BARCODE LABEL DISPLAYED IN YOUR CAR, WE ASK YOU TO PLEASE REFRAIN FROM USING THE VISITOR'S GATE AND TO ALWAYS USE THE RESIDENT'S ENTRANCE GATE.

27. On that same date, Ms. Zarante, on behalf of the Condominium, authored a memorandum to the gate security personnel. Said memorandum set forth the same information as above, and further advised the gate personnel to advise residents without the requisite barcode and label to stop by the office to obtain the same. The memorandum further instructed the security personnel as follows:

> SHOULD THE RESIDENT WITH A CAR BARCODE LABEL ALREADY PLACED IN THE CAR STILL DECIDES [sic] TO USE THE VISITOR'S GATE, PLEASE TELL THEM THAT YOU WILL ONLY OPEN THAT TIME FOR THEM, THAT IN THE FUTURE THEY MUST USE THE RESIDENT'S ENTRANCE GATE AS YOU WILL NOT OPEN FOR THEM. SHOULD THEY HAVE ANY PROBLEM WITH THE BARCODE LABEL, PLEASE TELL THEM TO STOP BY THE OFFICE.

28. On September 8, 2011, the Board of Directors issued a memorandum to "Residents Using Visitor's Gate" entitled "FINAL NOTICE/RESIDENT BUILDING ACCESS." The memorandum advised the residents as follows:

> DEAR RESIDENT, PLEASE BE INFORMED THAT YOU MUST DISPLAY THE CAR BARCODE LABEL IN YOUR CARS AT ALL TIMES. YOU MUST USE THE CAR BARCODE LABEL AND USE THE RESIDENT'S ENTRANCE WHEN ENTERING OUR BUILDING.
>
> SHOULD YOU CONTINUE USING THE VISITOR'S GATE, WHICH IS FOR VISITORS AND DELIVERIES ONLY, YOU WILL NOT BE ADMITTED. AS AN OWNER/RESIDENT YOU WILL BE PERMITTED TO ENTER; HOWEVER, YOUR AUTOMOBILE WILL NOT.
>
> IF YOU LEAVE YOUR AUTOMOBILE IN THE VISITOR'S ENTRANCE THE POLICE WILL BE NOTIFIED AND YOUR AUTOMOBILE WILL BE TOWED.
>
> PLEASE, ABIDE BY THE RULES AND REGULATIONS TO AVOID FUTURE PROBLEMS.

29. The Condominium maintained regular office hours of 9:00 a.m. to 5:00 p.m. for residents to obtain the aforementioned barcode/label.

30. On or about September 14, 2011, Petitioner attempted to enter the Condominium using the visitors' gate. Despite being

advised of the barcode/label requirement and the admonition against using the visitors' gate, Petitioner had not acquired the barcode/label. After the security officer advised Petitioner that he was not permitted to open the visitors' gate for residents, Petitioner entered the security gate house and opened the gate herself.

31. As a result of her actions, law enforcement was called to the scene, and ultimately Petitioner gained access to the Condominium. Subsequently, as a result of Petitioner's actions, she was advised via correspondence that her actions were improper.[7/]

32. After obtaining the requisite barcode/label, there is no evidence that Petitioner experienced any further inconvenience regarding the gate.

33. The undersigned finds that Petitioner was not denied access to her property. The undersigned further finds that Petitioner presented no evidence that any inconvenience regarding the gate was due to her race.

B. Petitioner's Son

34. Visitors of unit owners were required to pay $2.00 to park in the guest parking lot. Unit owners, like Petitioner, for the convenience of their guests, were permitted to pre-pay for a guest if the guest was anticipated to arrive that day. Carlos Devesa, a security guard at the front gate, testified that a

special exception was made for Petitioner, wherein she was allowed to accept a deposit for her guests for a longer period of time.

35. Petitioner testified that on one occasion, a security guard, who is not an employee of the Condominium or the Association, delivered a package to Petitioner's son at the front gate. Petitioner extrapolates that benefit into a denial of access to her property:

> A. Security was trying to be nice by greeting him off the property with a package that was left on the property for him.
>
> Q. Okay. What evidence do you have that was based on race?
>
> A. In the case of my son, again, he was denied access to come to the property. It wasn't because of parking, so maybe you should have been asking security what was his motivation.
>
> Q. I'm asking you because you made the allegation.
>
> A. Well, I believe that he met him out at the street because he wanted to interfere with his right to come on the property.

36. The undersigned finds that Petitioner's son was not denied access to Petitioner's property. The undersigned further finds that Petitioner failed to present any evidence that Petitioner's son's access to Petitioner's property was denied due to her or his race.

Lien

37. Between the twelfth and fifteenth day of each month, the Association runs a "delinquency report." If it is determined that a unit owner or resident is delinquent (in maintenance fees, assessments, etc.) an initial letter is issued reminding of the delinquency. If the delinquency is not then satisfied, a thirty (30) day certified letter is issued. Thereafter, if the delinquency is not cured, the Association ceases to be involved and refers the matter to the Association's legal counsel for further handling.

38. It is undisputed that Petitioner became delinquent in maintenance fees. Following the above protocol, a lien was ultimately placed on Petitioner's unit. Thereafter, Petitioner satisfied the maintenance fees; however, she refused to pay the attorneys' fees associated with the legal process.

39. Petitioner contends that she was treated differently in the lien process due to her race. In support of her position, Petitioner believes that Unit 2007 was not subject to the same protocol. The evidence establishes that Unit 2007 was delinquent for a longer period of time than Petitioner's unit prior to being sent to the Association's counsel. Unlike Petitioner's unit, however, Unit 2007 was placed in foreclosure, and was ultimately sold through a foreclosure sale.

40. The undersigned finds that a lien was placed on Petitioner's unit. The undersigned finds that Petitioner presented no evidence to establish that the lien process was initiated due to her race.

CONCLUSIONS OF LAW

41. DOAH has jurisdiction over the parties to, and subject matter of, this proceeding pursuant to sections 125.69, 120.57(1), and 760.23(2), Florida Statutes.

42. Petitioner brought the Complaint pursuant to "Section 804 b or f of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988." Thus, the asserted claims fall under the Federal Fair Housing Act, 42 U.S.C. section 3604(b), and the Florida Fair Housing Act, section 760.23(2), Florida Statutes.[8/]

43. Section 3604(b) provides that it shall be 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, religion, sex, familial status, or national origin.

44. The United States Department of Housing and Urban Development ("HUD"), the agency tasked with implementing the FHA, has enacted regulations relating to section 3605. 24 C.F.R. section 100.65(a) provides that:

> It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or

> national origin, to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

45. 24 C.F.R. section 100.65(b) provides a nonexclusive list of the type of actions that are prohibited by subsection (a). Specifically, the regulation provides, in pertinent part, as follows:

> (b) Prohibited actions under this section include, but are not limited to:
>
> * * *
>
> (4) Limiting the use of privileges, services or facilities <u>associated with a dwelling</u> because of race, color, religion, sex, handicap, familial status, or national origin of an owner, tenant or a person associated with him or her.

24 C.F.R. § 100.65(b)(4)(emphasis added).

46. Petitioner's Complaint does not concern alleged discrimination against Petitioner relating to the transaction in which she acquired the ownership interest in the unit. Indeed, it is undisputed that Petitioner is the unit owner of condominium Unit 310 and has been the owner for many years.

47. Ostensibly, Petitioner's Complaint alleges discrimination regarding the privileges, services, or facilities associated with Unit 310 because of her race. In other words, Petitioner alleges post-acquisition discrimination.

48. In Savannah Club Worship Service, Inc. v. Savanna Club Homeowners' Association, Inc., 456 F. Supp. 2d 1223 (S.D. Fla. 2005), the court addressed the issue of whether a homeowners' association's rule that prohibited all religious activities in the association's common areas violated 42 U.S.C. section 3604(b). The court noted that "[a] majority of courts considering [the issue of what constitutes 'discrimination . . . in the provisions of services'] have found that section 3604(b) is limited to discrimination in the provision of services as they are connected to the acquisition or sale and rental of housing." Savanna Club, 456 F. Supp. 2d at 1228 (citations omitted). The court further noted that:

> Most of those same courts have interpreted this to mean that this provision is not applicable to post-acquisition discrimination in the provision of services, unless the discrimination somehow deprives a person of their housing. This definition has resulted in the conclusion that, if the challenged discriminatory activity occurs after a buyer has already purchased his or her home, and if such activity is not one which results in either an actual or constructive deprivation of that property, then such activity is not prohibited by the FHA.

Id. (citations omitted). The Savanna court, however, refused to create a "bright-line rule" that the FHA fails to reach any post-acquisition discrimination and that such an interpretation "certainly cannot apply to unique planned communities," and by

extension condominium unit owners, where some types of services are in fact "part and parcel with home ownership." Id. at 1229.

49. Citing 24 C.F.R. section 100.65, the Savanna court noted that this regulation prohibited actions under section 3604(b) to include limiting the use of privileges, services or facilities associated with a dwelling because of the protected class of an owner. Id. at 1230. This lent support to the court's conclusion that if an association member was completely denied access to a clubhouse or other common area because of their protected class, such denial would clearly be a deprivation of full use of the incidents of ownership actionable under the FHA. Id.

50. The Savanna court ultimately found that section 3604(b) can apply to some post-acquisition provision of services, in the planned community context, where there is a complete denial of services or access to such services that are an incident of ownership. Id. at 1231-32. Failing to find a complete denial of access to services connected to the dwelling, the court granted summary judgment for the defendant. Id.

51. The Seventh Circuit Court of Appeals has also grappled with the issue. Most recently, in Bloch v. Frischholz, 587 F.3d 771 (7th Cir. 2008), the plaintiffs alleged that a rule in the condominium association preventing the placement of "objects of any sort" on their doorposts, in particular the mezuzot——a

religious symbol——violated the FHA. The Bloch court first noted that the right to inhabit the premises is a privilege of sale, and a deprivation of that right by making the premises uninhabitable would violate section 3604(b). Id. at 779.

52. The Bloch court further acknowledged that the contractual connection by and between condominium unit owners and the board of directors distinguished the case:

> But the "privilege" to inhabit the condo is not the only aspect of § 3604(b) that this case implicates. The Blochs alleged discrimination by their condo association, an entity by which the Blochs agreed to be governed when they bought their units. This agreement, though contemplating future, post-sale governance by the Association, was nonetheless a term or condition of sale that brings this case within § 3604(b).

Id. at 779-780. Because the owners purchased their dwellings subject to the condition that the condominium association could enact rules restricting their rights in the future, the Bloch court held that "§ 3604(b) prohibits the Association from discriminating against the Blochs through its enforcement of the rules, even facially neutral rules." The Seventh Circuit cautioned, however, that section 3604(b) requires that the alleged conduct, however deplorable, must be linked to the terms, conditions, or privileges that accompanied or were related to the plaintiffs' purchase of their property. Id. at 780.

53. Unlike the plaintiffs in Savanna Club and Bloch, the undersigned does not construe Petitioner's Complaint as alleging the Association discriminated against her through its enforcement of a particular Association rule. Petitioner's claims of discrimination in the instant case are also not related to specific services (electricity, telephone service, waste disposal, domestic water supply, sanitary sewage, storm drainage, and master antenna service) or facilities (clubroom and entertainment areas, lobbies, association office, recreational facilities, pools, etc.) that are an incident of ownership.[9/] Moreover, Petitioner's Complaint does not allege discrimination tantamount to a constructive eviction. Even assuming, arguendo, that Petitioner's post-acquisition discrimination claims met the requirements of section 3604(b), Petitioner's claims fail for the reasons set forth below.

54. Petitioner has the burden of proving the material allegations of the Complaint by a preponderance of the evidence. §§ 760.34(5) and 120.57(1)(j), Fla. Stat.

55. "Discriminatory intent may be established through direct or indirect circumstantial evidence." Johnson v. Hamrick, 155 F. Supp. 2d 1355, 377 (N.D. Ga. 2001). Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to inference or presumption. Denny v. Cty. of Albany, 247 F.3d 1172, 1182 (11th Cir. 2001);

Holifield v. Reno, 15 F.3d 1555, 1561 (11th Cir. 1997). Courts have held that "only the most blatant remarks, whose intent could be nothing other than to discriminate," satisfy this definition. See Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1358-59 (11th Cir. 1999)(internal quotations omitted). Often, such evidence is unavailable, and in this case, no evidence presented by Petitioner meets this rigorous standard.

56. Absent direct evidence, Petitioner is left to prove by circumstantial evidence her claim of discrimination. Where a complainant attempts to prove intentional discrimination using circumstantial evidence, the burden-shifting framework of McDonnell Douglas Corp. v. Green, 41 U.S. 792 (1971), is applicable. Under this framework, Petitioner first bears the burden of establishing that the Respondents have engaged in discrimination. If Petitioner succeeds in making such a prima facie case, then the burden shifts to Respondents to establish a legitimate non-discriminatory reason for its action. If Respondents articulate such a reason, then the burden shifts back to Petitioner to show that the proffered reason is really pretext for unlawful discrimination. Id. If, however, the complainant fails to establish a prima facie case of discrimination, the matter ends. Ratliff v. State, 666 So. 2d 1008, 1012 n.6 (Fla. 1st DCA 1996); Nat'l Indus., Inc. v. Comm'n on Hum. Rel., 527 So. 2d 894 (Fla. 5th DCA 1998).

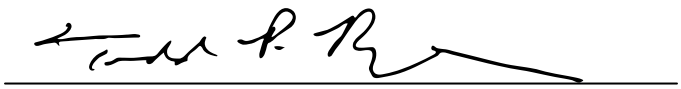
57. Adapted to the facts of this case, the standard requires Petitioner to establish: (1) that she is a member of a protected class; (2) that she has suffered an injury because of the alleged discrimination; and (3) that, based on her claimed classes of race and gender, she was denied the privileges, services or facilities protected by the FHA which were available to other condominium unit owners.

58. Petitioner has established that she is a member of a protected class, an African-American female. Petitioner's claims must fail, however, because Petitioner has failed to establish the second and third prong—that she has in fact suffered an injury or that she was denied the use or access of privileges, services, or facilities available to other condominium unit owners based upon her race or gender as contemplated by the FHA. Having failed to establish a prima facie case, the matter ends.

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 the Petition for Relief.

DONE AND ENTERED this 17th day of July, 2014, in Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of July, 2014.

ENDNOTES

[1/] Counsel for Respondent filed his Notice of Appearance on May 22, 2014, after the conclusion of the final hearing.

[2/] The Complaint does not individually name the board members.

[3/] By agreement of the parties, after November 6, 2013, the final hearing was conducted by video teleconference with sites in Tallahassee and Miami, Florida.

[4/] The record does not reveal when Mr. Nunez was the financial committee chairman.

[5/] The undersigned notes that section 718.111(12), Florida Statutes, sets forth a condominium association's obligation regarding official records, requests for records, the consequences for failure to provide records, and the appropriate avenue for redress.

[6/] Witness Anthony Shelter testified that sometime between 2007 and 2011, he overheard an argument between Petitioner and Audrey Bekoff, with two other unnamed individuals, in the Association's administrative office. During that argument, Mr. Shelter was in an adjacent room and thought he heard an individual use the "N" word. Mr. Shelter could not recall the particular time frame or

give an opinion on who uttered the "N" word. The underlying complaint in this case was not brought forward until February 22, 2013. At the final hearing, Respondents consistently raised the statute of limitations defense. Consequently, facts concerning events that occurred one year before February 22, 2013, are untimely and not considered by the undersigned. § 760.35, Fla. Stat.

[7/] Another resident who performed a similar action at the gate was also advised via correspondence that her actions were improper.

[8/] Under Florida law, discrimination covered under the Florida Fair Housing Act is the same discrimination as is prohibited under the Federal Fair Housing Act. Savanna Club Worship Service, Inc. v. Savanna Club Homeowners' Assn', Inc., 456 F. Supp. 2d 1223, 1224 n.1 (S.D. Fla. 2005). Although Petitioner references the equivalent of section 760.23(8) in her Complaint, as said section applies to handicapped individuals and as there is no allegation that Petitioner is handicapped, a claim under said section is not viable. Petitioner's proposed recommended order makes no argument pursuant to said section.

[9/] The undersigned would also construe maintenance as a "service."

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.