

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SAEID HASSANI,

Petitioner,

vs.

Case No. 13-4132

JACKSONVILLE HOUSING AUTHORITY,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 15-16, 2014, by video teleconference at sites in Tallahassee and Jacksonville, Florida, before E. Gary Early, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Saeid Hassani, pro se
8090 Atlantic Boulevard, Apartment A-34
Jacksonville, Florida 32211

For Respondent: Wendy L. Mummaw, Esquire
Ashley Benson, Esquire
City of Jacksonville
Office of General Counsel
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

STATEMENT OF THE ISSUE

Whether Petitioner was the subject of discriminatory housing practices based on his sex or his disability, in

violation of the Florida Fair Housing Act, chapter 760, Part II, Florida Statutes.

PRELIMINARY STATEMENT

On July 31, 2013, Petitioner, Saeid Hassani (Petitioner), then known as Steven Yari, signed a Housing Discrimination Complaint, which was thereupon served on the Florida Commission on Human Relations (FCHR). The complaint alleged that Respondent, Jacksonville Housing Authority (JHA), discriminated against Petitioner based on his sex and his disability. The basis for the claim of discrimination was that Marcie Montes, the JHA Housing Manager for the Centennial Tower housing complex at which Petitioner resided, engaged in a sexual relationship with Petitioner that constituted discrimination against Petitioner in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection therewith in violation of section 760.23(2) and (8), and that such conduct coerced, intimidated, threatened, or interfered with Petitioner in the exercise of his rights under the Fair Housing Act in violation of section 760.37.

An investigation of the complaint was made, resulting in the September 18, 2013, issuance of the FCHR's Notice of Determination of No Cause, which concluded that there was no reasonable cause to believe that a discriminatory housing practice had occurred.

Petitioner disagreed with the FCHR's determination, and on October 18, 2013, filed a Petition for Relief. The petition was forwarded to the Division of Administrative Hearings for a formal hearing. The final hearing was scheduled for December 16 and 17, 2013. The hearing was twice-continued, and reset for September 15 through 17, 2014.

During the period leading up to the final hearing, Petitioner underwent a legal name change from Steven Yari to Saeid Hassani. The evidence suggests that Saeid Hassani is Petitioner's given name, and that he changed it to Steven Yari at some time after coming to the United States. Thus, any mention of Steven Yari in the record of this proceeding refers to Petitioner.

The hearing commenced on September 15, 2014, as scheduled. At the hearing, Petitioner testified on his own behalf, through an interpreter, and offered the testimony of Sirius Gabrani, a personal friend; Reza Hassani, Petitioner's brother (hereinafter referred to as Mr. Hassani); Katherine Martin, manager of the Brooks Clubhouse, a vocational reintegration program; and Mona Taylor, an employee of the Brooks Clubhouse. Respondent presented the testimony of Jane Hoover, who was, at all times relevant hereto, the JHA Senior Director of Property Management; Marci Montes, who was, until her demotion and transfer on January 16, 2013, the JHA Housing Manager for the Centennial

Tower apartment complex; and Sandra Nicole Ray, a JHA Housing Manager and Ms. Montes's replacement at the Centennial Tower apartment complex. Respondent offered Respondent's Exhibits R3-R5, R7-R11, and R14, which were received in evidence.

The two-volume Transcript was filed on October 20, 2014. The parties timely filed Proposed Recommended Orders which have been considered in the preparation of this Recommended Order.

References to statutes are to Florida Statutes (2013) unless otherwise noted.

FINDINGS OF FACT

1. At all times relevant to this cause, Petitioner was a tenant of a rental apartment located at the JHA Centennial Tower housing complex at 230 East First Street, Jacksonville, Florida. Petitioner's tenancy began in December 2008. Petitioner moved out of the apartment on or about January 28, 2013.

2. As a result of injuries sustained in an automobile accident in 2001, while living in his home country of Iran, Petitioner has an unspecified physical disability. Petitioner has a pattern of speech related to his accident that can make him difficult to understand, especially when he is speaking in English. There is no competent, substantial evidence to support a finding that Petitioner suffers from a mental disability. Petitioner receives disability benefits from the Social Security Administration.

3. JHA is a municipal housing authority with the authority, among other duties, to provide safe, clean, and affordable housing to low and moderate income individuals, and to persons who are elderly and disabled.

4. Among the 23 properties owned or managed by JHA is Centennial Tower, a high-rise apartment complex with more than 200 apartments. Residence in Centennial Tower is limited to persons who are either elderly or disabled.

5. JHA employs property managers to provide oversight of its properties. Ms. Montes was employed in that capacity starting on December 1, 2008, and over the years served as property manager for JHA properties including Centennial Townhouses, Blodgett Villas, Brentwood Park, and Centennial Tower. Ms. Montes' duties included overall operation of the facilities, processing and approving work orders, housekeeping and federal compliance inspections, calculating and accepting rent payments, and similar duties. Ms. Montes was assigned as the property manager for Centennial Tower on March 7, 2011.

6. JHA has established Standards of Conduct for its employees that are designed to minimize conflicts of interest between employees and residents of JHA housing. The Standards of Conduct are included in the JHA Employee Handbook. Among the standards to which JHA employees are expected to adhere is the following:

JHA employees are expected to deal with residents in a friendly, courteous, business-like-manner, but are discouraged from fraternizing with JHA residents at any time and are strictly forbidden from fraternizing with residents during working hours.

Petitioner's Appliances

7. Subsidized housing is subject to periodic inspection by the federal Department of Housing and Urban Development's Real Estate Assessment Center (REAC). The purpose of a REAC inspection is to ensure that federal funds are being put to good use, and that the housing units are maintained, up to code, and adhere to federal guidelines. The inspection results are used to determine funding levels for the following year. Depending on the REAC inspection score, a subsidized housing may be inspected every one, two, or three years.

8. On November 7, 2011, a REAC inspection was conducted at Centennial Tower. The inspection was conducted on a randomly selected percentage of housing units. Centennial Tower received a score of 64, a poor score that warranted a re-inspection the following year.

9. In response to its poor REAC inspection score, JHA engaged in an aggressive effort to upgrade the Centennial Tower common areas and apartments. As a result, during the year following the 2011 REAC inspection, 25% of the stoves, 50% of the refrigerators, 75% of the range hoods, and 15% of the air-

conditioning units in Centennial Tower apartments were replaced. Even more apartments received service and repairs to their appliances.

10. With regard to Petitioner's apartment, JHA replaced the stove, which was rusted; replaced the air conditioner, which did not work correctly resulting in moisture problems in the apartment; and replaced the refrigerator with a refurbished unit. Petitioner complained about the replacement refrigerator, so his old refrigerator was cleaned, painted, and placed back in his apartment.

11. On September 12, 2012, Centennial Tower was subject to the annual REAC inspection required after the poor 2011 inspection score. As a result of the repairs and improvements, Centennial Tower received a much-improved score of 97.

12. The evidence establishes conclusively that all tenants of Centennial Tower were treated alike with regard to the replacement and repair of their appliances, and that no favoritism was shown to any tenant.

Petitioner's Rent

13. When Ms. Montes was assigned to Centennial Tower, Petitioner's rent had been set at \$192.00 per month, a figure calculated by application of a formula based on his income and assets.

14. Prior to September 1, 2011, Petitioner's brother, Mr. Hassani, came to the United States from Iran. Upon his arrival, he moved into Petitioner's apartment at Centennial Tower, and was added to the lease on September 1, 2011. Since Mr. Hassani was not employed upon his arrival in the country, and thus had no income or assets, Petitioner's rent remained at \$192.00 per month.

15. By early 2012, Mr. Hassani found employment. As a result, and as required by federal HUD guidelines, an evaluation of his income was performed in order to calculate the appropriate rent for the apartment.

16. The rent adjustment was calculated by Ms. Montes' housing assistant. As a result of a series of miscalculations arising from the failure of the assistant to properly figure in Mr. Hassani's eligibility for the Earned Income Disallowance (EID) Program, errors in the monthly rent were made that resulted in monthly rent bills as high as \$900.00 per month.

17. In late May 2012 to early June 2012, by which time Mr. Hassani was no longer employed, Ms. Montes communicated with the JHA Operations Manager to explain the rent calculation errors, and to ascertain Petitioner's rent status. To address the fact that Mr. Hassani was not employed at the time, Ms. Montes made an interim adjustment of the rent to the previous level of approximately \$200.00 per month. The

Operations Manager, recognizing the situation as an "interesting case," advised Ms. Montes as to the applicable program for calculating Petitioner's rent. The rent was thereafter set at the \$200.00 per month level.

18. Several months later, Mr. Hassani moved out of Petitioner's apartment. By the time of the commencement of Petitioner's sexual relationship with Ms. Montes, as discussed herein, Petitioner was again living by himself.

19. The evidence establishes conclusively that Petitioner's rent was set (though incorrectly) in the normal course of JHA's operations, and in compliance with HUD requirements. The evidence further establishes that the first calculations were not performed by Ms. Montes, and that her subsequent efforts to ascertain the correct rental amount were remedial in nature, and performed with the advice and assistance of the JHA Operations Manager. There was no evidence that any action regarding Petitioner's rent was done as an act of favoritism towards Petitioner.

Petitioner's Sexual Relationship with Ms. Montes

20. At the end of August 2012, Petitioner asked Ms. Montes to join him for a meal as appreciation for her efforts to improve his tenancy as described above. The circumstances of the ensuing relationship, which lasted at most several months,

varies dramatically, based upon whether they are being related by Petitioner or by Ms. Montes.

21. For purposes of this Recommended Order, the undersigned will generally accept Petitioner's account, as corroborated or supplemented by the testimony of his friend, Mr. Gabrani, and his brother, Mr. Hassani, unless a specific finding states otherwise. In so doing, the undersigned does not suggest that Ms. Montes' account is less worthy of belief, and in many instances finds her account of the relationship to be more credible than that of Petitioner. However, in order to give Petitioner the maximum benefit of the doubt as to whether his relationship with Ms. Montes constituted a violation of the Fair Housing Act, his description of events is accepted.

22. Petitioner asked Ms. Montes to lunch to thank her for her assistance with his appliances and rent. Petitioner thought of Ms. Montes as a "boss," though he also thought of her as a friend.^{1/}

23. Ms. Montes declined Petitioner's invitation, but suggested that he meet her that Friday night at the Club 57 Heaven. They arrived separately and spent the evening drinking and conversing. At the end of the evening, Ms. Montes asked Petitioner out for the next weekend. Petitioner accepted the invitation.

24. The next weekend, Ms. Montes picked Petitioner up in her car from a spot across the street from his Centennial Tower apartment and drove to Club 57 Heaven. While at the club, they drank liquor. Ms. Montes wanted to dance. Even though Petitioner believed that he could not dance, she took his hand and they danced anyway. Afterwards, he went back to their table and sat down while Ms. Montes continued to dance. When Ms. Montes returned to the table, she kissed Petitioner and ran her fingers through his hair. She asked him to come home with her, but he refused.

25. When they left the club, Ms. Montes and Petitioner went to get some food, which they ate in the car. As she was driving him home, Ms. Montes passed by Centennial Tower without stopping, as though she was going to take Petitioner to her house. Petitioner yelled for Ms. Montes to stop, which she did. Before letting him out, Ms. Montes asked Petitioner to go out with her again the following week.

26. That night, Petitioner was agitated and could not sleep. He was nervous about having relations with women. He felt as though Ms. Montes was the "boss" at Centennial Tower, and he was beholden to her, which led to his being confused. There is no evidence that he related his feelings to Ms. Montes.

27. Petitioner subsequently told Ms. Montes that he would again go with her to the club. However, he asked that she not

kiss or touch him since he was going to the club with his brother and his friend.

28. The following weekend, Petitioner, Ms. Montes, Mr. Hassani, and Mr. Gabrani met at Club 57 Heaven. There was no consistency in the testimony of Petitioner, Mr. Hassani, and Mr. Gabrani as to how they got to the club and who rode with whom. As indicated previously, the undersigned will accept Petitioner's testimony that he rode with Ms. Montes, meeting the others at the club.

29. The four of them embarked on a night of robust drinking. Mr. Gabrani bought at least three rounds of whiskey shots that were downed along with their normal course of drinks.

30. Mr. Gabrani was talking with friends, and had little specific recollection of any conversation with Ms. Montes, other than a statement that she liked "Steven." She did not say that she intended to bother him.

31. After much drinking, Petitioner left the club with Ms. Montes and went to her house. Petitioner could not recall whether they had sex that night. Ms. Montes testified credibly that Petitioner came in, went to her room, and passed out on her bed without having sex. When he awoke the next morning, Petitioner and Ms. Montes had coffee and she drove him home.

32. Over the next weeks, Petitioner testified that he saw Ms. Montes a few times, either at the club or at her home, and

that they had consensual sex on at least two occasions. He came prepared with Cialis® and condoms, thus demonstrating an element of planning, preparation, and consent in their trysts.

33. The precise circumstances of each rendezvous are not material to any issue in this proceeding. What is material is that they occurred either at the Club 57 Heaven or at Ms. Montes' home. At no time did Petitioner and Ms. Montes discuss either Petitioner's tenancy at Centennial Tower or his disability. There was no evidence that Petitioner and Ms. Montes had any social or sexual encounters at Centennial Tower, or at any time during which Ms. Montes was on duty.

34. During the period in which Ms. Montes and Petitioner were engaged in their sexual relationship, Ms. Montes began to feel as though she might be pregnant. Ms. Montes had no desire to become pregnant, as she had two very young children -- ages 1 and 2 -- and a husband who had left her and moved to Washington state. She knew that if she was pregnant, there could be no doubt that the pregnancy was the result of her sexual encounters with Petitioner, since she had not been seeing anyone else.

35. Ms. Montes took a home pregnancy test that was positive.

36. A brief time after Ms. Montes took the home pregnancy test, but before advising Petitioner of the results, Petitioner and Ms. Montes had two opportunities to see each other, once

when Ms. Montes drove Petitioner to the home of a mechanic to see about repairs to Petitioner's car, and once when Petitioner joined Ms. Montes and her two children for an outing at the zoo. The circumstances of the events are not material, but they made Ms. Montes, who was understandably emotional about the results of the test, feel like "just a friend, like I was absolutely nobody." She decided to end the relationship. The evidence suggests her decision was made in mid-to-late October 2012.

37. Shortly thereafter, Ms. Montes advised Petitioner of the results of the pregnancy test. He became agitated and aggressive, and demanded that she get an abortion.

38. In order to confirm the results of the over-the-counter pregnancy test, Ms. Montes visited her doctor, who performed a pregnancy test. The test came up negative. Ms. Montes informed Petitioner that she was not pregnant.

39. A week or so later, still feeling as though she was pregnant, Ms. Montes took another home pregnancy test that came up positive. This time the results were confirmed.

40. When she advised Petitioner of the confirmed results, his reaction was little changed. He threatened suicide^{2/} and again demanded that she get an abortion.

41. Shortly after Ms. Montes told Petitioner of the pregnancy, Mr. Gabrani came to Centennial Tower to visit with Petitioner. He saw Ms. Montes as he entered and stopped to

Speak with her. During their conversation, Ms. Montes advised Mr. Gabrani that she was pregnant with Petitioner's child.

42. Mr. Gabrani related the information he received from Ms. Montes to Petitioner's brother, Mr. Hassani. Mr. Gabrani and Mr. Hassani confronted Petitioner the next day, and suggested that he should return to the family home in Iran.

43. Later, Mr. Gabrani went with Petitioner to Ms. Montes' house to discuss the matter. The meeting between Petitioner and Ms. Montes became confrontational. To defuse the situation, Mr. Gabrani took Petitioner and left.

44. Petitioner testified that the situation with Ms. Montes has caused him great difficulties -- personally, familially, and culturally. His older brother, who worked with Mr. Gabrani, became very upset. Mr. Hassani testified that the revelation came as a sudden shock, and completely changed everything in the family, though he has managed thus far to keep the information from their sister, who lives in Jacksonville, and from the family in Iran. Petitioner now perceives Mr. Gabrani as his enemy who is ruining his life because Ms. Montes has turned him "into a tool to send messages to me." Petitioner feels as though his reputation has been destroyed, for which he places the blame squarely on Ms. Montes.^{3/}

45. Starting in October or November of 2012, Ms. Martin, who knew Petitioner from his attendance at the Brooks Clubhouse,

noticed that Petitioner appeared to be showing signs of distress, anxiety, and depression.^{4/} Ms. Taylor, who previously perceived Petitioner as happy and normal, likewise noticed that Petitioner seemed depressed and withdrawn.

46. On January 2, 2013, Petitioner delivered a Notice of Intent to Vacate to the Centennial Tower office, where it was received and signed by Ms. Montes. Petitioner gave the reason for moving as "death or hate."

47. Mr. Gabrani testified that Petitioner decided to leave his apartment as a means to avoid responsibility for Ms. Montes' child. That testimony, being hearsay, is insufficient on its own to support a finding, though it is generally consistent with and supported by other evidence, including the testimony of Petitioner that "I didn't want a child, because it makes me lose face and respect."

48. In January 2013, Petitioner revealed the circumstances of his relationship with Ms. Montes to Ms. Martin. Ms. Martin testified that she was told by Petitioner that Ms. Montes was continuing to contact him, and that Petitioner showed her "a string of text messages" that she did not look at in detail. Petitioner told Ms. Martin that he felt as though he could not stay at his apartment. Petitioner asked Ms. Martin to contact Ms. Montes on his behalf "and tell her that he did not want to have anything to do with the pregnancy."

49. At Petitioner's request, Ms. Martin called Ms. Montes. She placed the call using her speaker-phone while Petitioner was present. It is unclear as to whether Ms. Martin advised Ms. Montes that Petitioner could hear their conversation.

50. Ms. Martin testified that Ms. Montes confirmed her pregnancy, indicated her intent to carry the child to term, and stated that she did not intend for Petitioner to be financially responsible for the child.^{5/} Ms. Martin asked Ms. Montes to have no further contact with Petitioner, a request to which Ms. Montes agreed.

JHA's Response to the Report of the Relationship

51. After Ms. Martin's telephone conversation with Ms. Montes, Ms. Martin testified that Petitioner came to her complaining that Ms. Montes was still bothering him by sending him text messages. Ms. Martin had no direct knowledge of Petitioner's complaint, but relied on what he told her. Nonetheless, Ms. Martin decided to take action.

52. On January 15, 2013, Ms. Martin called Centennial Tower and asked to speak to the "person in charge." When told that person was Ms. Montes, Ms. Martin then asked for the name of Ms. Montes' supervisor. That person was identified as Ms. Hoover.

53. Ms. Martin called Ms. Hoover and advised her that Petitioner, a resident at JHA's at Centennial Tower, had engaged

in a sexual relationship with Ms. Montes, and that Ms. Montes was pregnant with Petitioner's child. Ms. Martin asked that Petitioner be provided with an alternate place to live, away from Ms. Montes.

54. Prior to the call from Ms. Martin, no one at the JHA had any knowledge of the relationship between Petitioner and Ms. Montes. Immediately upon hanging up with Ms. Martin, Ms. Hoover contacted the JHA human resources director and her supervisor to discuss the matter.

55. The next day, January 16, 2013, Ms. Montes was placed on administrative leave and removed from her position as property manager at Centennial Tower. Ms. Montes was subsequently demoted, received a cut in salary, and was transferred to the JHA Section 8 housing department.

56. The punishment meted out to Ms. Montes was the harshest penalty established for violations of JHA standards, short of dismissal. In choosing to demote Ms. Montes, the JHA took into account that prior to her relationship with Petitioner, Ms. Montes had been an exceptional employee; that a lower-level position which required little interaction with JHA clients and which came with a lower salary was available in JHA's Section 8 housing section; and that Ms. Montes' social and sexual encounters with Petitioner occurred off of JHA property and after work hours.

Petitioner's Decision to Vacate Centennial Tower

57. After Ms. Montes' removal, Ms. Ray was put into the position of property manager for Centennial Tower, starting work on January 22, 2013.

58. On January 22, 2013, Petitioner sent a letter, addressed to Centennial Tower, which stated that "I did not understand the rules regarding my housing voucher. I do not want to move. I want to stay in my apartment. I am rescinding my earlier notice to vacate." The evidence is persuasive that Petitioner authored and submitted the letter.

59. Ms. Ray received Petitioner's letter on January 24, 2013. She called Petitioner, and met with him that day. Ms. Ray wanted to go over Petitioner's lease with him so he understood the terms, and to tell him that he did not have to move from his apartment.

60. During the meeting, Petitioner indicated that he thought he would stay, but that he did not want any of his private information given to Ms. Montes. Ms. Ray advised Petitioner that Ms. Montes was no longer the housing manager, that he had done nothing wrong, that he could stay in his apartment, and that Ms. Montes would not have access to any of his personal information. At the conclusion of their meeting, Ms. Ray thought Petitioner would stay in his apartment, but she was not certain.

61. On January 28, 2013, Petitioner came to the Centennial Tower business office and turned in his keys. Ms. Ray recalled Petitioner saying all of his problems were because of a woman and that he did not want to live anymore. At the time, he refused to provide a forwarding address for the return of his deposit. He subsequently provided an address.

62. Prior to his moving out of Centennial Tower, Petitioner sold or gave away his belongings. There is no evidence as to the nature of the belongings, their value, or any payment received for them.

63. At some time after Petitioner vacated his apartment, Ms. Hoover received a telephone call from Ms. Martin, who related that Petitioner had moved out of his apartment and was living in his car. Ms. Martin asked if Petitioner could be provided with housing.

64. Ms. Hoover, who until Ms. Martin's call had been unaware that Petitioner had vacated his apartment, immediately called Ms. Ray to inquire as to the circumstances of Petitioner's departure.

65. By the time Ms. Martin called Ms. Hoover, Petitioner's apartment had been leased to another qualified resident. Ms. Hoover called Ms. Martin with that information and explained that, due to the backlog of requests for public housing,

Petitioner would have to be placed on the waiting list for a new apartment.

66. Despite Ms. Martin's assertion that Petitioner was living in his car, the evidence revealed that, after leaving his apartment, Petitioner lived with Mr. Gabrani for 6 months, and has lived with his brother since then. Petitioner's mailing address is that of his brother. Petitioner does not pay rent to his brother, but occasionally cooks and performs tasks around the house. There was testimony from Petitioner that he occasionally sleeps in his car, but he has not been homeless.

67. Petitioner testified that after Ms. Montes was removed as the Centennial Tower housing manager and demoted, she continued to text and harass him. Ms. Montes testified credibly that she did not continue to text or otherwise harass Petitioner. She had two children to support, with a third on the way, was in trouble with her employer as a result of Petitioner, and did not want to get fired. Petitioner had no physical print-outs of any alleged text messages, and no witness testified to seeing them. Thus, there is insufficient evidence to support his assertion.

Ultimate Findings of Fact

68. Petitioner initiated the relationship that forms the basis for his claim of discrimination by asking Ms. Montes out the first time. Whether the invitation was for lunch or dinner

is irrelevant. Ms. Montes testified convincingly that she kept seeing Petitioner because she liked him, was attracted to him, and had fun with him. She took the time to understand his speech, which Petitioner seemed to appreciate. She believed that they were in a mutually agreeable, consensual relationship, which she thought at one time to be meaningful. Ms. Montes' testimony is credited.

69. Ms. Montes gave Petitioner no special consideration in repairing and replacing his appliances or determining his rent, actions that occurred prior to Petitioner's initial invitation. Ms. Montes did not discriminate against Petitioner in the performance of her duties as JHA property manager for Centennial Tower as a result of Petitioner's handicap or otherwise. Ms. Montes did not threaten Petitioner's housing arrangement if he refused to have sex with her, and did not make their sexual relationship a basis for any decision towards Petitioner as the JHA housing manager.

70. Petitioner failed to introduce any evidence that he was treated differently by JHA or its employees or agents under similar circumstances than were other tenants of JHA housing units who did not have comparable disabilities.

71. There was no competent, substantial evidence adduced at the hearing that JHA or its employees or agents undertook any

adverse act pertaining to Petitioner's occupancy of his apartment based on Petitioner's handicap.

72. Petitioner failed to prove that he was ready, willing, and able to continue to rent his apartment, but that JHA or its employees or agents refused to allow him to do so. In fact, after Petitioner expressed his desire to remain in his apartment, Ms. Ray specifically advised him that he could continue in his apartment despite his Notice of Intent to Vacate, and that Ms. Montes would not be able to access his personal information.

73. Petitioner failed to prove that any employee of the JHA, including Ms. Montes, coerced, intimidated, or threatened Petitioner in any way. The preponderance of the competent, substantial evidence in this case demonstrates that Petitioner engaged in a voluntary relationship with Ms. Montes that involved planned and consensual sex. The evidence further demonstrates that Petitioner was a willing participant in the relationship until Ms. Montes became pregnant, at which time he wanted nothing more to do with Ms. Montes, or the child produced as a result of their union.

74. Petitioner failed to prove that JHA or its employees or agents took any action to intentionally interfere with Petitioner's occupancy of his apartment.

75. In sum, the evidence did not establish that Petitioner was the subject of unlawful discrimination in the provision of services or facilities in connection with his apartment based on his handicap, or that JHA or its employees or agents coerced, intimidated, threatened, or interfered, sexually or otherwise, with his exercise of any right granted under the Florida Fair Housing Act.

CONCLUSIONS OF LAW

76. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2014).

77. Florida's Fair Housing Act, sections 760.20 through 760.37, Florida Statutes, makes it unlawful to discriminate against persons in matters incident to a dwelling on the basis of the persons' handicap. In that regard, subsection 760.23(2), provides that:

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

78. Subsection 760.23(7) provides, in pertinent part, that "[i]t is unlawful to discriminate in the sale or rental of . . . a dwelling to any buyer or renter because of a handicap of (a) [t]hat buyer or renter."

79. Subsection 760.23(8) provides, in pertinent part, that "[i]t is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, . . . because of a handicap of: (a) That buyer or renter."

80. Section 760.37 provides, in pertinent part, that "[i]t is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of her or his having exercised, . . . any right granted under [the Fair Housing Act]."

81. The Florida Fair Housing Act is patterned after Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988, and discrimination covered under the Florida Fair Housing Act is the same discrimination prohibited under the Federal Fair Housing Act. Savannah Club Worship Serv. v. Savannah Club Homeowners' Ass'n, 456 F. Supp. 2d 1223, 1224 (S.D. Fla. 2005); see also Loren v. Sasser, 309 F.3d 1296, 1300 (11th Cir. 2002). When "a Florida statute is modeled after a federal law on the same subject, the Florida statute will take on the same constructions as placed on its federal prototype." Brand v. Florida Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994); see also Millsap v. Cornerstone Residential Mgmt., 2010 U.S. Dist. LEXIS 8031 *11 (S.D. Fla. 2010); Dornbach v.

Holley, 854 So. 2d 211, 213 (Fla. 2d DCA 2002); Fla. Dep't of Cmty. Aff. v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

82. Petitioner has the burden of proof to establish that Respondent violated the Florida Fair Housing Act. § 760.34(5), Fla. Stat.; Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

83. JHA stipulated that Petitioner suffered from a physical handicap, a protected class under the Fair Housing Act, and it is so found. There was no evidence that Petitioner suffered from any other handicap, and no allegation that Petitioner was the subject of discrimination on the basis of any other protected classification.

84. A plaintiff may proceed under the Fair Housing Act under theories of either disparate impact or disparate treatment, or both. Head v. Cornerstone Residential Mgmt., 2010 U.S. Dist. LEXIS 99379 *20 (S.D. Fla. 2010). To establish a prima facie case of disparate impact, Petitioner would have to prove a significantly adverse or disproportionate impact on a protected class of persons as a result of Respondent's facially neutral acts or practices. Head v. Cornerstone Residential Mgmt., 2010 U.S. Dist. LEXIS 99379 at *20 (citing E.E.O.C. v. Joe's Stone Crab, Inc., 220 F.3d 1263, 1278 (11th Cir. 2000)). To prevail on a disparate treatment in housing claim, Petitioner would have to come forward with evidence that he was treated

differently than similarly-situated tenants. Head v. Cornerstone Residential Mgmt., 2010 U.S. Dist. LEXIS 99379 at *21 (citing Schwarz v. City of Treasure Island, 544 F.3d 1201, 1216 (11th Cir. 2008)) and Hallmark Dev., Inc. v. Fulton Cnty., 466 F.3d 1276, 1286 (11th Cir. 2006).

85. In establishing that he was the subject of discrimination, Petitioner could either produce direct evidence of discrimination that motivated disparate treatment in the provision of services to him, or prove circumstantial evidence sufficient to allow the trier of fact to infer that discrimination was the cause of the disparate treatment. See King v. Auto, Truck, Indus. Parts & Supply, 21 F. Supp. 2d 1370, 1381 (N.D. Fla. 1998).

86. Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to inference or presumption. Denney v. City of Albany, 247 F.3d 1172, 1182 (11th Cir. 2001); Holifield v. Reno, 115 F.3d 1555, 1561 (11th Cir. 1997). As to the nature of the evidence, “‘only the most blatant remarks, whose intent could be nothing other than to discriminate . . .’ will constitute direct evidence of discrimination.” Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1358-59 (11th Cir. 1999) (citations omitted).

87. Petitioner presented no direct evidence of discrimination by JHA related to or affecting the terms,

conditions, or privileges of his tenancy in Centennial Tower, or in the provision of services or facilities in connection therewith. There were no statements or acts of any kind that could be construed to have been directed to Petitioner's handicap.

88. Petitioner presented no direct evidence that JHA or its employees or agents coerced, intimidated, threatened, or interfered, sexually or otherwise, with his exercise of any right granted under the Florida Fair Housing Act

89. When there is no direct evidence of discrimination, fair housing cases are subject to the three-part test set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Boykin v. Bank of America Corp., 162 Fed. Appx. 837, 838; 2005 U.S. App. LEXIS 28415 (11th Cir. 2005); see also Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc., 3 F.3d 1472, 1476 n.6 (11th Cir. 1993); Secretary, U.S. Dept. of Hous. and Urban Dev., on Behalf of Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990); Savannah Club Worship Serv. v. Savannah Club Homeowners' Ass'n, 456 F. Supp. 2d at 1231-1232.

90. Under the three-part test, Petitioner has the initial burden of establishing a prima facie case of unlawful discrimination. McDonnell Douglas Corp. v. Green, at 802; Texas Dep't of Cmty. Aff. v. Burdine, at 252-253; Burke-Fowler v.

Orange Cnty., Fla., 447 F.3d 1319, 1323 (11th Cir. 2006);
Valenzuela v. GlobeGround North America, LLC., 18 So. 3d at 22.
"The elements of a prima facie case are flexible and should be
tailored, on a case-by-case basis, to differing factual
circumstances." Boykin v. Bank of America Corp., 162 Fed. Appx.
at 838-839 (citing Fitzpatrick v. City of Atlanta, 2 F.3d 1112,
1123 (11th Cir. 1993)).

91. If Petitioner is able to prove a prima facie case by a
preponderance of the evidence, the burden shifts to Respondent
to articulate a legitimate, non-discriminatory reason for its
actions. Texas Dep't of Cmty. Aff. v. Burdine, 450 U.S. at 255;
Dep't of Corr. v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991).
Respondent has the burden of production, not persuasion, to
demonstrate to the finder of fact that its action as a landlord,
upon which the complaint was made, was non-discriminatory.
Dep't of Corr. v. Chandler, supra. This burden of production is
"exceedingly light." Holifield v. Reno, 115 F.3d 1555, 1564
(11th Cir. 1997); Turnes v. Amsouth Bank, N.A., 36 F.3d 1057,
1061 (11th Cir. 1994).

92. If Respondent produces evidence that the basis for its
action was non-discriminatory, then Petitioner must establish
that the proffered reason was not the true reason but merely a
pretext for discrimination. St. Mary's Honor Center v. Hicks,
509 U.S. 502, 516-518 (1993). In order to satisfy this final

step of the process, Petitioner must "show[] directly that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief." Dep't of Corr. v. Chandler, 582 So. 2d at 1186 (citing Tex. Dep't of Cmty. Aff. v. Burdine, 450 U.S. at 252-256). Pretext can be shown by inconsistencies and/or contradictions in testimony. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000); Blackwell, supra; Woodward v. Fanboy, L.L.C., 298 F.3d 1261 (11th Cir. 2002). The demonstration of pretext "merges with the plaintiff's ultimate burden of showing that the defendant intentionally discriminated against the plaintiff." Thomas v. Dep't of Corr., 377 Fed. Appx. 873, 880; 2010 U.S. App. LEXIS 9175 (11th Cir. 2005) (citing Holifield v. Reno, 115 F.3d at 1565).

93. The failure of Petitioner to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1013 n.7 (Fla. 1st DCA 1996), aff'd, 679 So. 2d 1183 (Fla. 1996) (citing Arnold v. Burger Queen Systems, 509 So. 2d 958 (Fla. 2d DCA 1987)).

94. As applied to this case, the standard established in McDonnell-Douglas requires Petitioner to establish in his prima facie case that (1) he belongs to a protected class; (2) Respondent was aware of it; (3) Petitioner was ready,

willing, and able to rent the apartment; and (4) Respondent refused to allow him to do so. Jackson v. Comberg, Case No. 8:05-cv-1713-T-24TMAP, 2006 U.S. Dist. LEXIS 66405 *9 (M.D. Fla. 2006).

95. To establish a violation of section 760.37 based on a claim of sexual harassment, including a claim of "quid pro quo" sexual harassment, Petitioner must establish that JHA, or its employees or agents, "conditioned his occupancy on compliance with [Ms. Montes'] alleged sexual advances." Butler v. Carrero, Case No. 1:12-cv-2743-WSD, 2013 U.S. Dist. LEXIS 130838 *24 (N.D. Ga. 2013); see also Tagliaferri v. Winter Park Hous. Auth., 486 Fed. Appx. 771, 774 (11th Cir. 2012) (Claim that a lease was not renewed because of a previous sexual relationship with landlord's employee did not state a claim for quid pro quo harassment under the Fair Housing Act because the plaintiffs did not allege that their lease would have been renewed if had they consented to unwelcome sexual advances.).

96. JHA admitted that Petitioner had an unspecified physical handicap and is therefore in a protected class under the Florida Fair Housing Act. Petitioner failed to prove that he suffered from any other form of handicap. Knowledge of Petitioner's physical handicap is imputed to Ms. Montes due to Petitioner's residence in Centennial Tower.

97. The evidence demonstrated that Petitioner voluntarily vacated his apartment in Centennial Tower for reasons unrelated to issues involving his handicap.

98. Petitioner failed to present any evidence that he was discriminated against in the terms, conditions, or privileges of his rental of his apartment in Centennial Tower, or in the provision of services or facilities in connection therewith, because of his handicap.

99. Petitioner failed to prove that JHA or its employees or agents coerced, intimidated, threatened, or interfered, sexually or otherwise, with his exercise of any right granted under the Florida Fair Housing Act, or otherwise conditioned his occupancy of JHA housing on his having sex with Ms. Montes.

100. Petitioner did not meet his burden to establish a prima facie case of discrimination. Although the record reflects that he was a member of a protected class based on his handicap, Petitioner failed to prove that any actions on the part of JHA, or its employees or agents were discriminatory in nature.

101. The evidence demonstrated that Respondent, Jacksonville Housing Authority, did not commit a discriminatory housing practice as to Petitioner, Saeid Hassani, in violation of the Florida Fair Housing Act, chapter 760, Part II, Florida

Statutes. 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 issue a final order dismissing the Petition for Relief filed in FCHR No. 2014H0023.

DONE AND ENTERED this 3rd day of November, 2014, in Tallahassee, Leon County, Florida.



E. GARY EARLY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of November, 2014.

ENDNOTES

^{1/} Ms. Montes never told Petitioner that she was his "boss." Rather, Petitioner regards anyone who has authority as the "boss." In that regard, Ms. Martin was the "boss" at Brooks Clubhouse.

^{2/} Ms. Montes testified that Petitioner also made statements of a more homicidal nature, the evidence of which, standing alone, is insufficient to support a finding. However, Ms. Montes' testimony finds support in Petitioner's admission that, after

unsuccessfully pressuring her to get an abortion, he told Ms. Montes that "[y]ou're not going to become happy about this. And the lady [Ms. Montes] then asked me: Will you kill me? I said nothing."

^{3/} It has not escaped the notice of the undersigned that, despite Petitioner's alleged "great troubles" and "massive problems" resulting from his relationship with Ms. Montes, it is, in fact, Ms. Montes who carried and bore Petitioner's child and is raising the child without emotional or financial support, and Ms. Montes who was demoted from her job and received a cut in salary. Thus, despite Petitioner's dolorous tale of self-pity and regret, it is Ms. Montes who has borne the brunt of Petitioner's dalliance.

^{4/} Respondent objected to Ms. Martin's characterization of Petitioner as showing signs of depression, since a diagnosis of the medical condition of depression would call for some degree of medical expertise. The objection was overruled, and the undersigned accepts Ms. Martin's testimony as a general observation of Petitioner's mood, rather than as a diagnosis of a specific condition.

^{5/} Ms. Montes ultimately gave birth to the child conceived during her encounters with Petitioner.

COPIES FURNISHED:

Ashley Brooke Benson, Esquire
City Of Jacksonville
Office of General Counsel
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
(eServed)

Cheyenne Michelle Costilla, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
(eServed)

Saied Hassani
8090 Atlantic Boulevard, Apartment A-34
Jacksonville, Florida 32211

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.