STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MELISSA TERRELL,

Petitioner,

vs. Case Nos. 14-4577

PROPERTIES GROUP MANAGEMENT, LLC; LEE ADAMS; YARON M. DAVID; AND RAMON PEREZ, JR.,

Respondents.
_____/

RECOMMENDED ORDER

On January 30, 2015, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by videoconference in Tampa and Tallahassee, Florida.

APPEARANCES

For Petitioner: C. Martin Lawyer, III, Esquire
Melissa A. Craig, Esquire
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For Respondents (except Respondent Perez):

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For Respondent Perez: no appearance

STATEMENT OF THE ISSUE

The issue is whether any of the respondents is guilty of discriminating against Petitioner on the basis of her sex in connection with her rental of a lot in the Galaxy Mobile Home Park, in violation of the Florida Fair Housing Act, section 760.23(2), Florida Statutes.

PRELIMINARY STATEMENT

By Housing Discrimination Complaint dated April 1, 2014, Petitioner alleged that each of the four respondents discriminated against her on the basis of sex in connection with her rental of mobile home lot 163 at 5810 U.S. Highway 92, West, Plant City, Florida. The complaint alleges that Respondent Perez was a maintenance employee of Respondent Properties Group Management, LLC (PGM), Respondent Adams was the manager of the mobile home park, and the other respondents owned the mobile home park.

The complaint alleges that Respondent Perez subjected Petitioner to continuous sexual harassment, calling her a "fucking prostitute," "bitch," and "whore." Although Petitioner complained to Respondent Adams about this alleged harassment, Respondent Adams allegedly took no apparent action against Respondent Perez.

The Florida Commission on Human Relations (FCHR) investigated the complaint. On September 8, 2014, FCHR

determined that reasonable cause did not exist to believe that a discriminatory housing practice had occurred.

On September 26, 2014, Petitioner filed a Petition for Relief (Petition). The Petition alleges Petitioner initially rented lot 163 in approximately October 2011, and a "long-lasting pattern of highly intimidating, hostile and offensive behavior" began around September 28, 2010, and continued until July 28, 2013. The Petition states that Respondent Adams witnessed Respondent Perez yell and swear at Petitioner, but took no action against him. The Petition alleges that Petitioner contacted Respondent David to speak about the problem, but he refused to do so outside of the presence of Respondent Perez and failed to arrange such a meeting. The Petition states that, on July 28, 2013, Respondent Perez drove by Petitioner's lot and swore at her, Petitioner complained to the sheriff's office, and a deputy arrived at Galaxy, promising to speak to Respondent Perez. The Petition abruptly stops at this allegation.

At the hearing, Petitioner called four witnesses and offered into evidence five exhibits: Petitioner Exhibits 1 through 5. Respondents called three witnesses and offered into evidence two exhibits: Respondents' Exhibits 3 and 5. All exhibits were admitted.

The court reporter filed the transcript on February 26, 2015. The parties filed proposed recommended orders by March 9, 2015.

FINDINGS OF FACT

1. In September 2010, Petitioner, a 54-year-old female, moved into Galaxy Mobile Home Park, 5810 U.S. Highway 92, West, Plant City, Florida. Since her arrival at the park, Petitioner has occupied her lot based on a month-to-month rental agreement. The park consists of 33 mobile home lots, four cabins, six RV lots, and one house. At present, 27 females and 22 males live there; most residents are 55 years old and older.

2. The park manager is Respondent Adams, an 85-year-old female. She and her late husband moved to Galaxy Mobile Home Park in 1988. Initially, she was not the manager, but her husband performed all of the maintenance and lawn mowing. Ownership and property-management duties lie with Respondent David and Respondent PGM; one of them employs Respondent Adams and pays her $300 per month to serve as the park manager.

3. In 2002, Respondent Adams moved out of the park and into a nearby residence. She works mornings in a small office located at the park, although, if needed, she remains at the park until as late as 4:00 p.m. or returns to the park in the afternoon. Her duties include cleaning the laundromat, collecting rents,

showing prospective tenants available lots, and arranging for repairs. She is paid $300 per month for her services.

4. Respondent Perez, a male reportedly 68 or 70 years old, formerly was the maintenance man at the park--the lawn mowing responsibilities having been assigned to another person. Using supplies provided by Respondent David or Respondent PMG, Respondent Perez performed maintenance work around the park as needed. No one recorded his time, and he did not work according to a set schedule. At times, he would travel and be gone for extensive periods, during which minor maintenance duties were apparently deferred until his return, sometimes months later. Respondent Perez lived in a mobile home at the park, and his sole compensation was free lot rent of about $300 per month. This obviously was a part-time job.

5. When she first moved to Galaxy Mobile Home Park, Petitioner owned an RV, so she rented lot 148, which is an RV lot. Petitioner first arrived at the park late in the day when the office was closed, so, the next morning, she and Respondent Adams were speaking in front of Petitioner's RV. After Petitioner had paid the first-month's rent, Respondent Adams was describing the park amenities to Petitioner when Respondent Perez approached the two women, cursing loudly.

6. Few incidents involving Respondent Perez acquired much clarity in the record, and the first of these is no exception.

As Respondent Perez approached Petitioner and Respondent Adams, he appeared to be concerned about an item of potentially dangerous maintenance equipment that Petitioner may have lent to another resident. Pointing a finger at Petitioner, evidently from some distance from the two women, Respondent Perez warned her that if she lent this equipment to someone, "it is on your fucking ass," implying that she, not he, would be responsible if the resident injured himself using the equipment. For emphasis, Respondent Perez then pounded his chest, shouting, "I'm a fucking man." Petitioner replied, "and I'm a fucking woman."

7. Later that day, two male residents were helping Petitioner set up her RV. Driving by, Respondent Perez shouted a warning to Petitioner from his vehicle, "if you let those fucking men in your yard, you'll have a yard-full of fucking men."

8. The following morning, Respondent Perez knocked on Petitioner's door. This appears to have been the only time that he did so, and he never entered Petitioner's home at any time. When Petitioner answered the door, Respondent Perez told her that everyone was "fucking complaining" that she was using too much toilet paper, plugging up the sewage system at the park. Petitioner replied that, due to problems with her holding tank, she did not flush her toilet paper, but disposed of it in her trash, and invited Respondent Perez to take a look. Respondent

Perez declined, saying, "Well, I don't know. That's what the fuck they say."

9. In October 2011, when a resident left her mobile home to move north, Petitioner moved into the mobile home, which was at lot 163. The mobile home had a screen porch, where Petitioner would often sit, enjoying watching television and smoking cigarettes, which she tried not to smoke inside. From time to time, Respondent Perez would walk by the screen porch, and sometimes he would utter unpleasantries to Petitioner, warning her that no one could do his work.

10. On one occasion, Petitioner complained to Respondent Adams that Respondent Perez was disturbing her by his use of a flashlight as he walked through the park at night. Respondent Adams spoke to Respondent Perez, who replaced the flashlight with a brighter lantern. The evidence does not establish that Respondent Perez was walking at night to bother Petitioner; given the location of their lots, he would have to pass her lot as he walked or drove toward the front of the mobile home park where amenities were located. Also, Respondent Perez was in an intimate relationship with a woman named Mrs. Miller, and Petitioner's lot was between the lots of Respondent Perez and Mrs. Miller. ("Mrs. Miller" is a pseudonym to protect the privacy of the resident.)

11. In the spring of 2012, while Petitioner was talking to a male resident at the picnic area, Respondent Perez drove up and began talking to the man, evidently ignoring Petitioner. Respondent Perez told him that, the prior evening, he had met a woman in a bar. Professing to be a Christian, she had told him that she did not believe in sex before marriage. But Respondent Perez loudly proclaimed that he had had sexual intercourse with the woman that very night. At this point in the story, Respondent Perez laid face down in the grass and began violently thrusting, in a pantomime of sexual intercourse, explaining that "when I get a woman, I can go all night."

12. Other problems arose between Petitioner and Respondent Perez. When she moved from the RV, Petitioner placed a PVC pipe from the RV in her new yard, keeping it for the new owner of the RV. Respondent Perez removed the pipe, likely as part of his duties in keeping the park clean and thinking that the used pipe had been discarded. Petitioner called Respondent Adams, accused Respondent Perez of stealing the pipe, and threatened to call the sheriff's office. Respondent Adams told her that would not be necessary, and she would buy whatever PVC pipe the new owner required to connect his RV to the park's plumbing.

13. At some point, dissatisfied with Respondent Adams' handling of her complaints about Respondent Perez, Petitioner demanded a meeting with Respondent David. Respondent David,

Respondent Adams, and Petitioner met at the park. They were talking while looking at a repair job that Respondent Perez had done, suggesting that the focus of Petitioner's complaints at least included poor workmanship on Respondent Perez's part. But when Petitioner tried to talk about Respondent Perez, Respondent David declined to do so unless Respondent Perez was present. Respondent David and Petitioner had no further conversations.

14. The final incident coincided with the death of a neighbor, according to Petitioner, who testified that Respondent Perez's animosity toward her intensified at this time. The death seems to have taken place in July 2013. The record is insufficiently developed to find any possible connection between the resident's death and Respondent Perez's increased animosity.

15. However, at some point, Mrs. Miller died, and Respondent Perez and Respondent Adams believed that Petitioner and another neighbor entered Mrs. Miller's mobile home after the ambulance had removed her body to rifle through her medications in order to steal those that they wanted. Petitioner admitted that she was in the mobile home going through the medications, but only to assist the emergency medical technicians in their effort to identify Mrs. Miller's prescriptions.

16. The record is poorly developed in other respects. Petitioner testified to a steady verbal barrage from Respondent Perez, seemingly on every occasion that the two met, usually

featuring epithets describing Petitioner as a "whore" or "prostitute." Petitioner called as a witness her brother, who could recall only that Respondent Perez complained about where he and his son had parked and that Respondent Perez was always "on" his sister about something, although he could not recall anything in specific. The nephew also testified, adding only that Respondent Perez often told them that they could not "fucking park" where they had parked, and he generally swore a lot.

17. The neighbor who had joined Petitioner in Mrs. Miller's mobile home testified that she had once overheard Respondent Perez say to a male resident that all women are "whores and prostitutes." On another occasion, she overheard Respondent Perez say to Respondent Adams, as he pointed to a woman some distance away, "there's another one of those whores over there." And the neighbor overheard Respondent Adams reply, "I told you to keep that word from your mouth."

18. A deputy who was called out in response to a complaint made by Petitioner could not remember a single detail of the call.

19. By contrast, Respondent Adams proved to be a memorable witness. Demonstrating the danger of compound questions posed to aged witnesses, when asked by her attorney if Respondent Perez drove by Petitioner's home every day and harassed her, Respondent Adams answered that he had to--meaning that he had to drive by

Petitioner's lot. When asked by her attorney (twice) if Respondent Perez harassed Petitioner, Respondent Adams answered definitively, yes. She explained that he harassed everyone, but also denied that he harassed anyone.

20. As Respondent Adams saw it, the relationship between Petitioner and Respondent Perez was that of two residents, not a resident and the park maintenance man. On occasion, though, Respondent Adams directed Respondent Perez to watch his language. One such occasion has been noted above; on another occasion, she said that Petitioner "has a name. It is Lisa. Use it." Respondent Perez's reference to Petitioner that prompted this directive is undisclosed.

21. Respondent Adams also witnessed occasions during which Petitioner employed profanity toward Respondent Perez, as well as at least one other individual. On one such occasion, when a male tree-trimmer at the park warned Petitioner to keep a safe distance from his work area, she responded, "You son of a bitch. Drop a limb on me and I will sue you."

22. It is difficult to characterize Respondent's state of mind at the time of his vulgar utterances, of which some, it is safe to assume, were uttered at Petitioner. The present record supports findings that Petitioner and Respondent Perez had a poor relationship. It is impossible to determine whether either party was at fault for this relationship or the degree of any fault

that each party bore. However, from Respondent Perez's point of view, Petitioner's behavior was, on one occasion, substantially unjustified, as in the case of the removed PVC pipe from the yard, and, on another occasion, open to justifiable suspicion, as in the handling of the prescription medicines after Mrs. Miller's death.

23. The present record supports a finding of abusive verbal exchanges between Petitioner and Respondent Perez, but not their frequency. If Petitioner's recounting of them were fully credited as all of them, there were very few such exchanges over the three years in question. Undoubtedly, Respondent Perez's swear words and other insults were grounded in gender relations or gender, as in his use of the words, "fuck" or "fucking," "bitch," and "whore." Respondent Perez was unable to direct a park visitor to move his car without uttering "fucking," employed either as an adverb to intensify the verb (i.e., "move") or an adjective to intensify the object (i.e., the "car")--or, of course, both.

24. Most importantly, though, the present record in no way supports a finding that these exchanges were so frequent or intense as to deprive Petitioner of the use and enjoyment of her home and the amenities in the park.

CONCLUSIONS OF LAW

25. DOAH has jurisdiction. § 760.35(3)(b), Fla. Stat.

26. Section 760.23(2) prohibits discrimination on the basis of sex, among other things, "in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith[.]" Section 760.34(5) imposes the burden of proof on Petitioner, and section 120.57(1)(j) requires Petitioner to prove the material allegations by a preponderance of the evidence.

27. In construing provisions of the Florida Fair Housing Act, sections 760.20, et seq., Florida courts are guided by decisions of federal courts construing the federal Fair Housing Act, 42 U.S.C. §§ 3601, et seq. Dornback v. Holley, 854 So. 2d 211, 213 (Fla. 2d DCA 2002). The federal counterpart to section 760.23(2) is 42 U.S.C. § 3604(b).

28. The prohibition contained in section 760.23(2) may apply to post-acquisition discrimination. Bloch v. Frischolz, 587 F.3d 771 (7th Cir. 2009) (en banc); Smith v. Zacco, 2011 U.S. Dist. LEXIS 158386 (M.D. Fla. 2011); Savanna Club Worship Service, Inc. v. Savanna Club Homeowners' Ass'n, Inc., 456 F. Supp. 2d 1223 (S.D. Fla. 2005).

29. However, as noted in Bloch, section 3604(b) provides no relief from isolated acts of discrimination from fellow property owners. 587 F.3d at 780. The focus in this case is thus limited to the actions of Respondent Perez in his capacity as the maintenance man.

30. A plaintiff in a 3604(b) case may prove discrimination by proof of discriminatory intent or under a modified disparate impact theory. See, e.g., Bloch at 783. There is no evidence of disparate impact in this case.

31. A plaintiff may prove discriminatory intent by direct evidence or inferentially. See, e.g., U.S. v. Hylton, 944 F. Supp. 2d 176, 187 (D. Conn. 2013). Proof of discriminatory intent, as reflected in sexual harassment, to prove a 3604(b) claim may draw upon cases involving sexual harassment in the workplace. See, e.g., Butler v. Carrero, 2013 U.S. Dist. LEXIS 130838 (N.D. Ga. 2013); Richards v. Bono, 2005 U.S. Dist. LEXIS 43585 (M.D. Fla. 2005).

32. In Pospicil v. Buying Office, Inc., 71 F. Supp. 2d 1346, 1356 (N.D. Ga. 1999), the court stated:

> Title VII clearly does not prohibit all verbal or physical harassment in the workplace. See Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 80, 140 L. Ed. 2d 201, 118 S. Ct. 998 (1998). Indeed, harassment "is not automatically discriminatory because of sex merely because the words used have a sexual content or connotations." Id. As the Seventh Circuit has indicated, the concept of sexual harassment is designed to protect employees from the kind of attentions that can make the workplace hellish. Baskerville v. Culligan Int'l Co., 50 F.3d 428, 430 (7th Cir. 1995). Title VII is not designed to "purge the workplace of vulgarity." Id. On the other hand, the court recognizes that words and actions short of unwanted physical contact or overt sexual advances can

sometimes cross the line that "separates the merely vulgar and mildly offensive from the deeply offensive and sexually harassing." Carr v. Allison Gas Turbine Div., 32 F.3d 1007, 1010 (7th Cir. 1994). Because there is no bright line separating vulgarity from discriminatory harassment, the inquiry here concerns the characteristics that distinguish the two.

On one side of the line falls "the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing." Faragher, 118 S. Ct. at 2284. These tribulations include the "vulgar banter, tinged with sexual innuendo, of coarse and boorish workers." Baskerville, 50 F.3d at 430. Courts should keep in mind that Title VII does not create a general civility code for the American workplace, see Oncale, 523 U.S. at 80, and it therefore does not protect workers from the everyday foul language, off-color humor, and suggestive repartee found in our society. The statute was not designed to improve the manners or transform the social mores of the American worker. It does not, in other words, protect the "[person] of Victorian delicacy--a [person] mysteriously aloof from contemporary American popular culture in all its sex-saturated vulgarity." Baskerville, 50 F.3d at 431. See also Indest v. Freeman Decorating, Inc., 164 F.3d 258, 264 (5th Cir. 1999) (suggesting that Title VII action will not lie for remarks and innuendo "no more offensive than sexual jokes told on major network television programs").

On the other side of the line, however, falls that conduct which is actionable as hostile work environment sexual harassment. Things such as intimidating words and actions, obscene gestures, unwelcome physical contact, and unsolicited sexual advances, if sufficiently severe or pervasive, fall on this side of the line.

> See Baskerville, 50 F.3d at 430. Additionally, an employee may make out an actionable claim by showing the existence of other conduct, not involving touching or sexual advances, that was intentionally designed to create an abusive or hostile work environment for the employee because someone of his or her gender is not welcome in the workplace or held in low regard on account of his or her gender. An employee might thus demonstrate a hostile work environment by showing that women (or men) were targeted for extensive hazing designed to demean and denigrate their importance in the workplace. It is important to remember, however, that intentional discrimination is a key element of any sexual harassment claim, which the plaintiff bears the burden of proving.

Pospicil v. Buying Office, Inc., 71 F. Supp. 2d 1346, 1356-1357, (N.D. Ga. 1999).

33. The Pospicil court noted that the chief executive officer routinely used the word,, "fuck," and referred often to "blowjobs." More concerning to the court, though, was that the chief executive officer treated men and women differently, cursing at female, but not male, employees; allowing male, but not female, employees to leave a function early; using the words "whore" and "harem"; and making comments about having sexual relations with a beauty contestant. Noting that any of these behaviors "might fall on the [nonactionable] vulgarity side of the line," the court found that, together, these comments were enough to present a fact issue for the jury. Id. at 1357-58.

34. In Baskerville v. Culligan Int'l Co., 50 F.3d 428 (7th Cir. 1995), a male manager made nine suggestive or sexually inappropriate comments to a female whom he supervised over seven months. The court noted that the manager never touched the plaintiff, nor had he propositioned her or asked her on a date. He made no threats, showed her no sexually suggestive materials, and never said anything that could not be repeated on network television. The court noted:

> The infrequency of the offensive comments is relevant to an assessment of their impact. A handful of comments spread over months is unlikely to have so great an emotional impact as a concentrated or incessant barrage. Dey v. Colt Construction & Development Co., 28 F.3d 1446, 1456 (7th Cir. 1994); Doe v. R.R. Donnelley & Sons Co., 42 F.3d 439, 444 and n.3 (7th Cir. 1994).
>
> We are mindful of the dangers that lurk in trying to assess the impact of words without taking account of gesture, inflection, the physical propinquity of speaker and hearer, the presence or absence of other persons, and other aspects of context. Remarks innocuous or merely mildly offensive when delivered in a public setting might acquire a sinister cast when delivered in the suggestive isolation of a hotel room. So too remarks accompanied by threatening gestures or contorted facial features, or delivered from so short a distance from the listener's face as to invade the listener's private space. Cf. Erving Goffman, The Presentation of Self in Everyday Life (1959). Even a gross disparity in size between speaker and listener, favoring the

> former, might ominously magnify the impact of the speaker's words.

Id. at 431.

35. Over a period of nearly three years, Respondent Perez demonstrated himself to Petitioner and others to be a man capable of repulsive crudeness. But he never touched Petitioner. He came to her door only once when she first moved into Galaxy, and, upon learning of Petitioner's practice in disposing of used toilet paper, seemed, not threatening, but understandably abashed, as he evidently declined Petitioner's offer to see for himself.

36. The present record does not depict the pattern of demeaning females that was present due to all of the factors noted by the court in Pospicil. Respondent Perez's vulgarity was not reserved for Petitioner or females, judging from his comments to Petitioner's brother and nephew. Undoubtedly, given his fondness for the word, Respondent Perez uttered "fuck" to or at Petitioner, although the circumstances of such interactions are undeveloped in the record. As noted above, in an early exchange with Petitioner, Respondent Perez used the word as an adjective to intensify his reference to his gender, and Petitioner did the same to intensify her reference to her gender.

37. Respondent Perez also used the words "bitch" and "whore." Although the latter word is not a swear word, like "bitch," "whore" demeans women. Again, though, the circumstances

of these utterances are undeveloped in the record. It is unknown whether Respondent Perez uttered these words to Petitioner and, if so, how often; without this information, it is difficult to infer discriminatory intent, as distinguished from mere vulgarity.

38. Nor can Respondent Perez's intent be inferred from the impact of any of his vulgarities upon Petitioner, as noted by the court in Baskerville. The setting was invariably in the common area of the park, and the impact on Petitioner, who herself freely engaged in vulgarities, does not seem to have been great.

39. Several times, Petitioner testified--at least once tearfully--that Respondent Perez's treatment of her deprived her of her ability to enjoy her home and the amenities of the park. This testimony was not credible based on Petitioner's demeanor throughout the hearing and the abruptness from which she transitioned in her testimony between routine matters and what was supposed to have been this moving, dramatic testimony. More basically, there was never a connection between Petitioner's recounting of relatively few incidents of vulgarities uttered (or, in one case, pantomimed) by Respondent Perez over three years and Petitioner's broad claim of a resulting deprivation of her ability to enjoy the material, emotional, and spiritual comforts of her home.

40. Based on the foregoing, Petitioner has failed to prove that any of the respondents discriminated against her on the basis of sex in connection with the rental of her lots at Galaxy Mobile Home Park, or in the provision of services or facilities in connection the rental of her lots.

RECOMMENDATION

It is

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

DONE AND ENTERED this 23rd day of March, 2015, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
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Filed with the Clerk of the
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this 23rd day of March, 2015.

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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.