STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PEGGY TROIANO,

Petitioner,

vs. Case No. 14-6140

HERNANDO COUNTY HOUSING
AUTHORITY,

Respondent.
_______________________________/

RECOMMENDED ORDER

A final hearing was conducted in this case on February 13, 2015, in Brooksville, Florida, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Peggy Troiano, pro se
15141 Pomp Parkway
Weeki Wachee, Florida 34614

For Respondent: LaShawnda K. Jackson, Esquire
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STATEMENT OF THE ISSUE

Whether the Hernando County Housing Authority (Respondent) unlawfully engaged in a discriminatory housing practice against Peggy Troiano (Petitioner) on the basis of her disability by

refusing to provide Section 8 funding for a housing unit being occupied by Petitioner and the housing unit's owner, Petitioner’s daughter, Julia Williams.

PRELIMINARY STATEMENT

On October 8, 2014, Petitioner filed a Housing Discrimination Complaint (Complaint) against the Hernando County Housing Authority with the U.S. Department of Urban Development (HUD). Thereafter, the Complaint was forwarded to the Florida Commission on Human Rights (Commission) for investigation. According to the Complaint, on August 21, 2014, Petitioner was issued a notice stating that her Housing Assistance Contract under the Section 8 program will be terminated, effective September 30, 2014, because the "unit is occupied by its owner or by a person with interest in the unit." The Complaint further states that on September 8, 2014, Petitioner submitted a reasonable accommodation request to have her voucher reinstated to her current residence [owned by her daughter] until Petitioner could locate a home that would meet her medical needs. The Complaint alleges that Respondent discriminated against Petitioner on the basis of her disability.

Following completion of its investigation, the Commission issued a Determination dated November 24, 2014, finding "that there is not reasonable cause to believe that a discriminatory housing practice occurred." On December 4, 2014, the Commission

mailed Petitioner a Notice of Determination of No Cause (Notice) on the Complaint noting that the Commission and HUD "administer the Fair Housing Act . . . [and that] [b]ased on the evidence obtained during the investigation, the [Commission] has determined that reasonable cause does not exist to believe that a discriminatory housing practice has occurred." The Notice referenced the Florida Fair Housing Act, as well as Florida Administrative Code Rule 60Y-8.001 and chapter 60Y-4, and advised Petitioner of her right to file a petition for relief for an administrative proceeding on her Complaint within 30 days from the date of service of the Notice, or a civil action within two years from the alleged discriminatory housing practice. Petitioner timely filed a petition (Petition for Relief) with the Commission on the Commission's form reiterating the allegations of her Complaint.

On December 29, 2014, the Commission filed a Transmittal of Petition with the Division of Administrative Hearings (DOAH) for assignment of an administrative law judge to conduct an administrative hearing on Petitioner's Petition for Relief.

At the administrative hearing held on February 13, 2015, with the help of her daughter, Julia Williams, Petitioner appeared by phone and presented the testimony of one witness, testified on her own behalf, and offered 18 pre-marked exhibits received into evidence as Exhibits P-A, P-D, P-F, P-H through

P-L, P-N, P-Q, P-S, P-T, P-Y, and P-BB through P-FF. Respondent presented the testimony of two witnesses and offered 33 pre-marked exhibits received into evidence as Exhibits R-A through R-GG. In addition, Exhibit Joint-1 was received into evidence. All exhibits were received into evidence with the caveat that, although hearsay in the exhibits could be used as corroborative evidence, hearsay, alone, could not be relied upon to support a finding of fact.

The hearing concluded on February 13, 2015. The proceedings were recorded and a transcript was ordered. The parties were given 30 days from the filing of the transcript within which to file their proposed recommended orders. A two-volume Transcript of the proceeding was filed March 13, 2014. The parties timely filed their respective Proposed Recommended Orders on April 13, 2015, both of which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all relevant times, Petitioner was an individual participant in a tenant-based voucher arrangement under the Section 8 Housing Program funded by HUD and administered by Respondent.

2. Petitioner is an individual claiming that she is disabled because of a toxic injury that requires her to live isolated in a non-toxic environment. Respondent does not

contest Petitioner's claim of disability and it is, therefore, found that Petitioner is disabled or handicapped within the meaning of applicable law.

3. Julia Williams is Petitioner's daughter who, at all relevant times, owned the house located at 15141 Pomp Parkway, Weeki Wachee, Hernando County, Florida ("15141 Pomp Parkway unit"). Ms. Williams is specially trained to deal with toxic injury and is paid through a federally-funded, consumer-directed program to provide assistance to Petitioner.

4. Respondent is a public housing agency that administers the Section 8 Housing Program as part of the Housing and Community Development Act of 1974, which recodified the U.S. Housing Act of 1937. As a recipient of funding from HUD for its Section 8 Program, Respondent is required to comply with HUD Section 8 regulations, as well as all Federal, State, and local fair housing laws and regulations.

5. In order to receive funding from HUD, Respondent is required to sign an annual contributions contract (ACC) wherein it agrees to follow the Code of Federal Regulations (C.F.R.). If Respondent does not follow the C.F.R. or HUD's guidelines, HUD has the right to terminate Respondent's Section 8 program funding. In addition, HUD could make Respondent repay any funding used for ineligible housing.

6. On March 17, 2014, during the annual reexamination for her Section 8 voucher, Petitioner signed, under the penalty of perjury, a summary report which identified her as the only household member permitted to live in any unit under her Section 8 voucher.

7. Around the time of the annual reexamination, Petitioner was living at a unit on Philatelic Drive with plans to move into and rent a unit at 15141 Pomp Parkway. The Pomp Parkway unit was owned, but not being occupied, by Petitioner's daughter Julia Williams.

8. In April of 2014, Petitioner asked Respondent for permission to rent the unit from her daughter. Petitioner and her daughter spoke with Respondent's officials about her request.

9. Generally, a public housing agency, such as Respondent, cannot approve a unit for participation in the Section 8 program if it is owned by a parent, child, grandparent, grandchild, sister, or brother of any member of the participant's family. See 24 C.F.R. § 982.306. Respondent, however, ultimately approved Petitioner's rental of the Pomp Parkway unit under the Section 8 program, even though it was owned by Petitioner's daughter, pursuant to a limited exception under 24 C.F.R. § 982.306(d), which provides an express exception to the rule if "the [public housing agency] determines that approving the unit

would provide reasonable accommodation for a family member who is a person with disabilities." 24 C.F.R. § 982.306(d).

10. Also, during April of 2014, Petitioner and Ms. Williams were working on constructing a caregiver suite for the 15141 Pomp Parkway unit and had discussions with Respondent's staff about it.

11. There are documents purportedly created during this time frame summarizing several conversations between Respondent, Petitioner, and Ms. Williams. The documents state that Respondent's officials had a conversation with Petitioner and her daughter wherein they discussed the requirements for a live-in aide and that Petitioner and Ms. Williams were warned that Ms. Williams could never live in the 15141 Pomp Parkway unit. Respondent also contends that Petitioner and Ms. Williams were warned that, even if Ms. Williams was approved as a live-in aide, Ms. Williams could not live in the 15141 Pomp Parkway unit.

12. On the other hand, Petitioner contends that the alleged conversations warning her that her daughter could not reside in the home did not occur during this time frame, and that she and her daughter continued to renovate the house to specifications suitable to accommodate Petitioner's disability with the expectation that her daughter would ultimately be able to reside in the home after renovations were complete.

13. Upon consideration of the credibility of the witnesses and timing of the purported documents, the undersigned finds that the testimony and documents regarding these alleged April conversations are unreliable and do not support a finding that the conversations and warnings actually occurred during the April time frame. The evidence is also insufficient to support Petitioner's contention that Respondent was somehow responsible for Petitioner's expectation that her daughter would be able to both act as Petitioner's caregiver and live in the home while Petitioner was receiving rent vouchers under the Section 8 program.

14. Petitioner was the only person that Respondent approved to live in the 15141 Pomp Parkway unit under her Section 8 voucher. In May of 2014, Petitioner’s daughter entered into a one-year residential lease with Petitioner and a Housing Assistance Payment Contract (HAP Contract) with Respondent. According to the HAP Contract, Petitioner was the only person able to reside in the 15141 Pomp Parkway unit without the express, written consent of Respondent. At the time the HAP Contract was signed, Petitioner advised Respondent that she would be the only person living in the unit. Ms. Williams, as the landlord, signed a check cashing agreement with Respondent wherein she agreed Petitioner would be the only person occupying the 15141 Pomp Parkway unit. Also,

Petitioner’s income verification summary report provides that Petitioner is the only person allowed to live in a unit covered by her Section 8 voucher.

15. In early May of 2014, Ms. Williams moved into the 15141 Pomp Parkway unit without notice to Respondent.

16. Petitioner has never received written approval from Respondent to have Ms. Williams live and occupy the 15141 Pomp Parkway unit under the Section 8 voucher program.

17. By letter dated June 17, 2014, Petitioner submitted an HCHA Live-in Aide Request Verification Form, along with letters from her doctor. Petitioner also requested that her daughter Julia Williams serve as her live-in aide.

18. Approval for a live-in aide is a different process than the approval process to have someone added to the household. While Petitioner's request for a live-in aide stated that Petitioner was living at 15141 Pomp Parkway, it did not mention that Petitioner's daughter was the owner of the dwelling, nor did it include a specific request that Ms. Williams be allowed to move into and occupy the 15141 Pomp Parkway unit that she owned.

19. Upon receipt of the written request for a live-in aide by Petitioner, Respondent began its investigation to determine whether Petitioner met the qualifications for a live-in aide and

whether Ms. Williams met the qualifications to serve as a live-in aide.

20. Respondent has implemented 24 C.F.R. § 5.403 into its written policy regarding live-in aides, which provides:

> LIVE-IN ATTENDANTS
>
> - A family may include a live-in aide provided that such live-in aide:
> - Is determined by the [public housing agency] to be essential to the care and well-being of an elderly person, a nearly-elderly person, or a person with disabilities,
> - Is not obligated for the support of the person(s), and
> - Would not be living in the unit except to provide care for the person(s).

21. Under the C.F.R., a public housing agency is required to approve a live-in aide, if needed, as a reasonable accommodation for an elderly or disabled person. 24 C.F.R. § 982.316 ("The PHA must approve a live-in-aide if needed as a reasonable accommodation" to a family with an elderly or disabled person.).

22. By letter dated June 27, 2014, Respondent notified Petitioner of the approval of her request for her daughter to serve as her live-in aide. Although Respondent was aware that a home occupied by an owner was not eligible for a Section 8 voucher at the time it gave its permission for Petitioner's

daughter to serve as Petitioner's live-in aide, the letter did not speak to that issue. Rather, the June 27, 2014, letter, signed by Donald Singer, stated:

> Pursuant to your letter dated June 17, 2014 requesting a reasonable accommodation for a live in aide. Your letter also ask [sic] that the live in aide be your daughter, Julia Williams based upon her qualifications as presented.
>
> After reviewing the U.S. Department of Housing and Urban Development's (HUD) regulations for Live-in Aides and the Housing Authority's Section 8 Program Administrative Plan for Live in Aides our office has determined that your daughter, Julia Williams meets the program qualification(s) to act as your Live in Aide. Therefore our office is approving Julia E. Williams as your Live in Aide effective immediately.
>
> Should you have any questions regarding this action/letter please contact our office at 352-754-4160.

23. By email on August 11, 2014, Petitioner notified Mr. Singer that she and her live-in aide, Julia Williams, intended to live at the 15141 Pomp Parkway unit.

24. On August 11, 2014, Petitioner's daughter Julia Williams was still the owner of the 15141 Pomp Parkway unit.

25. Under 24 C.F.R. § 892.352, a unit being occupied by its owner is deemed "ineligible" and a public housing agency is prohibited from providing funding for such unit. The C.F.R. provides a limited exception for shared housing that allows an

owner to occupy a unit funded by Section 8. Under that limited exception, however, the Section 8 participant cannot be a blood relative of the resident owner. 24 C.F.R. § 982.615(b)(3).

26. Based upon the prohibition under the C.F.R. which forbids a public housing agency from funding a unit occupied by an owner who is a blood relative of the Section 8 participant, by letters dated August 22, 2014, Respondent notified Petitioner and Ms. Williams that the 15141 Pomp Parkway unit was "ineligible housing" that could not be funded. The letters also informed Petitioner that Julia Williams' approval as a live-in aide did not supersede HUD regulations and that, because Julia Williams was occupying the unit, Respondent was terminating the HAP contract effective September 30, 2014.

27. The only reason Respondent terminated the funding for the 15141 Pomp Parkway unit was because the C.F.R. does not allow Respondent to continue funding a unit occupied by its owner.

28. Prior to the August 22nd letters, Respondent was advised by HUD that Respondent did not have any discretion in funding "ineligible housing." HUD approved the draft of the August 22nd letters.

29. The evidence does not support a finding that either Respondent or HUD waived or should otherwise be prevented from applying the limitations and requirements of the law that a

Section 8 participant cannot be a blood relative of the resident owner.

30. Respondent would have been willing to continue Petitioner’s housing assistance as long as Petitioner met program requirements and the housing was deemed eligible housing under the C.F.R. through the issuance of a new three-bedroom voucher for a different unit, or by having Petitioner live in the 15141 Pomp Parkway unit without Ms. Williams both owning and occupying the unit.

31. By letter dated August 27, 2014, Respondent provided Petitioner with a new Section 8 voucher and voucher packet information so that Petitioner could start searching for a new rental unit where Ms. Williams could continue to serve as Petitioner’s live-in aide under Petitioner’s Section 8 voucher. The new voucher was required to be returned to Respondent by September 30, 2014.

32. There was no testimony that Petitioner returned the new Section 8 voucher to Respondent by September 30, 2014, or that Ms. Williams moved out of 15141 Pomp Parkway by that date.

33. On September 4, 2014, before the funding was terminated for the 15141 Pomp Parkway unit, Petitioner filed a complaint for discrimination.

34. Petitioner emailed a signed three-bedroom voucher on October 30, 2014, a month after funding under the new voucher

expired, for the rental of the 15141 Pomp Parkway unit that had already been deemed ineligible housing as defined by 24 C.F.R. § 982.316.

35. That voucher is not valid and the facts fail to support a finding that Respondent's refusal to allow Petitioner to participate in the Section 8 voucher program while occupying a unit owned and occupied by her daughter was because of Petitioner's disability.

CONCLUSIONS OF LAW

36. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. See §§ 120.569, 120.57(1), and 760.20-760.37, Fla. Stat.; see also Fla. Admin. Code R. 60Y-4.016 and 60Y-8.001.[1/]

37. Although Petitioner's allegations are couched in terms of federal law,[2/] the Notice of the Commission's determinations advising Petitioner of her right to file a petition for relief reference the Act, as well as Florida Administrative Code Rule 60Y-8.001 and chapter 60Y-4, which invoke the undersigned's jurisdiction for an administrative hearing under the Act. The analysis, whether under the Act or the federal fair housing act (FHA),[3/] is the same. Bhogaita v. Altamonte Heights Condo. Ass'n, 765 F.3d 1277, 1285 (11th Cir. 2014)("The FHA and the Florida Fair Housing Act are substantively identical, and therefore the same legal analysis applies to each.").

38. Florida's Fair Housing Act (the Act) is codified in sections 760.20 through 760.37, Florida Statutes.

39. Among other things, as in the FHA, the Act makes certain actions "discriminatory housing practices." Under the Act, following an administrative hearing, the Commission has authority to make findings as to whether a "discriminatory housing practice" has occurred. If such a finding is made, the Act further authorizes the Commission to issue an order "prohibiting the practice" and providing "affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs." § 760.35(3)(b), Fla. Stat.

40. The "discriminatory housing practices" prohibited by the Act include those described in section 760.23(2), which provides:

> (2) It is unlawful to discriminate against any person in terms, conditions, or privileges of sale or rental of a dwelling, or <u>in the provision of services or facilities in connection therewith, because</u> of race, color, national origin, sex, <u>handicap</u>, familial status, or religion. (emphasis added).

41. The language in section 760.23(2) is identical to the prohibition in the federal Fair Housing Act (FHA), found at 42 U.S.C. § 3604(b). Because section 760.23(2) is patterned after a federal law on the same subject, "it [should] be

accorded the same construction as in federal courts to the extent the construction is harmonious with the spirit of the Florida legislation." Cf., Winn-Dixie Stores, Inc. v. Reddick, 954 So. 2d 723, 728 (Fla. 1st DCA)(discussing the same rule of construction in the context of the Florida Civil Rights Act of 1992, §§ 760.01-760.11, Fla. Stat.), rev. denied, 967 So. 2d 198 (Fla. 2007).

42. Petitioner, as the party asserting the affirmative in this proceeding, has the initial burden of proof. See Balino v. Dep't of Health & Rehab. Services, 348 So. 2d 349 (Fla. So. 2d 349).

43. Petitioner has the burden of establishing facts to prove a prima facie case of discrimination. U.S. Dep't of Hous. and Urban Dev. v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990).

44. The three-part "burden of proof" pattern developed in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973), applies. Blackwell, 908 F.2d at 870. Under that test:

> First, [Petitioner] has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if [Petitioner] sufficiently establishes a prima facie case, the burden shifts to [Respondent] to "articulate some legitimate, nondiscriminatory reason" for its action. Third, if [Respondent] satisfies this burden, [Petitioner] has the opportunity to prove by a preponderance that the legitimate reasons asserted by [Respondent] are in fact mere pretext.

Id., citing Pollitt v. Bramel, 669 F. Supp. 172, 175 (S.D. Ohio 1987)(federal Fair Housing Act claim).

45. Discrimination under the Act and the FHA can occur upon "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a disabled person an] equal opportunity to use and enjoy a dwelling." § 760.23(9)(b), Fla. Stat.; 42 U.S.C. § 3604(f)(3)(B). In proving an alleged refusal to make a reasonable accommodation, Petitioner has the burden of showing that a proposed accommodation is reasonable. See Loren v. Sasser, 309 F.3d 1296, 1302 (11th Cir. 2002). To prevail on a failure to accommodate claim under either the Act or the FHA, Petitioner must establish that (1) she is handicapped within the meaning of the Act, (2) she requested a reasonable accommodation, (3) such accommodation was necessary to afford her an opportunity to use and enjoy her dwelling, and (4) Respondent refused to make the requested accommodation. See Philippeaux v. Apt. Inv. and Mgmt. Co., 598 Fed. Appx. 640, *6-*7 (11th Cir. 2015).

46. As explained by the Eleventh Circuit Court of Appeals in Schwarz v. City of Treasure Island, 544 F.3d 1201, 1226 (11th Cir. 2008):

> The FHA's reasonable accommodation provision requires only those accommodations that "may be *necessary* . . . to afford *equal*

> opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B)(emphases added). The word "equal" is a relative term that requires a comparator to have meaning. In this context, "equal opportunity" can only mean that handicapped people must be afforded the same (or "equal") opportunity to use and enjoy a dwelling as non-handicapped people, which occurs when accommodations address *the needs created by the handicaps*. If accommodations go beyond addressing these needs and start addressing problems not caused by a person's handicap, then the handicapped person would receive not an "equal," but rather a better opportunity to use and enjoy a dwelling, a preference that the plain language of this statute cannot support.

47. A review of the testimony and exhibits received into evidence, in light of the facts and law, demonstrates that Petitioner failed to meet her burden in this case.

48. First, Petitioner's claim fails because applicable regulations prohibit the use of a Section 8 housing voucher to pay her rent for a unit being occupied by its owner.

49. Federal regulations pertaining to the tenant-based program of Section 8 prohibit the rental family from having any interest in the dwelling unit. This prohibition states that "[t]he family must not own or have any interest in the unit." 24 C.F.R. § 982.551(j). A similar restriction is found at 24 C.F.R. § 982.352, pertaining to eligibility of a housing unit. Specifically, the regulation deems ineligible "[a] unit

occupied by its owner or by a person with any interest in the dwelling unit." 24 C.F.R. § 982.352(6).

50. Respondent has no authority to waive the rule requirements or otherwise accommodate Petitioner who wishes to receive assistance in a family owner-occupied unit. While the "shared housing" provision of 24 C.F.R. § 982.615 permits a Section 8 participant to share an owner-occupied unit, the provision expressly provides "[a]n assisted person may not be related by blood or marriage to a resident owner." 24 C.F.R. § 982.615(b)(3). Because Petitioner and Julia Williams are blood relatives, the regulations do not provide a means for Respondent to permit Petitioner to live in the 15141 Pomp Parkway unit with owner Julia Williams, even as a live-in aide.

51. In addition, the evidence does not support a finding that the accommodation requested by Petitioner is reasonable. "The Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act" provides that a request for accommodation cannot require a "fundamental alteration" of a public housing agency's operation or an undue financial or administrative burden.

52. Respondent has no discretion in complying with 24 C.F.R. § 982.352(6). Under its ACC Contract with HUD, Respondent must comply with the C.F.R.'s prohibition against

funding “ineligible” units. Respondent's failure to comply could jeopardize federal funding of its Section 8 program.

53. Further, Petitioner is requesting an accommodation that would put her in a better position than all of Respondent’s other Section 8 clients. Preferential treatment is not what a reasonable accommodation is designed to do. See Philippeaux, 598 Fed. Appx. 640 at *8 (where tenant’s request would have put him in a better position than other residents, the request is not for a reasonable accommodation).

54. Petitioner has also failed to establish that the requested accommodation is necessary to afford Petitioner the equal opportunity to use and enjoy Respondent’s Section 8 program. Before terminating funding for the 15141 Pomp Parkway unit, Respondent issued Petitioner a three-bedroom Section 8 voucher for Petitioner to locate and rent a different unit that was not owned and being occupied by Ms. Williams. Alternatively, Ms. Williams could have moved out and continued to provide services to Petitioner at the 15141 Pomp Parkway unit for which Petitioner was receiving payment under the two-bedroom voucher. Petitioner could also submit a request for a live-in aide who did not own and could occupy the 15141 Pomp Parkway unit under a three-bedroom voucher. Under any of those options, Respondent was willing to provide Section 8 funding to

Petitioner without violating applicable regulations and its contractual obligations to HUD.

55. In sum, Petitioner failed to prove her claim of discrimination[4/] based upon her disability.[5/]

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 Complaint and Petition for Relief.

DONE AND ENTERED the 22nd day of May, 2015, in Tallahassee, Leon County, Florida.

JAMES H. PETERSON, III
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of May, 2015.

ENDNOTES

[1/] Unless otherwise indicated by context, citations to all statutes, rules, and regulations are to current versions, the substantive provisions of which have not changed since the pertinent facts in this case.

[2/] In particular, the Complaint alleges violations of "[s]ections 804a, 804(f)(2), and 804(f)(3)(B) of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988." The Complaint also references section 504 of the 1973 Rehabilitation Act.

[3/] The FHA, enacted as Title VIII of the Civil Rights Act of 1968, amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988), is codified at 42 U.S.C. § 3601, et. seq.

[4/] This conclusion is based upon an analysis under the Act and pertinent case law under the FHA. Although beyond the scope of an analysis under the Act, in addition to her claim of discrimination under the FHA, Petitioner's Complaint also alleges a violation of section 504 of the Rehabilitation Act of 1973. Section 504, codified at 29 U.S.C. § 794, provides in pertinent part:

> No otherwise qualified individual with a disability in the United States, as defined in section 705(20) [29 USC § 705(20)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

The facts do not support a claim under section 504. Petitioner failed to show that her disability played any role whatsoever in Respondent's decision to decline a Section 8 voucher for the 15141 Pomp Parkway unit occupied by Petitioner's daughter who owned the unit.

In addition, although Petitioner makes reference to the Americans with Disabilities Act, an analysis under that law is not appropriate. Rather, FHA case law and standards are applicable to this case involving residential housing, as opposed to the Americans with Disabilities Act (ADA) case law and standards which are applied to discrimination claims involving public accommodations. See, e.g., Harding v. Orlando Apts., LLC, 748 F.3d 1128 (11 Cir. 2014)(discussing FHA standards in context of alleged residential housing discrimination) and Thompson v. Sand Cliffs Owners Assoc.,

No. 3:96cv270/RV, 1998 U.S. Dist. Lexis 32632 (N.D. Fla. Mar. 30, 1998)(explaining that ADA standards are applicable to discrimination with regard to public accommodations, not residential housing).

[5/] Both the Act and the FHA prohibit discriminating against a person on the basis of a "handicap," by refusing to make reasonable accommodations when necessary to afford the person equal opportunity to use and enjoy a dwelling. § 760.23(2), Fla. Stat.; 42 U.S.C. § 3604(f)(3)(B). In applicable case law and this Recommended Order, the terms "handicap" and "disability" are used interchangeably. As noted by the Eleventh Circuit Court of Appeal:

> The FHA refers to discrimination based on "handicap" rather than disability. *42 U.S.C. § 3604(f)*. Disability scholars, however, generally prefer the term "disability" to handicap, and the Americans with Disabilities Act, Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended at *42 U.S.C. §§ 12101-12213*) ("ADA"), reflects that preference. For this reason, we treat the terms interchangeably and elect to use "disability" and the preferred possessive construction. *See Giebeler v. M&B Assocs., 343 F.3d 1143, 1146 n.2 (9th Cir. 2003)* (using the terms interchangeably and stating the same rationale for doing so); Michelle A. Travis, *Impairment as Protected Status: A New Universality for Disability Rights*, *46 Ga. L. Rev. 937 (2012)* (referring throughout to persons "with disabilities" rather than "disabled persons").

Bhogaita, 765 F.3d at 1285, n.2.

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.