STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

STACEY JERN,

Petitioner,

vs. Case No. 15-4817

CAMELOT RESIDENCE'S ASSOCIATION, INC.; CHARLES KANE, PROPERTY MANAGER; AND GREG HUNNICUTT, PRESIDENT,

Respondents.
_____/

RECOMMENDED ORDER

This case was heard on December 1, 2015, via video teleconference in Tallahassee and Sebastian, Florida, before Suzanne Van Wyk, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stacey Leigh Jern, pro se
Post Office Box 352
Kirkwood, Illinois 61447

For Respondents: Nicholas A. Vidoni, Esquire
Watson, Soileau, DeLeo, Burgett, and Pickles, P.A.
3490 North U.S. Highway 1
Cocoa, Florida 32923

STATEMENT OF THE ISSUE

Whether Petitioner was subject to unlawful discrimination by Respondents in retaliation for exercising her rights under the Fair Housing Act, chapter 760, Part II, Florida Statutes (2015).[1/]

PRELIMINARY STATEMENT

On June 5, 2015, Petitioner dual-filed a Complaint of Discrimination with the Department of Housing and Urban Development (HUD) and the Florida Commission on Human Relations (FCHR), alleging that Respondents discriminated against her in violation of the Fair Housing Act by retaliating against Petitioner for filing a prior complaint with FCHR.

An investigation of the complaint was made by FCHR. On August 3, 2015, FCHR issued its Determination of No Cause and Notice of Determination of No Cause, concluding that there was no reasonable cause to believe that a discriminatory housing practice had occurred.

Petitioner disagreed with FCHR's determination and, on August 20, 2015, 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 1, 2015, via video teleconference in Sebastian and Tallahassee, Florida, and commenced as scheduled.

At the hearing, Petitioner testified on her own behalf, and presented the testimony of Marcus Murillo and Brittany Walker. Petitioner introduced no exhibits in evidence. Respondents offered the testimony of Gerry Britton and Charlie Kane. Respondents introduced no exhibits in evidence.

The proceedings were recorded, but the parties did not order a transcript thereof. The parties timely filed Proposed Recommended Orders which have been considered by the undersigned in preparing this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Stacey Jern, is a former resident of a condominium development located in Titusville, Florida, which will be referred to herein as Camelot. At the time of the final hearing, Petitioner identified herself as residing in Kirkwood, Illinois.

2. Respondent, Camelot Residence's Association, Inc. (the Association), is an entity created by the developer and/or owners of property in Camelot. The Association is governed by a Board of Directors (Board) and has recorded covenants governing use of the property by current and future residents.

3. Respondent, Charlie Kane, was at all times relevant hereto, the Association manager.

4. Respondent, Greg Hunnicutt, was at all times relevant hereto, President of the Association.

5. In 2013, while a tenant in Camelot, Petitioner filed a complaint with the FCHR alleging the Association discriminated against her on the basis of her disability in violation of the Fair Housing Act (2013 Complaint). As to her disability, Petitioner testified that she has post-traumatic stress syndrome and anxiety disorder.[2/]

6. The 2013 Complaint was resolved by a No Cause determination issued by the FCHR in 2014. Petitioner did not exercise her right to an administrative hearing following the No Cause determination on the 2013 Complaint.

7. Shortly after issuance of the No Cause determination, Petitioner left Camelot and moved out of state.

8. While out of state, Petitioner reconnected with a friend, Brittany Walker, who was living with her grandfather in Melbourne, Florida. Ms. Walker was expecting a baby and wished to move out of her grandfather's house. Petitioner and Ms. Walker planned to find a place to live together in Florida. Petitioner was going to provide child care for Ms. Walker's baby.

9. In 2015, Petitioner returned to Titusville, Florida. Petitioner needed a place to stay while searching for a rental to accommodate herself, Ms. Walker, and the baby.

10. On or about January 5, 2015, Petitioner came to visit her friend Marcus Murillo, who was a tenant in Camelot. Mr. Murillo leased a one-bedroom unit.

11. Petitioner brought very little personal property other than clothing with her to Mr. Murillo's unit. Petitioner intended to stay only briefly.

12. Petitioner did not apply to rent any property in Camelot, and upon questioning by the undersigned, emphatically denied any intent to lease property or reside in Camelot. Petitioner was not a resident of Camelot and did not intend to become a resident of Camelot.

13. At all times pertinent hereto, Petitioner was Mr. Murillo's guest. Mr. Murillo's unit was not Petitioner's residence.

14. Mr. Murillo's one-bedroom condominium unit was owned by Respondent, Greg Hunnicutt.

15. Mr. Hunnicutt had knowledge of Petitioner's 2013 Complaint against the Association. By all accounts, Petitioner had a hostile relationship with Mr. Hunnicutt when she was a tenant in Camelot. No details regarding the nature of the hostility were introduced in evidence.

16. Mr. Kane became aware of Petitioner's presence in Camelot by an unidentified "neighborhood watch volunteer" who so

informed Mr. Kane. Mr. Kane contacted Mr. Hunnicutt and informed him that Petitioner was staying in Mr. Murillo's unit.

17. Shortly thereafter, Mr. Hunnicutt called Mr. Murillo. Mr. Murillo testified that Mr. Hunnicutt inquired whether Petitioner was staying with him, and, when Mr. Murillo confirmed that fact, Mr. Hunnicutt told him Petitioner had to leave. Mr. Murillo testified that Mr. Hunnicutt stated something to the effect that Petitioner was "not the kind of person we need in Camelot." Further, Mr. Murillo testified that Mr. Hunnicutt said to him "if you don't like it, you can leave with her."

18. Petitioner left Camelot shortly thereafter.

19. The Association did not hold a Board meeting in January 2015. No evidence was introduced to support a finding that Mr. Hunnicutt's actions were taken at the direction of the Association, or that any member of the Board was aware of Mr. Hunnicutt's request that Petitioner leave Camelot.

20. Petitioner alleges that she incurred monetary damages because she was asked to leave Camelot before she had secured another place to rent. Petitioner seeks $15,432.00 in "actual monetary damages."[3/]

21. Petitioner's mother is a resident of Camelot. Petitioner also seeks an order prohibiting Respondents from harassing her should Petitioner visit her mother in the future.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2015).[4/]

23. Petitioner's complaint alleges Respondent violated section 760.37, which reads as follows:

> 760.37 **Interference, coercion, or intimidation; enforcement by administrative or civil action.**—It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of her or his having exercised, or on account of her or his having aided or encouraged any other person in the exercise of any right granted under ss. 760.20-760.37. This section may be enforced by appropriate administrative or civil action.

24. Section 760.37 is patterned after 42 U.S.C. § 3617, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988. Discrimination covered under the Florida Fair Housing Act is the same discrimination prohibited under the Federal Fair Housing Act (referred to hereafter collectively as the FHA). 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. Fla. Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA

1994); see also Milsap v. Cornerstone Residential Mgmt., 2010 U.S. Dist. LEXIS 8031 (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).

Standing

25. Standing to bring a claim under the FHA is broad. "[T]he only requirement for standing to sue under the [FHA] is the Art. III requirement of an injury in fact." Telesca v. Kings Creek Condo. Ass'n, 2010 U.S. App. LEXIS 16167 at *6 (11th Cir. 2010)(quoting Havens Realty Corp. v. Coleman, 455 U.S. 363, 376 (1982)).

26. While the standing requirement is broad, is it not limitless. There are three elements to Article III standing, succinctly stated by the Supreme Court as follows:

> 'First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely as opposed to merely speculative, that the injury will be redressed by a favorable decision.'

Id. at 880-81 (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)).

27. Petitioner alleges she was injured by Mr. Hunnicutt's threatening phone call to Mr. Murillo, which caused her to prematurely terminate her visitation with Mr. Murillo and seek shelter on short notice, thus incurring monetary damages.

28. Petitioner has not established standing to bring the instant action, even under the broad ambit of the FHA. Based on the particular facts herein, Petitioner has not proven that she suffered an injury in fact.

29. Petitioner has not identified any legally-protected interest which was allegedly invaded by Respondents. Section 760.37 regulates discriminatory conduct "before, during, or after a sale or rental of a dwelling." Delawter-Gourlay v. Forest Lake Estates Civic Ass'n of Port Richey, Inc., 276 F. Supp. 2d 1222, 1235 (M.D. Fla. 2003)(vacated after settlement, 2003 U.S. Dist. LEXIS 26080 (M.D. Fla. 2003)). Under the FHA, a "dwelling" is defined, in pertinent part, as "any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families." § 760.22(4), Fla. Stat.

30. The term "residence" is not defined by the FHA, but courts have held that "the ordinary meaning of the word 'residence' in [the FHA] is 'a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient

visit.'" Schwarz v. City of Treasure Island, 544 F.3d 1201, 1214 (11th Cir. 2008)(holding that half-way house is a dwelling for purposes of the FHA where residents treat the facility as their home and the average stay is six to ten weeks). Other temporary residences have been found to qualify as dwellings under the FHA where the occupants' lifestyles and intentions reflect the plain and ordinary meaning of the word residence. See Lakeside Resort Enters., L.P. v. Bd. of Supervisors of Palmyra Twp., 455 F.3d 154 (3d. Cir. 2006)(drug- and alcohol-treatment centers are dwellings for purposes of the FHA where they were "intended to accommodate 30-day stays as a matter of course" and in which patients ate their meals together, received mail, hung pictures on their walls, and had visitors in their rooms).

31. In contrast, Camelot was to Petitioner but a temporary stop on her way to a more permanent living arrangement with Ms. Walker as her roommate. Petitioner treated Mr. Murillo's unit as transient lodging, albeit a very affordable option. She did not bring personal belongings to Mr. Murillo's unit, did not occupy her own bedroom, and did not personalize her space. Petitioner was, by her own admission, only a visitor in Camelot. Petitioner plainly did not plan on "happily-ever-aftering" in Camelot.

32. Petitioner's claim under the FHA invokes no interest protected thereunder. Petitioner was not attempting to either lease or purchase any property therein, and did not occupy any unit as a dwelling subject to the protections of the FHA. Petitioner had no legally-cognizable interest in her transient visitation to Mr. Murillo's unit. Cf., Walker v. Pointer, 304 F. Supp. 56 (N.D. Tex. 1969)(holding that white Plaintiffs had standing to bring a claim under 42 U.S.C. § 1982 when evicted for hosting black guests because black guests' enjoyment of implied easement of ingress and egress over the common areas was destroyed when white tenants' leasehold interest was destroyed. "It is reasonable to characterize the freedom of Negro persons to come and go at the invitation of one lawfully in control of the premises as sufficiently pertaining to a condition of property to be a right to 'hold' under section 1982.").

33. Because Petitioner's allegations do not constitute interference with any legally-recognized statutory interest, Petitioner failed to establish an injury in fact which would afford her standing under the FHA. Petitioner's Petition for Relief should be dismissed.

Merits of the Claim

34. Assuming, arguendo, Petitioner has standing to bring the subject challenge, the undersigned examines the merits of Petitioner's claim.

35. The burden is on Petitioner to prove her claim under the FHA. See § 760.34(5), Fla. Stat. Petitioner must establish her claim by a preponderance of the evidence. Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

36. In order to recover on a claim under section 760.37, Petitioner must demonstrate that Respondents:

> coerced, intimidated, threatened, or interfered with (a) [Petitioner's] exercise of a right under the FHA; (b) [Petitioner's] enjoyment of a housing right after exercise of that right; or (c) [Petitioner's] aid or encouragement to a protected person to exercise or enjoy a housing right.

Kleinschmidt v. Three Horizons North Condo., Inc., Case No. 06-2251 (Fla. DOAH Nov. 21, 2006; Fla. FCHR Feb. 15, 2007)(quoting Delawter-Gourlay, 276 F. Supp. 2d at 1235).

37. Petitioner's claim most closely resembles option (b) above, that Respondents coerced, intimidated, threatened, or interfered with Petitioner's enjoyment of a housing right after exercise of her right under the FHA to file the 2013 Complaint.[5/]

38. Petitioner's claim fails primarily because, as discussed above, she was not exercising any housing right protected under the FHA when the alleged act of coercion, intimidation, threat, or interference occurred. Because Petitioner had no housing right, Respondents could not have interfered with said right.

39. Assuming, again arguendo, that Petitioner's visitation with Mr. Murillo constituted the exercise of a housing right, Petitioner failed to prove her claim.

40. First, as to Respondent Hunnicutt, Petitioner failed to demonstrate by a preponderance of the evidence that he threatened, intimidated, or coerced Petitioner. Mr. Hunnicutt's threat was directed (and pointedly so) at Mr. Murillo. Mr. Hunnicutt threatened Mr. Murillo with eviction if Petitioner did not leave. Petitioner was neither directly nor indirectly threatened. No adverse consequence was to befall her if she did not leave Camelot.

41. Second, Petitioner did not prove that Mr. Hunnicutt's alleged discriminatory actions amounted to conduct actionable as interference under the FHA. For discriminatory conduct to be actionable under section 760.37, it must be "so severe or pervasive that it will have the effect of causing a protected person to abandon the exercise of his or her housing rights." Delawter-Gourlay, 276 F. Supp. 2d at 1235.

42. Courts considering the issue have consistently required this level of conduct in order to be actionable under the FHA. See Sofarelli, 931 F.2d at 722 ("leaving a note threatening to 'break [Sofarelli] in half' if he did not get out of the neighborhood and running up to one of Sofarelli's trucks, hitting it, shouting obscenities and spitting at Sofarelli"

along with making racial slurs in a newspaper); United States v. Pospisil, 127 F. Supp. 2d 1059, 1062-63 (W.D. Mo. 2000)(cross-burning on lawn of non-white's residence); Stackhouse v. DeSitter, 620 F. Supp. 208, 211 (N.D. Ill. 1985)(firebombing black plaintiff's car). But cf., Lachira v. Sutton, 2007 U.S. Dist. LEXIS 33250 (D. Conn. 2007)(kicking Hispanic tenant's plants out of her apartment, stating "it has been a mistake to rent to you with a child," refusing to perform repairs, and other conduct, if proven, is not egregious or severe enough to give rise to a 42 U.S.C. § 3617 claim); United States v. Weisz, 914 F. Supp. 1050, 1054 (S.D.N.Y. 1996)(Jewish defendant's listing, in The Jewish Press, Roman Catholic neighbor's home as for sale and "open for four days including Christmas Eve and Christmas Day" causing neighbors to suffer unwelcome intruders during the Christmas holidays, among other "skirmishes between neighbors," were insufficient to allege a claim under 42 U.S.C. § 3617); Lawrence v. Courtyards at Deerwood Ass'n, 318 F. Supp. 2d 1133, 1144 (S.D. Fla. 2004)(failure of Association to intervene in neighbor's discriminatory actions against neighbor was not actionable under 42 U.S.C. § 3617).

43. In addition, Petitioner must prove that Respondents' actions were motivated by discriminatory animus. See Sofarelli, 931 F.2d at 722. As applied to the instant case, Petitioner

must demonstrate that Mr. Hunnicutt's action was motivated by Petitioner's having filed the 2013 Complaint.

44. As to Respondent Hunnicutt, Petitioner failed to demonstrate discriminatory animus. Petitioner introduced no evidence to support a conclusion that Mr. Hunnicutt's effort to remove Petitioner from Camelot was motivated by her 2013 Complaint. Petitioner relied upon Mr. Hunnicutt's reference to her as "not the type of person" for Camelot as evidence of discriminatory animus. That broad brush terminology could just as easily refer to any of Petitioner's personal attributes as to her prior exercise of her right to file the 2013 Complaint. The record is devoid of evidence regarding the nature of the former "hostile relationship" between Petitioner and Mr. Hunnicutt. The undersigned cannot conclude that Mr. Hunnicutt's actions were in retaliation for her 2013 Complaint. The sole reference to Petitioner as "not the type of person" is insufficient to establish discriminatory animus under the preponderance standard.

45. In sum, Petitioner failed to prove her section 760.37 claim against Respondent Hunnicutt.

46. As to Respondent, Association, Petitioner likewise failed to establish any act of coercion, intimidation, threat, or interference. Petitioner attributes Mr. Hunnicutt's statement to the Association, but because Mr. Hunnicutt's

actions did not violate the FHA, there is no violation to be attributed to the Association.

47. Assuming, yet again, arguendo, that Mr. Hunnicutt's statement constituted a violation of section 760.37, Petitioner must prove that Mr. Hunnicutt was acting on behalf of the Association in order to establish that the Association was liable for Mr. Hunnicutt's actions. As a matter of Florida general law, a not-for-profit corporation "is managed by its board of directors or by its officers acting under the direction and control of the board." Fla. State Oriental Med. Ass'n v. Slepin, 971 So. 2d 141, 144 (Fla. 1st DCA 2007); see § 617.0801, Fla. Stat. For the Association to be held liable by Mr. Hunnicutt's alleged unlawful act, Petitioner must demonstrate that Mr. Hunnicutt had either actual or apparent authority for his action.

48. "A finding of actual authority would require evidence that the principal acknowledged the agent's power, that the agent accepted the responsibility of representing the principal, and that the principal retained control over the agent's actions." Slepin, 971 So. 2d at 145 (citing Villazon v. Prudential Health Care Plan, Inc., 843 So. 2d 842 (Fla. 2003); Goldschmidt v. Holman, 571 So. 2d 422 (Fla. 1990); and Restatement (Second) of Agency § 1 (1957)). The record is devoid of any such evidence. The Board did not meet, and took

no official action of any kind, in January 2015. Mr. Hunnicutt was not acting under the direction and control of the Board.

49. The party alleging the agency relationship bears the burden of proof. See Robbins v. Hess, 659 So. 2d 424, 427 (Fla. 1st DCA 1995). Petitioner offered only her assumption that Mr. Hunnicutt's use of the word "we" ("she is not the type of person **we** need" in Camelot) as proof that his statement is attributable to the Association. It is axiomatic that the extent of an agent's authority cannot be established merely by proof of the agent's own out-of-court statements made to a third party. Orange Belt Ry. Co. v. Cox, 33 So. 403 (1902). Petitioner would have to have shown that Mr. Hunnicutt's statement was known and acquiesced to, or ratified by, the Association. See Deutsche Credit Corp. v. Gale Group, Inc., 616 So. 2d 469 (Fla. 5th DCA 1993). Petitioner offered no such evidence. As such, Petitioner failed to prove Mr. Hunnicutt was acting on actual authority from the Association.

50. Petitioner likewise failed to prove the Association was liable for Mr. Hunnicutt's action (again, assuming said action was unlawful discrimination) under a theory of apparent authority.

> Apparent authority arises under Florida law only when the principal creates the appearance of an agency relationship. It does not depend on representations by the person claiming to be an agent or on the

> subjective belief of the person dealing with the purported agent. Rather it is based entirely on the acts or omissions of the principal.

Slepin, 971 So. 2d at 144 (internal citations omitted). Petitioner's subjective belief that Mr. Hunnicutt was acting on behalf of the Association is insufficient proof. Petitioner offered no proof that the Association held its president out as having authority to remove tenants from Camelot. The Association did not cloak Mr. Hunnicutt with "indicia of its authority" to take such action. See Gale Group, 616 So. 2d at 472.

51. Petitioner failed to prove that Respondent, Association, unlawfully discriminated against Petitioner in violation of the FHA.

52. Finally, as to Respondent, Charlie Kane, Petitioner did not demonstrate any element of her claim. The only evidence regarding Mr. Kane's involvement in the alleged discrimination is that he reported Petitioner's presence in Camelot to Mr. Hunnicutt. There is no evidence, much less a preponderance of evidence, to establish that Mr. Kane violated the FHA with respect to Petitioner.

53. Petitioner failed to prove by a preponderance of the evidence that any of the three Respondents unlawfully discriminated against her in violation of section 760.37.

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. 2015H0270.

DONE AND ENTERED this 12th day of January, 2016, in Tallahassee, Leon County, Florida.

Suzanne Van Wyk
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of January, 2016.

ENDNOTES

[1/] All citations herein to the Florida Statutes are to the 2015 version, unless otherwise noted.

[2/] Neither the details concerning the 2013 Complaint, nor the record of said complaint, was introduced into evidence.

[3/] In her Complaint of Discrimination, Petitioner alleged monetary damages in the amount of $9,036.00. At hearing, Petitioner testified that she was seeking damages in the amount of $20,103.00. Petitioner revised that amount to $15,432.00 in a post-hearing filing.

[4/] In addition to a violation of the FHA, Petitioner alleges a cause of action pursuant to 760.51, Florida Statutes, invoking the Attorney General's jurisdiction to bring a civil or administrative action for damages. In Petitioner's Proposed Recommended Order, she further alleges violations of section 718.303, Florida Statutes (relating to obligations of condominium owners and associations) and section 83.64, Florida Statutes (prohibiting retaliatory conduct by landlord against tenant). The Division has no jurisdiction over Petitioner's claims under the cited statutes.

[5/] Petitioner does not claim, and it cannot be found, that she was aiding or encouraging any protected person in his or her exercise or enjoyment of a housing right (option (c)). That option might have been appropriate for Mr. Murillo had he filed a Petition under the instant facts. Despite Petitioner's references, both in her Petition and at final hearing, to Mr. Murillo as an "aggravated party," Mr. Murillo is not a petitioner in this case.

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.