STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KENNETH AND LISA ANDUZE,

Petitioners,

vs. Case No. 16-0342

FUND WATERFORD LAKES, LLC,

Respondent.
_____/

RECOMMENDED ORDER AFTER REMAND

This Recommended Order after Remand is entered following a hearing conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016), before Cathy M. Sellers, an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH"), by video teleconference on February 23, 2017, at sites in West Palm Beach and Tallahassee, Florida.

APPEARANCES

For Petitioners: David Stuart Cronin, Esquire
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For Respondent: Leslie L. Tucker, Esquire
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STATEMENT OF THE ISSUE

The amount of quantifiable damages and costs, if any, to which Petitioners are entitled as a result of Respondent's discriminatory housing practice, pursuant to the Interlocutory Order Awarding Affirmative Relief from a Discriminatory Housing Practice and Remanding Case to Administrative Law Judge for Issuance of Recommended Order Regarding Amounts of Quantifiable Damages and Costs ("Interlocutory Order") issued by the Florida Commission on Human Relations ("FCHR") in this proceeding on November 17, 2016.

PRELIMINARY STATEMENT

On May 25, 2016, a final hearing was held on the Petition for Relief from a Discriminatory Housing Practice filed by Petitioners on or about January 19, 2016, which alleged that Respondent had engaged in discriminatory housing practices against them in violation of the Florida Fair Housing Act, chapter 760, Part II, Florida Statutes (2014).[1/]

On August 31, 2016, the ALJ issued a Recommended Order finding and concluding that Respondent had engaged in a discriminatory housing practice on the basis of retaliation, in violation of section 760.37. In the Recommended Order, the ALJ determined that because Petitioners had not presented evidence regarding potentially quantifiable damages, no factual basis existed for awarding such damages.

On November 17, 2016, FCHR entered the Interlocutory Order adopting the ALJ's findings of fact, as clarified, and adopting the ALJ's conclusions of law except as to the conclusion regarding entitlement of Petitioners to quantifiable damages for the discriminatory housing practice found to have occurred. Relying on previous orders remanding proceedings to DOAH to conduct proceedings to determine the amount of quantifiable damages, costs, or other appropriate relief, the Interlocutory Order remanded this proceeding back to DOAH "for further proceedings to determine the amount of 'quantifiable damages' and 'costs' owed Petitioners and the issuance of a Recommended Order as to those amounts."

The final hearing on remand was held on February 23, 2017. Lisa Anduze testified on behalf of Petitioners. Petitioners' Exhibits 1 through 6, 8, 9, 12, 14, and 15 were admitted into evidence without objection, and Petitioners' Exhibit 13 was admitted over objection. The undersigned took official recognition of Petitioners' Exhibits 7, 10, and 11.[2/] Respondent presented the testimony of Kenneth Anduze. Respondent's Exhibit 1 was admitted into evidence without objection, and Respondent's Exhibit 3[3/] was admitted into evidence over objection.

The one-volume Transcript was filed with DOAH on May 12, 2017, and the parties were given until May 22, 2017, in which to

file proposed recommended orders. However, pursuant to a joint motion, the deadline for filing proposed recommended orders was extended to June 9, 2017. Respondent timely filed its proposed recommended order on June 9, 2017, and Petitioners' proposed recommended order was filed on June 12, 2017. Both proposed recommended orders were duly considered in preparing this Recommended Order after Remand.

FINDINGS OF FACT

I. Background

1. On August 31, 2016, the ALJ entered a Recommended Order determining that Respondent engaged in a discriminatory housing practice by retaliating against them, in violation of section 760.37.

2. On November 17, 2016, FCHR entered an Interlocutory Order. The Interlocutory Order determined that Petitioners were legally entitled to recover quantifiable damages and costs incurred as a result of Respondent's unlawful housing practice, and remanded this proceeding to DOAH to afford Petitioners an opportunity to present evidence regarding those quantifiable damages and costs.

II. Evidence Regarding Damages and Costs

3. In this proceeding, Petitioners are seeking to recover $4,905.58 in damages and costs. They presented testimony and documents at the final hearing in an effort to substantiate this

amount. Each component of the claimed damages and costs is addressed below.

Rent Differential and Related Costs for Rental of Unit 11-205

4. As previously found in this proceeding, Petitioners leased Unit 4-207 in the Camden Waterford Lakes apartment community in Orlando, Florida.

5. Per its express terms, the lease for Unit 4-207 began on December 31, 2013, and ended on January 4, 2015.

6. Unit 4-207 was a three-bedroom/two-bath unit. At the time pertinent to this proceeding, Camden Waterford Lakes was a new apartment community located near ample shopping areas.

7. As previously found in this proceeding, on or about October 20, 2014, Respondent gave Petitioners notice that it was not renewing their lease for Unit 4-207. The notice stated that "the Lease will terminate effective 1/04/2015." This notice further stated in pertinent part: "You are expected to vacate your Apartment on or before the termination date and comply with all terms of your Lease through your termination date."

8. The undisputed evidence shows that Petitioners paid a base monthly rent of $1,434.00 for the term of their lease of Unit 4-207.

9. The credible, persuasive evidence establishes that Petitioners did not wish to move out of Unit 4-207 and would

have renewed their lease for that unit had they been given the opportunity to do so.

10. As a direct result of Respondent's non-renewal of their lease, Petitioners were forced to find alternative housing.

11. The credible evidence shows that Petitioners made reasonable efforts[4/] to secure comparable housing, in terms of quality and price, in the Orlando area, but were unable to do so.

12. As the end of the lease term for Unit 4-207 approached, Petitioners decided to move to the West Palm Beach area. Lisa Anduze was familiar with the West Palm Beach area, and Petitioners were not employed at that time.

13. The credible evidence establishes that Petitioners made reasonable efforts[5/] to find housing in the West Palm Beach area that was of comparable quality and price to Unit 4-207. After some searching, they were able to secure a two-bedroom/ two-bath apartment, Unit 11-205, at the Barcelona apartment community in Jupiter, Florida.

14. The base monthly rent for Unit 11-205 is $1,540.00. Petitioners rented Unit 11-205 for a year starting on December 31, 2014, and ending on December 30, 2015.

15. The rent differential between Unit 4-207 and Unit 11-205 is $106.00 per month. Thus, for the calendar

year of 2015-2016, Petitioners paid $1,272.00 more per month to rent Unit 11-205 than they would have paid had they been able to remain in Unit 4-207.

16. The credible evidence also establishes that Petitioners were required to pay, and paid, a charge of $51.00 to occupy Unit 11-205 on December 31, 2014.

17. The evidence establishes that they were charged an application fee of $40.00 each for each occupant[6/] of Unit 11-205, for a total of $120.00.

18. The evidence also establishes that Petitioners incurred a $150.00 administrative fee when they moved into Unit 11-205.

Reimbursement of Rent Charged for Unit 4-207

19. Petitioners vacated Unit 4-207 on December 30, 2014. However, Respondent charged them $199.87 in rent for the days of December 31, 2014, through January 4, 2015.

20. Kenneth Anduze testified that the lease for Unit 4-207 had been modified through a written lease addendum to terminate on December 30, 2014, so that Petitioners were not obligated to pay rent for the dates of December 31, 2014, through January 4, 2015.

21. However, no lease addendum document substantiating Mr. Anduze's testimony was tendered or admitted into the record in this proceeding, either at the hearing conducted on May 25,

2016, or at the hearing after remand conducted on February 23, 2017.

22. The credible evidence establishes that the lease term for Unit 4-207 ended on January 4, 2015.

Expenses Incurred in Moving from Unit 4-207 to Unit 11-205

23. In moving from Unit 4-207 to Unit 11-205, Petitioners packed and moved their belongings rather than hiring professional movers.

24. Mrs. Anduze estimated that the cost of purchasing boxes was approximately $75.00, and the cost of purchasing packing tape, bubble wrap, labels, and markers was approximately $20.00, for a total of $95.00 of expenses for moving supplies. Petitioners did not provide receipts to support their estimate of these expenses.[7/]

25. Mrs. Anduze estimated that Petitioners and their daughter collectively spent approximately 85 hours packing and moving their belongings. This labor consisted of removing their belongings from cabinets, closets, and drawers; wrapping them to help prevent damage in the move; placing them in labelled boxes; and moving them out of Unit 4-207 and into Unit 11-205. Because Petitioners moved their belongings rather than hiring professional movers, they were unable to produce a receipt precisely quantifying the number of hours spent in moving out of Unit 4-207 and into Unit 11-205. However, given that three

people were involved, and given the scope of the task of moving out of a three-bedroom/two-bath apartment and into another apartment, the undersigned determines that 85 hours——which would break down to three people working eight hours per day, for approximately three-and-one-half days——is a reasonable estimate of the number of hours of labor Petitioners expended.

26. Mrs. Anduze estimated that the value of Petitioners' labor expended for the move from Unit 4-207 to Unit 11-205 was $678.00. She derived this amount by multiplying the estimated 85 hours of labor by the minimum wage in Florida in 2014, which was $7.93 per hour.

27. At the time Petitioners moved out of Unit 4-207, neither of them were employed. They have not alleged or demonstrated that they suffered lost wages as a result of moving out of Unit 4-207. They also did not allege or provide any evidence that Monique Anduze incurred lost wages in assisting Petitioners in their move.

28. Petitioners rented a U-Haul van in Orlando to transport their belongings from Unit 4-207 to a local storage unit. They provided a receipt showing that they incurred a $25.00 rental fee for the van.

29. Petitioners also provided a receipt showing that they had incurred a $24.50 rental fee for the storage unit.

30. Petitioners also rented a moving van in West Palm Beach to move some of their belongings from Unit 4-207 to Unit 11-205. The rental fee for this van was $44.44. Petitioners estimated that they spent $60.00 on gas for the van for driving a total of 390 miles between Unit 4-207 and Unit 11-205. The total expenses associated with rental and use of the van were $104.44.

31. Mrs. Anduze testified that in the course of moving, a television and a glass-top table were damaged. Petitioners estimated the replacement cost of these items at $344.00. They did not provide receipts or other documentation, such as photographs of the damaged items, to support this claim.

Mileage

32. Petitioners provided information, consisting of Google Maps mileage calculations, showing that the one-way travel distance between Unit 4-207 and Unit 11-205 is 166 miles. Accordingly, one round-trip between Unit 4-207 and Unit 11-205 totaled 332 miles.

33. The credible evidence establishes that Petitioners traveled by car between Unit 4-207 and Unit 11-205 a total of three round-trips and an additional one-way trip, for a total of 1,162 miles of car travel necessitated by their move from Unit 4-207 to Unit 11-205.

34. The Internal Revenue Service ("IRS") Standard Mileage Rates used to calculate the deductible costs of operating an automobile for moving purposes established a mileage rate of $0.235 per mile for moving purposes for the year 2014.

35. Petitioners seek reimbursement of calculated mileage costs in the amount of $273.07, which is derived by multiplying the 1,162 miles of travel by the IRS deductible rate of $0.235 per mile.

Meal and Hotel Expenses

36. Petitioners estimated that they incurred $300.00 in meal expenses (consisting of ten meals comprised of breakfast, lunch, and dinner, plus water and snacks, for three people) while traveling associated with their relocation from Orlando to West Palm Beach. They did not provide receipts or other documentation supporting these claimed expenses.

37. As discussed above, Petitioners vacated Unit 4-207 on December 30, 2014, a few days before their lease of that unit terminated. Because the term of their lease for Unit 11-205 commenced on December 31, 2014, they could not occupy that unit on December 30, 2014. They stayed in a hotel on the night of December 30, 2014, and began moving into Unit 11-205 the following day.

38. Petitioners provided a statement from the hotel showing that they stayed the night of December 30, 2014, and

showing a $0.00 balance.[8/] Although Petitioners did not provide the receipt showing the amount of the room charge, Mrs. Anduze credibly testified that she contacted the hotel and was told that the room rate was between $130.00 and $149.00 per night. Petitioners are seeking to recover $130.00 for the hotel room expense for the night of December 30, 2014.

Airline Ticket

39. Mrs. Anduze testified that when Petitioners' daughter, Monique, was informed that Petitioners' lease of Unit 4-207 had not been renewed, "she was very upset" so wanted to fly to Orlando to "find out what's going on." According to Mrs. Anduze, Monique "could not get a straight flight to Orlando, it was too high, so she decided to fly into Miami, and then she took the bus from Miami to Orlando."

40. Petitioners presented an eTicket Itinerary and Receipt Confirmation for a ticket issued on October 1, 2014, for a flight from Kingston Manley (Jamaica) to Miami, Florida, costing $323.20.

41. At time the airline ticket was issued, Petitioners had not yet been notified by Respondent that the lease for Unit 4-207 was not being renewed. As discussed above, the credible evidence establishes that Petitioners were not notified that their lease was not being renewed until on or after October 20,

2014, when Respondent posted the notice on their unit door. This was almost three weeks after the airline ticket was issued.

Postage and Related Costs to Prosecute Discrimination Claims

42. Petitioners incurred postage, overnight courier, photocopying, telefax, and related costs in filing and prosecuting their discrimination claims against Respondent. Petitioners are seeking $116.00 in costs they claim were incurred as a result of prosecuting these claims.

43. Petitioners produced receipts for postage and other expenses totaling $97.07. However, some of these receipts do not provide any indication, on their face, showing that the expenses incurred were related to Petitioners' prosecution of their discrimination claims.

44. Specifically, the receipts from Office Depot/Office Max dated January 26 and February 10, 2016, in the respective amounts of $6.58 and $6.24, do not contain any information indicating that these amounts were spent by Petitioners in prosecuting their discrimination claims. It is noted, however, that on January 26, 2016, Petitioners telefax-filed a one-page document at DOAH. Prorating the charges shown on the Office Depot/Office Max receipt dated January 26, 2016, the evidence indicates that Petitioners incurred $0.21 in telefax costs connected to prosecution of their discrimination claims.[9/]

45. Petitioners also provided what appears to be a receipt for U.S. Postal Service First Class Mail postage in the amount of $8.23. This receipt is almost completely illegible, and there is no visible information indicating that this amount was spent on Petitioners' prosecution of their discrimination claims.

46. The FedEx courier receipts dated December 30, 2016, in the amounts of $1.99 and $2.40 are similarly deficient.

47. Petitioners provided receipts for U.S. Postal Service Certified Mail that document costs totaling $71.58 for sending documents to Respondent's counsel, DOAH, FCHR, and the United States Department of Housing and Urban Development in connection with Petitioners' prosecution of their discrimination claims.

48. Collectively, Petitioners documented that they incurred $71.79 in postage-related expenses in prosecuting their discrimination claims.

Medicines

49. Mrs. Anduze testified that Petitioners experienced significant stress due to Respondent's unlawful retaliation. She testified that as a result, Petitioners suffered a range of health-related issues, requiring them to spend $300.00 for medications.

50. Petitioners did not provide any substantial evidence, such as a physician's testimony or report, specifically linking

these claimed health-related issues to being required to move out of Unit 4-207, nor did they provide receipts or any other documentation substantiating the claimed costs of these medications.

Miscellaneous Expenses

51. Petitioners also seek to recover $400.00 in miscellaneous expenses they claim to have incurred as a result of Respondent's unlawful retaliation and their move from Unit 4-207 to Unit 11-205.

52. Mrs. Anduze testified that such expenses included the value of personal items, such as clothing, they gave away in the move; gas expenses; a bus ticket for a trip by Monique Anduze from Miami to Orlando; Florida Turnpike tolls; and other expenses. She testified: "I'm just basing, basing it on what I remember." Petitioners did not provide receipts or other documentation to substantiate that these expenses were incurred or the amounts thereof.

III. Findings of Ultimate Fact

53. As discussed in greater detail below, Petitioners are entitled to recover quantifiable damages and costs that are demonstrated by the evidence in the record to be reasonably related to Respondent's unlawful retaliatory conduct. An award of damages and costs must be based on substantial evidence and cannot be based on conjecture or speculation.

54. Based on the competent, substantial, and credible evidence presented at the hearing, the undersigned determines that Petitioners are entitled to an award of $2,221.80 in quantifiable damages and costs in this proceeding. This determination is explained below.

Rent Differential and Related Costs for Rental of Unit 11-205

55. The credible evidence establishes that Petitioners would not have moved out of Unit 4-207, had Respondent not retaliated against them by terminating their lease. Thus, Petitioners were forced to find alternative housing as a direct result of Respondent's retaliatory conduct.

56. The evidence establishes that Petitioners made reasonable efforts to find alternative housing in the Orlando area but were unable to do so. Thus, they moved to West Palm Beach, a city with which Mrs. Anduze was familiar. There, they made reasonable efforts to find an apartment comparable to the one they had rented in Orlando, and ultimately found Unit 11-205 at the Barcelona apartment community. The Barcelona is a new community, as was Camden Waterford Lakes at the time Petitioners moved there. Petitioners provided substantial evidence that the monthly rental rate for Unit 11-205 is $106.00 more than for Unit 4-207. Units 4-207 and 11-205 are of comparable quality, and the monthly rental rates, while not identical, are very similar. Under these circumstances, it is determined

Petitioners are entitled to recover the total rent differential of $1,272.00 between Units 4-207 and 11-205 for the lease term for Unit 11-205 that commenced on December 31, 2014, and ended on December 30, 2015.[10/]

57. The substantial evidence also establishes Petitioners also incurred a $51.00 rental charge for occupying Unit 11-207 on December 31, 2014; an application fee of $120.00; and an administrative fee of $150.00. These expenses were incurred as a direct result of Petitioners being forced by Respondent to move out of Unit 4-207. Accordingly, Petitioners are entitled to recover these expenses.

Reimbursement of Rent Charged for Unit 4-207

58. As discussed above, the greater weight of the competent substantial evidence establishes that the term of Petitioners' lease ended on January 4, 2015.

59. Even though Petitioners vacated Unit 4-207 on December 30, 2014, they were legally entitled to occupy that unit through January 4, 2015, and also were legally obligated for the rent on the unit until that date. As such, Respondent correctly charged Petitioners rent for January 1 through 4, 2015.

60. Accordingly, Petitioners are not entitled to recover the $199.87 they were charged in rent by Respondent for December 31, 2014, through January 4, 2015.

Expenses Incurred in Moving from Unit 4-207 to Unit 11-205

61. Petitioners incurred expenses directly associated with moving from Unit 4-207 to Unit 11-205. These included $25.00 for rental of a U-Haul van, $24.50 for rental of a storage unit, and $104.44 for rental and use of a moving van. As noted above, Petitioners provided receipts quantifying these expenses. As such, an award of damages to compensate Petitioners for these expenses is not speculative. Petitioners are entitled to reimbursement for these expenses.

62. Petitioners also seek reimbursement for approximately $95.00 in expenses for boxes and packing supplies directly related to their move from Unit 4-207 to Unit 11-205. Although Petitioners are legally entitled to recover, as damages, their expenses that are reasonably related to Respondent's unlawful retaliation, they still must present evidence to substantiate these expenses in order to be able to recover them as damages. As further discussed below, expense estimates that are supported only by conjecture or guesses are speculative, so are not recoverable. Here, Petitioners did not provide receipts or any other evidence objectively quantifying the expenses they incurred in purchasing packing supplies. Thus, there is no substantial evidence in the record from which to determine the amount of damages that should be awarded for purchase of these supplies, and an award of damages based on conjecture would be

speculative. Petitioners are not entitled to recover damages to cover expenses incurred in purchasing packing materials.

63. Petitioners also seek to recover what they have referred to as "labor costs" for their time spent packing and moving out of Unit 4-207, in the amount of $678.00. They derived this amount by multiplying their estimated hours spent (85 hours total by Petitioners and their daughter) by the minimum wage in 2014. However, the evidence establishes that Petitioners were not employed at the time of their move. Because Petitioners were not employed, they were not being paid. Accordingly, Petitioners are not entitled to recover what effectively would constitute "lost wages."[11/] Additionally, they did not provide any evidence that their daughter incurred lost wages, or the amount of any such wages, as a result of helping Petitioners pack and move out of Unit 4-207. Petitioners are not entitled to recover damages for their labor in moving from Unit 4-207 to Unit 11-205.

64. Petitioners also seek to recover $344.00 in replacement expenses for a damaged glass top table and damaged television. As noted above, Petitioners did not provide substantial evidence, such as photographs, showing that these items were damaged in the move, nor did they provide substantial evidence regarding the replacement costs for these items. As

such, any award of damages for these items would be speculative. Petitioners are not entitled to recover damages for these items.

Mileage

65. As discussed above, Petitioners presented information, consisting of Google Maps mileage calculations, establishing that the distance between Unit 4-207 and Unit 11-205 was 166 miles one way, or 332 miles round trip. Mrs. Anduze credibly testified that it took Petitioners three round trips and one one-way trip to move from Unit 4-207 to Unit 11-205, for a total of 1,162 miles traveled to complete Petitioners' move between Unit 4-207 and Unit 11-205. As discussed above, Petitioners presented information showing that in 2014, the IRS Standard Mileage Rate was $0.235 cents per mile.[12/] Accordingly, Petitioners are entitled to recover $273.03 for mileage expenses for their trips taken in connection with moving from Unit 4-207 to Unit 11-205.

Meal and Hotel Expenses

66. Mrs. Anduze estimated that Petitioners spent approximately $300.00 on food for three people during their travel between Orlando and Jupiter. Petitioners did not provide receipts or any other objective means to substantiate these meal expenses. Absent substantial evidence quantifying these expenses, any award of damages would be speculative.

Petitioners are not entitled to recover these meal expenses in this proceeding.

67. As part of their move from Unit 4-207 to Unit 11-205, Petitioners stayed in a hotel located at 4431 PGA Boulevard, Palm Beach Gardens, the night of December 30, 2014, as verified by a document provided by the hotel that was admitted into evidence. This document did not show the amount of the hotel room for that night; Mrs. Anduze estimated that Petitioners spent $130.00 on the hotel room. Although Petitioners were unable to demonstrate precisely the amount they spent on the hotel room, they provided documentary evidence substantiating that they stayed in the room the night of December 30, 2014. A room rate of $130.00 per night in the South Florida hotel market, particularly given the time of year during which Petitioners stayed in the room, is reasonable. Accordingly, the undersigned determines that Petitioners are entitled to recover $130.00 spent for a hotel room the night of December 30, 2014.

Airline Ticket

68. As discussed above, the airline ticket for Monique Anduze's trip from Manley Airport in Kingston, Jamaica, to Miami, Florida, was purchased almost three weeks before Petitioners were given notice by Respondent, on October 20, 2014, that their lease for Unit 4-207 was not being renewed. Mrs. Anduze's testimony on cross-examination that Petitioners

received notice on October 1, 2014, that their lease was not being renewed is contradicted by the non-renewal notice dated October 20, 2014.[13/] Her testimony was not credible.

69. The credible evidence establishes that the airline ticket issued on October 1, 2014, was not purchased in connection with Petitioners' move out of Unit 4-207. Accordingly, Petitioners are not entitled to recover the amount spent for this ticket.

Postage and Related Costs to Prosecute Discrimination Claims

70. As discussed above, Petitioners seek to recover $116.00 in costs associated with the prosecution of their discrimination claims against Respondent.

71. As discussed above, Petitioners provided documentation substantiating that they incurred $71.58 in costs related to the prosecution of their discrimination claims against Respondent. Petitioners are entitled to recover these claimed costs.

72. The remaining $44.42 in claimed costs either have not been documented by any receipts, or have not been shown to be linked to Petitioners' prosecution of their discrimination claims. As such, these claimed costs are not based on substantial evidence in the record, and any damage award would be speculative. Therefore, Petitioners are not entitled to recover these claimed costs.

Medicines

73. Petitioners seek to recover $300.00 in expenses for medicines. As discussed above, Petitioners did not provide any substantial evidence, such as a physician's testimony or report, specifically linking their claimed health-related issues to Respondent's unlawful retaliation; thus, there is no evidentiary basis for determining that Petitioners' claimed health issues are rationally related to Respondent's conduct. Further, Petitioners did not provide any substantial evidence establishing the amounts of these claimed expenses; as such, any award of damages for medication expenses would be speculative. Petitioners are not entitled to recover these claimed expenses for medications.

Miscellaneous Expenses

74. As discussed above, Petitioners also seek to recover $400.00 in miscellaneous expenses they claim to have incurred as a result of Respondent's unlawful retaliation and their move from Unit 4-207 to Unit 11-205. Mrs. Anduze generally described some of the items that Petitioners have claimed as miscellaneous expenses. However, Petitioners did not provide any substantial evidence quantifying these claimed expenses,[14/] so any damages award for these claimed expenses would be speculative, and, thus, not recoverable. Additionally, the purchase of the bus ticket for Petitioners' daughter was not related to Respondent's

retaliatory conduct,[15/] so the cost of this ticket is not recoverable.

Total Damages and Costs to Which Petitioners are Entitled

75. Based on the foregoing, it is determined that Petitioners are entitled to recover $2,221.80 in damages and costs in this proceeding.

Attorney's Fees and Costs

76. As reflected in the record, Petitioners represented themselves in the final hearing held on May 25, 2016, which resulted in a determination that Respondent engaged in retaliation in violation of section 760.37.

77. On January 9, 2017——after this proceeding was remanded for the undersigned to conduct a final hearing on the amount of damages and costs to which Petitioners are entitled——Petitioners retained attorneys to represent them in the proceeding on remand.

78. The final hearing on remand was held on February 23, 2017. Petitioners did not move for an award of attorney's fees before this hearing, and the issue of attorney's fees was first raised immediately before close of this hearing. As such, the parties did not present evidence regarding the amount of attorney's fees and costs to which Petitioners may be entitled for attorney representation in the proceeding on remand.

79. Prior to entry of this Recommended Order, Petitioners filed a Motion for Attorney's Fees and Costs, seeking to recover the attorney's fees and costs incurred in connection with this proceeding on remand. The motion does not provide any information on the legal services provided or costs incurred, and does not specify the amount of attorney's fees and costs sought.

CONCLUSIONS OF LAW

80. DOAH has jurisdiction over the parties to, and subject matter of, this proceeding.

81. As discussed above, FCHR remanded this proceeding to DOAH with instructions to conduct an evidentiary hearing for the purposes of determining the amount, if any, of quantifiable damages and costs to which Petitioners are entitled as a result of Respondent's unlawful retaliation against them.

82. Section 760.35(3)(b), governing the remedy in cases brought under the Florida Fair Housing Act, sections 760.20 through 760.37, states in pertinent part:

> If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney’s fees and costs.

83. The Florida Fair Housing Act is modeled after Title VII of the Civil Rights Act of 1964, as amended by the Fair Housing Act of 1988. Accordingly, case law interpreting the federal statute is applicable to cases brought under the Florida Fair Housing Act. Savanna Club Worship Serv. V. Savanna Club Homeowners' Ass'n, 456 F. Supp. 1223, 1224 n.1 (S.D. Fla. 2005); Brand v. Fla. Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994).

84. Petitioners bear the burden in this proceeding, by a preponderance of the evidence, to prove their entitlement to the damages and costs they seek to recover. See Casas v. First Am. Bank, N.A., 1983 U.S. Dist. LEXIS 16623, at *12 (D.D.C. 1983).

85. In determining the appropriate amount of damages to be awarded to a victim of housing discrimination, courts begin with the proposition that the goal of an award of damages is to "put the [aggrieved party] in the same position, so far as money can do it, as he [or she] would have been had there been no injury" ——that is, to compensate him or her for the injury actually sustained. Lee v. S. Home Sites Corp., 429 F.2d 290, 293 (5th Cir. 1970).

86. Section 760.35(3)(b) specifically limits the compensatory damages, as well as costs, that may be awarded in administrative proceedings to those that are quantifiable.[16/]

87. Claims for damages under fair housing statutes, such as the Florida Fair Housing Act, "basically sound in tort." Curtis v. Loether, 415 U.S. 189, 195 (1974).

88. Because compensatory damages are intended to redress the concrete loss that the aggrieved party has suffered due to the wrongful conduct, damages cannot be awarded when the causal connection between the claimed injury and the unlawfully discriminatory conduct is speculative. See Anza v. Ideal Steel Supply Corp., 547 U.S. 451, 466-67 (2006). Stated another way, the record evidence must establish a reasonable connection between the claimed injury and the unlawful conduct. See United States Dep't of Hous. & Urban Dev. v. Blackwell, 908 F.2d 864, 872 (11th Cir. 1990).

89. Further, a substantial evidentiary basis must be established to support the amount of damages awarded. That is, the amount of a damage award must be based on substantial evidence, rather than on conjecture or speculation. Keener v. Sizzler Family Steak Houses, 597 F.2d 453, 457 (5th Cir. 1979); Falin v. Condo. Ass'n of La Mer Estates, 2012 U.S. Dist. LEXIS 181847, at *4 (S.D. Fla. 2012); Jeffrey O. v. City of Boca Raton, 2007 U.S. Dist. LEXIS 12983, at *59 (S.D. Fla. 2007).

90. Although damage award amounts need not be established with mathematical certainty, they must be based on reasonable proof. Fitzgerald v. Mountain States Tel. & Tel. Co., 68 F.3d

1257 (10th Cir. 1995). Amounts that are speculative, remote, imaginary, or impossible of ascertainment are not recoverable. Id. at 1264.

91. In order to recover damages, a claimant must present evidence that provides the finder of fact with a reasonable basis on which to determine the amount of damages. Sir Speedy, Inc. v. L & P Graphics, Inc., 957 F.2d 1033, 1038 (2d Cir. 1992). The finder of fact is not allowed to base an award of damages on speculation or guesswork. Id. A claimant for an award of damages has the burden to present a non-speculative basis for determining the quantifiable damages; that burden is not met where the sole evidence of the amount of damages sought consists of that person's uncorroborated or unsubstantiated testimony. Wang v. Yum! Brands, Inc., 2007 U.S. Dist. LEXIS 37348, at *18-*20 (E.D.N.Y. 2007).

92. Pursuant to these legal principles as applied to the foregoing findings of fact, it is concluded that Petitioners established, by credible, competent, and substantial evidence, that they are entitled to an award of $2,221.80 in damages and costs as a result of Respondent's retaliation.

93. Pursuant to these legal principles as applied to the foregoing findings of fact, it is concluded that Petitioners are not entitled to recover the remaining balance (i.e., $2,683.78) of the damages and costs sought in this proceeding.

Attorney's Fees and Costs

94. Section 760.35(3)(b) contemplates an award of reasonable attorney's fees and costs in proceedings in which the ALJ finds that a discriminatory housing practice has occurred.

95. As discussed above, Petitioners retained attorneys to represent them in this proceeding after it was remanded to conduct an additional evidentiary hearing for the purpose of determining quantifiable damages and costs.

96. Under section 760.35(3)(b), Petitioners are entitled to an award of reasonable attorney's fees and costs they have incurred in this proceeding after it was remanded to DOAH for the evidentiary hearing to determine the quantifiable damages and costs to which they are entitled. Because no evidence has yet been presented on this issue, if the parties are unable to agree between themselves on the amount of reasonable attorney's fees and costs to which Petitioners are entitled, this proceeding should be remanded for an evidentiary hearing limited to determining the amount of reasonable attorney's fees and costs to which Petitioners are entitled in this proceeding on remand.

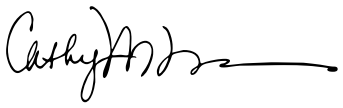
RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the FCHR enter a final order finding

and concluding that Petitioners are entitled to an award of $2,221.80 in damages and costs.

Jurisdiction over this proceeding is retained only with respect to conducting any further proceedings pursuant to sections 120.569 and 120.57(1), as necessary, to determine the amount of reasonable attorney's fees and costs to which Petitioners are entitled under section 760.35 in connection with the final hearing on remand in this proceeding.

DONE AND ENTERED this 18th day of July, 2017, in Tallahassee, Leon County, Florida.



CATHY M. SELLERS
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of July, 2017.

ENDNOTES

[1/] All references to chapter 760, Florida Statutes, are to the 2014 version, which is the version in effect at the time Respondent engaged in unlawful retaliation against Petitioners.

[2/] Official recognition of these exhibits was taken pursuant to sections 120.57(1)(f)5. and 90.202(5), Florida Statutes.

[3/] On March 6, 2017, Respondent filed a late-filed exhibit, as permitted by the undersigned at the final hearing. This exhibit, labeled "Resp. 2," consisted of a document dated October 20, 2014, formally notifying Petitioners that Respondent was exercising its right to terminate their Apartment Rental Contract ("Lease"). This document was formally marked and admitted into evidence as "Respondent's Exhibit 3" at the final hearing held on February 23, 2017. For clarity purposes, the exhibit's number has been changed in the record to conform to that referenced in the Transcript of the final hearing.

[4/] Lisa Anduze credibly described her efforts in searching for comparable housing in the Orlando area as entailing looking "at a good seven communities," looking "at a couple of places," and going to "several complexes." Although she did not precisely recall the number of places she investigated or the names of those complexes, it is noted that she searched for alternative housing over three years ago, under the tension of trying to find housing on relatively short notice during the holiday season, when vacant comparable units were in short supply. The undersigned finds her testimony credible and substantial for purposes of establishing that Petitioners made reasonable efforts to secure comparable housing in the Orlando area but were unable to do so.

[5/] Mrs. Anduze credibly testified that in attempting to find housing in the West Palm Beach area, she called "several communities, at least five," before finding a comparable unit at the Barcelona.

[6/] Petitioners' daughter also was going to be an occupant of Unit 11-205.

[7/] Mrs. Anduze testified that the ink on this receipt, as with several others, had faded, so it was illegible.

[8/] Given the existence of the statement and that it shows a $0.00 balance for a stay on the night of December 31, 2014, it is reasonable to infer that Petitioners paid to stay in the hotel room that night.

[9/] This amount was calculated using the per-page cost of $.14 shown on the receipt and adding prorated "FAXSENDL&TF," sales tax, and state and local telecom taxes shown on the receipt.

[10/] Respondent argues that Petitioners are not entitled to the rent differential between Units 4-207 and 11-205 because

Petitioners did not "mitigate their damages" suffered as a result of Respondent's unlawful retaliation. This argument is rejected. In Toucan Partners, LLC v. Hernando County, 2014 U.S. Dist. LEXIS 12979 (11th Cir. 2014), the court observed that even assuming the duty to mitigate were an available defense against Fair Housing Act claims, it only "requires plaintiffs to do no more than is reasonable under the circumstances to mitigate or avoid further harm." Id. at *14-*15 (emphasis added). See also Silver Sage Partners v. City of Desert Hot Springs, 251 F.3d 814, 825 (9th Cir. 2001)(if the duty to mitigate applies in housing discrimination cases, it requires a plaintiff to do no more than is reasonable under the circumstances to avoid damages). Here, Petitioners undertook significant efforts to find comparable housing in Orlando but they were unable to do so. They moved to West Palm Beach, where they moved into a smaller apartment unit at only a slightly higher (7.4%) rate than they were paying for Unit 4-207. Petitioners' efforts to mitigate the damages they suffered due to Respondent's unlawful retaliation were patently reasonable under the circumstances.

[11/] Damages awards in civil rights cases should make the claimant whole, not confer a windfall. EEOC v. Joe's Stone Crab, Inc., 15 F. Supp. 2d 1364, 1378 (S.D. Fla. 1978). Here, paying Petitioners for moving themselves out of their apartment would effectively constitute "wages" that they would not otherwise have earned because they were not employed at the time. This would constitute a windfall. See Evans v. Weiser Servs., 2012 U.S. Dist. LEXIS 124750, at *11 (S.D. Ala. 2012)(anything above a payment of damages in an amount that would make the claimant whole constitutes a windfall that is not contemplated by law).

[12/] Cases interpreting federal remedial statutes have authorized reimbursement at the IRS Standard Mileage Rates for mileage incurred as a result of violations of those statutes. See, e.g., Ruby v. Jefferson Cnty. Bd. of Educ., 122 F. Supp. 3d 1288, 1308 (N.D. Ala. 2015)(plaintiff entitled, under the Individuals with Disabilities in Education Act, to reimbursement at IRS mileage rate for mileage incurred in transporting her disabled child to an appropriate school).

[13/] The October 20, 2014, non-renewal notice for Petitioners' lease of Unit 4-207 was admitted into the record as Petitioners' Exhibit 17 in the hearing conducted on May 25, 2016, and as Respondent's Exhibit 2 at the February 23, 2017, hearing after remand.

[14/] As part of these miscellaneous expenses, Petitioners seek to recover the costs of tolls incurred while traveling on the Florida Turnpike, a toll road, between Unit 4-207 and Unit 11-205. As discussed above, the evidence establishes that Petitioners made this trip three-and-one-half times. However, they did not provide receipts for these toll costs, and they did not request the undersigned to take official recognition of Florida Turnpike toll rates at the final hearing. Thus, there is no evidence in the record regarding the amount of costs Petitioners incurred in tolls in moving from Unit 4-207 to Unit 11-205. According to the State of Florida Department of Transportation's Toll Calculator, a one-way trip on the Florida Turnpike starting at Florida State Road 417 and ending at Florida State Road 706 is $12.00. This would total $84.00 in toll costs incurred in Petitioners' move from Unit 4-207 to Unit 11-205. However, Petitioners did not request the undersigned to take official recognition of this information, and the procedures established in sections 90.202 through 90.204, Florida Statutes, have not been met, so it would be an abuse of discretion for the undersigned to take official recognition of this information.

[15/] The credible evidence does not establish that Monique Anduze's trip from Kingston, Jamaica, to Orlando——including the bus trip from Miami to Orlando——resulted from Respondent's unlawful retaliation. Accordingly, Petitioners are not entitled to recover expenses associated with this trip, including the bus trip from Miami to Orlando.

[16/] Although courts in civil rights cases are authorized to award damages for non-quantifiable injuries such as mental distress as part of "compensatory damages," those types of injuries are not compensable in the administrative context. Metro. Dade Cnty. Fair Hous. & Emp't Appeals Bd. v. Sunrise Vill. Mobile Home Park, 511 So. 2d 962, 965-66 (Fla. 1987) (administrative entity not constitutionally empowered to award non-quantifiable damages for mental distress); Broward Cnty. v. LaRosa, 505 So. 2d 422, 424 (Fla. 1987)(awarding damages for non-quantifiable injuries is strictly a judicial function that cannot constitutionally be performed by an administrative body).

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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.