

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JOHN HOMER,

Petitioner,

vs.

Case No. 17-3451

GOLFSIDE VILLAS CONDOMINIUM  
ASSOCIATION, INC.; HARA  
COMMUNITY 1ST ADVISORS, LLC;  
AND RICK MICHAUD,

Respondents.

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RECOMMENDED ORDER

D. R. Alexander, the assigned Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted a hearing in this matter by video teleconference on November 30, 2017, at sites in Orlando and Tallahassee, Florida.

APPEARANCES

For Petitioner: John Homer, pro se  
Unit 609  
1000 South Semoran Boulevard  
Winter Park, Florida 32792-5503

For Respondents: Candace W. Padgett, Esquire  
Vernis & Bowling of North Florida, P.A.  
4309 Salisbury Road  
Jacksonville, Florida 32216-6123

STATEMENT OF THE ISSUE

The issue is whether Petitioner has a disability (handicap), and, if so, was denied a reasonable accommodation

for his disability by Respondents, in violation of the Florida Fair Housing Act (FFHA), as amended.

PRELIMINARY STATEMENT

On November 15, 2016, Petitioner filed a Housing Discrimination Complaint (Complaint) with the Florida Commission on Human Relations (FCHR) alleging that Golfside Villas Condominium Association, Inc. (Golfside), along with its managing organization, Hara Community 1st Advisors, LLC (Hara), and Rick Michaud, the community manager, had "collectively" discriminated against him on the basis of a disability and denied his reasonable accommodation request. After investigating the matter, the FCHR issued its Determination on May 8, 2017, in which it found there is no reasonable cause to believe a discriminatory housing practice occurred. Petitioner timely filed a Petition for Relief, which named only Golfside and Hara as the alleged violators. The matter was referred by the FCHR to DOAH to conduct a hearing to resolve the dispute.

At the hearing, Petitioner testified on his own behalf. Respondents did not present any witnesses. However, Respondents' Exhibits 1, 2a through 2f, and 3 were accepted in evidence.

A transcript of the proceeding was not prepared. Respondents filed a proposed recommended order.

## FINDINGS OF FACT

1. The record in this discrimination case is extremely brief and consists only of a few comments by Mr. Homer, cross-examination by Respondents' counsel, and Respondents' exhibits.

2. Petitioner resides at Golfside Villas, a condominium complex located in Winter Park, Florida. At hearing, Petitioner asserted that he suffers from a disability, narcolepsy, but he offered no competent evidence to support this claim. Thus, he does not fall within the class of persons protected against discrimination under the FFHA.

3. Golfside is the condominium association comprised of unit owners that is responsible for the operation of the common elements of the property. Hara is the corporate entity that administers the association, while Mr. Michaud, a Hara employee, is the community manager.

4. In September 2016, Mr. Homer became involved in a dispute with Golfside over late fees being charged to his association account and issues concerning ongoing repairs for water damage to his unit that were caused by flooding several years earlier. Because some of his telephone calls were not answered by "Lorie" (presumably a member of management staff), on September 23, 2016, Mr. Homer sent an email to Mr. Michaud, the community manager, expressing his displeasure with how his complaints were being handled. He also pointed out that "I have

a disability." The email did not identify the nature of the disability, and it did not identify or request an accommodation for his alleged disability.

5. There is no evidence that Respondents knew or should have known that Mr. Homer had a disability or the nature of the disability. Also, there is no evidence that narcolepsy is a physical impairment "which substantially limits one or more major life activities" so as to fall within the definition of a handicap under the FFHA. See § 760.22(7)(a), Fla. Stat. Here, Petitioner only contends that at times it causes him to speak loudly or yell at other persons.

6. As a follow-up to his email, on September 26, 2016, Mr. Homer spoke by telephone with Mr. Michaud and reminded him to look into the complaints identified in his email. If a request for an accommodation ("work with me") was ever made, it must have occurred at that time, but no proof to support this allegation was presented. Mr. Homer acknowledged that he was told by Mr. Michaud that in the future, he must communicate by email with staff and board members rather than personally confronting them in a loud and argumentative manner.

7. On September 26, 2016, Mr. Michaud sent a follow-up email to Mr. Homer informing him that he must "work with my staff, without getting loud or upset, no matter how frustrated you may be at the time." The email also directed staff to

answer Mr. Homer's questions regarding repairs for water damage to his unit, to "look into some late charges on his account," and to "work with Mr. Homer to help him get both his unit and his account in order."

8. On November 15, 2016, Mr. Homer filed his Complaint with the FCHR alleging that on September 26, 2016, Golfside, Hara, and Mr. Michaud had violated the FFHA by "collectively" denying his reasonable accommodation request. Later, a Petition for Relief was filed, which alleges that Golfside and Hara (but not Mr. Michaud) committed the alleged housing violation. However, the findings and conclusions in this Recommended Order apply to all Respondents.

#### CONCLUSIONS OF LAW

9. Section 760.23(9)(b), Florida Statutes, makes it unlawful to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."

10. The burden of proving that Respondents failed to provide a reasonable, proposed accommodation, or otherwise engaged in unlawful housing discrimination, belongs to Petitioner. See, e.g., Loren v. Sasser, 309 F.3d 1296, 1302 (11th Cir. 2002).

11. To establish a failure-to-accommodate claim, Petitioner must prove that 1) he is disabled within the meaning of the FFHA; 2) he requested a reasonable accommodation; 3) the requested accommodation was necessary to afford him an opportunity to use and enjoy his dwelling; and 4) Respondents refused to make the accommodation. See, e.g., Philippeaux v. Apt. Inv. & Mgmt. Co., 598 Fed. Appx. 640 (11th Cir. 2015). The complainant has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. See 120.57(1)(j), Fla. Stat.

12. Under the four-part burden of proof, a threshold requirement is to demonstrate that the complainant has a disability. By failing to offer any competent evidence (such as a doctor's report or other medical evidence) that he has a disability, Mr. Homer failed to establish a prima facie case. A failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1012 n.6 (Fla. 1st DCA 1996). Thus, there is nothing for Respondents to rebut. On this basis alone, the Petition for Relief should be dismissed.

13. Assuming arguendo that Mr. Homer had a disability and Respondents were aware of this fact (which has not been established), there is no evidence in the record that he identified an accommodation or demonstrated that it is

reasonable. Therefore, the second prong of the test has not been met.

14. Finally, assuming that Petitioner asked Respondents to "work with [him]," this is insufficient to trigger a legal duty on Respondents' part to respond. Even so, Respondents accommodated his inquiry by directing staff to investigate his complaints, to answer any other questions that he submitted, and to "work with Mr. Homer to help him get both his unit and his account in order."

15. Given the foregoing considerations, the Petition for Relief should be dismissed, with prejudice.

#### 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 Petition for Relief, with prejudice.

DONE AND ENTERED this 14th day of December, 2017, in  
Tallahassee, Leon County, Florida.

*D. R. Alexander*

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D. R. ALEXANDER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
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this 14th day of December, 2017.

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.