

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RITA LYNAR,

Petitioner,

vs.

Case No. 18-1314

WESTMINSTER RETIREMENT  
COMMUNITIES FOUNDATION, INC., ET  
AL.,

Respondent.

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RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2018),<sup>1/</sup> on September 11, 2018, and January 9, 2019, in Sebastian, Florida.<sup>2/</sup>

APPEARANCES

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For Respondent: Maria Vaeth Henderson, Esquire  
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STATEMENT OF THE ISSUE

Whether Respondent, Westminster Retirement Communities Foundation, Inc., et. al., discriminated against Petitioner, Rita Lynar, in violation of the Florida Fair Housing Act; and, if so, the relief to which Petitioner is entitled.

PRELIMINARY STATEMENT

On August 17, 2017, Petitioner filed a housing discrimination complaint with the Florida Commission on Human Relations (the "Commission") claiming that Respondent, Westminster Retirement Communities of Florida Foundation, Inc. ("Westminster"), violated the Florida Fair Housing Act ("FHA"). Petitioner specifically alleged that Westminster retaliated against her based on her practice of an activity protected by the FHA.

On February 9, 2018, the Commission notified Petitioner that no reasonable cause existed to believe that Westminster had committed a discriminatory housing practice.

On March 6, 2018, Petitioner filed a formal Petition for Relief with the Commission alleging a discriminatory housing practice. The Commission transmitted the Petition to the Division of Administrative Hearings ("DOAH") to conduct a chapter 120 evidentiary hearing.

The final hearing began on September 11, 2018. The final hearing was continued to January 9, 2019, at which time it was

completed. At the final hearing, Petitioner testified on her own behalf. Petitioner also called Joe Downs, Linda Evans, Patricia Helms, Bruce Ballman, Theresa Moss, Jane Furman, Marvene Sheriff, and Denise Miles as witnesses at the final hearing. Petitioner's Exhibits 1 through 4 and 6 through 10 were admitted into evidence. Respondent's Exhibits 1, 3, and 4 were admitted into evidence.<sup>3/</sup>

A three-volume Transcript of the final hearing was filed with DOAH on November 20, 2018, and May 15, 2019. At the close of the hearing, the parties were advised of a ten-day timeframe following receipt of the hearing transcript at DOAH's to file post-hearing submittals. At a post-hearing conference, both parties requested an extension of the filing deadline, which was granted.<sup>4/</sup> Both parties timely filed post-hearing submittals, which were duly considered in preparing this Recommended Order.

#### FINDINGS OF FACT

1. Westminster owns and operates several retirement communities across Florida. The Westminster property in this matter is located in Cocoa, Florida. Joe Downs is the administrator for the Cocoa site and manages the facilities.

2. Petitioner moved into the Westminster community in January 2013. The Cocoa, Florida, location consists of three buildings. Petitioner rents an apartment located in Asbury Arms

North ("Asbury North"). Asbury North is restricted to only elderly persons.

3. Petitioner and Westminster have had a contentious relationship from the time she moved in. The problems stem from Westminster's handling of an ongoing personality conflict between Petitioner and several other Asbury North residents. The genesis of the current matter was on or about August 2014, when Petitioner filed a housing discrimination complaint against Westminster with the U.S. Department of Housing and Urban Development ("HUD"). On January 9, 2015, Petitioner also submitted her complaint to the Commission.

4. In this initial complaint, Petitioner alleged that Westminster discriminated against her based on her sex. Petitioner contended that another resident, Kenneth Schultz, had physically and verbally harassed her. Petitioner accused Westminster management (Mr. Downs) of encouraging and supporting Mr. Schultz's impropriety. The Commission investigated Petitioner's allegations (FCHR No.: 2015 H0098), and on April 7, 2015, issued a Notice of Determination of No Cause. The Commission's Notice stated that it "determined that reasonable cause does not exist to believe that a discriminatory housing practice has occurred."

5. Petitioner contested the Commission's findings in DOAH Case No. 15-2769. In December 2015 however, on the eve of the

final administrative hearing, Westminster and Petitioner settled their dispute. Petitioner remained a resident of Asbury North.

6. Unfortunately, from Petitioner's perspective, her tribulations did not end in December 2015. The current case is based on Petitioner's allegations that Westminster has been unlawfully retaliating against her because of her first complaint. The FHA safeguards individuals based on their previous participation in a right granted by the FHA (such as filing a housing discrimination complaint with HUD and/or the Commission). See § 760.37, Fla. Stat. Petitioner claims that as a direct result of her 2015 accusations, she has been subjected to harassment, intimidation, and threats by Westminster.<sup>5/</sup>

7. At the final hearing, Petitioner described what she asserts demonstrates Westminster's retaliation based on her participation in an act protected by the FHA. These multiple incidents include the following:

a. Eviction:

8. On May 1, 2017, Westminster served Petitioner with a Notice of Termination of Tenancy (the "Termination Notice") on May 1, 2017. Thereafter, on June 2, 2017, Westminster filed an eviction lawsuit against Petitioner in Brevard County.

9. Petitioner denies that she ever violated Westminster's rules or regulations. Therefore, the eviction action is

completely unjustified. Petitioner claims that Westminster initiated the eviction action in retaliation for her 2015 housing discrimination complaint.

b. Intimidation and Mistreatment:

10. In addition to the eviction lawsuit, Petitioner complains that a small clique of Asbury North residents has continually bullied, harassed, stalked, and targeted her. They call her nasty names; they utter derogatory remarks; and they ostracize her from social activities. They make false accusations about her (alleged) misconduct to both Westminster and the Cocoa police department.

11. This group consists primarily of four members of the "Residents Council," including Denise "Dee" Miles, Don Miles, Mr. Schultz, and Jane "Mickey" Furman. The Residents Council was formed before Petitioner arrived at Westminster. Its primary purpose is to arrange for and coordinate various activities and functions for Asbury North residents, such as cookouts, holiday parties, and entertainment. Persons serving on the Residents Council are elected by the Asbury North residents. However, the Residents Council is not officially associated with, compensated by, or selected by Westminster. None of the Residents Council members are Westminster employees in any capacity. Neither has Westminster authorized the Residents Council to act on its behalf.

12. The most dramatic episode of intimidation occurred on June 6, 2017, when the eviction complaint was served on Petitioner. That day, Petitioner joined a handful of other Westminster residents for lunch at a nearby Cracker Barrel. Most residents, including Petitioner, rode a church bus to the restaurant.

13. Five other residents, Ms. Miles, Donald Miles, Mr. Schultz, Mickey Furman, and Pat Helms rode separately in Mr. Schultz's car. They also sat with each other at the restaurant.

14. While Petitioner was sitting at a table with several friends, Ms. Miles left the dining area and went outside to the parking lot. She returned shortly, leading a process server. Ms. Miles pointed to Petitioner. Ms. Miles then returned to her table and shared the information with her tablemates. They watched as the process server handed Petitioner the eviction paperwork in front of all the restaurant patrons.<sup>6/</sup>

15. After riding the bus back to Asbury Arms, Petitioner proceeded to her building to return to her second floor apartment. As she opened the door to enter the Florida room, however, she was confronted by a "mob" of approximately 20 residents, including Ms. Miles. At her appearance, the mob erupted into a boisterous cheer, celebrating Petitioner's imminent eviction. Petitioner recounted how several residents

jeered and taunted her. Petitioner was shocked and horrified. She quickly scurried to the elevator.

16. Linda Evans, a resident who is friends with Petitioner, observed the incident and exclaimed that the spectacle was organized specifically to humiliate Petitioner. She saw residents clapping, hooting, and hollering. She heard someone yell, "We got you." Ms. Evans espied several members of the Residents Council in the gathering, including Ms. Miles and Mr. Schultz. However, she was not aware of any Westminster employees who participated in the revelry. Ms. Evans complained to Westminster management about the incident, but she never saw any repercussions addressing this "horrible" celebration.

17. Petitioner blamed Ms. Miles for orchestrating and leading the cheering. Petitioner also accused Mr. Downs of colluding with Ms. Miles by giving her information about the service of process.

c. Mental, Physical, and Verbal Abuse:

18. Beyond Westminster's eviction action and the "mobbing" incident, Petitioner alleges that she has suffered constant and recurring mental, physical, and verbal abuse at Westminster. Petitioner claims that this hostile environment has caused her deep anxiety and stress.

19. Petitioner's primary foil at Westminster is Dee Miles. Petitioner alleges that Ms. Miles is the leader of her



antagonists. Among their numerous run-ins, Petitioner claims that Ms. Miles wrongly reported Petitioner to the police in February 2016; called her names in May 2016; falsely accused her of abusing community privileges in June 2016; pushed her and yelled at her in August 2016; yelled at her in April 2017; and called her a foul name in May 2017. Petitioner asserts that Ms. Miles manipulates the management to harass and intimidate her. Petitioner calls Ms. Miles an "agent" of Westminster.

20. As additional examples of the unpleasant situation she endures, Petitioner relayed an episode where Mr. Schultz threatened to hit her with a mallet (June 2016) and named a wild pig after her (July 2016). She reported the incidents to Mr. Downs, but Westminster took no action against Mr. Schultz.

21. Petitioner also described a time in November or December 2016 when she lost the outside key to her building. Petitioner complains that Mr. Downs charged her \$75 for a replacement key, then took approximately six weeks to give her the new key. When Petitioner inquired about the delay, she claims that Mr. Downs disrespected her and treated her unprofessionally. (Mr. Downs acknowledged that it took several weeks to obtain a new key. However, Petitioner could always access her building by using the keypad. Mr. Downs also denied that he received the \$75 from Petitioner for the duplicate key.)

22. Finally, Petitioner also reported a fight she had on March 28, 2017, with another resident named Doris Driver. Petitioner recounted that she was sitting in the Asbury Arms common area with several friends. Ms. Driver approached her from behind and unexpectedly struck her in the head and pulled her hair. Petitioner was completely caught off guard. In an effort to protect herself, Petitioner kicked Ms. Driver and slapped her across her face. After the incident, Petitioner obtained a court ordered Injunction for Repeat Violence against Ms. Driver. Petitioner accused Mr. Downs of ignoring Ms. Driver's violent attack.

23. Petitioner charges that Mr. Downs fosters and supports the abusive behavior from Ms. Miles and the other members of the Residents Council. Mr. Downs colludes in Ms. Miles and her cohorts' efforts to bully Petitioner. Petitioner alleges that Mr. Downs/Westminster treats her unfairly by not acknowledging or investigating her complaints against other residents, and failing to admonish them for their wrongdoing.

24. Mr. Downs testified on behalf of Westminster. Mr. Downs explained that Westminster provides affordable housing for senior citizens. Accordingly, HUD subsidizes the rent for a number of residents, including Petitioner.

25. In his role as administrator, Mr. Downs oversees the day-to-day operations for the Cocoa location. Mr. Downs has worked at Westminster as the administrator since 2010.

26. Mr. Downs is well aware of the incompatibility between Petitioner and several other Asbury North residents. Mr. Downs stated that he has received "volumes" of complaints from Petitioner about other residents. Mr. Downs explained that each time he received a grievance from (or against) Petitioner, he would personally evaluate and review the complaint, then offer the other side the opportunity to respond. Mr. Downs estimated that he has reviewed over 1,000 complaints from Petitioner, which, at one point, consumed approximately 50 percent of his time.

27. Despite this "barrage" of jeremiads, Mr. Downs maintained that he never ignored Petitioner's complaints. However, he testified that he found that most of her accusations lacked any factual basis and were meritless.

28. Mr. Downs is also aware that Petitioner's primary personality dispute is with Dee Miles. Mr. Downs relayed that he has repeatedly and strongly counseled both Petitioner and Ms. Miles not to engage each other. Mr. Downs specifically warned Ms. Miles to avoid Petitioner "at all costs." Unfortunately, Mr. Downs has found both ladies to be very

headstrong, and Petitioner to be very confrontational. They simply do not want to get along.

29. Mr. Downs readily admitted that Westminster is attempting to evict Petitioner. However, Mr. Downs adamantly denied that Westminster, or any of its agents or employees, has taken any action in retaliation for Petitioner's 2015 housing discrimination complaint. Instead, Mr. Downs testified that the legal action is based entirely on Petitioner's own unacceptable behavior, which has resulted in her multiple, material violations of her Westminster lease agreement.

30. Petitioner signed her lease agreement on January 21, 2013, when she moved into Asbury North. Attachment No. 3 to the lease agreement is a document entitled "House Rules." The House Rules include a section labeled "CONDUCT," which instructs that:

Residents . . . will not engage in, or participate in, such conduct which interferes with the quiet and peaceful enjoyment of other residents living in the apartment property. No act of a resident and/or guest which threatens, intimidates, is deemed as harassing others, is physically violent with or without injury to another person and/or property, or has unacceptable social conduct, will be tolerated. Any such incident(s) will be considered a violation of the Community Policies and the Lease.

\* \* \*

Social and friendly gatherings of residents and his/her guest(s) are welcomed provided such gatherings do not become noisy, offensive, threatening, or generally

objectionable to other residents and/or management. The gathering is considered in violation of the terms of the Lease and Community Policies when other residents' rights to quiet and peaceful enjoyment of his/her residence are violated.

31. Westminster delivered the Termination Notice to Petitioner on May 1, 2017. Petitioner discovered the Termination Notice posted on her door. The Termination Notice informed Petitioner that Westminster was terminating her lease,

based on your material noncompliance with the Lease Agreement, including one or more substantial violations of the Lease Agreement, and repeated minor violations of the Lease Agreement which disrupt the livability of the project, and adversely affect the health or safety of any person and the right of any tenant to the quiet enjoyment of the leased premise and related project facilities.

The Termination Notice directed Petitioner to vacate Asbury North not later than May 31, 2017.

32. Mr. Downs testified that the Termination Notice was based on Westminster's investigations into complaints about Petitioner's conduct. Mr. Downs surmised that he has received over 100 complaints regarding Petitioner. Mr. Downs expressed that the difficulties Petitioner caused accumulated to a point where the frustration rose to an unacceptable level.

33. Mr. Downs stated that the Termination Notice is based on Petitioner's clear violations of the lease agreement House Rules. The Termination Notice includes 12 "specific reasons for

this termination" involving complaints from at least nine Asbury North residents. Mr. Downs asserted that he verified each and every incident, in writing, after speaking with the complainant.

34. At the final hearing, Mr. Downs summarized the most egregious violations to include:

a. June 20, 2016: Petitioner filed a police report accusing another resident (Kenneth Schultz) of threatening her with a mallet. (See paragraph 20 above.) Following his investigation, Mr. Downs concluded that Petitioner's allegations were groundless. Mr. Downs reviewed a video recording of the encounter. He observed no hostile or threatening behavior from Mr. Schultz towards Petitioner. Therefore, he concluded that Petitioner intentionally filed a false police report. Consequently, Petitioner's actions interfered with the quiet enjoyment of another resident, as well as harassed the other residents.

b. October 31, 2016: Petitioner pushed a door into another resident (Norma Seitz). The resident reported the incident to Westminster staff. Petitioner's actions interfered with the quiet enjoyment of another resident in that she was physically violent to the other resident.

c. March 28, 2017: Mr. Downs referred to Petitioner's fight with Doris Driver. (See paragraph 22 above.) The incident caused Westminster to call law enforcement to the

property. At the final hearing, Mr. Downs conceded that he did not determine who actually started the quarrel. However, he maintained that physical violence is an absolute violation of Westminster's rules, regardless of who is at fault. Mr. Downs denied that he sided with Ms. Driver. Instead, he advised Ms. Driver that she needed to leave Westminster. Ms. Driver moved out of Westminster the following month, before Westminster formally filed legal action against her. Mr. Downs also cooperated with a law enforcement investigation into the incident by providing them with a copy of the video of the episode. Westminster cited Petitioner for interfering with the quiet enjoyment of another resident, harassing and intimidating another resident, and being physically violent with another resident.

35. In addition to the above "substantial violations," the Termination Notice listed a number of additional incidents which Mr. Downs asserted violated the lease agreement by interfering with the quiet enjoyment of, as well as harassing and intimidating other Westminster residents. These episodes included:

a. January 6, 2016: Petitioner yelled at another resident (Judith Collins). Ms. Collins was frightened and reported the encounter to Westminster staff.

b. January 9, 2016: Petitioner yelled at another resident (Rebecca Scott). Ms. Scott was frightened and reported the incident to Westminster staff.

c. January 20, 2016: Petitioner yelled at another resident (Sue Diserio), calling her derogatory names. Ms. Diserio reported the event to Westminster staff.

d. November 28, 2016: Petitioner blocked another resident's (Mr. Schultz) access to the elevator, and declared that the other resident "just wanted to touch [her] body." The resident filed a complaint against Petitioner with Westminster staff.

e. January 12, 2017: Petitioner yelled at another resident (Mickey Furman) regarding a recurring dispute about Petitioner placing her feet on the chairs in the common room. (Ms. Furman testified at the final hearing confirming that she reported the incident to Westminster. She expressed that she was offended by Petitioner's outburst. Ms. Furman further relayed that she has written several letters to Mr. Downs complaining of Petitioner's inappropriate behavior.)

f. January 23, 2017: Petitioner yelled at another resident (Ms. Miles) regarding the same years' long complaint about Petitioner resting her feet on chairs in the Florida room. (Ms. Miles testified at the final hearing confirming that she reported the incident to Mr. Downs.)



g. January 26, 2017: Petitioner called a Westminster staff member a "bitch." At the final hearing, Petitioner acknowledged confronting the staff member, but denied calling her a demeaning name.

h. January 27, 2017: Petitioner took a cart from the thrift shop, which belonged to another resident (Ms. Furman) without her permission. Petitioner then called Ms. Furman "greedy." (Ms. Furman confirmed at the final hearing that she reported the encounter to Westminster staff.)

i. February 14, 2017: Petitioner intentionally spilled coffee down the hallway and lobby of Asbury North. Mr. Downs watched a video recording of the incident. Mr. Downs maintained that Petitioner's destruction of property constituted unacceptable social conduct at Westminster.

36. Despite receiving the Termination Notice on May 1, 2017, Petitioner did not vacate her room by May 31, 2017. As a result, Mr. Downs stated that Westminster felt compelled to initiate the eviction action. Westminster filed the eviction complaint in county court in Brevard County on June 2, 2017.

37. Regarding the service of the eviction paperwork on June 6, 2017, Mr. Downs explained that the process server appeared at Westminster when Petitioner was at lunch at Cracker Barrel. Because Petitioner was not present on the property, Mr. Downs contacted the process server's office to inquire about

the appropriate next step. During the phone call, Mr. Downs relayed that Petitioner was lunching at Cracker Barrel. Thereafter, the process server left Westminster (presumably for Cracker Barrel).

38. Mr. Downs refuted any claims that he told Ms. Miles about the service of the eviction complaint. Mr. Downs testified that he did not know how Ms. Miles learned about the eviction. (Mr. Downs reflected that many residents already knew about the eviction based on the posting of the Termination Notice on Petitioner's door.)

39. Mr. Downs also denied any knowledge of the "mobbing" celebration at Westminster on June 6, 2017. He relayed that he was not present in Asbury North at the time.

40. Mr. Downs further denied that any member of the Residents Council (i.e., Dee Miles) had any input into Westminster's decision to evict Petitioner. Instead, the eviction was based solely on the incidents listed in the Termination Notice. Mr. Downs described the Residents Council as an "activities committee" formed by Asbury North residents. Mr. Downs denied that the Residents Council is affiliated with or serves any official function on behalf of Westminster. His testimony was credible and is credited.

41. Dee Miles testified at the final hearing. Ms. Miles expressed that she is not, nor has she ever been an employee of

Westminster. Ms. Miles further contended that the Residents Council is not an official Westminster organization, nor are its members compensated by Westminster.

42. Regarding the incident on June 6, 2017, Ms. Miles admitted that she was aware of the process server's activities before Petitioner was served at Cracker Barrel. Ms. Miles also admitted that she waited for the process server in the parking lot, then led him into the restaurant where she identified Petitioner. However, she denied that she learned about the summons from Mr. Downs or received any communication from him about the process server. Ms. Miles explained that, while driving to Cracker Barrel, she received a text from another Asbury North resident who had seen the process server at Westminster.

43. Ms. Miles further admitted that she participated in the "mobbing" celebration in the Florida Room when Petitioner returned from lunch. However, she declared that she had no involvement in Westminster's decision to evict Petitioner.

44. Ms. Miles willingly acknowledged that Petitioner and she have frequently clashed since Petitioner's arrival at Westminster. Ms. Miles declared that she has written many letters to Mr. Downs complaining of abuse and harassment she has suffered at Petitioner's hands. At the final hearing, Ms. Miles described verbal abuse (name-calling), as well as harassment

(Petitioner's ill treatment of Mr. Miles' scooter). Ms. Miles further recounted that she has seen Petitioner harass other Asbury North residents and misuse the furniture in the common room.

45. Based on the competent substantial evidence in the record, the preponderance of credible evidence does not establish that Westminster discriminated against Petitioner in retaliation for her 2015 complaint of housing discrimination. Accordingly, Petitioner failed to meet her burden of proving that Westminster violated the FHA.

#### CONCLUSIONS OF LAW

46. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569, 120.57(1), 760.34(4), 760.35(3)(b), and 760.37, Florida Statutes.

47. Petitioner asserts that Westminster discriminated against her in violation of the FHA. Specifically, Petitioner alleges that Westminster retaliated against her based on her participation in a protected activity.

48. The FHA is codified in sections 760.20 through 760.37 and makes it unlawful to discriminate against any person in connection with the rental of a dwelling. § 760.23(2), Fla. Stat. Section 760.37 addresses retaliatory acts and states, in pertinent part:

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.

49. The FHA is patterned after the Federal Fair Housing Act found in 42 U.S.C. § 3601, et seq. Discrimination covered under the FHA is the same discrimination prohibited under the Federal Fair Housing Act. Savannah Club Worship Serv. v. Savannah Club Homeowners' Ass'n, 456 F. Supp. 2d 1223, 1224 n.1 (S.D. Fla. 2005); see also Bhogaita v. Altamonte Heights Condo. Ass'n, 765 F.3d 1277, 1285 (11th Cir. 2014) ("The [Federal Fair Housing Act] and the Florida Fair Housing Act are substantively identical, and therefore the same legal analysis applies to each."). Accordingly, federal case law involving discrimination is instructive in applying and interpreting the FHA. See Loren v. Sasser, 309 F.3d 1296, 1300 n.9 (11th Cir. 2002).<sup>7/</sup>

50. In proceedings brought under the FHA, the burden of proof is on the complainant. § 760.34(5), Fla. Stat.; see also Sec'y, U.S. Dep't of Hous. & Urban Dev. ex rel. Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990); and Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996) ("The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue."). The preponderance of

the evidence standard is applicable to this matter.

§ 120.57(1)(j), Fla. Stat.

51. Discrimination may be proven by direct, statistical, or circumstantial evidence. Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17, 22 (Fla. 3d DCA 2009). Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent behind the decision without any inference or presumption. Denney v. City of Albany, 247 F.3d 1172, 1182 (11th Cir. 2001); see also Holifield v. Reno, 115 F.3d 1555, 1561 (11th Cir. 1997). Courts have held that “‘only the most blatant remarks, whose intent could be nothing other than to discriminate . . .’ will constitute direct evidence of discrimination.” Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1358-59 (11th Cir. 1999) (citations omitted).

52. At the final hearing, Petitioner presented no direct evidence of a retaliatory housing practice by Westminster. No evidence or testimony shows that Westminster intentionally intimidated, threatened, or interfered with Petitioner’s exercise of her right to file a discriminatory housing complaint under the FHA.

53. In the absence of direct or statistical evidence of discriminatory intent, Petitioner must rely on circumstantial evidence of discrimination to prove her case. For discrimination claims involving circumstantial evidence, fair

housing cases are analyzed under the three-part, burden-shifting framework set forth in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). See also Bone v. Vill. Club, Inc., 223 F. Supp. 3d 1203, 1217 (M.D. Fla. 2016). Under this three-part test, Petitioner has the initial burden of establishing a prima facie case of unlawful discrimination. McDonnell Douglas, 411 U.S. at 802; Burdine, 450 U.S. at 252-253; Valenzuela, 18 So. 3d at 22.

54. To establish a prima facie case of retaliatory housing discrimination, a plaintiff must show that (1) she engaged in a protected activity; (2) the defendant subjected her to an adverse action; and (3) a causal link exists between the protected activity and the adverse action. Bone, 223 F. Supp. 3d at 1217 (M.D. Fla. 2016); Philippeaux v. Apartment Inv. & Mgmt. Co., 598 F. App'x 640, 644 (11th Cir. 2015); and Hebden v. Anderson, No. 8:18-cv-1063-T-33AAS, 2019 U.S. Dist. LEXIS 56368, at \*14-15 (M.D. Fla. Apr. 2, 2019). A plaintiff engages in statutorily protected activity when she "protests . . . conduct which is actually lawful, so long as . . . she demonstrates a good faith, reasonable belief that the [conduct engaged in] was . . . unlawful." Philippeaux, 598 F. App'x at 644-45.

55. Demonstrating a prima facie case is not difficult, but rather only requires Petitioner "to establish facts adequate to

permit an inference of discrimination.” Holifield, 115 F.3d at 1562. However, the failure to satisfy any of these elements is fatal to a complaint of retaliation. Higdon v. Jackson, 393 F.3d 1211, 1219 (11th Cir. 2004).

56. If Petitioner proves a prima facie case, she creates a presumption of housing discrimination. At that point, the burden shifts to Westminster to articulate a legitimate, nondiscriminatory reason for its actions. Bone, 223 F. Supp. 3d at 1218; Oliver, No. 8:17-cv-585-T-30AAS, 2018 U.S. Dist. LEXIS 220246, at \*24. The reason for Westminster’s decision should be clear, reasonably specific, and worthy of credence. See Dep’t of Corr. v. Chandler, 582 So. 2d 1183, 1186 (Fla. 1st DCA 1991). The burden on Westminster is one of production, not persuasion, to demonstrate to the finder of fact that its action was nondiscriminatory. Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1087 (11th Cir. 2004). This burden of production is “exceedingly light.” Holifield, 115 F.3d at 1564.

57. If Westminster meets its burden, the presumption of discrimination disappears. The burden then shifts back to Petitioner to prove that Westminster’s proffered reason was not the true reason but merely a “pretext” for discrimination. Bone, 223 F. Supp. 3d at 1218; Valenzuela, 18 So. 3d at 25.

58. In order to satisfy this final step in the process, Petitioner must show “either directly by persuading the court



that a discriminatory reason more likely motivated [Westminster] or indirectly by showing that [Westminster's] proffered explanation is unworthy of credence." Burdine, 450 U.S. 248, 256, 101 S. Ct. 1089, 1095. Petitioner must prove that the reasons articulated were false and that the discrimination was the real reason for the action. City of Miami v. Hervis, 65 So. 3d 1110, 1117 (Fla. 3d DCA 2011) (citing St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 515, 113 S. Ct. 2742, 2751 (1993) ("[A] reason cannot be proved to be 'a pretext for discrimination' unless it is shown both that the reason was false, and that discrimination was the real reason.")).

59. Despite the shifting burdens of proof, "the ultimate burden of proving discrimination rests at all times with the [petitioner]." Valenzuela, 18 So. 3d at 22; Burdine, 450 U.S. at 253.

60. Applying the burden-shifting analysis to the facts found in this matter, Petitioner did not meet her burden of proving that Westminster retaliated against her based on her exercise of a right protected by the FHA. Specifically, Petitioner did not show that Westminster coerced, intimidated, threatened, or interfered with her because of her decision to file a housing discrimination complaint in 2015.

61. Reviewing her prima facie case, Petitioner satisfied the first two elements. The facts establish that Petitioner

engaged in a protected activity by filing housing discrimination complaints with HUD in August 2014, and with the Commission in January 2015, and then by pursuing a Petition for Relief in DOAH in 2015.

62. Petitioner also fulfilled the "adverse action" prong of her prima facie case. Westminster served Petitioner with the Termination Notice on May 1, 2017, which is sufficiently "adverse" to demonstrate circumstantial evidence of retaliation. See Bone, 223 F. Supp. 3d at 1219, and Neudecker v. Boisclair Corp., 351 F.3d 361, 363-64 (8th Cir. 2003) (holding that threats of eviction are sufficient to allege an adverse action under the Federal Fair Housing Act). (In addition to the eviction, Petitioner argues that the persistent abusive treatment she received from other Asbury North residents should be considered "adverse action" perpetrated by Westminster. The facts do not support this position as is discussed in paragraphs 66-70 below.)

63. However, Petitioner failed to show a causal link between her 2015 complaint and Westminster's eviction action. Petitioner can satisfy the third element if she "provides sufficient evidence that the decision-maker became aware of the protected conduct, and that there was close temporal proximity between this awareness and the adverse employment action." Farley v. Nationwide Mut. Ins. Co., 197 F.3d 1322, 1337 (11th Cir. 1999); Rustowicz v. N. Broward Hosp. Dist., 174 So. 3d 414,

426 (Fla. 4th DCA 2015). See also Thomas v. Cooper Lighting, Inc., 506 F.3d 1361, 1364 (11th Cir. 2007) (“[I]n the absence of other evidence tending to show causation, if there is a substantial delay between the protected expression and the adverse action, the complaint of retaliation fails as a matter of law.”).

64. As discussed in endnote 5, the 16-month passage of time between the date Petitioner concluded her 2015 claim (December 2015) and when Westminster posted the Termination Notice (May 2017) is too attenuated to establish a reasonable inference that Westminster retaliated against her. See Higdon v. Jackson, 393 F.3d 1211, 1220 (11th Cir. 2004); and Oliver v. Fox Wood at Trinity Cmty. Ass’n, No. 8:17-cv-585-T-30AAS, 2018 U.S. Dist. LEXIS 220246, at \*23 (M.D. Fla. July 30, 2018).

65. Further, Petitioner did not present other evidence tending to show causation. On the contrary, Westminster provided ample documentation and credible testimony that its decision to evict Petitioner was based on her breach of the lease agreement (the House Rules). The Termination Notice identified 12 separate violations Petitioner committed from January 2016 through March 2017. Mr. Downs’ testimony, as well as supporting testimony from Ms. Furman, Ms. Evans, Ms. Helms, and Ms. Miles, persuasively substantiated the factual basis underlying each of the cited incidents. Consequently, because

the facts in the record demonstrate that Westminster's decision to terminate Petitioner's lease agreement was based on reasons independent from Petitioner's 2015 housing discrimination complaint, Petitioner did not establish a causal link between her protected activity and the adverse action.

66. Notwithstanding the above analysis, Petitioner alleges that she was subjected to "adverse action" in the form of relentless bullying and harassment by other Asbury North residents since December 2015. Petitioner asserts that Westminster participated in this activity by either explicitly instigating or implicitly supporting this behavior, and, as such, all offensive conduct from other residents must be considered retaliation on the part of Westminster.

67. According to Petitioner, proof of this retaliation is evident in the disparate manner in which Westminster (Mr. Downs) applied the lease agreement to the Asbury North residents. Petitioner contends: Mr. Downs readily enforced the House Rules against Petitioner, especially the residents' right to quiet enjoyment of the property; he presumed that every complaint levied against Petitioner was true without conducting a comprehensive and fair investigation; and he then used these complaints to justify Westminster's termination of Petitioner's tenancy.

68. Conversely, Mr. Downs either declined to enforce or outright ignored these same provisions against those residents about whom Petitioner complained. He also refused to stop or admonish other residents who interfered with Petitioner's right to quiet enjoyment.

69. However, the evidence at the final hearing belies Petitioner's claim of collusion between Westminster and Petitioner's adversaries. Mr. Downs credibly testified that he treats all residents' complaints, including those either by or against Petitioner, in like manner.<sup>8/</sup> Mr. Downs also convincingly explained that he spent a considerable amount of his time investigating and reviewing Petitioner's allegations against Ms. Miles and Mr. Schultz. The testimony also corroborates Mr. Downs' representation that he directly confronted Ms. Miles about her fractious relationship with Petitioner and attempted to resolve the situation. Further, the evidence (primarily from Ms. Miles) also supports Mr. Downs' explanation that he did not instigate, nor was he involved in either the Cracker Barrel incident or the "mobbing" in June 2017.

70. Finally, no evidence shows that any Asbury North residents participated in Westminster's decision to evict Petitioner. No evidence was presented demonstrating that any Westminster tenants (in particular, Ms. Miles) had any authority

to act in lieu of, or had any input in, Westminster's determination that Petitioner had violated her lease agreement. Consequently, Petitioner did not present sufficient evidence to find that Westminster conspired with other Asbury North residents to retaliate against her based on her 2015 housing discrimination complaint.

71. Notwithstanding the above conclusions, even assuming that Petitioner did establish a prima facie case of retaliation, Westminster articulated legitimate, nondiscriminatory reasons for the "adverse action" (eviction) about which she complains. Westminster's burden to refute Petitioner's prima facie case is light. Westminster met this burden by providing credible evidence that its decision to terminate Petitioner's tenancy was based on her multiple violations of her lease agreement (the House Rules). Mr. Downs clearly and cogently described the facts and circumstances supporting each of the 12 "specific reasons" listed in the Termination Notice. The underlying basis for each reason was further substantiated by documents in the record or testimony from persons involved, including Petitioner, Ms. Furman, and Ms. Miles.

72. Finally, the House Rules expressly directed that Westminster residents "will not engage in, or participate in, such conduct which interferes with the quiet and peaceful enjoyment of other residents living in the apartment property."

Petitioner's conduct, as described throughout the final hearing, plainly fell into this category.

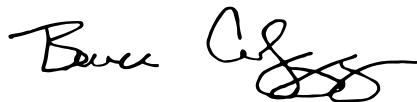
73. Completing the McDonnell Douglas burden-shifting analysis, Petitioner did not prove that Westminster's "specific reasons" for terminating her tenancy were not its true reasons, but merely a "pretext" for retaliation. In other words, that Westminster both fabricated its grounds for eviction, and its real reason was retaliation. The evidence and testimony in the record does not support a finding or conclusion that Westminster's explanation is false or not worthy of credence. As persuasively attested by Mr. Downs, Westminster's decision to evict Petitioner was solidly based on 12 actual, verifiable violations of the House Rules.

74. At its core, Petitioner's claim consists of her subjective misgivings that Mr. Downs treated her complaints against other residents less favorably.<sup>9/</sup> However, the evidence does not, either directly or circumstantially, link her frustrations to retaliation on the part of Westminster. Consequently, Petitioner failed to meet her ultimate burden of proving that Westminster's eviction action was based on, or motivated by, its desire to retaliate against her because of her 2015 housing discrimination complaint. Accordingly, Petitioner's Petition for Relief must be dismissed.

RECOMMENDATIONS

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 concluding that Respondent, Westminster Retirement Communities Foundation, Inc., did not commit a discriminatory housing practice against Petitioner, Rita Lynar, and dismissing her Petition for Relief.

DONE AND ENTERED this 10th day of July, 2019, in Tallahassee, Leon County, Florida.



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J. BRUCE CULPEPPER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of July, 2019.

ENDNOTES

<sup>1/</sup> Unless otherwise stated, all statutory references are to the 2018 codification of the Florida Statutes.

<sup>2/</sup> The January 9, 2019, hearing was conducted by video teleconference at sites in Sebastian and Tallahassee.



<sup>3/</sup> Petitioner also proffered Exhibit 5 and Respondent proffered Exhibit 2. The undersigned did not admit these documents in evidence, nor do they serve as a basis for any findings of fact. However, they have been placed in the record in this matter.

<sup>4/</sup> Following the filing of the transcript at DOAH, the parties jointly moved for an additional three-day extension to submit their proposed recommended orders, which was granted. By requesting a deadline for filing post-hearing submissions beyond ten days after the transcript was filed, the 30-day time period for filing the recommended order was waived. See Fla. Admin. Code R. 28-106.216(2).

<sup>5/</sup> As an initial procedural matter, Petitioner's housing discrimination claim must overcome a timing issue. To initiate a viable cause of action under the FHA, Petitioner's complaint must be filed with the Commission within one year after the alleged injury occurred. § 760.34(2), Fla. Stat.

Petitioner submitted her housing discrimination complaint to the Commission on August 17, 2017. Accordingly, all discrete retaliatory acts that occurred prior to August 18, 2016, are untimely and no longer actionable.

On the other end of the spectrum, to establish her prima facie case of retaliation, Petitioner must show a causal connection between the protected activity and the adverse action. Based on the facts found in this matter, Petitioner's protected activity (the 2015 housing discrimination complaint) concluded on December 15, 2015. The most overt adverse action in this matter (the eviction action), however, occurred on May 1, 2017, over 16 months later.

The Eleventh Circuit has held that a mere three-month delay between a complaint and the alleged adverse action is too long to establish a causal connection under controlling precedent. See Fisher v. SP One, Ltd., 559 F. App'x 873, 878 (11th Cir. 2014) (citing Higdon v. Jackson, 393 F.3d 1211, 1220-21 (11th Cir. 2004) (holding that a three-month period between the protected conduct and the adverse action was not sufficient to allow a reasonable inference of causality in an Americans with Disabilities Act retaliation suit); Thomas v. Cooper Lighting, Inc., 506 F.3d 1361, 1364 (11th Cir. 2007) ("A three to four month disparity between the statutorily protected expression and the adverse employment action is not enough."); Clark Cnty. Sch. Dist. v. Breeden, 532 U.S. 268, 273, 121 S. Ct. 1508, 149 L. Ed. 2d 509 (2001) (noting that temporal proximity between protected

activity and adverse action in Title VII retaliation suits must be "very close" in order to be sufficient evidence of causality). Specifically involving retaliatory housing discrimination, in Oliver v. Fox Wood at Trinity Community Association, No. 8:17-cv-585-T-30AAS, 2018 U.S. Dist. LEXIS 220246, at \*23 (M.D. Fla. July 30, 2018), the court dismissed a claim where the alleged retaliatory act occurred almost a year after the plaintiff's complaint, and in Pavlik v. Shoreham Condominium Association, No. 18-81488-CIV-MARRA/MATTHEWMAN, 2019 U.S. Dist. LEXIS 51860, at \*15-16 (S.D. Fla. Mar. 26, 2019), the court ruled that a complaint filed two years after the incident was too attenuated to sustain a retaliation claim.

In isolation, Westminster's eviction action (as Westminster argues) is not contemporaneous or even remotely close in time to Petitioner's 2015 complaint. Therefore, Petitioner cannot prove retaliation under the FHA.

However, Petitioner's overarching theme is that Westminster worked in concert with her rival residents to drive her out of Asbury North. Towards this end, evidence at the final hearing shows that she suffered harassment as early as February 2016. Petitioner further charges that Westminster either expressly supported or implicitly endorsed this activity. Therefore, in adjudging this matter, the undersigned started the analysis by giving Petitioner the benefit of the doubt as to when Westminster's alleged retaliatory actions commenced. In other words, before determining whether Petitioner's cognizable allegations are supported by competent substantial evidence, the undersigned assumed that Westminster's alleged wrongdoing included the intimidation and threats Petitioner experienced within months after her protected activity ended in December 2015, and continued through her "mobbing" in June 2017.

<sup>6/</sup> In the Certificate of Service, the process server recorded:

On 06/06/2017 at about 1:35 PM, the Process Server attempted to serve the defendant at 1200 Clearlake Road, Unit 2114, Cocoa, Florida and was informed by the Complex manager, Joe [Downs], that Rita Lynar had gone to the Cracker Barrel Restaurant in Titusville, FL with a group of people on a bus. It was requested that the Process Server attempt to serve her there today. The Process Server proceeded to Titusville, and located Rita Lynar in the Cracker

Barrel. She identified herself as Rita Lynar and was served her [sic] personally as shown above.

<sup>7/</sup> Specifically regarding the subject matter of Petitioner's claim, the statutory language in section 760.37 is very similar to that found in its federal counterpart in 42 U.S.C. § 3617. 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 Dornbach v. Holley, 854 So. 2d 211, 213 (Fla. 2d DCA 2002); Milsap v. Cornerstone Residential Mgmt., 2010 U.S. Dist. LEXIS 8031 (S.D. Fla. 2010); and Fla. Dep't of Cmty. Aff. v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

<sup>8/</sup> The glaring exception to Mr. Down's representation is Westminster's lack of response to the "mobbing" Petitioner experienced in Asbury North on June 6, 2017. This encounter undoubtedly occurred, as verified by multiple sources, and depicts the most blatant example of "conduct which interferes with the quiet and peaceful enjoyment of other residents living in the apartment property" presented at the final hearing. However, no evidence was offered showing that Westminster took any steps to rebuke the participants or acknowledge that this "unacceptable social conduct" ever happened.

Even so, the "mobbing" does not establish retaliation. No Westminster agent or employee planned or participated in the gathering. Neither can Petitioner's discrimination claim overcome the existence of the 12 verified "specific reasons" identified in the Termination Notice which preceded Westminster's eviction action.

<sup>9/</sup> See Wigfall v. St. Leo Univ., Inc., No. 8:10-CV-02232-T-24-TGW, 2012 U.S. Dist. LEXIS 29638 (M.D. Fla. Mar. 6, 2012); and Novella v. Wal-Mart Stores, Inc., 459 F. Supp. 2d 1231, 1235 (M.D. Fla. 2006) (A plaintiff cannot establish the causal link element in a retaliation claim simply by inference.).

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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.