

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CARLOS RODRIGUEZ AND  
MONICA BONTEMPI,

Petitioners,

vs.

Case No. 20-0978

BONAVIDA CONDOMINIUM ASSOCIATION,  
INC., ET AL.,

Respondents.

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RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings ("DOAH") for final hearing by Zoom conference on August 18 and 21, 2020.

APPEARANCES

For Petitioner: Carlos O. Rodriguez, pro se  
Monica Bontempi, pro se  
20100 West Country Club Drive, Unit 1505  
Aventura, Florida 33180

For Respondent: Stuart S. Schneider, Esquire  
Cole, Scott & Kissane, P.A.  
222 Lakeview Avenue, Suite 120  
West Palm Beach, Florida 33401

STATEMENT OF THE ISSUES

Whether Respondents Bonavida Condominium Association, Inc., Lorne Rovet, and John McNamee discriminated against Petitioners Carlos Rodriguez and Monica Bontempi in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in

connection therewith, because of their national origin; and retaliated against Petitioners on account of their having exercised any right granted under the Florida Fair Housing Act, in violation of sections 760.23(2) and 760.37, Florida Statutes (2018); and, if so, the relief to which Petitioners are entitled.<sup>1</sup>

#### PRELIMINARY STATEMENT

Petitioners filed a fair housing discrimination complaint with the United States Department of Housing and Urban Development ("HUD") on March 8, 2019. HUD transferred the matter to the Florida Commission on Human Relations ("FCHR") for an investigation and determination of whether a discriminatory housing practice occurred. FCHR is a state agency charged with investigating fair housing discrimination complaints. On September 23, 2019, Petitioners filed an amended complaint with FCHR alleging that they were discriminated against by Respondents because of their national origin. After its investigation, FCHR issued a Notice of Determination of No Cause on January 24, 2020.

Dissatisfied with FCHR's determination, Petitioners filed a Petition for Relief with FCHR on February 20, 2020, alleging that Respondents violated Florida's Fair Housing Act by discriminating against them because of their national origin and retaliating against them for engaging in protected activity. On February 20, 2020, FCHR referred this matter to DOAH to assign an administrative law judge to conduct the final hearing.

The final hearing was initially set for May 12, 2020. On May 1, 2020, the undersigned issued an Order cancelling the final hearing due to the

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<sup>1</sup> Throughout this Order, Bonavida Condominium Association, Inc., may be referred to as "Bonavida." The individual parties are referred to by their last names or all parties collectively as Petitioners or Respondents.

COVID-19 pandemic. On June 1, 2020, the undersigned entered an Order rescheduling the final hearing for August 18, 2020, by video teleconference. On July 22, 2020, the undersigned entered an amended Order rescheduling the final hearing for August 18, 2020, by Zoom conference.

The final hearing commenced on August 18, 2020, and concluded on August 21, 2020, with all parties present. At the outset of the hearing, and after considering argument of the parties, the undersigned denied the three pending motions filed by Petitioners and the one pending motion filed by Respondents. Petitioners testified on their own behalf. Petitioners' Exhibits 1 through 11 were received into evidence. Respondents presented the testimony of Lorne Rovet, Paulo Alves, and John McNamee. Respondents' Exhibits 2, 5, 25 through 27, and 34 were received into evidence.<sup>2</sup>

The three-volume final hearing Transcript was filed at DOAH on September 16, 2020. The parties timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order. Unless otherwise indicated, citations to the Florida Statutes are to the 2018 version.

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<sup>2</sup> Only the hard copy documents within Petitioners' Exhibits 1, 3, 5, 7, and 9 through 11 and Respondents' Exhibits 2, 5, 25 through 27, and 34, which accompany this Recommended Order were received into evidence. Petitioners' Exhibits received into evidence also include excerpts from certain audio or video files contained on a thumb drive identified as follows: Petitioners' Exhibit 2 (audio file #5: first hour of July 30, 2018, board meeting); Petitioners' Exhibit 4 (audio 2:15:49 through 2:16:34 of October 22, 2018, board meeting); Petitioners' Exhibit 6 (audio); Petitioners' Exhibit 8 (video), which were received into evidence. To the extent any additional documents, audio, or visual files are contained on the thumb drive accompanying this Recommended Order, they were not received into evidence; and, therefore, were not considered by the undersigned in the preparation of this Recommended Order.

## FINDINGS OF FACT

### Parties

1. Petitioners are husband and wife who, until recently, worked and lived in their country of origin, Argentina. Petitioners are headstrong, well-educated, and very proud of their Argentinian national origin. While living in Argentina, Rodriguez worked as a renowned physicist and research professor and Bontempi as a physician and renowned immunologist.

2. After successful careers in Argentina, Petitioners retired and moved from Argentina to Aventura, Florida, where, in 2015, they purchased Unit 1505 at Bonavida. Petitioners own the condominium unit through Tina Trust, LLC, named after their native country of Argentina.

3. Bonavida is a multi-cultural condominium community governed by an association, which, in turn, is governed by a board of directors. At all times material hereto, the board has been comprised of individuals of many different cultures, backgrounds, and countries of origin.

4. Many of the individual board members are headstrong, which often led to confrontational interactions, disputes, and bickering among board members relating to various matters of association business.

5. Rovet has been a unit owner at Bonavida since 2009 and McNamee since 1985. Rovet is not retired and works full-time as an accountant. McNamee retired following a distinguished career in law enforcement in New York City.

### "The Three Musketeers" Join the Board Together in 2018

6. For several years, Petitioners, Rovet, and McNamee were good friends and socialized together.

7. In 2016, Rodriguez was president of the board. By the end of 2016, a dispute arose regarding Rodriguez's presidency and he was removed as president. However, Rodriguez remained on the board as a director for unspecified periods of time during 2016 and 2017.

8. By the end of 2017, Rodriguez was no longer on the board. However, Rodriguez, McNamee, and Rovet were dissatisfied with the prior management company at Bonavida and condition of the property, so they agreed to become more active in the association. To this end, McNamee asked Rodriguez to join the board with him and Rovet.

9. In January 2018, Rodriguez, McNamee, and Rovet joined the board together determined to collectively combat the problems at Bonavida. McNamee became vice president, Rovet became treasurer, and Rodriguez was a director. At the time, Petitioners, McNamee, and Rovet, were still good friends. In fact, Rodriguez, McNamee, and Rovet fondly referred to each other as "the three musketeers" in reference to their plan to combat the problems at Bonavida.

Deterioration of the Relationship and the July 30, 2018, Board Meeting

10. Not long after joining the board together in January 2018, the friendship between Petitioners, McNamee, and Rovet deteriorated.

11. A dispute arose between Petitioners, McNamee, and Rovet over the management of the board and how to address the condition of the property. These disputes are gleaned from a review of numerous emails exchanged between Rodriguez, McNamee, and Rovet on June 22, 2018.

12. On June 25, 2018, on the heels of these emails, a Bonavida board meeting was held. During the meeting, Rodriguez became angry, took the floor, and to McNamee's and Rovet's surprise, challenged McNamee's and Rovet's qualifications to be on the board. Rodriguez argued that McNamee and Rovet were not full-time residents of Bonavida (McNamee was a resident of New York and Rovet was a resident of Canada); and, therefore, they were not qualified to be on the board.

13. Bonavida's condominium attorney was present at the June 25, 2018, board meeting and the matter was addressed and resolved at the meeting in favor of McNamee and Rovet. Nonetheless, after the meeting, Rodriguez

unilaterally contacted the board's attorney causing Bonavida to incur additional legal expense.

14. Understandably, after the June 25, 2018, board meeting, Petitioners, McNamee, and Rovet were no longer friends and they did not speak to each other, although they each remained on the board.

15. In the meantime, Rovet, as treasurer, had discovered that Bonavida's finances were in poor shape, and one of the reasons was the incurrence of unauthorized legal fees incurred by Rodriguez. The matter was noticed to be discussed during a board meeting to occur on July 30, 2020, where other fees potentially owing and due to Bonavida from other unit owners would also be discussed.

16. The agenda for the July 30, 2018, board meeting was posted in common areas. The agenda items included "Carlos Rodriguez-Legal Fees" and various types of fees attributable to other units. The meeting commenced at 5:04 p.m., and did not conclude until 7:20 p.m. The meeting began in chaotic fashion with Rodriguez interrupting other speakers and bickering over the approval of the prior board meeting minutes.

17. After several minutes of bickering, a vote was taken and the reading and approval of the previous meeting minutes was tabled so that the board could move forward and address the agenda items. Even after this vote, Rodriguez continued to argue about the prior meeting minutes and interrupted other speakers. At one point, an unidentified speaker chastised Rodriguez for always interrupting other speakers at board meetings, which invoked a loud applause and "thank yous," from other attendees at the meeting.

18. The meeting then turned to the first agenda item, which was a discussion and vote on a proposal requiring Petitioners' unit to reimburse Bonavida for legal fees. As treasurer, Rovet took the floor to speak on the matter. He was immediately interrupted by Rodriguez, which resulted in further bickering until Rodriguez momentarily stopped talking.

19. At the meeting, Rovet explained that the legal fees were incurred by Bonavida in 2017, and arose from five invoices totaling \$5,332.52. Each invoice was attributable to Petitioners' unit. Four of the invoices (totaling \$4,448.52) related to a conflict between the former association manager, Beth Natland, and Bontempi, in which Bontempi was accused of threatening Ms. Natland. Another invoice in the amount of \$884.00 related to an attempted transfer in 2017 of Petitioners' unit from an "LLC to their trust." There was a heated and chaotic discussion on the item for almost one hour. Petitioners disagreed with Bonavida's legal authority to recover the legal fees. Following a vote, a majority of the board voted to hold Petitioners' unit responsible to reimburse Bonavida for the legal fees (\$5,332.52).

20. After the vote, no action was ever taken to seek to recover the legal fees. The legal fees have never been placed on Petitioners' unit ledger; Bonavida has not sought to collect the fees; the fees have never been paid; no lien, lawsuit, or foreclosure action was filed; and Petitioners have never been threatened with eviction or evicted. On December 10, 2018, the president of Bonavida sent Petitioners a letter stating that no action would be taken to collect any of the legal fees. Petitioners do not owe any assessments, expenses, or fees to the association and they own their unit free and clear of any mortgage liens, fees, expenses, or assessments owed to Bonavida. Notably, Petitioners have resided at the unit without interruption since they moved into Bonavida in 2015. At no time have Petitioners been denied the provision of services or facilities in connection with the sale or rental of a dwelling.

21. Nevertheless, Petitioners assert that the agenda's reference to Rodriguez by name and the board's action at the July 30, 2018, meeting to recover the legal fees of \$5,332.52 against their unit is based on national origin discrimination. Significantly, at no time during the meeting did Petitioners contend that the agenda or attempt to recover the legal fees was based on national origin discrimination.

22. At hearing, Rodriguez could not explain how the attribution of the legal fees incurred in 2017 related to Petitioners' unit are based on his national origin. Rather, Rodriguez contends Petitioners could not be legally held responsible for the attorneys' fees; a point he stated at the meeting and reiterated at the final hearing.

23. The evidence presented at hearing demonstrates that other unit owners who are not Argentinian have been identified at board meetings as being responsible for various types of fees owed to Bonavida.

24. In sum, Petitioners failed to present persuasive and credible evidence that Respondents discriminated against them based on their national origin with respect to the meeting agenda, the July 30, 2018, board meeting, and any attempt to recover the legal fees from Petitioners' unit in the amount of \$5,332.52.

#### Emails

25. Petitioners further assert that they were discriminated against because of their national origin based on emails authored by Rovet.

26. On April 3, 2018, Rovet sent an email to Brenda Friend, the president of Bonavida, in which numerous other persons, including Rodriguez, were copied, stating:

Great suggestion Brenda. We should only allow Brazilians into the building.

My ideas would be to have everyone speak one language, like Swedish.

A great rule change would be to require all residents to change their underwear every day and to wear the underwear [on] the outside of their clothing so we can check.

Good work team!

27. Rovet's April 3, 2018, email was not directed at Petitioners and does not refer to their national origin. At hearing, Rovet testified that he is a fan



of movies and music, and that he often refers to various movies and songs in his communications with others in an attempt at "dry humor." Rovet testified that his reference to "Brazilians," "Swedish," and individuals with underwear outside their clothing was an attempt at humor and in reference to a "Woody Allen movie." The email was in no way intended to disparage Petitioners based on their national origin. At hearing, Rodriguez acknowledged that Rovet is sarcastic and that it is important to consider the full context of email conversations.

28. Petitioners also point to an email by Rovet dated April 15, 2018, which he sent to Rodriguez and other board members regarding "Violations and Enforcement Committee," stating:

Before leaving there Brenda and I discussed this issue and concluded that regardless of what our rules state and what state laws state we should be reasonably aggressive against violators because we have to in order to change the culture but also because most residents will not know the rules nor take the time to learn about them. If confronted by anyone surpassing that assumption we can always withdraw from our position.

29. This email does not refer to Petitioners and makes no reference to their national origin. In no way was this email intended by Rovet to disparage Petitioners' national origin.

30. Petitioners also point to the following string of emails by Rovet dated May 28, 2018. At 4:38 a.m. that morning, Rovet stated: "How do you know its pee?" A couple of hours later, McNamee responded; "?? Shouldn't pee be on the pillar. I only see it on the floor therefore, if pee, it's not a male dog?" In response, Rovet sent an email to McNamee, Rodriguez, and others stating: "We need a pee detective to get to the bottom of this."

31. At hearing, Rovet testified that he wrote the May 28, 2018, emails because a dog was allegedly "peeing" somewhere near his building. Rovet's reference to "pee detective" was in reference to the Jim Carrey movie, "Pet

Detective." The May 28, 2018, emails were another attempt by Rovet at dry humor and in no way intended to disparage Petitioners based on their national origin.

32. Petitioners also point to an email written by Rovet on July 25, 2018, at 4:03 p.m. to McNamee, Rodriguez, and other board members, stating: "Let[']s put that in the new condo rules – all board members required to sit at same table facing same way unless they have BO and/or excess gas and are over smiling." This email does not refer to Petitioners. This email was another attempt by Rovet at dry humor and was in no way intended to disparage Petitioners based on their national origin.

33. Petitioners also point to an email written by Rovet on July 26, 2018, at 5:27 p.m., to Rodriguez and other board members, stating: "can't help but think of Staff Sergeant Bob Barnes in Platoon--terrible what happened to Sergeant Elias, no relation to our President, at the end." This email does not refer to Petitioners, was another attempt by Rovet at dry humor, and was in no way intended to disparage Petitioners based on their national origin.

34. Petitioners also point to an email written by Rovet on July 27, 2018, at 2:26 p.m., stating, "sung to the tune 'Cry For Me Argentina.' [The song title is actually 'Don't Cry for Me Argentina']." This is the only email authored by Rovet that actually mentions Argentina. This email was written by Rovet following a dispute among the board members as to how meetings and votes should be conducted.

35. Significantly, Rodriguez interjected the issue of Argentina into the discussion in reference to the past-oppressive Argentinian government and as an example of how meetings at Bonavida should not be conducted, which prompted Rovet to write the email, "sung to the tune 'Cry for Me Argentina.'" In response to Rovet's email, Rodriguez wrote back to Rovet moments later, stating: "Please don't make fun of the death and disappearance of 30,000 people." Moments later, Rovet responded: "I love to sing. I have a right to sing and I shall sing. Can we sing together?" Later that afternoon, Rovet also sent

an email, stating: "stand and sing with you John—let[']s stand and sing together a song called 'Oh That Sweet Lovely Bully Boy.'"

36. At hearing, Rovet testified that the email "sung to the tune 'Cry For Me Argentina,'" was in reference to the song by Madonna titled: "Don't Cry For Me Argentina," which Rovet had just heard prior to writing the email. At hearing, Rodriguez acknowledged he is aware of the Madonna song; that Rovet made the statement "Cry For Me Argentina" as a joke; and that he (Rodriguez) interjected the issue of Argentina into the conversation before Rovet's email. Rovet's emails were another attempt at dry humor and were in no way intended to disparage Petitioners based on their national origin.

37. Petitioners also point to an email written by Rovet to Rodriguez and others on August 19, 2018, stating: "Let[']s give Arthur a piece of our hearts so he might have some peace in his heart and maybe he will respect our parking rules." This email makes no reference to Petitioners' national origin and is in no way disparaging against Petitioners based on their national origin.

38. Petitioners also point to an email written by Rovet on September 1, 2018, to various persons regarding "Unauthorized notice at mail room," stating:

Well said Elisa, the guy's real intentions have been apparent for some time. Yes I agree, he needs a shrink. A football team of them, in fact. (It's never easy as an adult if beaten as a child). Meanwhile, the fencing will go on, and that's the main thing. I don't mind Carlos around, even if his intentions are nefarious, because these little things he comes up with (a piece of paper, a missing flag and the fence permit, for example), makes us all step up our game and that's never a bad thing because there are cracks and stuff inadvertently falls in them. Almost can[']t wait for his next amusing electioneering gambit. Probably the parking system. He dislikes it. But I appreciate the feedback, even if delivered negatively, and any help

he has to lend us which can serve to make us better.

39. This email refers to Rodriguez's ongoing disputes and bickering with board members regarding various issues before the board. The email in no way disparages Petitioners based on their national origin; and, in fact, demonstrates Rovet's tolerance of Rodriguez's positions on various issues pertaining to Bonavida.

40. Petitioners also point to an email from McNamee to Rovet and other persons on September 2, 2018, at 6:32 p.m., stating, "Try dictator instead of director?" This email does not refer to Petitioners and their national origin. Even if it referred to Rodriguez, however, it illustrates the personal dispute and bickering between McNamee and Rodriguez over the handling of board matters and in no way was intended to disparage Petitioners based on their national origin.

41. The undersigned carefully considered all the emails received into evidence which are alleged by Petitioners to be discriminatory against them based on their national origin, even if every email is not specifically referenced herein. Suffice it to say that none of the emails demonstrate a discriminatory animus by Respondents against Petitioners based on their national origin, and, in any event, Petitioners did not suffer any injuries from the emails. In sum, Petitioners failed to present persuasive and credible evidence that Respondents discriminated against them based on their national origin with respect to any emails.

McNamee's "Bullshit" Comment During the October 22, 2018, Meeting

42. During this chaotic board meeting, an ongoing parking issue was discussed. The discussion was supposed to be very brief. After a few minutes, Rodriguez took the floor and while he was speaking on the matter and discussing a possible solution, McNamee, who was attending the meeting over a speakerphone, blurted out: "Stop the bullshit." Not to be deterred, Rodriguez spoke for several more minutes explaining his proposal.

43. At hearing, McNamee testified that the "stop the bullshit" comment was directed at his wife, who was in the same room with him. McNamee thought his speakerphone was muted when he made the comment to his wife. McNamee further testified that the same comment had been used by Rodriguez on prior multiple occasions.

44. The phrase "stop the bullshit" is commonly used in today's vernacular. Even if the comment was directed at Rodriguez, it had nothing to do with Petitioners' national origin.

45. In sum, Petitioners failed to present persuasive and credible evidence that Respondents discriminated against them based on their national origin with respect to the "stop the bullshit" comment made by McNamee during the October 22, 2018, board meeting.

Petitioners' Retaliation Claim Based on Emails

46. Petitioners contend Respondents subjected them to retaliation beginning in March 2019, after the filing of Petitioners' HUD complaint. In support of their position, Petitioners again rely on various emails.

47. On March 14, 2019, at 2:49 p.m., Rodriguez wrote to Elisa Souza and copied other board members, including Brenda Friend, regarding "Generator repair quotes," stating,

Hi Elisa  
Please note that the most important issue was not  
replied by you.  
Are you against transparency?  
Are you against to having 3 bids?  
Respectfully  
Carlos

48. At 3:05 p.m., Ms. Friend wrote to the other board members, stating: "Elisa let him 'die' wondering of that!"

49. At 3:13 p.m., Ms. Friend wrote again to other board members: "It seems Carlos has adopted the bad so well known 'leftist' habit/strategy which

is: 'Always accuse others of what you are and do.' So people (the masses) of poor intellect can believe."

50. Ms. Friend did not testify at the final hearing, so it is unclear what she meant by the emails she authored on March 14, 2019. Nevertheless, a plain reading of the email string indicates her comments were made in direct response to emails written by Rodriguez challenging her transparency and decisions, not in response to Petitioners' HUD complaint; and, in any event, no action was taken against Petitioners in the emails.

51. On April 9, 2019, at 1:40 p.m., the Bonavida manager wrote an email to unidentified individuals regarding an insurance carrier's approval of a law firm to defend against Petitioners' HUD complaint filed against Bonavida and two directors. In response, at 2:18 p.m., Rovet wrote "another reason not to do the pool now," which elicited an email from McNamee to unidentified persons at 7:44 p.m., stating: "After the association wins the case, can they sue for expenses incurred for defending this libelous action or does every one of us sue individually?"

52. Merely questioning whether expenses may be recovered and referring to Petitioners' complaint as "libelous" is not retaliation. Again, no action was taken against Petitioners in these emails.

53. On May 29, 2019, at 10:33 a.m. an unidentified person wrote to Ms. Friend and other board members, stating:

Dear Ms[.] Friend

I do not want you to think I'm ignoring your questions but I'm going down to speak to the manager in person about what requires permits what doesn't require permits, is there a list of things that absolutely must be inspected by County inspectors, is there a list of things that absolutely don't have to be inspected.

Etc etc etc]

I wish there were such a list I would love to shove it in our antagonists face ???

54. At 11:02 a.m., McNamee replied, stating, "Does the City of Aventura reward whistle blowers for creating revenue? The City of NY does[.]"

55. Rodriguez takes issue with McNamee's email at 11:02 a.m. At hearing, Rodriguez acknowledged that because of his "scientific preparation and attitude," he was "obsessive on getting the permits..." and ensuring they were correct. Based on Rodriguez's own testimony, the email authored by McNamee was in reference to permits, not Petitioners' HUD complaint. In any event, no action was taken against Petitioners in the email.

56. The undersigned carefully considered all the emails received into evidence which are alleged by Petitioners to be retaliation against them based on their HUD complaint, even if every email is not specifically referenced herein. Suffice it to say that none of the emails demonstrate a retaliatory animus by Respondents against Petitioners based on their HUD complaint, and no action was taken against Petitioners in the emails. In sum, Petitioners' failed to present persuasive and credible evidence that Respondents retaliated against them for filing their HUD complaint based on any emails.

Petitioners' Retaliation Claim Based on the Cardroom Incident

57. Finally, Petitioners contend that McNamee's inquiry to the Bonavida manager regarding a gathering of owners, including Rodriguez, at a Bonavida cardroom on December 8, 2019, is further evidence of retaliation. However, McNamee's inquiry legitimately pertained to whether Rodriguez had paid the required deposit to reserve the cardroom for the gathering. In any event, no action was taken against Petitioners.

58. In sum, Petitioners failed to present persuasive and credible evidence that Respondents retaliated against them for filing their HUD complaint based on McNamee's inquiry to the manager regarding the cardroom.

## CONCLUSIONS OF LAW

59. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

### Petitioners' National Origin Discrimination Claim

60. Florida's Fair Housing Act is codified in sections 760.20 through 760.37, Florida Statutes. Section 760.23(2) provides that: "[i]t is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, *or in the provision of services or facilities in connection therewith*, because of race, color, national origin, sex, handicap, familial status, or religion." (Emphasis added).

61. Florida's Fair Housing Act is patterned after the Federal Fair Housing Act. Federal court decisions interpreting the Federal Fair Housing Act provide guidance in determining whether a violation of Florida's Fair Housing Act has occurred. *Bhogaita v. Altamonte Heights Condo. Ass'n, Inc.*, 765 F. 3d 1277, 1285 (11th Cir. 2014). Section 760.23(2) is patterned after 42 U.S.C. § 3604(b) of the Federal Fair Housing Act; and, therefore, the same legal analysis applies to each section.

62. Petitioners have the burden of proving by a preponderance of the evidence that Respondents violated section 760.23(2) by discriminating against them because of their national origin. § 760.34(5), Fla. Stat. A "preponderance of the evidence" means the "greater weight" of the evidence, or evidence that "more likely than not" tends to prove the fact at issue. *Gross v. Lyons*, 763 So. 2d 276, 280. n.1 (Fla. 2000).

63. Complainants alleging intentional discrimination under the Fair Housing Act must establish a prima facie case. Petitioners can do so either by direct or circumstantial evidence. Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to inference or presumption. *Denney v. City of Albany*, 247 F. 3d 1172, 1182 (11th Cir. 2001). "[O]nly the most blatant remarks, whose intent could mean nothing other than to discriminate on the basis of some impermissible factor



constitute direct evidence of discrimination." *Wilson v. B/E Aerospace, Inc.*, 376 F. 3d 1079, 1086 (11th Cir. 2004); *See e.g., E.E.O.C. v. Alton Packaging Corp.*, 901 F. 2d 920, 923 (11th Cir. 1990)(holding that the general manager's statement that "if it was his company he wouldn't hire any black people," constitutes direct evidence). In this case, Petitioners presented no direct evidence of national origin discrimination by Respondents.

64. When no direct evidence of national origin discrimination exists, a complainant may attempt to establish a prima facie case circumstantially by demonstrating that they: (1) are an aggrieved party; (2) suffered an injury because of the alleged discrimination; and (3) were denied, based on their national origin, access to services or facilities protected by the Fair Housing Act that were available to other homeowners who were not of Argentinian national origin. *Savanna Club Worship Serv., Inc. v. Savanna Club Homeowners' Ass'n, Inc.*, 456 F. Supp. 2d 1223, 1232 (S.D. Fla. 2005); *Simhoni v. Mimo on the Beach I Condo. Ass'n, Inc.*, Case No. 18-4442 (Fla. DOAH Feb. 26, 2019, p. 18; FCHR May 16, 2019); *Austin and Tomayko v. Saddlebag Lake Owners Ass'n, Inc.*, Case No. 16-1799 (Fla. DOAH Sept. 15, 2016; FCHR Dec. 8, 2016); *Ludka v. Winston Towers 600 Condo. Ass'n, Inc.*, Case No. 13-3704 (Fla. DOAH July 17, 2014; FCHR Oct. 9, 2014); *Cosme v. Lakeshore Club of Polk Cty. Homeowners Ass'n*, Case No. 11-1115 (Fla. DOAH July 7, 2011; FCHR Aug. 30, 2011).

65. Not all conduct by a condominium association or board member is actionable under the Fair Housing Act. The Federal Fair Housing Act was passed to ensure fairness and equality in housing, not to become an all-purpose civility code regulating conduct between neighbors. *Lawrence v. Courtyard at Deerwood Ass'n, Inc.*, 318 F. Supp. 2d 1133, 1142 (S.D. Fla. 2004). Where the alleged discriminating conduct, as in the instant case, occurred *after* the complainants' purchase of their unit, which is commonly referred to as "post-acquisition," a narrow construction of the types of actionable conduct is required.

66. In *Georgia State Conference of the NAACP v. City of LaGrange, Georgia*, 940 F. 3d 627 (11th Cir. 2019), the court recently examined the plain language of 42 U.S.C. § 3604(b) in determining what post-acquisition conduct is actionable. The court explained that section 3604(b) "makes clear that the conduct at issue must relate to services provided in connection with the sale or rental of a dwelling...." Construing the plain meaning of the statute narrowly, the court stated that section 3604(b) only "reaches certain post-acquisition conduct, including post-acquisition conduct related to the provision of services, as long as those services are connected to the sale or rental of a dwelling." The court "held that a service within the meaning of § 3604(b) must be a housing related service that is directly connected to the sale or rental of a dwelling." *Id.* at 632-34.

67. At issue in that case were municipality provided electricity, gas, water, and law enforcement services. The Eleventh Circuit Court of Appeal concluded that law enforcement services are not provided "in connection with the sale or rental of a dwelling." However, basic utility services, such as electricity, gas, and water, "are inextricably intertwined with the dwelling itself" and "connected to the sale or rental of a dwelling because they are fundamental to the ability to inhabit a dwelling." *Id.* at 634.

68. Applying the foregoing legal principles to the instant case, Petitioners failed to establish the second and third prongs of a prima facie case. Petitioners failed to present sufficient evidence that they suffered an injury because of national origin discrimination, and that they were denied, based on their national origin, access to facilities or services protected by the Fair Housing Act that were available to other non-Argentinian unit owners.

69. As detailed above, Respondents did not discriminate against Petitioners because of their national origin and Petitioners have not been injured because of national origin discrimination. Petitioners have resided at their unit continuously since 2015, without interruption. At no time have

they been restricted from accessing any facilities or services of the condominium.

70. Petitioners' claim appears to be that Respondents created a hostile housing environment based on their national origin. The Eleventh Circuit Court of Appeals has not recognized a cause of action under the Fair Housing Act for a hostile housing environment. *Lawrence*, 318 F. Supp. 2d at 1133, 1146; *Simhoni*, Case No. 18-4442 (Fla. DOAH Feb. 26, 2019, p. 18; FCHR May 16, 2019); *Austin and Tomayko*, Case No.16-1799 (Fla. DOAH Sept. 15, 2016; FCHR Dec. 8, 2016).

71. Even if a claim of a hostile housing environment based on national origin is cognizable, however, Petitioners failed to establish such a claim. Courts that have recognized a claim of a hostile housing environment require that plaintiffs establish that, because of their national origin, they were subjected to unwelcome conduct that was so severe and pervasive as to alter the conditions of their housing and interfere with their right to the use and enjoyment of their property. *Mohamed v. McLaurin*, 390 F. Supp. 3d 520, 548-51 (D. Vermont 2019)("courts that recognize a hostile housing environment claim under the FHA require a high degree of proof, effectively requiring a plaintiff to prove that the discriminatory harassment resulted in constructive eviction"); *Godwin v. City Redevelopment, LLC*, 2018 WL 3620482, at \*3 (D. Nev. 2018)(unpleasant comments by neighbors including single offhand comment about plaintiff's national origin was not severe or pervasive); *Krieman v. Crystal Lake Apartments Ltd. Partnership*, 2006 WL 1519320, at \*12 (N.D. Ill. 2006)(recognizing a demanding standard for establishing hostile housing environment claim--conduct must be extreme and not merely rude or unpleasant offensive utterances); *Simhoni*, (Fla. DOAH Feb. 26, 2019, p. 18; FCHR May 16, 2019). "Whether a housing environment is illegally hostile or abusive can be determined only by looking at all the circumstances, and factors may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or

humiliating, or a mere offensive utterance; and whether it unreasonably interfered with the use and enjoyment of the premises." *Jackson v. Park Place Condo. Ass'n, Inc.*, 619 Fed. Appx. 699, 704 (10th Cir. 2015).

72. In the present case, Petitioners failed to establish they were subjected to severe or pervasive conduct by Respondents based on their national origin. As detailed above, the evidence adduced at hearing demonstrates that Petitioners, Rovet, and McNamee were friends, whose relationship deteriorated once Rodriguez, Rovet, and McNamee joined the board together. The board meetings, at which some of the alleged conduct is centered, were chaotic with Petitioners often being disruptive and combative and Rodriguez inserting the issue of national origin into his communications with other board members. Petitioners, Rovet, and McNamee disagreed on how Bonavida should be managed and their disputes amount to nothing more than bickering. The single email authored by Rovet that mentions Argentina was in response to Rodriguez bringing up the issue; was intended as dry humor; and Rodriguez admits it was sent as a joke. Other emails were also sent by Rovet with the intent of dry humor and not intended to disparage Petitioners because of their national origin. At no time did Respondents disparage Petitioners based on their national origin. In sum, the Fair Housing Act was not written to provide relief for the type of bickering and sparring between neighboring board members and one of the board member's spouse that exists in this case.

#### Retaliation

73. Section 760.37, the anti-retaliation provision, provides, in pertinent part: "[i]t is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of her or his having exercised ... any right granted under [the Florida Fair Housing Act]." Section 760.37 is patterned after 42 U.S.C. § 3617 of the Federal Fair Housing Act; and, therefore, the same legal analysis applies to each section.

74. As with a claim of disparate treatment discrimination under section 760.23(2), Petitioners have the burden of establishing a claim of retaliation under section 760.37 by a preponderance of the evidence.

75. In the present case, Petitioners failed to present direct evidence of retaliation.

76. To establish a claim of retaliation under section 760.37 based on circumstantial evidence, Petitioners must show that: (1) Respondents coerced, intimidated, threatened, or interfered; (2) with Petitioners enjoyment of a housing right after the exercise of that right; (3) because of discriminatory animus. *Lawrence*, 318 F. Supp. 2d at 1133, 1143-44; *Anderson v. Shaddock Estates Homeowners Ass'n, Inc.*, 2008 WL 10590598, at \*4 (S.D. Fla. 2008); *Cosme v. Lakeshore Club of Polk Cty. Homeowners Ass'n*, (Fla. DOAH July 7, 2011; FCHR Aug. 30, 2011).

77. As detailed above, Petitioners rely on a series of emails between board members that were not even sent to them and that, with the exception of one email, were not related to Petitioners' HUD complaint. The one email between board members that was actually in reference to Petitioners' HUD complaint was not sent to Petitioners, and merely questioned, legitimately, whether Respondents could recover legal fees from Petitioners should they prevail for what McNamee considered to be a "libelous" complaint. As stated above, merely questioning whether legal expenses may be recovered and referring to Petitioners' complaint as "libelous" is not retaliation and, in any event, no action was taken against Petitioners in the emails. Finally, the incident in the cardroom had nothing to do with Petitioners' HUD complaint; it was many months after the filing of the HUD complaint and, in any event, did not result in any adverse action against Petitioners.<sup>3</sup> None of the alleged

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<sup>3</sup> A mere three-month delay between a complaint and an alleged adverse action is too long to establish a causal connection of retaliation. *Fisher v. SP One, Ltd.*, 559 Fed. Appx. 873, 878 (11th Cir. 2014).

conduct was based on a discriminatory animus. Accordingly, Petitioners failed to establish a case of retaliation and their retaliation claim fails.<sup>4</sup>

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.

DONE AND ENTERED this 6th day of October, 2020, in Tallahassee, Leon County, Florida.



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<sup>4</sup> On pages 29 and 30 of their Proposed Recommended Order, Petitioners assert that Respondents also violated section 760.23(3) with regard to an unspecified "chain of emails" 15 days before the July 30, 2018, board meeting and the posting of the agenda for the July 30, 2018, meeting. Under section 760.23(3), "[i]t is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on ... national origin or an intention to make any such preference, limitation, or discrimination."

However, whether Respondents violated section 760.23(3) was not identified as an issue in the notices of hearing or at the final hearing. It is also not identified as an issue at the beginning of the parties' proposed recommended orders. Accordingly, the issue has been waived.

Even if the undersigned were to address the issue, however, Petitioners' claim under section 760.23(3) fails for the same reasons their claim under section 760.23(2) fails. Respondents did not make, print, or publish, or caused to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on their national origin or an intention to make any such preference, limitation, or discrimination.

Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of October, 2020.

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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.