

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RITA LYNAR,

Petitioner,

vs.

Case No. 20-1080

WESTMINSTER COMMUNITIES, INC.,
ASBURY ARMS NORTH, INC., AND JOSEPH
DOWNS, ADMINISTRATOR,

Respondents.

RECOMMENDED ORDER

On September 17 and 28, 2020, Administrative Law Judge (ALJ) Robert J. Telfer III, of the Florida Division of Administrative Hearings (Division), conducted an evidentiary hearing pursuant to section 120.57(1), Florida Statutes (2018), in Tallahassee, Florida, via Zoom web-conference.

APPEARANCES

For Petitioner: Rita Lynar, pro se
1200 Clearlake Road, #2114
Cocoa, Florida 32922

For Respondents: Stephen G. Henderson, Esquire
Henderson Legal Group
5419 Village Drive
Viera, Florida 32955

STATEMENT OF THE ISSUES

Whether Respondents retaliated against Petitioner Rita Lynar, in violation of the Florida Fair Housing Act, chapter 760, part II, Florida Statutes (FHA); and, if so, the appropriate penalty.

PRELIMINARY STATEMENT

On June 11, 2019, Ms. Lynar filed a charge of housing discrimination (retaliation) with the Florida Commission on Human Relations (FCHR), alleging that Respondents retaliated against her based upon a disability, in violation of the FHA. Ms. Lynar's charge stated:

Complainant Rita Lynar previously filed a complaint of Housing Discrimination with the Florida Commission on Human Relations (FCHR) based on discrimination; previous FCHR Case No. 2017H0199. Therefore, Complainant belongs to a class of persons whom the Fair Housing Act ("the Act") protects from unlawful discrimination by virtue of previous participation in an act protected by the Fair Housing Act. Complainant rents an apartment at the "Westminster Asbury located at 1200 Clearlake Rd. #2114, Cocoa, FL 32922; which is under the rules and regulations of the Department of Housing and Urban Development (HUD) subsidized multifamily housing for the elderly and disabled elderly. Which is owned by Respondent Asbury Arms, Inc.

Complainant alleges on September 1, 2018, Respondent Joseph Downs ordered the COS for Westminster Communities of Florida not to cooperate with the Complainant for her annual recertification for HUD subsidized rent. Complainant also alleges Respondent ordered the Service Coordinator not to give the Complainant the reasonable accommodation form. Complainant alleges the Respondent wanted to evict her and not renew her lease. Allegedly on January 9, 2019 Respondent left another eviction summons on the Complainant's door while he and the Complainant were at the DOAH final hearing in the previous retaliation claim. Complainant alleges in January, February and March of 2019, Respondent solicited multiple complaints from vulnerable elderly and disabled individuals telling them to sign misleading and false allegations attempting to silence the Complainant. Complainant alleged on April 22,

2019 Westminster Asbury Administrator Joseph A. Downs testified on record in a court hearing that he does not like the Complainant because she filed previous complaints with HUD and DOAH. As such, Complainant believes Respondents actions are based on the fact that she previously filed a Complaint with HUD (04-17-9673-8, 04-15-0305-8) against them, and that Respondents actions are made in a retaliatory effort.

On January 28, 2020, FCHR issued a “Notice of Determination of No Cause,” finding that there was no reasonable cause to believe that Respondents had committed a discriminatory housing practice against Ms. Lynar.

On February 26, 2020, Ms. Lynar filed a Petition for Relief from Discriminatory Housing Practice with FCHR, again alleging that Respondents had committed a discriminatory housing practice (retaliation) against her. FCHR transmitted the Petition to the Division and assigned the undersigned ALJ to conduct an evidentiary hearing.

Respondents, represented by counsel, filed on March 9, 2020, a Motion to Dismiss Based on Res Judicata and Collateral Estoppel and Motion for Sanctions and Attorney Fees, to which Ms. Lynar filed a response. The undersigned conducted a telephonic hearing on March 16, 2020, and on March 18, 2020, entered an Order Denying Respondent’s Motion to Dismiss based on Res Judicata and Motion for Sanctions and Attorney Fees, and Extending Time to Respond to Initial Order. On March 19, 2020, Ms. Lynar filed a First Amended Petition for Relief from Retaliation and Discriminatory Housing Practice and Case Caption Correction.

The undersigned originally noticed this matter for final hearing on June 19, 2020. On June 8, 2020, Ms. Lynar filed a Motion for Continuance

and Objection to Respondent's Discovery Violations, to which Respondents filed a response. On June 12, 2020, the undersigned entered an Order Granting Continuance, and, thereafter, noticed the final hearing for August 28, 2020. On August 21, 2020, Ms. Lynar filed an "Emergency Motion to Compel Respondents to Produce [sic] Motion for Continuance [sic] and Objection to Respondent's Discovery Violations." On August 25, 2020, the undersigned entered an Order Granting Motion for Continuance, Ordering Response to Motion to Compel, and Scheduling Case Management Conference. The undersigned thereafter noticed the final hearing for September 17, 2020.

The undersigned convened the final hearing on September 17, 2020, by Zoom web-conference; as the parties required additional time to view an exhibit and call additional witnesses, the undersigned continued the final hearing until September 28, 2020, by Zoom web-conference. Petitioner presented the testimony of Nicholas Vidoni, and testified on her own behalf. The undersigned admitted Petitioner's Exhibits P2, P3, and P6 through P12, into evidence. Pastor Darwin "Don" Adkins, Josephine Brooks, and Joseph Downs testified on behalf of Respondents. The undersigned admitted Respondents' Exhibits R1 through R4 into evidence.

The three-volume Transcript of the final hearing was filed with the Division on November 23, 2020. On December 2, 2020, Petitioner filed a Motion for Extension of Time on Proposed Recommended Order, and that same date, the undersigned entered an Order Granting Petitioner's Motion to Extend Deadline for Filing Proposed Recommended Order. Petitioner and Respondents timely submitted proposed recommended orders on December 7, 2020, which the undersigned has considered in the preparation of this Recommended Order.

All statutory references are to the 2018 codification of the Florida Statutes, unless otherwise indicated.

FINDINGS OF FACT

1. Respondent Westminster Communities, Inc., owns and operates several retirement communities across Florida. The Westminster property in this matter is Respondent Asbury Arms North, Inc., which is located in Cocoa, Florida. Respondent Joseph Downs is the administrator for Westminster's Cocoa site, and manages its facilities.

2. Ms. Lynar is a resident of Asbury Arms North, Inc.

3. Ms. Lynar previously filed a housing discrimination complaint on August 17, 2017, against Respondents that claimed that Respondents violated the FHA, and contending that Respondents retaliated against her. After FCHR notified Ms. Lynar that no reasonable cause existed to believe that Respondents committed a discriminatory housing practice on February 9, 2018, she filed a Petition for Relief with FCHR. FCHR transmitted the Petition for Relief to the Division on March 6, 2018. The Division's case number for this matter is 18-1314.

4. ALJ J. Bruce Culpepper conducted a two-day final evidentiary hearing in DOAH Case No. 18-1314 on September 11, 2018, and January 9, 2019. On July 10, 2019, ALJ Culpepper issued a Recommended Order, which concluded that Ms. Lynar failed to meet her burden of proving that Respondents committed a discriminatory housing practice in violation of the FHA, and recommended that FCHR dismiss Ms. Lynar's Petition for Relief. On October 1, 2019, FCHR entered a Final Order that adopted ALJ Culpepper's Findings of Fact and Conclusions of Law, and dismissed Ms. Lynar's Petition for Relief. *See Lynar v. Westminster Retirement Communities Foundation, Inc., et al.*, Case No. 18-1314 (Fla. DOAH July 10, 2019; FCHR Oct. 1, 2019)(*Lynar II*).

5. As previously noted in the undersigned's March 18, 2020, Order Denying Respondent's Motion to Dismiss Based on Res Judicata and Collateral Estoppel and Motion for Sanctions and Attorney Fees, and Extending Time to Respond to Initial Order, the undersigned specifically precluded any attempt by Ms. Lynar to relitigate any matter resolved (or that could have been resolved) in *Lynar II* in the instant matter. Thus, in the instant matter, the undersigned only considered any alleged acts that occurred *after* the final hearing in *Lynar II* commenced, *i.e.*, after September 11, 2018, as possible evidence of FHA retaliation.¹

November 7, 2018, Incident and Lease Termination

6. On November 8, 2018—after the commencement of the final hearing in *Lynar II*, and while that matter remained pending—Ms. Lynar was involved in an incident at Asbury Arms North.

7. Pastor Adkins, who was conducting a regular morning Bible study meeting on November 8, 2018, in the fellowship room, which is a common area in the Asbury Arms North building that has multiple entranceways, noticed Ms. Lynar walk through the fellowship room “at a very fast pace” on multiple occasions that morning. Upon her first pass through the fellowship room, he heard Ms. Lynar screaming in front of Mr. Downs's office and pounding on his office door. Pastor Adkins did not see Ms. Lynar scream or pound, but heard it.

8. Pastor Adkins next observed Ms. Lynar pass through the fellowship room again, and she went towards her apartment. Then, approximately a minute or two later, she rushed back through the fellowship room, went to the same area in front of Mr. Downs's office, and began screaming and

¹ Additionally, Ms. Lynar, in 2014, filed a charge of discrimination against Respondents, alleging an FHA violation. After receiving a No Cause Determination from FCHR, she filed a Petition with FCHR, alleging gender discrimination. FCHR transmitted that Petition to the Division, which assigned it DOAH Case No. 15-2796 (*Lynar I*). ALJ Culpepper also conducted a partial hearing in that matter but, on December 15, 2015, the parties filed a Stipulation for Dismissal. Consistent with the undersigned's March 18, 2020, ruling, the undersigned did not consider any alleged acts that occurred prior to September 11, 2018, in the instant matter.

pounding on the same office door. He also heard Ms. Lynar screaming at Ms. Brooks, who was located in close proximity to Mr. Downs's office. He described Ms. Lynar's behavior that morning as "unhinged."

9. Pastor Adkins testified that these incidents disrupted his Bible study meeting for approximately 10 minutes.

10. Ms. Brooks, who is an administrative assistant at Asbury Arms North, works at a desk in that building's front lobby. Her desk was around the corner from Mr. Downs's office. She worked at the front desk on the morning of November 7, 2018, and recalled that she heard Ms. Lynar "pounding" on Mr. Downs's office door; she described it as "[v]ery intentional and very loud." Ms. Brooks walked around the corner to observe Ms. Lynar, and testified that Ms. Lynar began screaming at her. Ms. Brooks testified that she said nothing to Ms. Lynar, and that Ms. Lynar eventually left.

11. Ms. Brooks then entered Mr. Downs's office, where there were two other residents and a certified occupational specialist, and explained to Mr. Downs what had transpired outside of his office.

12. Ms. Brooks was inside of Mr. Downs's office when Ms. Lynar began screaming and pounding on his office door a second time. Ms. Brooks testified that Ms. Lynar's conduct that morning frightened her.

13. Mr. Downs, the administrator of Westminster's property in Cocoa, including Asbury Arms North, testified that on the morning of November 7, 2018, he was on a telephone call, but heard a loud pounding on his door, and ended his call. He testified that Ms. Brooks came to his office to explain what had happened, and during this explanation, Ms. Lynar began pounding on the door and screaming again. After answering the door, he stated that Ms. Lynar stormed off.

14. The undersigned observed a video recording of the first of the two "screaming and pounding" incidents that occurred the morning of November 7, 2018. Although the video recording did not also have an audio recording of this incident, it appeared to the undersigned that Ms. Lynar

clearly approached an office door and, with her hand and fist, intentionally pounded on the office door. Additionally, Respondents introduced into evidence only one of the two “pounding and screaming” incidents, explaining that the video of the other/second incident was unavailable.

15. On November 20, 2018, Asbury Arms North, Inc., hand-delivered to Ms. Lynar a “Notice of Termination of Tenancy,” which stated, in part:

YOU ARE HEREBY NOTIFIED that your tenancy ... is terminated, effective at the end of the day on **December 20, 2018**. You must vacate the premises at or before that time.

THIS TERMINATION is based on your material noncompliance with the Lease Agreement, including one or more substantial violations of the Lease Agreement. The specific reason for this termination is as follows:

On the morning of November 7, 2018 you committed a substantial violation of the lease by causing a loud commotion by acting aggressive and erratic, banging repeatedly on the office door, and yelling at staff and other residents, including Receptionist Josephine Brooks and Administrator Joe Downs. Your actions were threatening, intimidating, harassing, and violent. Your actions interfered with the quiet and peaceful enjoyment of the other residents living in the apartment property by causing a commotion and disrupting a bible study being conducted by Chaplain Don Adkins and approximately 15 residents. Your actions also disrupted the management of Westminster Asbury by staff. Your actions scared staff and other residents, and have caused continuing fear among staff and other residents. The Lease Agreement contains the following requirement regarding resident conduct:

Conduct

Residents ... will not engage in, or participate in, such conduct which interferes with the

quiet and peaceful enjoyment of the 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 act will be considered a violation of the Community Policies and the Lease.

No act of intimidation, harassment, verbal abuse, physical threat or violence, or social misconduct of, or to, and [sic] employee of this apartment property by any person will be tolerated. Any such act is considered a noncompliance of the Lease Agreement and will result in termination of the Lease.

Your above-described actions on November 7, 2018 violate the foregoing conduct requirements, in that you engaged in conduct that interfered with the quiet and peaceful enjoyment of the other residents, you intimidated other residents, and you intimidated, harassed, and verbally abused employees of the property. Your actions, pursuant to the Lease, are a noncompliance and have resulted in termination of the Lease.

BE ADVISED that if you remain in the leased unit after the date specified for termination, the Landlord may seek to enforce the termination only by bringing a judicial action at which time you may present any defenses.

16. Thereafter, on December 22, 2018, Asbury Arms North, Inc., filed a Complaint for possession of real property, and damages, in county court in Brevard County, Florida.

17. Ms. Lynar testified that she has been the subject of previous eviction actions with Asbury Arms North, Inc., and had never previously received a Notice of Termination. She stated that Asbury Arms North, Inc., delivered

this while she was with friends in the fellowship room, and believed this was inappropriate and retaliation for participation in *Lynar II*.

18. Ms. Lynar testified that she did knock on Mr. Downs's door, to (again) complain about a group of residents she contends engage in bullying and harassment. She contends that instead of doing something about the bullying and harassment, Asbury Arms North, Inc., instituted the eviction action in Brevard County Court, again, in retaliation for her participation in *Lynar II*.²

Other Alleged Bases for FHA Retaliation

19. Ms. Lynar testified that she believed Respondents' decision to issue the Notice of Termination and commence eviction proceedings against her was also in retaliation for her assisting another Asbury Arms North, Inc., resident, Sudhir Kotecha, in bringing an FHA discrimination claim against Respondents.

20. Respondents had also commenced an eviction action against Mr. Kotecha during this time period. Mr. Kotecha's attorney, Nicholas Vidoni, testified at the final hearing concerning the deposition of Mr. Downs in that eviction proceeding, in which Ms. Lynar (who was not a party to that eviction matter, but was a party to the December 22, 2018, pending eviction matter involving Asbury Arms North, Inc.) attempted to attend. Mr. Downs's attorney objected, and filed a Motion to Terminate or Limit Examination, requesting that Ms. Lynar not be present for the deposition because of the pending eviction matter and the pending *Lynar II* matter (in both of which, Mr. Vidoni represented Ms. Lynar), and other reasons. Mr. Vidoni testified that the county judge granted the Motion to Terminate or Limit Examination, in part, and barred Ms. Lynar from attending Mr. Downs's deposition.

21. Additionally, during this time period, Ms. Lynar testified that Respondents sought to have the county judge assigned to the eviction case

² The issue of bullying and harassment at the hands of certain residents of Asbury Arms North, Inc., was fully considered and rejected as grounds for a violation of the FHA in *Lynar II*.

removed, because Ms. Lynar allegedly had contact with the county judge at a restaurant. Mr. Vidoni confirmed that Respondents indeed filed such a motion, but did not testify as to its resolution, and Ms. Lynar presented no further evidence about it.

22. Ms. Lynar testified that the actions of Respondents in paragraphs 20 and 21 above are further evidence of Respondents retaliating against her for participation in *Lynar II*.

23. Ms. Lynar also contends that Mr. Downs reached out to the Department of Housing and Urban Development (HUD), which subsidizes her apartment at Asbury Arms North, Inc., to discuss the non-renewal of Ms. Lynar's lease in 2014, as an additional form of retaliation. Mr. Downs testified that Respondents had initiated an eviction proceeding in 2014, and that he recalled discussing with a HUD official whether Asbury Arms North, Inc., should renew Ms. Lynar's lease; Mr. Downs testified that the HUD official questioned why Ms. Lynar's lease would be renewed if Asbury Arms North, Inc., was in the process of evicting her. This conversation occurred well before the actions that resulted in *Lynar II* occurred, and are irrelevant.

24. Ms. Lynar failed to provide any credible evidence that Respondents' decision to issue the Notice of Termination, and subsequently commence eviction proceedings in county court, was retaliation for her participation in *Lynar II*, in violation of the FHA. The undersigned further finds that the actions that occurred during the Kotecha eviction proceeding, and Mr. Downs's conversation with a HUD official, are not credible evidence of FHA retaliation.

CONCLUSIONS OF LAW

25. The Division has jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.569, 120.57(1), and 760.35(3)(b), Florida Statutes.

26. The FHA makes it 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.” § 760.37, Fla. Stat.

27. The FHA is patterned after Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988. As such, discriminatory acts prohibited under the federal Fair Housing Act are also prohibited under the FHA, and federal case law interpreting the federal Fair Housing Act is applicable to proceedings brought under the FHA. *See Brand v. Fla. Power Corp.*, 633 So. 2d 504, 509 (Fla. 1st DCA 1994)(noting that “the Florida statute will take on the same constructions as placed on its federal prototype.”).

28. In proceedings brought under the FHA, the complainant has the burden to prove a prima facie case of discrimination by a preponderance of the evidence. § 760.34(5), Fla. Stat.; *Fla. Dep’t of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981). 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, 289 n.1 (Fla. 2000).

29. Regarding her retaliation claim, Ms. Lynar may establish a violation of the FHA through either direct evidence, or through the burden-shifting framework of *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973). *See Noel v. Aqua Vista Townhomes Condo. Ass’n, Inc.*, 2019 WL 4345903 at *3 (S.D. Fla. Sept. 12, 2019). Direct evidence is that which, 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). “Direct evidence encompasses conduct or statements that both (1) reflect directly the alleged discriminatory attitude, and (2) bear directly on the contested [housing] decision.” *Noel*, 2019 WL 4345903 at *3. As to the nature of the evidence, “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 (11th Cir. 1999)(citations omitted).

30. Ms. Lynar presented no direct evidence of retaliation by Respondents. No evidence or testimony established that Respondents intentionally coerced, intimidated, threatened, or interfered with Ms. Lynar’s right to file and proceed with *Lynar II*.

31. Under the *McDonnell Douglas* framework, Ms. Lynar must show that she: (a) engaged in a protected activity; (b) Respondents subjected her to an adverse action; and (c) a causal link exists between the protected activity and the adverse action. *See Philippeaux v. Apartment Inv. & Mgmt. Co.*, 598 Fed. Appx. 640, 644 (11th Cir. 2015).

32. Ms. Lynar established the first and second elements of a prima facie case: she participated in a protected activity by pursuing a petition for relief in *Lynar II*; and Respondents subjected her to an adverse action when it issued the Notice of Termination and commenced eviction proceedings in county court. *See 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). However, the undersigned concludes that Ms. Lynar failed to establish any adverse action concerning her exclusion from a deposition of Mr. Downs in Mr. Kotecha’s eviction proceeding, or Mr. Downs’s years-ago conversation with a HUD official concerning the non-renewal of her lease.

33. With respect to whether Ms. Lynar established a causal link between the protected activity and the adverse action, it is indisputable that Respondent issued the Notice of Termination within a couple of months of the start date of the hearing in *Lynar II*. Ms. Lynar has provided “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 ... action.” *Farley v. Nationwide Mut. Ins. Co.*, 197 F.3d 1322, 1337 (11th Cir. 1999). However, given the approximately four-year period between

Mr. Downs's 2014 conversation with a HUD official and the Notice of Termination, the undersigned concludes that Ms. Lynar has failed to establish a causal connection on this allegation. *See 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).

34. The mere fact of close temporal proximity between the protected activity and adverse action does not, in and of itself, establish the requisite causal link under *McDonnell Douglas*. Here, Ms. Lynar did not present any actual evidence that established causation. Respondents provided credible evidence that its decision to issue the Notice of Termination, and then commence eviction proceedings, was based on the incident of November 7, 2018, which was a violation of the "Conduct" requirement in her lease agreement. The credible and persuasive testimony of Pastor Adkins, Ms. Brooks, and Mr. Downs substantiated the factual basis of Respondents' decision. The competent, substantial record evidence establishes that Respondents' decision to issue the Notice of Termination, and commence eviction proceedings, was based on reasons independent of Ms. Lynar's participation in *Lynar II*, and thus, Ms. Lynar failed to establish a causal link between her protected activity and the adverse action. Additionally, Respondents provided credible evidence that its reason for seeking to exclude Ms. Lynar from the deposition of Mr. Downs in Mr. Kotecha's eviction proceeding was because Respondents' eviction proceeding against Ms. Lynar was open and pending, and it was within its legal rights to exclude Ms. Lynar from this deposition, to which the Brevard County Court agreed.

35. Ms. Lynar's FHA retaliation claim also fails, even if the undersigned were to assume she established a *prima facie* case of FHA retaliation, thus creating a presumption of housing discrimination. The burden would then shift to Respondents to articulate a legitimate, non-discriminatory, and non-

retaliatory reason for its actions. *See Bone v. Vill. Club, Inc.*, 223 F. Supp. 3d 1203, 1218 (M.D. Fla. 2016). The reason for Respondents' 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 Respondents is one of production, not persuasion, to demonstrate to the undersigned that its action was non-retaliatory. *See Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079, 1087 (11th Cir. 2004). This burden of production is "exceedingly light." *Holifield v. Reno*, 115 F.3d 1555, 1564 (11th Cir. 1997), *abrogated on other grounds*, *Lewis v. City of Union*, 918 F.3d 1213 (11th Cir. 2019)(*en banc*).

36. If Respondents meet this burden, the presumption of retaliation disappears. The burden then shifts back to Ms. Lynar to prove that Respondents' proffered reason was not the true reason, but merely a "pretext" for discrimination. *See Bone*, 223 F. Supp. 3d at 1218.

37. To satisfy this final step, Ms. Lynar must show "either directly by persuading the court that a discriminatory reason more likely motivated [Respondents] or indirectly by showing that [Respondents'] proffered explanation is not worthy of credence." *Texas Dep't of Cmty. Aff. v. Burdine*, 450 U.S. 248, 256 (1981). Ms. Lynar must prove that the reasons articulated were false *and* that discrimination was the real reason for the action. *See City of Miami v. Hervis*, 65 So. 3d 1110, 1117 (Fla. 3d DCA 2011).

38. For the same reasons as concluded in paragraph 34 above, Respondents articulated legitimate, non-discriminatory, and non-retaliatory reasons for its decision to issue the Notice of Termination and commence eviction proceedings.

39. The undersigned further concludes that Ms. Lynar failed to meet her burden of proving pretext. The competent substantial evidence presented at the final hearing does not support a conclusion that Respondents' explanation for issuing the Notice of Termination, or commencing eviction proceedings, or seeking to exclude her from a deposition in an unrelated eviction proceeding,

or discussing the non-renewal of her lease in a distant telephone conversation with a HUD official, was false or not worthy of credence.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby RECOMMENDS that the Florida Commission on Human Relations issue a final order dismissing Rita Lynar's Petition for Relief.

DONE AND ENTERED this 4th day of January, 2021, in Tallahassee, Leon County, Florida.



ROBERT J. TELFER III
Administrative Law Judge
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Filed with the Clerk of the
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this 4th day of January, 2021.

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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.