STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

YOCELIN BARBARROSA,

Petitioner,

vs. Case No. 20-1592

GOLDENROD POINTE PARTNERS, LTD, ET AL.,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted before Administrative Law Judge Mary Li Creasy by Zoom conference on July 16, 2020.

APPEARANCES

For Petitioner: Yocelin Barbarrosa, pro se
366 West 13th Street
Hialeah, Florida 33010

For Respondent: Elizabeth H. Howanitz, Esquire
Wicker, Smith, O'Hara, McCoy & Ford, P.A.
50 North Laura Street, Suite 2700
Jacksonville, Florida 32202

STATEMENT OF THE ISSUES

Whether Petitioner was unlawfully discriminated against and denied a reasonable accommodation for her child's disability by Respondent with regard to access to housing; and, if so, what is the appropriate remedy.

PRELIMINARY STATEMENT

On February 4, 2019, Petitioner, Yocelin Barbarossa, filed a Housing Charge of Discrimination ("Charge") with the Florida Commission on Human Relations ("FCHR") alleging that Respondents, Goldenrod Pointe Partners, Ltd., SAS Goldenrod Pointe Managers, LLC, Concord Management, Ltd., and Asantewa Thomas Forbes (collectively referred to herein as "Respondent" or "Goldenrod") violated sections 760.23(2), 760.37, 760.23(8) and (9)(b), Florida Statutes (the Florida Fair Housing Act or "FFHA"), by discriminating against her on the basis of her familial status and disability of her son.

On February 25, 2020, the FCHR issued a Determination (No Cause), by which the FCHR determined that reasonable cause did not exist to believe that an unlawful housing practice occurred.

On March 27, 2020, Petitioner filed a Housing Discrimination Complaint ("Complaint") with the FCHR. On the same day, the Complaint was transmitted to the Division of Administrative Hearings ("DOAH"), to conduct a final hearing.

The final hearing was initially set for June 5, 2020. The parties requested, and were granted, a continuance and the final hearing commenced as rescheduled on July 16, 2020. At the final hearing, Petitioner testified on her own behalf, and Petitioner's Exhibits 1 through 20 were admitted in evidence.[1] Respondent presented the testimony of the following: Asantewa Thomas Forbes, Assistant Community Director for Goldenrod Pointe; and Sharon Ivey, Vice-President of Compliance for Concord Management Ltd.

[1] Petitioner's exhibits were not indexed and numbered. For purposes of referencing Petitioner's exhibits are numbered sequentially in the order in which they were admitted during the hearing. This is the order in which they are listed in the hearing Transcript.

Respondent's Exhibits 1 through 4, 6, 7, 11 through 14, 16 through 18, 23, 28, 30, and 32 through 35 were admitted in evidence.

The one-volume Transcript was filed on August 4, 2020. Both parties timely filed proposed recommended orders, which were taken into consideration in the drafting of this Recommended Order. Unless otherwise indicated, citations to the Florida Statutes refer to the version in effect at the time of the alleged discrimination.

FINDINGS OF FACT

1. This matter involves a Complaint of housing discrimination filed by Petitioner against Respondent. Petitioner was a resident at the Goldenrod Pointe residential community from February 2017 until December 2018. The incidents at issue here occurred in connection with Petitioner's tenancy at Goldenrod Pointe, an affordable residential apartment development located in Winter Park, Florida.

2. This property is owned by Goldenrod Pointe Partners, Ltd., and managed by Concord Management, Ltd. Ms. Forbes is the Assistant Community Director for Goldenrod Pointe.

3. Petitioner moved into the property with three minor children on February 18, 2017, pursuant to a one-year lease agreement with Respondent from February 18, 2017, through February 28, 2018. The lease was renewed for a second term for the period of March 1, 2018, to February 28, 2019.

4. Petitioner alleges that Respondent engaged in discriminatory housing practices on the basis of familial status and her minor child's, Adrian, disability. More specifically, Petitioner alleges that Respondent:

> a. requested that Petitioner complete a form regarding her request for a service animal;
>
> b. improperly questioned Petitioner's minor son about an arrest that occurred on property;

c. denied Petitioner's son full use and enjoyment to the premises after his arrest;

d. made repeated unwanted phone calls to Petitioner outside of business hours;

e. improperly denied Petitioner's request to transfer to a balcony unit to accommodate the needs of her son;

f. improper entry into Petitioner's unit by Maintenance staff; and

g. assessed Petitioner with unwarranted fines and fees at move-out.

Service Animal

5. In August 2018, Petitioner decided she wanted to provide a service animal for her son. Petitioner purchased a dog to be an "emotional companion" for Adrian. The dog was not approved for use at school or trained to provide any particular services for Adrian. The dog was left with its breeder at the time Petitioner initially inquired about allowing the dog in the apartment.

6. Petitioner approached Ms. Forbes on August 27, 2018, about the need for the dog. Petitioner completed a form that was provided by Respondent and provided medical documentation from a healthcare provider showing Adrian's diagnosis of Attention-Deficit/Hyperactivity Disorder ("ADHD"). However nothing in the documentation referenced Adrian's need for an emotional support animal.

7. Ms. Forbes forwarded the request form and additional materials to Respondent's Compliance Department, which determined additional information was needed. The Compliance Department instructed Ms. Forbes to have Petitioner complete another verification form which would confirm the need for an emotional support animal. This form was provided to Petitioner by Ms. Forbes.

8. On September 25, 2018, Petitioner did not provide the requested verification form, but instead provided Ms. Forbes with additional documents from a medical professional indicating Adrian's qualification for a service animal. This in turn was provided to the Compliance Department on September 26, 2018. Petitioner's request for a reasonable accommodation, for a service animal to reside on the premises without a pet deposit was approved the next day, on September 27, 2018.

9. Respondent immediately approved Petitioner's request for an emotional support pet as soon as it received the verification that the animal was needed as a reasonable accommodation. Accordingly, no discrimination occurred.

Questioning the Details of Petitioner's Son's Arrest

10. On April 28, 2018, Petitioner's son Adrian was arrested for aggravated battery against Petitioner, which occurred in the Goldenrod Pointe apartment. Petitioner alleges that, following Adrian's arrest for aggravated battery, Ms. Forbes "interrogated" Adrian about the incident.

11. Ms. Forbes admits that she called Petitioner to the office to discuss the incident out of concern for the other residents of the complex. Ms. Forbes denies that she requested Adrian to attend or that she questioned him directly about the incident. Petitioner brought her son to the meeting. At or about the same time, Petitioner and Adrian claimed that other kids were ringing their bell or knocking on their door and running away. Ms. Forbes questioned Adrian regarding whether he could identify those other children.

12. Goldenrod Pointe holds a Crime Free Multi-Housing Program certificate issued by the Orange County Sheriff's Office for her participation in training on how to keep the apartment complex safe. A copy of this police report was automatically issued to Goldenrod Pointe—even without requesting it—by virtue of its participation in the Crime Free Multi-Housing Program. The police report showed that Adrian was arrested for aggravated assault with a deadly weapon and domestic battery against Petitioner, that

he threw knives in the direction of his baby sister, and punched a hole in the wall in the apartment during the incident.

13. After Ms. Forbes received the police report, Petitioner was asked to complete an incident report describing the events leading to the arrest. She completed this form on or about May 23, 2018. No evidence was presented suggesting that the information regarding what happened was solicited due to Adrian's disability. Rather, the information was requested because Respondent has a duty to ensure the safety of its other residents, and Adrian was arrested for very serious charges on Respondent's property.

Use and Enjoyment of the Premises

14. Petitioner's Complaint alleges that Respondent "denied her son access to the facilities at the apartment complex." The Complaint does not provide information regarding which son or what facilities. At final hearing, Petitioner alleged that after Adrian's arrest, she was told by Ms. Forbes that Adrian could not go outside on the apartment complex's property.

15. Petitioner admitted she has nothing in writing memorializing this alleged directive, or evidence that Adrian refrained from using the premises.

16. Ms. Forbes credibly and convincingly testified that she never provided such a directive to Petitioner or her son to preclude his access to the outdoor facilities or community amenities.

Unwanted Telephone Calls Outside Business Hours

17. Petitioner alleges that after her son's arrest, she received one or more phone calls from a restricted or unknown phone number after business hours. She assumed they were from Ms. Forbes. Petitioner failed to provide phone records, or any other documentation, evidencing the timing, frequency, or origination of these calls.

18. Ms. Forbes denies calling Petitioner outside of business hours or for any reason other than apartment management related reasons. Ms. Forbes admitted she contacted Petitioner regarding Adrian's spray painting graffiti on the premises. This contact had no connection to Adrian's disability.

Ms. Forbes explained that she would contact the parent of any child who was defacing the apartment community property.

Request to Transfer to Balcony Unit

19. At the time Petitioner considered leasing at Goldenrod Pointe, she visited a sister property that had three bedroom units with balconies. Petitioner claims she was promised a balcony unit at Goldenrod Pointe.

20. None of the units at Goldenrod Pointe have a balcony. Several units have a decorative "balcony-like" railing under a window but there is no functional balcony in any of the units which would provide the unit with additional space. Petitioner did not view her apartment before her move-in date. Despite knowing once she moved in that the apartment had no balcony, Petitioner remained in the apartment throughout the initial lease term and renewed the lease for another year.

21. At no time did Petitioner provide any written form or request to transfer to a balcony unit on property. Petitioner claims she submitted a transfer request to the Orlando Housing Authority (which provides a rent subsidy) for a larger unit with a balcony. This request was not put into evidence nor was it received by Respondent.

22. Petitioner alleges that a larger unit with a balcony would somehow make it easier to accommodate her son's disability. However no evidence was presented to demonstrate that such a request was made, how it would assist with Adrian's ADHD, or how it would be "reasonable" in light of the fact that none of the units were built with a balcony.

Entry Into Petitioner's Apartment by Maintenance

23. Petitioner's lease provides that entry may be made into an occupied unit by service personnel for the purpose of providing maintenance services during business hours.

24. A maintenance work order was made for the air-conditioning system in the unit directly above Petitioner's apartment on September 12, 2018. Maintenance needed to enter Petitioner's apartment to access the air handler

for her neighbor's apartment. Given the extreme heat that day, Maintenance considered this repair a priority.

25. Prior to entering any resident's apartment, Maintenance will knock three times.

26. Petitioner alleges that she had just gotten out of the shower and was undressed at the time Maintenance knocked. She chose not to respond because she felt like she was being harassed and she had not made a maintenance request for her own apartment. She alleges that Maintenance entered without her permission and that the three knocks came in rapid succession, which did not give her adequate time to cover herself.

27. After this entry occurred, Petitioner complained to Ms. Forbes. Ms. Forbes investigated, viewed the work order, talked to Maintenance personnel, and verified that Respondent's entry protocol was followed.

28. Petitioner presented no evidence that the unwanted entry into her apartment was unwarranted or based upon her son's disability.

Fines and Move-Out Fees

29. Petitioner alleges that she was assessed trash fines for a discriminatory purpose after her son Adrian's arrest.

30. The Resident Handbook sets forth the community trash policy as follows:

> **Disposal of Trash**
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> Improper disposal of trash anywhere on the community (including trash left outside of front doors, or by the dumpster or compactor areas) may result in a fine. All trash is to be placed in bags and all boxes are to be flattened before being placed in the dumpster or compactor. If a dumpster or compactor is full, please return after the container is emptied, and refrain from leaving trash outside the dumpster or compactor.

31. In 2017, before Adrian's arrest, Petitioner was issued a written warning for violating the trash policy. On March 30, 2018, before Adrian's arrest, Petitioner received a fine of $25.00 for leaving one bag of trash outside of the dumpster or compactor. On October 30, 2018, Petitioner received a fine of $50.00 for leaving two bags of trash outside of the dumpster or compactor.

32. Respondent alleges that the written warning and both subsequent fines were issued for violations of the community trash disposal policy. Petitioner admitted that the March 30, 2018, fine was valid, but alleges that the October 30, 2018, fine was discriminatory.

33. Petitioner failed to provide any evidence that the latter fine was assessed for a discriminatory purpose.

34. Petitioner also complains that at move-out she was improperly penalized for a gym access card. Petitioner believes that her oldest son accidently picked up someone else's gym access card while using the facility. Petitioner does not dispute that the card, which she returned at move-out, was not the card assigned upon her move-in.

35. Petitioner was assessed a $50.00 fine at move-out for failing to return the card assigned to her household. No evidence was presented to show that this fine was related in any way to the disability of Petitioner's son or inconsistent with Respondent's policies.

36. Petitioner also claims that when she broached the subject of early termination of her lease agreement, she was told by Ms. Forbes that she would incur an early termination penalty as defined in the lease.

37. Petitioner opted for Option 2 in the lease agreement, which provides early termination may result in liability "for future rents as they become due under the lease."

38. Petitioner claims that this threat of an early termination fee caused her to postpone moving. However, Petitioner, in fact, entered into a mutual rescission agreement with Goldenrod Pointe, approved by the Orlando Housing Authority, pursuant to which Petitioner was permitted to terminate

her lease early for medical reasons, and which waived the early termination fee.

CONCLUSIONS OF LAW

39. DOAH has jurisdiction over the parties and subject matter in this case. §§ 120.569 and 120.57, Fla. Stat.

40. Section 760.23 states that it is an unlawful housing practice 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 handicap or familial status.

41. The FCHR and Florida courts have determined that federal discrimination laws should be used as guidance when construing provisions of section 760. *See Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17 (Fla. 3d DCA 2009); *Brand v. Fla. Power Corp.*, 633 So. 2d 504, 509 (Fla. 1st DCA 1994).

Establishing Discrimination

42. Discriminatory intent can be established through direct or circumstantial evidence. *Schoenfeld v. Babbitt*, 168 F.3d 1257, 1266 (11th Cir. 1999). Direct evidence of discrimination is evidence that, if believed, establishes the existence of discriminatory intent behind an employment decision without inference or presumption. *Maynard v. Bd. of Regents*, 342 F.3d 1281, 1289 (11th Cir. 2003).

43. "Direct evidence is composed of 'only the most blatant remarks, whose intent could be nothing other than to discriminate' on the basis of some impermissible factor." *Schoenfeld*, 168 F.3d at 1257, 1266. Petitioner presented no direct evidence of handicap or familial status discrimination.

44. "[D]irect evidence of intent is often unavailable." *Shealy v. City of Albany, Ga.*, 89 F.3d 804, 806 (11th Cir. 1996). For this reason, those who claim to be victims of intentional discrimination "are permitted to establish

their cases through inferential and circumstantial proof." *Kline v. Tenn. Valley Auth.*, 128 F.3d 337, 348 (6th Cir. 1997).

45. Where a complainant attempts to prove intentional discrimination using circumstantial evidence, the shifting burden analysis established by the United States Supreme Court in *McDonnell Douglas Corporation. v. Green*, 411 U.S. 792 (1973), and *Texas Department of Community Affairs v. Burdine,* 450 U.S. 248 (1981), is applied. Under this well-established model of proof, the complainant bears the initial burden of establishing a prima facie case of discrimination. Once this burden is met, the respondent has the burden of articulating a legitimate non-discriminatory basis for the adverse action. The tenant must then come forward with specific evidence demonstrating that the reasons given by the respondent are a pretext for discrimination.

Housing Discrimination

46. In the instant case, Petitioner alleges that she and her family were unlawfully discriminated against regarding the terms and conditions of their residency at Goldenrod Pointe because of her son's handicap.

47. In order to establish a violation of section 760.23(2), the following elements must be proven by a preponderance of the evidence:

> (1) Petitioner belongs to a class of persons whom the Florida Fair Housing Act protects from unlawful discrimination because of race, color, national origin, sex, disability, familial status, or religion;
>
> (2) Petitioner must have been qualified, ready, willing, and able to receive the services or use facilities consistent with the terms, policies, and procedures of Respondent;
>
> (3) Petitioner must have requested services or use of facilities, or attempted to use facilities consistent with the terms and conditions, policies, and procedures established by Respondent for all

> persons who were qualified or eligible for services or use of facilities; and
>
> (4) Respondents, with knowledge of Petitioner's protected class, must have willfully failed or refused to provide services to Petitioner or permit use of the facilities under the same terms and conditions that were applicable to all persons who were qualified or eligible for services or use of the facilities.

See, e.g., Noah v. Assor, 379 F. Supp. 3d 1284, 1298 (S.D. Fla. 2019); *Woolington v. 1st Orlando Real Estate Servs., Inc.,* 2011 WL 3919715, at *2.

Petitioner Failed to Meet Her Burden of Proof

48. In this case, Petitioner provided no direct evidence of discrimination. Accordingly, the burden-shifting analysis is appropriate. Petitioner demonstrated by a preponderance of the evidence the first two elements of the case--that her son, Adrian, suffers from a handicap and that the family was qualified, ready, willing, and able to receive the services or use facilities consistent with the terms, policies, and procedures of Respondent.

49. However, Petitioner failed to demonstrate that she requested certain services or use of the facilities in accordance with the policies and procedures of Respondent, and that Respondent willfully failed or refused to provide such services. She did not meet her burden with regard to the third and fourth elements.

50. To summarize, Petitioner was not denied the ability to have a service animal as an accommodation. In fact, her request was immediately approved upon receipt of the appropriate documentation regarding the need for it.

51. Petitioner was questioned, in accordance with Respondent's policies and procedures after her son's arrest. This was not due to his disability, but rather due to the seriousness of the alleged crimes committed on Respondent's property.

52. No credible proof was presented that Petitioner was inappropriately called by Ms. Forbes outside of regular business hours, that she was denied a request for a transfer to a balcony unit, or that Respondent deviated in any way from its own procedures and protocols with regard to apartment entry for maintenance, the assessment of fees for trash removal, or the gym card. Petitioner was granted early termination of her lease without having to pay any early termination fee. If anything, in this regard, Petitioner was likely treated better than other residents with the same lease terms.

53. Even assuming *arguendo* that Petitioner proved the elements of a prima facie case of discrimination, Respondent offered legitimate, non-discriminatory reasons for any adverse actions. It is eminently reasonable that Respondent would want an explanation for the arrest of a minor on its property. It is reasonable that Respondent would contact Petitioner regarding her son's graffiti of the premises. It is reasonable that Petitioner would receive trash fines after being warned and continuing to disobey the trash policies for the complex. It is legitimate that an apartment complex with no balconies would not offer a balcony unit to Petitioner. Similarly, it is entirely reasonable that Maintenance would enter Petitioner's apartment when needed to fix her neighbor's air conditioning on a hot summer day in Florida.

54. While the undersigned applauds Petitioner's efforts in trying to provide the best for her children while assisting her son with his disability, there is no basis in the record to determine that Petitioner was discriminated against on the basis of this handicap or her familial status. Therefore, the discrimination charge should be dismissed, and none of the damages claimed by Petitioner should be awarded to her.

RECOMMENDATION

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 dismissing the Complaint.

DONE AND ENTERED this 2nd day of September, 2020, in Tallahassee, Leon County, Florida.

MARY LI CREASY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 2nd day of September, 2020.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.