

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

TIFFANI BERNARD,

Petitioner,

vs.

Case No. 20-3368

BEACH HOUSE AT AMELIA,

Respondent.

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RECOMMENDED ORDER

On November 10, 2020, Administrative Law Judge Yolonda Y. Green of the Division of Administrative Hearings (“Division”), conducted a hearing, pursuant to section 120.57(1), Florida Statutes (2020), by Zoom conference.

APPEARANCES

For Petitioner: Tiffani Crystal rea Bernard, pro se  
Apartment 501  
123 Hirth Road  
Fernandina Beach, Florida 32034

For Respondent: Arianne B. Suarez, Esquire  
McGinness & Cicero  
Suite 590  
1000 Sawgrass Corporate Parkway  
Sunrise, Florida 33323

STATEMENT OF THE ISSUE

Whether Respondent committed an act of discrimination against Petitioner due to her child’s disability in violation of the Florida Fair Housing Act.

PRELIMINARY STATEMENT

On March 19, 2020, Petitioner, Tiffani Bernard (“Petitioner” or “Ms. Bernard”), filed a Housing Discrimination Complaint (“Complaint”) with the Florida Commission on Human Relations (“FCHR”) alleging that Respondent, Beach House at Amelia (“Respondent” or “Beach House”), violated sections 760.23(2), 760.37, 760.23(8) and (9)(b), Florida Statutes (the “Florida Fair Housing Act” or “FHA”), by discriminating against her on the basis of the disability of her child.

On June 30, 2020, FCHR issued a Determination of No Cause, by which FCHR determined that reasonable cause did not exist to establish that an unlawful housing practice occurred.

On July 28, 2020, Petitioner filed a Petition for hearing with FCHR, in response to FCHR’s finding of “no cause.” The Petition was transferred to the Division for a final hearing, which was assigned to the undersigned.

The final hearing was initially scheduled for October 5, 2020. Petitioner filed a Motion for Continuance on September 16, 2020, which was granted. The undersigned rescheduled this matter for hearing on November 10, 2020.

On November 10, 2020, the hearing commenced as scheduled. Petitioner testified on her own behalf and offered the testimony of two witnesses: Alexandria Smith and Richard Nugent. Petitioner also offered Exhibits 1 through 8, which were admitted into evidence. Respondent offered the testimony of five witnesses: Paul Weston, Sydney Wulfeck, Jo Nix (Assistant Property Manager for Beach House), Stephanie Householder (Regional Marketing and Training Director for South Oxford Management), and Alicia Norve (Regional Manager for South Oxford Management). Respondent’s Exhibits 1 through 17, 19 and 20, were admitted into evidence.

After the close of the record, Petitioner filed two documents that were presumably submitted as evidence. However, since the record was closed, the exhibits were not accepted into the record or considered by the undersigned. Respondent filed a Motion to Strike Petitioner's Late-Filed Post-Hearing Exhibits, which is deemed moot as the exhibits were not accepted into the record.

The one-volume Transcript was filed with the Division on December 2, 2020. Both parties timely filed proposed recommended orders, which were considered in drafting this Recommended Order. Unless otherwise indicated, citations to the Florida Statutes refer to the 2019 version, the version in effect at the time of the alleged discrimination.

#### FINDINGS OF FACT

Based on the exhibits and testimony offered at the final hearing, the following Findings of Fact are made:

1. This matter involves a Complaint of housing discrimination Petitioner filed against Respondent. Petitioner was a resident at the Beach House from November 2017 until April 2020. The incidents at issue here occurred relating to Petitioner's tenancy at Beach House, an apartment complex located in Yulee, Florida.
2. The Beach House is owned by BW Amelia, LLC, and managed by South Oxford Management.
3. Petitioner moved into the property with her two minor children and her mother, Sonia Bernard, in November 2017. The lease was renewed at least two times with the most recent being for the lease period of April 30, 2019, through April 29, 2020. At all times that Petitioner lived at the Beach House she lived in apartment No. 521, a second-floor apartment.

4. Petitioner alleges that Respondent engaged in discriminatory housing practices due to her minor child, T.B.'s, disability. More specifically, Petitioner alleges that Respondent:

- a. issued a notice of non-renewal of her lease after becoming aware of T.B.'s disability; and
- b. prevented her from paying her rent in January 2020.

#### Complaint History

5. Each resident of Beach House is required to sign a lease agreement which provides the terms that the resident and the owner must follow.

Paragraph 20, the provision most relevant to this matter, provides as follows:

You, your occupants, or guests, or the guests of any occupants, may not engage in the following activities: behaving in a loud or obnoxious manner; disturbing or threatening the rights, comfort, health, safety, or convenience of others (including our agents and employees) in or near the apartment community; disrupting our business operations ... engaging in or threatening violence ... . You agree to communicate and conduct yourself at all times in a lawful, courteous, and reasonable manner when interacting with our employees, agents, independent contractors, and vendors; other residents, occupants, guests or invitees; or any other person on the premises. You agree not to engage in any abusive behavior, either verbal or physical, or any form of intimidation or aggression directed at our employees, agents, independent contractors, and vendors; other residents, occupants, guests or invitees; or any other person on the premises. ... Any violation of this paragraph shall be a material breach of this Lease and will entitle us to exercise all rights and remedies under the lease and law.

6. From November 12, 2019, through November 25, 2019, Petitioner received three notices of non-compliance with the lease agreement.

Respondent contends the notices were issued due to multiple complaints of noise disturbances and one incident involving an unauthorized occupant.

7. The noise complaints at issue were raised by the residents in apartment No. 511, which was located beneath Ms. Bernard on the first floor. Paul Weston and Sydney Wulfeck moved into apartment No. 511 with their young daughter in October 2019.

8. On November 12, 2019, Mr. Weston submitted a complaint by email to Respondent as follows:

My name is Paul Weston, I live in Apartment 511. I'm not sure who to contact but I'm at my wits end. Our upstairs is super loud, I hear her at all hours of the night and day. She is always screaming at someone or something, there are loud bangs on the floor at all hours of the night and day, it seems like there is a domestic issue ongoing inside the residence. I understand kids make noise but when they are clearly not there and she is screaming about everything it makes it impossible to go about the day. Crashes have been so loud that it has shook our doors, light fixtures, TV, fans and these noises have been keeping my daughter up when she should be sleeping for school. ...

9. That same day, Respondent issued a Seven Day Notice of Non-Compliance (With Opportunity to Cure) ("Seven-Day Notice") to Petitioner, which noted the following: "We have had many complaints on the slamming doors and level of noise coming from your apartment. It is disturbing your neighbors." The Notice also referenced paragraph 20 of the lease agreement as support for the violation.

10. At the hearing, Mr. Weston testified that the day before he emailed Respondent the noise was loud and sounded similar to a marching band or a jack hammer. While there were periods when the noise stopped, it seemed as if the noise was in different areas of the apartment and would continue until midnight.

11. Petitioner responded to the Seven-Day Notice disputing the complaint.

12. The next day, November 13, 2019, Mr. Weston submitted a second complaint. He indicated that “the noise last night was the worst it has ever been.” He noted in the complaint that the noise continued until “around midnight.” Mr. Weston testified that he believed the noise was purposeful. However, there was no evidence of record to support his belief.

13. On November 18, 2019, Mr. Weston made a third complaint as follows:

As noted from prior emails of the noise in the apartment above me, and also how it was addressed with the resident. The time is now 10 P.M. and since you had a talk with the resident we have been subjected to unrelenting loud banging on the floor, noises throughout the night and the resident and her occupants yelling excessively. I feel as though it is retaliatory due to the talk, its focused banging on the floor directly above us and non-stop. This needs to be taken care of as soon as possible. I am trying to be as civil as I can be, but I am at the end of my rope. I work a very stressful job at UF Downtown and I am unable to sleep for my job in which I help people because of this noise. Something needs to be done immediately. I can be reached by phone or email anytime.

14. While Mr. Weston continued to believe the noise was intentional, other than his belief, there was no evidence to support his beliefs.

15. On November 25, 2019, Respondent issued Petitioner another Seven-Day Notice as follows: “You and/or your guests and/or occupants ... causing a continued unreasonable disturbance on the premises including but not limited to loud voices, arguing, disturbing the peaceful quiet enjoyment of the premises for other residents.” This was the second Seven-Day Notice related to noise disturbance.

16. The next day, on November 26, 2019, Petitioner sent an email disputing the noise complaints and made her own noise complaint against the residents in the apartment above her (apartment No. 531). She complained of

stomping, loud noises, moving furniture, and loud sounds of dropped items.

17. As a result of Petitioner's complaint, Respondent issued the resident in apartment No. 531 a Seven-Day Notice for: "You and/or your guests and/or occupants ... causing a continued unreasonable disturbance on the premises including but not limited to loud stomping and disturbing the peaceful quiet enjoyment of the premises for other residents."

18. In addition to Mr. Weston's written complaints, Ms. Wulfeck testified regarding the noise disturbances. She described the noise from Petitioner's apartment as sounding like "tumble dryers" as well as yelling, screaming, and crying. She did acknowledge, however, that it was difficult to determine whether the sounds were simply loud walking or purposeful.

19. Ms. Wulfeck also testified that Petitioner confronted her on one occasion after complaints had been made against Petitioner. Ms. Wulfeck and Petitioner were leaving at the same time. Petitioner, who was in her truck, stopped her truck and began to yell at Ms. Wulfeck about her son's disability. Ms. Wulfeck testified that when she attempted to walk behind Petitioner's truck to leave, Petitioner's reverse lights illuminated so she stepped back from behind the truck. Ms. Wulfeck testified that "shortly thereafter, she just sped off." While Ms. Wulfeck testified that the truck began to go in reverse, it did not strike her. Ms. Wulfeck did, however, report the incident to the assistant property manager.

20. On December 31, 2019, Ms. Wulfeck sent an email complaint to Beach House and complained as follows:

Good evening, we live in apt# 511, we've been to the office many times about the above neighbor; Tiffani Bernard ...anytime of day she's banging around, it is sop [sic] much sores [sic] than before, our freaking lights are swaying!! Talking to her just made her angry with us and she now yell things at us in passing. The noise is insane, that's all I can say, it's never ending and we feel it's purposeful because she's angry we complained. She doesn't care, is so rude, she's also using her mom's

handicap sign to park in front up close, when we have people in our building that are actually handicapped and could use this spot it's wrong. ... .

21. At no point did Mr. Weston or Ms. Wulfeck contact the courtesy officer when they experienced noise disturbances to document and assist with verifying their complaints. A courtesy officer serves as the first point of contact for residents and responds to resident noise complaints and complaints of unlawful activity. However, a resident is not required to complain to a courtesy officer.

22. There was also no video or audio recording of the noise disturbances. At no point did Respondent investigate the complaints. However, Mr. Weston and Ms. Wulfeck credibly testified about their experience with the noise disturbances, which was also supported by their written complaint and decision to move due to the noise. The undersigned finds that any comments or testimony regarding the purposeful nature of the noise were speculative, and are, thus, not credited.

#### Incident Involving Mr. Nugent

23. A few days later, on November 25, 2019, Petitioner's son's father Mr. Nugent experienced a mental health episode in which he contacted the police. The police arrived and engaged Mr. Nugent to calm him down. Ms. Householder was on the property at the time and responded to the area of the incident to determine why the police were called. She only observed Mr. Nugent screaming on the balcony as she was asked to return to the leasing office. One of the responding officers, Officer Galloway, later reported to Ms. Householder what happened. Officer Galloway told Ms. Householder that the officers were able to calm down Mr. Nugent. The officer noted that Mr. Nugent identified himself as a resident of Petitioner's apartment, which was also documented on the police report. Finally, Officer Galloway told



Ms. Householder that Mr. Nugent would not pass a criminal background check to permit him to be a resident at the apartment complex.<sup>1</sup>

24. At the final hearing, Mr. Nugent, on the other hand, testified that he was reading a bible and concerned about his well-being which led him to call the police.

25. Since Mr. Nugent was not listed on Petitioner's lease as a resident and based upon the seriousness of the incident, Ms. Householder contacted Petitioner to discuss the incident. Petitioner denied that Mr. Nugent lived at her address, but rather that he would help her with the children. After the discussion, Ms. Householder issued Respondent a Seven-Day Notice for: "hav[ing] an unauthorized occupant residing on the premises in violation of [the] lease," issued on December 19, 2019.

#### T.B.'s Disability

26. Petitioner alleges Respondent did not renew her lease due to her child, T.B.'s, disability. T.B.'s assessment confirms that he has been evaluated and diagnosed as having delayed development with communication and motor skills. Ms. Bernard's son would often stomp his feet on the floor while doing what she referred to as the "hot dog dance." Petitioner denied being excessively loud. Petitioner, however, acknowledged that her voice carries when she's speaking to her mother and children, and stated she would attempt to resolve the issue. Petitioner testified that the noise was not late at night as she works nights or was not at home during times the alleged noise disturbances occurred.

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<sup>1</sup> Ms. Bernard offered evidence at hearing of a complaint she filed against the officer who reported the information about Mr. Nugent's criminal history. She also offered evidence of the officer's involvement in an unrelated matter which resulted in him being removed from his position. While it may have been inappropriate for the officer to report this information, Mr. Nugent was not a resident of the Beach House. Thus, based on the information provided to Ms. Householder about his assertion of residing at Beach House, it was reasonable for her to issue the Seven Day Notice for an unauthorized occupant.

27. Petitioner testified that she notified the property manager, Shannon, that her son had autism and communicates using his feet to stomp on the floor. Shannon did not testify at the hearing. Ms. Nix testified that she was not told about T.B.'s disability. On December 9, 2019, after receiving multiple complaints, Petitioner emailed Ms. Norve disputing the complaints and advised her that "2 1/2 year old has level 1 autism and communicates through motor not speech." On December 18, 2019, Petitioner also notified her neighbors in apartment No. 511 of her child's disability.

### Nonrenewal of Lease

28. The current assistant property manager, Ms. Jo Anne Nix, explained the process when a resident receives a complaint. After a resident is issued a Seven-Day Notice, they have seven days to resolve the issue. If the issue is not resolved, then the resident may be subject to eviction or nonrenewal of the lease agreement.

29. Petitioner was issued two notices for noise complaints within 12 days. However, the complaints continued.

30. On January 8, 2020, Respondent issued Petitioner a Notice of Lease Termination at the End of the Lease which notified Petitioner that her lease would not be renewed. On February 20, 2020, and March 9, 2020, Respondent followed up on the notice of nonrenewal with a request for confirmation of Petitioner's move out date. The lease was not renewed due to violations of the lease agreement, namely, noise complaints and the incident involving Mr. Nugent.

31. Other than the complaints from the residents in apartment No. 511, Petitioner had not received any written notices of violations of the lease agreement. However, when Ms. Householder started working as the property manager, she learned there had been previous verbal warnings regarding noise complaints. In addition, the degree of the noise complaints resulted in Mr. Weston and Ms. Wulfeck terminating their lease early.

32. At the final hearing, Petitioner testified that the noise would not have been an issue if she had been placed in a bottom floor apartment. However, she did not request a first (or ground) floor apartment as a reasonable accommodation. Ms. Norve acknowledged that she would have offered a lower level apartment as a resolution. However, the noise complaints and incidents with visitors were the basis for nonrenewal of the lease, and thus, a first-floor apartment would not have resolved the issues.

33. In support of her complaint, she testified that Beach House refused to permit her to use PayLease to pay her rent. PayLease is a third-party system that is used to pay rent payments. However, there was no additional evidence offered to demonstrate that Respondent barred Petitioner from using PayLease.

#### CONCLUSIONS OF LAW

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

35. 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.

36. 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

37. 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).

38. "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 1266. Petitioner presented no direct evidence of discrimination on the basis of a disability.

39. "[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).

40. 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 resident must then produce specific evidence demonstrating that the reasons given by the respondent are a pretext for housing discrimination.

### Housing Discrimination

41. In the instant case, Petitioner alleges that she and her family were unlawfully discriminated against regarding the terms and conditions of their residency at Beach House due to her son's disability.

42. To prove a violation of section 760.23(2), the following elements must be established 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 Did Not Meet Her Burden of Proof

43. 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, T.B., suffers from a disability 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.

44. 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. Specifically, Petitioner did not offer evidence to establish that she requested a different apartment to resolve her issue. In addition, even if she had made a request, it may not have assisted with the other noise disturbances related to yelling and screaming. Finally, Petitioner did not

offer sufficient evidence to establish that she was not permitted to use PayLease to pay her rent. As a result, Petitioner did not meet her burden regarding the third and fourth elements.

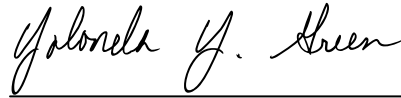
45. Even assuming *arguendo* that Petitioner proved the elements of a *prima facie* case of discrimination, Respondent offered legitimate, non-discriminatory reasons for any adverse actions. It is reasonable that Respondent would request that an unauthorized occupant not be permitted on the property after an incident involving law enforcement. It is also reasonable that Respondent would not renew Petitioner's lease after multiple complaints of noise disturbances from her neighbors. Finally, it is legitimate that the apartment complex would not offer a first-floor apartment, if such an apartment was not requested, and if a first-floor apartment would not cure the issue.

46. While the undersigned applauds Petitioner's efforts in trying to provide the best for her children, one of whom has a disability, there is no basis in the record to determine that Petitioner was discriminated against on the basis of his disability. Therefore, the discrimination charge should be dismissed.

#### 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 Petitioner's Complaint of discrimination.

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



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YOLONDA Y. GREEN  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of January, 2021.

COPIES FURNISHED:

Tammy S. Barton, Agency Clerk  
Florida Commission on Human Relations  
4075 Esplanade Way, Room 110  
Tallahassee, Florida 32399-7020  
(eServed)

Arianne B. Suarez, Esquire  
McGinness & Cicero  
Suite 590  
1000 Sawgrass Corporate Parkway  
Sunrise, Florida 33323  
(eServed)

Tiffani Crystal rea Bernard  
Apartment 501  
123 Hirth Road  
Fernandina Beach, Florida 32034  
(eServed)

Cheyenne Costilla, General Counsel  
Florida Commission on Human Relations  
4075 Esplanade Way, Room 110  
Tallahassee, Florida 32399  
(eServed)

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.