STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

KIMBERLY AND RICHARD INTERRANTE,

Petitioners,

vs. Case No. 20-4801

TREVESTA HOMEOWNERS ASSOCIATION, INC.,

Respondent.
_____/

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2020),[1] on December 22, 2020, by Zoom video conference, from Tallahassee, Florida.

APPEARANCES

For Petitioner: Kimberly Interrante, Pro Se
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For Respondent: Scott H. Jackman, Esquire
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STATEMENT OF THE ISSUE

Whether Petitioners, Kimberly and Richard Interrante, were subject to a discriminatory housing practice by Respondent, Trevesta Homeowners

[1] All statutory references are to Florida Statutes (2020), unless otherwise noted.

Association, Inc., based on a disability, in violation of Florida's Fair Housing Act.

PRELIMINARY STATEMENT

On or about June 22, 2020, Petitioners filed a Housing Discrimination Complaint with the Florida Commission on Human Relations (the "Commission") alleging that Respondent, Trevesta Homeowners Association, Inc. (the "Association"), violated the Florida Fair Housing Act ("FHA"). Petitioners claimed that the Association discriminated against them based on a disability.

On September 18, 2020, the Commission issued a Notice of Determination of No Cause, notifying Petitioners that reasonable cause did not exist to believe that the Association committed a discriminatory housing practice.

On October 28, 2020, Petitioners filed a Petition for Relief with the Commission alleging a discriminatory housing practice. That same day, the Commission transmitted the Petition to the Division of Administrative Hearings to conduct a chapter 120 evidentiary hearing.

The final hearing was held on December 22, 2020. At the final hearing, Kimberly Interrante and Jonathan Austin testified on behalf of Petitioners. After the hearing (and without objection), Petitioners submitted several documents, which have been accepted into evidence as Petitioners' (composite) Exhibit 1. The Association offered the testimony of Allan Heinze. Association composite Exhibits 1 and 2 were admitted into evidence.

A court reporter recorded the final hearing. Neither party requested a transcript. At the close of the hearing, the parties were advised of a ten-day timeframe following the hearing to file post-hearing submittals. At the final

hearing, both parties requested a ten-day extension of the filing deadline, which was granted.[2] Both parties timely filed post-hearing submittals, which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. Trevesta is a community of homes located in Palmetto, Florida. Trevesta is subject to rules and regulations of the Association.

2. Petitioners own a home in Trevesta. Petitioners purchased their house in 2018.

3. Living with Petitioners is Jonathan Austin. Jonathan is not related to Petitioners, but is currently in a relationship with Petitioners' daughter.

4. Jonathan suffers from several mental health conditions including anxiety, bipolar disorder, and similar mood-related disabilities.[3] Ms. Interrante, who testified on behalf of Petitioners, disclosed that Jonathan's mental issues are related to a benign brain tumor.

5. Ms. Interrante further explained that, based on his mental health conditions, Jonathan suffers from severe anxiety and has difficulty coping with stress. During tense situations, Jonathan struggles to communicate, think clearly, or focus on tasks. Because of the high anxiety he experiences, Jonathan is not employed. Consequently, although Jonathan is now a young adult, he spends most of his time inside Petitioners' home.

6. Respondent does not dispute that Jonathan suffers from a mental disability.

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[2] By requesting a deadline for filing post-hearing submissions beyond ten days after the final hearing, the 30-day time period for filing the recommended order was waived. *See* Fla. Admin. Code R. 28-106.216(2).

[3] A person has a disability (or "handicap") under both the Florida and F0ederal Fair Housing Act if he or she has "a physical or mental impairment which substantially limits one or more major life activities." § 760.22(3)(a), *see also* 42 USC §3602(h).

7. To help cope with anxiety and stress, Jonathan relies on the comfort he receives from his cat named "Ace." Ace is Jonathan's registered Emotional Support Animal.

8. Ace is a Tuxedo cat with a black and white coat. Jonathan adopted Ace as a kitten. Ace is now five years old.

9. Ms. Interrante expressed that Ace "absolutely" helps Jonathan manage his mental anxiety. Jonathan offered that Ace keeps him grounded. Ace's presence has also helped reduce the amount of medication Johnathan takes.

10. Ace lives with Petitioners (and Jonathan) in their home. Ace is an indoor cat and freely roams around the house.

11. The entryway to Petitioners' house currently consists of a single front door. The front door opens onto a small 6' by 6' alcove that leads to a walkway that runs along the front yard.

12. The impetus for Petitioners' action is Jonathan's fear that Ace will escape through their front door. At the final hearing, Jonathan testified that he experiences overwhelming anxiety the moment he hears the front door open. Jonathan voiced that he worries daily about Ace's safety. He remains on constant guard against the possibility that Ace will unexpectedly slip away from the house.

13. Ms. Interrante expressed that Jonathan's concern with Ace breaking free from their home is real. Ace's natural curiosity causes him to watch the front door. Once in the past, Ace actually crept through the front door and outside into the alcove. Ace was caught before he ventured further. Ace has never fully escaped from Petitioners' house.

14. Ms. Interrante expressed that if Ace escaped, Jonathan would suffer an extremely traumatic emotional reaction. Therefore, to help alleviate Johnathan's distress, Petitioners seek to modify their front entranceway to ensure that Ace remains in the house. Petitioners specifically desire to construct a "two-door" entry system. Basically, Petitioners hope to either install a screen door onto the front door, or to screen in the front alcove and

affix a separate screen door. Petitioners believe that the addition of a secondary barrier will prevent Ace from slipping through the (single) front door when it is ajar.

15. Ms. Interrante urged that the modification will ease Jonathan's mental distress. Jonathan will be comforted knowing that when one door is opened, the other will always be closed. That way, Ace would not unexpectedly dart into the wild.

16. Ms. Interrante testified that Petitioners are willing to bear all the costs to install a screened door and/or enclosure.

17. On April 6, 2020, Petitioners submitted an Architectural Modification Request Form to the Association seeking approval for an "addition or modification" to their "entry way enclosure." With their request, Petitioners attached plans for a screened-in enclosure, with a separate door, to be installed within the overhanging roof structure outside their front door. Petitioners also included information documenting Jonathan's disability. Petitioners wrote that, "we need this modification because without it [Jonathan] is unable to fully use and enjoy his home to the same degree as people without disabilities."

18. On April 9, 2020, the Association's Property Manager, Allan Heinze, notified Petitioners that the Association would not approve their request to modify their front door because "your listed alteration is not permitted in Tevesta HOA. Front screen enclosure[s] are not permitted per the guidelines." On May 6, 2020, the Association's Design Review Committee formally denied Petitioners' request stating that "[s]creened enclosures are not permitted." In follow up correspondence with Petitioners, the Association's attorney explained that Petitioners' request lacked documentation establishing "a relationship between the disability and the need for the accommodation." The attorney further stated that this information could come in the form of a "statement or opinion of a physician, therapist, counselor, etc."

19. At the final hearing, Ms. Interrante conveyed that she has tried to obtain support for the modification from a psychiatrist or mental health counselor. She relayed, however, that Jonathan's current psychiatrist, Dr. Brock Hollett, who evaluated Jonathan in the spring of 2020, resisted her request to personally appear at the hearing over concerns that his testimony would interfere with his doctor-patient relationship with Jonathan. Instead, Ms. Interrante offered several letters which she represented Dr. Hollett prepared on Jonathan's behalf. In a letter dated June 21, 2020, Dr. Hollett wrote that, in his opinion:

> Jonathan could benefit from having a screen door placed on his front door.

20. Following the final hearing, Petitioners filed an additional letter they received in April 2020 from Wendy Fisher, Licensed Clinical Social Worker, a behavioral health consultant who had examined Jonathan. Ms. Fisher expressed that Ace "is necessary for the emotional health of Jonathan because his cat's company will provide support and will mitigate the symptoms that his [sic] is experiencing." Ms. Fisher further advised that:

> I strongly recommend that Jonathan's cat be allowed to reside with him in his home in his community and that accommodations can be made to allow him to do so.

Ms. Fisher did not address the specific modifications Petitioners seek for their front entrance.[4]

21. Jonathan confirmed that he has discussed his anxiety over losing Ace with a mental health counselor. Jonathan represented that his counselor

[4] The written letters from Dr. Hollett and Ms. Fisher are out-of-court statements and clearly hearsay. *See* § 90.801(1)(c), Fla. Stat. Under the Administrative Procedure Act, "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." § 120.57(1)(c), Fla. Stat. Consequently, the undersigned makes no findings that modifying Petitioners' front door is necessary for Jonathan to fully enjoy the premises based solely on Dr. Hollett's and/or Ms. Fisher's written comments.

agreed that his anxiety and stress would benefit from additional security on the front door.

22. Finally, in response to questions at the final hearing, both Ms. Interrante and Jonathan were extremely skeptical that they could train Ace not to approach the front door when it is opened. They declared that their prior attempts to train Ace did not prove successful.

23. Further, while Ms. Interrante agreed that her back door opens onto a screened-in porch with a "two-door" entry system, she asserted that it was impractical for family or friends to only enter or exit her home through the rear door. Moreover, Ms. Interrante doubted that redirecting foot traffic to the back door would alleviate Jonathan's fixation on the possibility that Ace might escape through their front door.

24. To explain its decision, the Association presented the testimony of Allan Heinze, Property Manager for Trevesta. Mr. Heinze acknowledged that the Association received Petitioners' modification request on April 6, 2020. Mr. Heinze recounted that he made the initial decision on April 9, 2020, to deny the request due to the fact that the Association's governing rules and regulations do not permit front screen enclosures on any houses within the community. Mr. Heinze explained that, upon buying a house in Trevesta, homeowners become subject to the Association's Architectural Guidelines, Standards & Criteria (the "Guidelines"). The Guidelines specifically state:

> Q. Front Entryway/Storm Doors:
>
> Screen enclosures, storm doors or screen doors are not allowed for front entrances. Wicker, wood or wrought iron tables and chairs may be used in the front porch/entryway. Plastic stackable furniture is not permitted.

25. Mr. Heinze further testified that, following his initial denial, the Association attempted to resolve Petitioners' modification request. Mr. Heinze relayed that the Association's attorney contacted Petitioners, via

email, to discuss the details of their request. Mr. Heinze remarked that, based on his understanding of the concerns of the Association's legal counsel, Petitioners failed to articulate a sufficient "nexus" between the specific modification they sought and Jonathan's disability. Mr. Heinze explained that the Association was interested in any information that would substantiate (1) Jonathan's disability; (2) the modification Jonathan needs to address his disability; and (3) how that specific modification would improve Jonathan's life. Mr. Heinze asserted that the Association is ready and willing to consider any information and/or documentation Petitioners provide from a qualified medical provider. However, without details that establish the necessary nexus between Jonathan's disability and Petitioners' need for a screened enclosure outside their front door, Mr. Heinze maintained that the Association did not possess enough evidence to justify deviating from the Association's Guidelines.

26. Regarding the letters from Jonathan's mental health professionals, Mr. Heinze commented that, while they show that Jonathan might "benefit" from having a screened-in front door, the written statements did not adequately demonstrate why a "two-door" system is medically necessary for Jonathan to fully enjoy Petitioners' home.

27. Finally, despite the Association's denial of Petitioners' request to modify their front door, Mr. Heinze admitted that there are a few similar front entranceway enclosures in the Trevesta community. However, Mr. Heinze asserted that the Association never approved these additions. On the contrary, the homeowners who altered their front doors or alcoves did so in direct violation of the Association's Guidelines. Mr. Heinze exclaimed that, to his knowledge, the Association has never approved a formal request from a homeowner to enclose a front entryway.

28. Based on the competent substantial evidence in the record, the preponderance of the evidence does not establish that the Association discriminated against Petitioners by failing to permit them to modify their

home based on a disability. Accordingly, Petitioners failed to meet their burden of proving that the Association committed unlawful discrimination in violation of the FHA.

CONCLUSIONS OF LAW

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

30. Petitioners assert that the Association discriminated against them in violation of the FHA. Specifically, Petitioners allege that the Association discriminated against them based on a disability, by refusing to permit "reasonable modifications" to their home.

31. The FHA is codified in sections 760.20 through 760.37 and makes it unlawful to discriminate against any person in connection with the sale of a dwelling. Section 760.23 states, in pertinent part:

> (2) It 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.
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> * * *
>
> (7) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:
>
> (a) That buyer or renter;
>
> (b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
>
> (c) Any person associated with the buyer or renter.

> (8) It 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 with such dwelling, because of a disability of:
>
> (a) That buyer or renter;
>
> (b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
>
> (c) Any person associated with the buyer or renter.
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> (9) For purposes of subsections (7) and (8), discrimination includes:
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> (a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.

32. The FHA is patterned after the Federal Fair Housing Act found in 42 U.S.C. § 3601, *et seq*. Discrimination covered under the FHA is the same discrimination prohibited under the Federal Fair Housing Act. *Savanna Club Worship Serv. v. Savanna Club Homeowners' Ass'n*, 456 F. Supp. 2d 1223, 1224 n.1 (S.D. Fla. 2005); *see also Loren v. Sasser*, 309 F.3d 1296, 1300 n.9 (11th Cir. 2002); and *Bhogaita v. Altamonte Heights Condo. Ass'n*, 765 F.3d 1277, 1285 (11th Cir. 2014)("The [Federal Fair Housing Act] and the Florida Fair Housing Act are substantively identical, and therefore the same legal analysis applies to each."). Accordingly, federal case law involving housing discrimination is instructive in applying and interpreting the FHA. *Dornbach v. Holley*, 854 So. 2d 211, 213 (Fla. 2d DCA 2002).

33. Specifically regarding the subject matter of Petitioners' claim, the statutory language in section 760.23 is similar to that found in its federal

counterpart in 42 U.S.C. § 3604(f).[5] When "a Florida statute is modeled after a federal law on the same subject, the Florida statute will take on the same constructions as placed on its federal prototype." *Brand v. Fla. Power Corp.*, 633 So. 2d 504, 509 (Fla. 1st DCA 1994); *see also Dornbach,* 854 So. 2d at 213; *Milsap v. Cornerstone Residential Mgmt.*, 2010 U.S. Dist. LEXIS 8031 (S.D. Fla. 2010); and *Fla. Dep't of Cmty. Aff. v. Bryant*, 586 So. 2d 1205 (Fla. 1st DCA 1991).

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

35. The preponderance of the evidence standard is applicable to this matter. § 120.57(1)(j), Fla. Stat.

36. Discrimination may be proven through direct, statistical, or circumstantial evidence. *Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17, 22 (Fla. 3d DCA 2009). Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent behind the decision without any inference or presumption. *Denney v. City of Albany*, 247 F.3d 1172, 1182 (11th Cir. 2001); *see also Holifield v. Reno*, 115 F.3d 1555, 1561 (11th Cir. 1997). Courts have held that "'only the most blatant remarks, whose intent could be nothing other than to discriminate ...' will constitute direct evidence

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[5] The pertinent language in 42 U.S.C. § 3604(f) states:

> (3) For purposes of this subsection, discrimination includes--
>
> (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.

of discrimination." *Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1358-59 (11th Cir. 1999). In contrast, "[e]vidence that only suggests discrimination or that is subject to more than one interpretation does not constitute direct evidence." *Saweress v. Ivey*, 354 F. Supp. 3d 1288, 1301 (M.D. Fla. 2019).

37. Petitioners presented no direct evidence of housing discrimination by the Association. No evidence and testimony establishes, without any inference, that the Association intentionally refused to allow Petitioners to add a "two-door" system onto their front entryway because of Jonathan's disability.

38. Where there is no direct evidence of discrimination, fair housing cases are analyzed under the three-part, burden-shifting framework set forth in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973), and *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981). *See Blackwell*, 908 F.2d at 870; and *Savanna Club*, 456 F. Supp. 2d at 1231-32. Under this three-part test, Petitioners have the initial burden of establishing, by a preponderance of the evidence, a prima facie case of unlawful discrimination. *McDonnell Douglas*, 411 U.S. at 802; *Burke-Fowler v. Orange Cty.*, 447 F.3d 1319, 1323 (11th Cir. 2006); and *Valenzuela*, 18 So. 3d at 22. Next, if Petitioners sufficiently establish a prima facie case, the burden shifts to the Association to articulate a legitimate, nondiscriminatory reason for its action. Finally, if the Association satisfies this burden, Petitioners have the opportunity to prove that the Association's reason is mere "pretext." *Blackwell*, 908 F.2d at 870; *Palm Partners, LLC v. City of Oakland Park*, 102 F. Supp. 3d 1334, 1344 (S.D. Fla. 2015).

39. Petitioners' cause of action under the FHA is based on a claim that the Association refused to permit a "reasonable modification" of their home. *See* § 760.23(9)(a), Fla. Stat. Accordingly, adapted to the facts in this case, for Petitioners to establish a prima facie case of housing discrimination, they must prove that: (1) a person residing in their dwelling (Jonathan) is

"disabled" within the meaning of the FHA; (2) they requested a modification of their premises; (3) the requested modification is both reasonable and necessary to afford Jonathan the full enjoyment of the premises; and (4) the Association refused to make the requested modification. *See Johnson v. Jennings*, 772 Fed. Appx. 822, 825 (11th Cir. 2019); *Sackman v. Balfour Beatty Communities, LLC*, CV 113-066, 2014 WL 4415938, at *5 (S.D. Ga. Sept. 8, 2014); and *Bhogaita*, 765 F.3d at 1285.[6]

40. "Reasonable" is interpreted to mean that the modification will not require "a fundamental alteration in the nature of a program" or impose "undue financial and administrative burdens." *Schaw v. Habitat for Humanity of Citrus Cty, Inc.*, 938 F.3d 1259, 1265 (11th Cir. 2019), and *Sabal Palm Condominiums of Pine Island Ridge Ass'n, Inc. v. Fischer*, 6 F. Supp. 3d 1272, 1281 (S.D. Fla. 2014).[7]

41. If Petitioners' request is facially reasonable, the burden shifts to the Association, who must prove that the modification would nonetheless impose an "undue burden" or result in a "fundamental alteration" of its program. An accommodation requires a "fundamental alteration" if it would "eliminate an 'essential' aspect of the relevant activity." *Schaw*, 938 F.3d at 1266.

42. A modification is "necessary" if it alleviates the effects of the disability. *Schaw*, 938 F.3d at 1270. If the proposed modification "provides no direct amelioration of a disability's effect, it cannot be said to be necessary." *Schwarz v. City of Treasure Island*, 544 F.3d at 1226 (11th Cir. 2008), citing *Lapid–Laurel, L.L.C. v. Zoning Bd. of Adjustment of Twp. of Scotch Plains*, 284 F.3d 442, 460 (3d Cir.2002). In other words, "there must be an

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[6] *Bhogaita* reviewed an alleged failure to accommodate claim under section 760.23(9)(b).

[7] As with *Bhogaita*, the *Schaw* and *Sabal Palm* cases interpreted the term "reasonable accommodation" under the FHA. *See Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1123 (11th Cir. 1993)("The elements of a prima facie case are flexible and should be tailored, on a case-by-case basis, to differing factual circumstances."). *See also Schwarz*, 544 F.3d at 1220("We look to case law under the [Rehabilitation Act, 29 U.S.C. § 794(a)] and the [Americans with Disabilities Act, 29 U.S.C. §12132] for guidance on what is reasonable under the FHA").

identifiable relationship, or nexus, between the requested accommodation and the individual's disability." *Sabal Palm*, 6 F. Supp. 3d at 1281–82.

43. Further, the FHA requires only those modifications that "may be necessary ... to afford 'equal opportunity' to use and enjoy a dwelling. … In this context, "equal opportunity" can only mean that handicapped people must be afforded the same (or 'equal') opportunity to use and enjoy a dwelling as non-handicapped people, which occurs when accommodations address *the needs created by the handicaps*." *Schwarz*, 544 F.3d at 1226. Accordingly, the Association is only required to make a reasonable modification "if it 'may be necessary to afford [Petitioners an] equal opportunity to use and enjoy a dwelling.'" *Schwarz*, 544 F.3d at 1225; and *Sabal Palm*, 6 F. Supp. 3d at 1281.

44. Turning to the merits of the complaint, based on the evidence in the record, Petitioners failed to prove a case of a discriminatory housing practice under the FHA. Initially, the Association did not dispute that Jonathan should be considered "handicapped" within the meaning of the FHA. The evidence also establishes that Petitioners requested a modification to their house, and that the Association refused to allow them to make it.

45. Further, based on the facts found, the modification Petitioners seek is "reasonable." The only ground the Association cited at the final hearing to deny Petitioners' request was a provision in the Association's Guidelines, which broadly aspires to maintain a uniform aesthetic within the community. However, no evidence shows that Petitioners' proposed modification will pose an undue administrative or financial burden on the Association. Petitioners, not the Association, would bear the cost of the installation. In addition, the plans Petitioners submitted with their Architectural Modification Request Form reveal that the screened enclosure will be confined to the 6' by 6' space located just outside their front door.

46. Further, no evidence or testimony indicates that a screened-in doorway on the front of Petitioners' home will result in a "fundamental

alteration" of the Association's activities. No evidence in the record demonstrates that Petitioners' desired modification will "eliminate an essential aspect" of the Trevesta community, or undermine the basic purpose of the Guideline policy that prevents homeowners from installing additional security measures on the front of their houses.

47. Regarding the requirement that the modification must be "necessary," however, Petitioners failed to present the evidence needed to prove that a "two-door" system on the front entryway of their home is necessary to alleviate the effects of Jonathan's disability. In other words, Petitioners did not meet their burden of substantiating the causal relationship or "nexus" between constructing a screened-in doorway and mitigating Jonathan's mental issues.

48. To be sure, Jonathan compellingly described the distress he experiences at the thought of Ace escaping his house. However, the two letters Petitioners produced from Dr. Hollett and Ms. Fisher do not sufficiently establish that a screen door will directly alleviate Jonathan's mood-related disabilities. Aside from the hearsay evidentiary issue that prevents a finding of fact based solely on the out-of-court statements, the Association's argument that the written comments are too broad to support Petitioners' request is well made. For Petitioners to meet their burden, the medical professionals' opinions should more squarely link the modification and Jonathan's disability, other than by simply stating that Jonathan "could benefit from having a screen door placed on his front door." Further, the fact that Ace has not actually escaped from Petitioners' home means that, up until now, Jonathan has been able to fully enjoy the house with his emotional support animal.

49. Consequently, the evidence adduced at the final hearing does not establish, by a preponderance of the evidence, that a screened-in enclosure will directly ameliorate the effect of Jonathan's disability and afford him an equal opportunity to use and enjoy Petitioners' house that he does not now

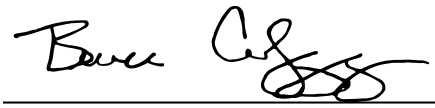
have. Therefore, the modification Petitioners request cannot be said to be "necessary."

50. At the final hearing, Petitioners (through Ms. Interrante) expressed their extreme frustration at what they perceive to be the Association's lack of compassion towards Jonathan's mental health condition. Petitioners clearly believe that their proposed modification offers a simple and straightforward solution that will cause minimal disruption within the Trevesta community. Petitioners are further disappointed at the Association's refusal to take the letters from Dr. Hollett and Ms. Fisher at face value. However, the Association correctly points out that Petitioners bear the burden in this administrative proceeding. And, a key component of Petitioners' case is to prove that the modification they requested will actually alleviate Jonathan's mood-related issues. The evidence produced at the final hearing, however, does not adequately make this showing. Consequently, Petitioners have failed to prove, by a preponderance of the evidence, that the Association discriminated against them by refusing to permit Petitioners to modify their home.

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 concluding that Respondent, Trevesta Homeowners Association, Inc., did not commit a discriminatory housing practice against Petitioners and dismissing their Petition for Relief.

DONE AND ENTERED this 8th day of March, 2021, in Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of March, 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.