STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CARLOS CORDOVA,

Petitioner,

vs. Case No. 21-1302

SOLABELLA CONDO. ASSOCIATION, INC., ET AL.; MIGUEL QUINTERO; AND RELIABLE PROPERTY MANAGEMENT SERVICES, INC.,

Respondents.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted before Administrative Law Judge Mary Li Creasy by Zoom conference on June 17, 2021.

APPEARANCES

For Petitioner: Carlos Cordova, pro se
Apartment 105
17345 Northwest 7th Avenue
Miami Gardens, Florida 33169

For Respondents: Jeremy Koss, Esquire
Koss Law Firm, P.A.
Post Office Box 565661
Miami, Florida 33256

STATEMENT OF THE ISSUES

Whether Petitioner was unlawfully discriminated against and denied a reasonable accommodation for his mother's alleged disability by Respondents regarding access to housing; and, if so, what is the appropriate remedy.

PRELIMINARY STATEMENT

In November 2020, Petitioner, Carlos Cordova, filed a Complaint with the United States Department of Housing and Urban Development ("HUD"), charging Respondents with discriminating against him in housing on the basis of his mother's disability. HUD transferred the complaint to the Florida Commission on Human Relations ("FCHR") for investigation and a determination of whether discrimination occurred. On March 10, 2021, FCHR issued a Determination, by which FCHR determined that reasonable cause did not exist to believe that an unlawful housing practice occurred.

On April 12, 2021, Petitioner timely filed a Petition for Relief with FCHR.[1] FCHR transmitted the petition to the Division of Administrative Hearings ("DOAH") on April 14, 2021, for the assignment of an administrative law judge ("ALJ") to conduct a final hearing.

The final hearing was held as scheduled on June 17, 2021. At the final hearing, Petitioner appeared pro se and testified on his own behalf.[2] No exhibits were admitted on behalf of Petitioner.[3] Respondents, Solabella

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[1] The timeliness of Petitioner's filing was contested by Respondents' Motion to Dismiss, which was denied by Order dated May 19, 2021.

[2] Although the hearing was scheduled by Zoom, on the morning of the hearing, Petitioner claimed he was unable to connect video on his computer and agreed to appear only telephonically rather than by video. Respondent acquiesced to Petitioner's request to appear by telephone only rather than delay the proceedings.

[3] Prior to hearing, Petitioner electronically filed a series of exhibits marked as A through N. However, the parties were notified, in the May 4, 2021, Notice of Hearing by Zoom Conference, that the proposed exhibits were to be provided by ***mail or hand delivery*** to DOAH on or before June 14, 2021. Further, Petitioner was reminded of the need to provide hard copies to the ALJ during the pre-hearing telephone conference on June 14, 2021, and indicated his intent to provide the necessary hard copies.

On June 8, 2021, in an Order on Amended Motion for Sanctions, the undersigned provided further specific instructions regarding the presentation of exhibits, stating:

> Proposed exhibits furnished to the Administrative Law Judge must be: (1) in a three-ring binder; (2) properly tabbed by

Condominium Association, Inc. ("Solabella"); Miguel Quintero; and Reliable Property Management Services, Inc. ("Reliable")(collectively referred to as "Respondents"), presented the testimony of Respondent, Miguel Quintero, president of Solabella. Respondent's Exhibits 1 through 19, 21, and 24 were admitted in evidence.

Neither party ordered a transcript of the final hearing. 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.

> exhibit number corresponding to the exhibit numbers outlined in the pre-hearing stipulation; and (3) preferably, Bate-stamped or numbered with sequential page numbers for each page of each exhibit, particularly lengthy composite exhibits.

Petitioner repeatedly refused to provide documents in response to Respondents' Requests for Production. More specifically, Petitioner failed to produce any medical records pertaining to his mother's alleged disability or the alleged damages he suffered by Respondents' removal of Petitioner's gardens and koi pond. In an Order on Motion to Compel and for Sanctions, dated June 9, 2021, Petitioner was directed to immediately produce the requested documents and advised that failure to do so would result in the exclusion of those documents from final hearing. Respondents issued a lawful subpoena to Dr. Carlos Danger, Petitioner's mother's purported physician. Dr. Danger did not seek protection from the subpoena and failed to appear for his deposition or to provide the requested documents. It should be noted that Petitioner attempted to preclude Dr. Danger's deposition by filing an objection to the subpoena which was denied (See Order Denying Motion to Strike Subpoena dated May 24, 2021). Despite the Order compelling the production and testimony, Petitioner failed to respond. Further, on the day prior to the final hearing, Petitioner filed a notice, entitled, "Better Planet, Better Future," in which for the first time he indicated his refusal to provide the undersigned hard copies of his intended exhibits due to his concern for the environment.

At the final hearing, Respondents renewed their Motion for Sanctions arguing that Petitioner's on-going refusal to produce documents critical to Respondents' defense warranted the sanction of excluding all proposed exhibits of Petitioner. Petitioner acknowledged that he had no intention of providing the materials requested and understood the consequences. He intended to produce only those documents that he believed helpful to his case or that he deemed "relevant." Accordingly, as a discovery sanction and for Petitioner's repeated willful failure to abide by the Orders of this tribunal, Petitioner was not allowed to introduce any exhibits at final hearing.

FINDINGS OF FACT

The Parties

1. This matter involves a Complaint of housing discrimination filed by Petitioner against Respondents. Petitioner purchased a condominium (townhome) unit, at Solabella in Miami Gardens, Florida, in August 2007, where he has continuously resided with his mother, Elvira Suarez, through the present time.

2. Solabella is run by a Board whose president is currently Respondent, Mr. Quintero, who has served in this capacity since 2015. The common areas of the condominium complex are managed by Respondent, Reliable.

Restriction on Modifications of the Common Areas

3. As a townhome owner at Solabella, Petitioner is bound by the Declaration, Bylaws, and Rules and Regulations of Solabella (referred to collectively as "controlling documents"). The Board is obligated to enforce the rules and regulations. In fact, at one time, Petitioner served on the Solabella Board. Petitioner agrees that these rules and regulations are important to ensure the safety of residents and visitors, as well as to maintain the uniform appearance of the property, which is a primary reason Solabella's residents choose to live there.

4. Both Florida condominium law and Solabella's Declaration provides for "common areas" outside the units themselves which are owned and maintained by Solabella for the mutual benefit of all residences. Solabella's controlling documents also define "limited common areas" to include the front entry way of each unit and the concrete terraces in the back of each unit. These limited common areas are to be maintained by the owner of the individual condominium unit to which they are attached.

5. The controlling documents place certain limitations on unit owners regarding the types of modifications permitted to the common areas and limited common areas. Solabella's Declaration (Respondent's Ex. 1) provides in relevant part:

> 20.1.2 Alterations. No Condominium Unit Owner shall make any alterations in the building or the common elements which are to be maintained by the Association or remove any portion thereof or make any additions they are to or do anything which would or might jeopardize or impair the safety or soundness of the Building, the Common Elements or the Limited Common Elements or which, in the sole opinion of the Board, would detrimentally affect the architectural design of the Building without first obtaining the written consent of the Board.
>
> 20.1.3 Painting and Board Approval. No Condominium Unit Owner shall paint, refurbish, stain, alter, decorate, repair, replace or change the Common Elements or any outside or exterior portion of the Building maintained by the Association, including terraces, doors or window frames (except for replacing windowpanes), etc., except as otherwise provided herein with respect to Terrace floors. No Condominium Unit Owner shall have any exterior lighting fixtures, mailboxes, window screens, screen doors, door bells, awnings, hurricane shutters, hardware or similar items installed which are not consistent with the general architecture of the Building maintained by the Association without first obtaining specific written approval of the Board.

6. Solabella's Rules and Regulations also restrict modifications to the common areas as follows:

> 2. The exterior of the Condominium Units and all other areas appurtenant to a Condominium Unit shall not be painted, decorated or modified by any Condominium Unit Owner in any manner without the prior written consent of the Association by its Board, which consent may be withheld on purely aesthetic grounds within the sole discretion of the Board.

* * *

> 4. No personal articles shall be allowed to stand on any portion of the Common Elements, other than the Terraces.

The Circumstances Giving Rise to this Dispute

7. In 2015, Petitioner made minor modifications to the common areas immediately outside his entryway and back terrace. Petitioner added some plants and a small Buddha statue. Petitioner neither sought nor obtained permission from the Board to make these changes. No one brought to Petitioner's attention that he was violating the controlling documents of Solabella.

8. In March 2018, Petitioner made major modifications to the common areas next to his entryway and beyond the terrace behind his unit. Again, Petitioner failed to seek or obtain the permission of the Board prior to making these changes. With the assistance of a friend, Petitioner installed additional landscaping, statues, lighting, and a Koi pond. Petitioner dug a hole for the pond and lined it with plastic. He filled the hole with water and connected the pond to a fountain. The fountain had a pump connected to an electrical outlet. Petitioner elevated the garden and the pond above-ground and used rocks and bricks as a border. Petitioner admits that no other unit owner has modified the areas around their entries or back terraces to this extent.

9. Petitioner alleges that he made these modifications for his mother to enjoy the unit in which they live. According to Petitioner, the unit is very dark inside, and he believes that sunlight would help her "disability." Petitioner claims that after meeting with his mother's doctor, Petitioner believed that enhanced "Zen" gardens and "therapy fish" would motivate her to get up in the morning and give her a purpose. Petitioner described vegetable gardening as his mother's "hobby." Petitioner testified that his mother receives Social Security disability benefits but failed to provide any evidence of the nature or extent of his mother's alleged disability.

10. Petitioner admits that his mother was able to sit outside either in the entryway or on the back terrace to enjoy the sunshine. Petitioner's mother was observed, over the last three years, outside walking around the Solabella community premises. Nothing precluded Petitioner from setting up a fish tank inside the unit or on the back terrace or from adding additional lighting to the inside of his unit.

11. In July 2019, Petitioner's significant modifications to the common area were noticed on a routine inspection by Reliable and brought to the attention of the Board. On July 31, 2019, a representative of Reliable advised Petitioner that the gardens and fish pond would need to be removed. Petitioner responded by an email to Reliable and Mr. Quintero stating, "please note I will be glad to remove the pond once every apartment in the community meets the condo regulations including the multiple units rented by Miguel [Quintero]." Petitioner also stated, "Additionally, the projects I have done in my property are to beautify the community and enhance the place we LIVE IN." Petitioner made no mention of his mother's alleged disability or the need for a reasonable accommodation. Petitioner also took no action to remove the areas he added to the common area.

12. On August 1, 2019, Solabella issued a "Violation Notice" to Petitioner, that states:

> Architectural changes must be approved by the Association so that we preserve the appearance and Architectural harmony of the community. This helps us all to protect the values of our property.
>
> VIOLATION: 1 - PERSONAL DECOATIVE ITEMS PLACED IN COMMON AREA (I.E., WATER FOUNTAIN, ROCKS, BRICKS, PLANTERS, ETC.) MUST BE REMOVED.
>
> 2 – ILLEGAL ALTERATIONS TO COMMON AREA.

> ACTION NEEDED: PLEASE REMOVE ANY AND ALL DECORATIVE ITEMS AFOREMENTIONED AND REVERSE ALTERATIONS MADE TO COMMON AREAS TO ORIGINAL STATE
>
> DATE OF COMPLIANCE: 15 DAYS FROM RECEIPT OF THIS LETTER.

13. On August 23, 2019, Solabella sent a "Second Notice of Violation" to Petitioner citing the same violations and action needed. Petitioner was instructed he had ten days within which to comply. In response to the second notice, Petitioner took no action.

14. On January 27, 2020, Solabella's lawyer, the Law Offices of Frank Perez-Siam, provided a third notice of violation by letter. This letter stated:

> Specifically, the violations involve the placement of planter retaining walls in the common areas in the front and rear of your property (see pictures). As you well know, common areas are the property of the Association and you are not permitted to place objects in the common areas. This is your final notice before the Association either removes the items from the common areas at your expense or proceeds with legal action to require you to remove the items.

Once again, Petitioner chose to do nothing in response to this notice of violation.

15. After five months with no response to the third notice of violation, Solabella sent a landscaper to Petitioner's unit on June 27, 2020, to remove the structures, including the gardens and Koi pond. Petitioner greeted the landscaping crew with a machete in his hand. Based on Petitioner's demeanor, the landscaping crew left rather than engage in a confrontation.

16. On June 30, 2020, Petitioner sent a lengthy email to Mr. Quintero in which he expressed a desire to have an "amicable solution" to the violations. Petitioner indicated his unwillingness to because he believed there was both

an unfair and an unequal enforcement of the regulations. Further, Petitioner indicated that he made the modifications:

> making sure the value of my property would not be negative impacted. As a contrary in today's market, where prices fluctuate so easily, I was adding something that will make my property more competitive and wanted than others. … I must let you know that I would not tolerate any [sic] the presence of strangers in my property and any pretentious [sic] of removing anything I have added to my unit without proper court order indicating the approval to remove the items. As homeowner and using the right given by the law I will defend my property from any actions that will jeopardize the well-being of my unit.

17. Noticeably absent from Petitioner's email was any mention of his mother's alleged disability or need for a reasonable accommodation associated with the modifications Petitioner made to the common areas.

18. On July 17, 2020, Mr. Quintero, as president of the Board, sent a letter to Petitioner. In this letter, Petitioner was reminded that he violated the community rules to the detriment of the community and that the Board would not negotiate with him because he was violating Solabella's Bylaws. Petitioner was told he had a maximum period of seven days to eliminate the alterations or the management company would hire a demolition team and Petitioner would be responsible for the expenses incurred for the removal of the gardens and pond.

19. On September 3, 2020, a landscaping crew arrived to remove the gardens, pond, and associated structures (raised beds, rocks, bricks, lighting) that had been erected in the common areas by Petitioner. Mr. Quintero was present at the request of the landscaper. Petitioner again confronted the landscaping crew with a machete outside his unit. Both the landscaper and Petitioner called the police as the situation escalated. Mr. Quintero showed the police the prior correspondence with Petitioner advising him of the

violations on four separate occasions. While the police watched, the landscaping crew removed Petitioner's additions to the common areas including the gardens and Koi pond while both Petitioner and his mother watched.

20. Importantly, at no time prior to either the installation or removal of the gardens and pond had Petitioner advised the Board that his mother had a disability or needed these additions to the common area as a "reasonable accommodation" for said disability. After removal of the gardens and pond, Petitioner filed a complaint of housing discrimination in which he alleged his disabled mother was precluded from using and enjoying the premises due to Respondents' removal of these items.

21. Petitioner never disclosed to HUD, FCHR, or Respondents the nature and extent of Ms. Suarez's disability. Despite the undersigned's Order to produce records relative to Ms. Suarez's medical treatment and any documents reflecting her need for a reasonable accommodation, Petitioner refused to provide or produce any evidence of the same, either during discovery, or the final hearing citing privacy concerns.

CONCLUSIONS OF LAW

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

23. Section 760.23, Florida Statutes, 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.

24. 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).

25. The burden of proving that Respondents engaged in unlawful housing discrimination belongs to Petitioner. *See, e.g., Loren v. Sasser*, 309 F.3d 1296, 1302 (11th Cir. 2002).

Establishing Discrimination

26. 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).

27. "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 handicap or familial status discrimination.

28. "[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).

29. 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 complainant must then come forward with specific evidence demonstrating that the reasons given by the respondent are a pretext for discrimination.

Housing Discrimination

30. In the instant case, Petitioner alleges that he and his mother were unlawfully discriminated against regarding the terms and conditions of their residency at Solabella because of his mother's alleged handicap.

31. To establish a "failure to accommodate" 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 (M.D. Fla., Sept. 7, 2011).

Petitioner Failed to meet His Burden of Proof

32. In this case, Petitioner provided no direct evidence of discrimination. Accordingly, the burden-shifting analysis is appropriate. Petitioner failed to demonstrate any element of the prima facie case.

33. A person is considered a "qualified individual" with a disability under the Fair Housing Act if that individual: (1) has "a physical or mental impairment that substantially limits one or more of the major life activities of such individual"; (2) has "a record of such an impairment"; or (3) is a person "regarded as having such an impairment." 42 U.S.C. § 3602(h).

34. Petitioner claims his mother is disabled and offered his self-serving statement alone, that she has been receiving Social Security benefits since some date prior to the building of the pond and gardens, as proof thereof. No verification or corroboration was offered, such as a physician's affidavit, an affidavit from Petitioner's mother, or affidavit of a social worker.

35. The receipt of Social Security disability benefits, standing alone, is insufficient to demonstrate "disability" within the meaning of the Fair Housing Act. Although a receipt for the payment of benefits may reference "disability," it gives no information about the nature, extent of the referenced disability, and thus no evidence that the disability meets the statutory definition.

36. Determinations of disability under the Americans with Disabilities Act ("ADA") and the Social Security system "diverge significantly in their respective legal standards and statutory intent ... ," *Weiler v. Household Finance Corporation,* 101 F.3d 519, 523-24 (7th Cir. 1996), and disability "determinations made by the Social Security Administration concerning disability are not dispositive findings for claims arising under the ADA." *Id.* at 524. *See also Cleveland v. Policy Mgmt. Sys. Corp.,* 526 U.S. 795, 801, 119 S. Ct. 1597 (1999). (Statement of "total disability" on Social Security benefits application does not estop a claimant under the ADA from claiming qualification to work.)

37. The ADA definition of "disability" (*see* 42 U.S.C. § 12102(2)(A)) is indistinguishable from the definition of "handicap" found under § 802(h) of the Fair Housing Act: both require a physical or mental impairment that substantially limits the person in one or more major life activities. There is no reason why a Social Security Administration determination of disability would bind the parties in a fair housing claim. For these reasons, Petitioner completely failed to produce prima facie evidence that his mother suffers from a "[h]andicap," 42 U.S.C. § 3602(h), within the meaning of the Fair Housing Act.

38. Even if Petitioner demonstrated his mother suffered from a qualifying disability under the Fair Housing Act, he cannot satisfy the remaining elements of the prima facie case.

39. Petitioner was not ready, willing, and able to "receive the services or use facilities consistent with the terms, policies, and procedures of Respondent." Prior to making any modifications to the common area, Petitioner was required to seek and receive Board approval. Instead, Petitioner not only failed to seek Board approval, but failed to abide by the Board's directives to remove the modifications despite receiving multiple warnings and an extended timeframe within which to do so.

40. Similarly, Petitioner never "requested services or use of facilities, or attempted to use facilities consistent with the terms and conditions, policies, and procedures established by Respondent."

41. As described in the fourth prong of the prima facie case, relevant to Petitioner's Fair Housing Act claim is not only the existence of a disability, but whether Respondents were aware of the disability when making the decision to remove the gardens and pond.

42. Respondents testified that Petitioner's mother is not visibly disabled, and at no time were they aware that she suffered from any condition that affects her major life activities. Petitioner only notified Respondents of his

mother's alleged need for an accommodation for some unspecified disability *after* the removal of the gardens and pond.

43. It is axiomatic that Respondents needed to know of a need for any accommodation before they could consider whether a request is reasonable or would enable a resident to have full use and enjoyment of the premises. It is not possible to discriminate against an individual on the basis of "disability" if the accused has no knowledge of said disability.

44. Even assuming arguendo that Petitioner met his burden, Respondents offered a legitimate, non-discriminatory reason for the removal of the pond and gardens. They were wholly inconsistent with the uniform appearance of the common areas and violated Solabella's controlling documents, resulting in possible liability for the Association.

45. "Condominium ownership and residency is unique in that condominium owners agree to 'for the good of the majority, restrict [] rights residents would otherwise have were they living in private separate residence.'" *Neuman v. Grandview at Emerald Hills, Inc.*, 861 So. 2d 494, 497 (Fla. 4th DCA 2003). The *Neuman* court describes how unit owners in a condominium give up certain of their rights and hand over the regulation of the units to an association to best maintain the entire community. "In exchange, unit owners know that their neighbors will maintain their property in a suitable fashion, and that the common areas will be kept in proper order for the use and enjoyment of all the residents." *Id.*, as quoted in *Savannah Club Worship Serv., Inc. v. Savannah Club Homeowners' Ass'n, Inc.*, 456 F. Supp. 2d 1223, 1231 (S.D. Fla. 2005).

46. Petitioner was neither singled out for disparate treatment nor denied a reasonable accommodation based on his mother's alleged disability.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a

final order finding Respondents not liable for housing discrimination and dismissing Petitioner's Petition for Relief.

DONE AND ENTERED this 16th day of July, 2021, in Tallahassee, Leon County, Florida.

MARY LI CREASY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of July, 2021.

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.