

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PAMELA ALLEN,

Petitioner,

vs.

Case No. 21-1625

BUILDING AND CODE ADMINISTRATION,  
ET AL.,

Respondent.

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RECOMMENDED ORDER

An administrative hearing was conducted in this case on July 22, 2021, via Zoom, before James H. Peterson III, Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Ka'Juel Washington, Esquire  
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For Respondent: Erin G. Jackson, Esquire  
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STATEMENT OF THE ISSUE

Whether Respondent, the County of Volusia, Florida, (the County or Respondent)<sup>1</sup> illegally discriminated against Pamela Allen (Petitioner) by refusing to issue a building permit for re-shingling Petitioner's roof because of her race.

PRELIMINARY STATEMENT

Petitioner filed a Housing Discrimination Complaint (Discrimination Complaint) with the Florida Commission on Human Relations (the Commission or FCHR) on January 15, 2021, which was assigned FCHR Case No. 202128026. In her statement of facts set forth in paragraph 8 of the Discrimination Complaint, Petitioner alleges:

Complainant Pamela Allen identifies as a person of African American/Black race. As such, Complainant belongs to a class of persons whom the Fair Housing Act ("the Act") protects from unlawful discrimination by virtue of race. Complainant owns a single-family home located at 4204 Quail Nest Lane New Smyrna Beach, FL 32168; which is under the jurisdiction of city enforcement office Respondent Building and Code Administration. Complainant identified Respondent Kerry Leuzinger as the Director and Chief Building official and as white.

Complainant alleged that she applied for a permit to re-shingle her home. Complainant alleged that her permit was denied, and she appealed it on March 4, 2020. Complainant alleged that during the appeal process, she learned that Respondent Kerry Leuzinger attempted to purchase the subject property while it was in Auction. Complainant alleged she won the Auction and took ownership of the property. Complainant alleged that when Respondent learned a black woman won the Auction of the property, he deliberately began to

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<sup>1</sup> As discussed during the final hearing, the proper name for Respondent is the County of Volusia, Florida (the County), as opposed to the name set forth in the style of the case.

interfere and hinder Complainants [sic] Civil Fair Housing Rights by falsely denying and/or delaying her ability to re-shingle her home as allowed by the Florida Building code. Complainant alleged that Respondent hindered her ability to resell the property, thereby causing financial hardship and loss. As such, Complainant believes that Respondents subjected her to discriminatory terms, conditions, privileges, or services based on her race.

After investigating Petitioner's allegations, the Commission's executive director issued a document entitled "DETERMINATION (NO CAUSE)," dated April 19, 2021 (No Cause Determination), stating that "the Commission finds that there is not reasonable cause to believe that a discriminatory housing practice occurred in violation of Section 760.23(2), Florida Statutes." An accompanying Notice of Determination of No Cause notified Petitioner of her right to file a Petition for Relief for an administrative proceeding within 30 days. Petitioner filed a Petition for Relief with the Commission via facsimile on May 18, 2021. The Commission forwarded the Petition for Relief to DOAH on May 19, 2021, for the assignment of an administrative law judge to conduct a hearing.

The undersigned was assigned the case and scheduled it for an administrative hearing to be held July 22, 2021. The hearing was held as scheduled. During the hearing, Petitioner called George Miles and Hughlester Philip as witnesses, testified on her own behalf, and offered 14 exhibits received into evidence as Petitioner's Exhibits P-1 through P-14. Respondent called Eric Gebo, Paul Traider, and Kerry Leuzinger as witnesses and offered 28 exhibits received into evidence as Respondent's Exhibits R-1 through R-26, R-30, and R-31.

The proceedings were recorded, and a transcript was ordered. The parties were given 30 days from the filing of the transcript to submit their proposed

recommended orders. The one-volume Transcript of the hearing was filed August 11, 2021. Thereafter, the parties timely submitted their respective Proposed Recommended Orders, both of which have been considered in preparing this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner is a Black female who resides at 4204 Quail Nest Lane, New Smyrna Beach, Florida (the Property), in Volusia County. The home was built in 1994 before the Florida Building Code (the Code) was first implemented. Petitioner purchased the home through a confidential auction in the Fall of 2019.

2. At the time of purchase, Petitioner was living in Georgia and was aware that the Property was uninhabitable and in foreclosure. In order to purchase the Property at auction, Petitioner took out a loan from a private investment group. The loan's conditions forbade Petitioner from moving into the Property until repairs to the house were complete and Petitioner obtained a conventional mortgage.

3. In an effort to obtain a higher appraisal rate, Petitioner planned to do a shingle-over-shingle overlay of the Property's roof. Hughlester Philip, a friend of Petitioner's who lived in Georgia, agreed to help Petitioner with the shingle-over-shingle overlay.

4. In early December 2019, Mr. Philip, with the help of his brother and a friend, began to place an overlay of shingles by placing shingle over shingle on the Property's roof without a permit or inspection.

5. Neither Hughlester Philip, his brother, nor his friend were Florida-licensed contractors, and neither of them had any ownership interest in the Property.

6. A permit from the County was required prior to starting work on the roof.

7. A stop work order (Stop Work Order) was issued by the County and posted in the yard of the Property for the re-roofing project on December 13, 2019, due to Petitioner's failure to pull a permit prior to starting the shingle-over-shingle overlay. Neither Mr. Philip nor Petitioner were on the Property when Respondent posted the Stop Work Order. Petitioner does not know who placed the Stop Work Order in her yard.

8. At the final hearing, Petitioner admitted that she should have obtained a permit prior to the start of the re-roofing project and that she was at fault for failing to obtain a permit before the work began.

9. On December 13, 2019, after the Stop Work Order was issued, Petitioner went to the County to apply for a permit. Mr. Philip helped Petitioner complete the permit application. Prior to this permit application, Mr. Philip had never personally pulled a permit for a roof overlay in Florida or anywhere else. In fact, Mr. Philip had never applied for any type of permit in Florida.

10. When Petitioner arrived to submit her application for a permit to the County, there were several women working in the office. This was the first time that Petitioner had any contact with anybody from the County. Petitioner was not asked about her race or gender as part of the permit application process.

11. In her permit application, Petitioner specified that she sought a permit to re-roof her sloped shingle roof and that she did not intend to remove the existing roof. In other words, she intended to place shingle over shingle without removing the existing roof.

12. As part of the County's permitting process, once a permit application is filed, a plan review is performed. If any deficiencies are noted, the County automatically issues a request for additional information (Additional Information Request). County Plans Examiner, Harold Allen, was charged with reviewing Petitioner's permit application.

13. On December 19, 2019, the County issued Petitioner an Additional Information Request. The request, prepared by Mr. Allen, stated that Tom Legler would be performing an inspection of the project, and, quoting language found in section 706.3(5) of the Code, further stated:

New roof coverings shall not be installed without first removing all existing layers of the roof coverings down to the roof deck where any of the following conditions occur: Where the existing roof is to be used for attachment for a new roof system and compliance with the securement provisions of Section 1504.1 of the Florida Building Code, Building cannot be met.

14. Mr. Harold Allen had never met Petitioner, nor had he spoken to her on the phone prior to sending the Additional Information Request on December 19, 2019.

15. The Property was built prior to implementation of the Code in 1994, and the County did not have any record of an inspection being done since then. The County's main concern was Petitioner's intent to install a shingle roof over an existing shingle roof without a County inspector being able to first verify that the underlying sheathing complied with current code.

16. The Code is implemented by the State of Florida, not the County. The County has no authority to delete or change the Code.

17. After receiving the Additional Information Request, Petitioner made several calls to the County. During these calls, Petitioner spoke to Mr. Allen and Chief Building Inspector Tom Legler. On one of the calls, Petitioner alleges that she heard Mr. Legler state to someone else that "those people are calling again about their roof."

18. Paragraph 29 of Petitioner's Proposed Recommended Order suggests that Mr. Legler's reference to "those people" was a racial epithet. That suggestion, however, is not supported by the evidence. At the final hearing, Petitioner testified that she did not know who Mr. Legler was speaking to and does not know why Mr. Legler referred to her as "those people." The

evidence was otherwise insufficient to show whether Mr. Legler was even aware of Petitioner's race at the time the comment was made.

19. During the same time period that Petitioner was calling the County in December 2019, Petitioner hired George Miles, a professional engineer, because she needed an engineer to certify that the work performed on the Property's roof complied with the Code.

20. Depending on the circumstances, the County has the authority to accept engineer certification letters on code compliance in lieu of conducting its own inspection.

21. After inspecting the roof and noting that some areas needed repair, Mr. Miles prepared a letter certifying that the work that had been completed on the roof complied with the Code and that he planned to submit his letter to the County to consider in lieu of a County inspection. However, as there was a disagreement with the County as to whether the roof needed to be removed to comply with the Code, the County indicated that it would not accept the letter in lieu of inspection and Mr. Miles never submitted the letter.

22. In attempting to resolve the disagreement over Petitioner's permit application, Mr. Miles mainly spoke to Kerry Leuzinger, who is the Chief Building Official and Division Director of the County's Building and Code Administration.

23. Early on, in December of 2019, before the County sent Petitioner any letter regarding potential fines, Mr. Philip contacted roofing contractor David Schaare to ask how much it would cost Petitioner to reroof her Property. Mr. Philip advised Mr. Schaare of the Stop Work Order and need for a permit.

24. Thereafter, Mr. Schaare evaluated Petitioner's Property and estimated how much it would cost to reroof it. Mr. Schaare determined that the overlay was done incorrectly. According to Mr. Schaare, the roof work did not comply with the Code and Mr. Schaare advised Mr. Philip that "[e]verything would

have to come off to be done correctly... ." At the final hearing, Mr. Schaare testified that he had never seen the County approve a shingle overlay for a roof in the same condition as Petitioner's.

25. Petitioner was on the phone during several calls between Mr. Miles and Mr. Leuzinger, but Petitioner did not speak. Mr. Leuzinger does not recall ever speaking with Petitioner on the phone and was not aware of Petitioner's race at the time. Petitioner has never met Mr. Leuzinger face-to-face. In fact, Mr. Leuzinger was not aware of Petitioner's race until he received notice of Petitioner's Discrimination Complaint in January of 2021-- more than a year after Respondent issued the Stop Work Order and more than a year after Petitioner applied for a permit in December of 2019.

26. Mr. Miles, Petitioner, and Mr. Leuzinger also discussed Petitioner's permit application over email. On January 10, 2020, Mr. Miles emailed Mr. Leuzinger to advise of his interpretation of the Code and to ask if Respondent agreed with it. After several emails back and forth, and lack of consensus between them as to interpretation of the Code, Mr. Leuzinger advised Mr. Miles that Petitioner could appeal Respondent's decision to the Volusia County Contractor Licensing & Construction Appeals Board (the Board) or request a binding interpretation from the Florida Department of Business and Professional Regulation (DBPR).

27. On January 13, 2020, Respondent issued Petitioner a Notice of Violation regarding Petitioner's failure to obtain required permits prior to starting the work on the Property's roof. The Notice of Violation is a standard letter that Respondent sends to homeowners to notify them of a code violation and to notify them that Respondent could take further action if the homeowner fails to correct the violation.

28. This was the only Notice of Violation that Petitioner received. Respondent did not issue Petitioner another Notice of Violation because Respondent was aware of Petitioner's intent to appeal Respondent's denial of a permit.



29. On January 15, 2020, after speaking with Mo Modani, who works for DBPR, Mr. Miles emailed Mr. Leuzinger and advised that Mr. Modani's opinion regarding the Code was consistent with the position advocated by Mr. Miles on behalf of Petitioner. Mr. Miles provided Mr. Modani's name and phone number and asked Mr. Leuzinger to give him a call.

30. Mr. Modani is a staff member who does not have authority over local jurisdictions with respect to enforcement of the Code.

31. That same day, January 15, 2020, instead of calling Mr. Modani, Mr. Leuzinger responded with an email to Mr. Miles stating, "We have made our determination and it stands."

32. At some point, Petitioner decided to abandon efforts to obtain an overlay and instead hired Mr. Schaare to replace the roof. Although it is unclear from the record when the job was completed, once Mr. Schaare undertook the project, it took him approximately two days to replace the roof at a price of approximately \$25,000.

33. According to Mr. Schaare, the County inspector for the Property mentioned that he had made a bid on the Property when it was up for auction. Mr. Schaare could not remember the name of the inspector and he did not know if it was Kerry Leuzinger. Mr. Schaare related this information to Mr. Philip.

34. Mr. Leuzinger was not the inspector for the Property and there is otherwise lack of sufficient evidence that would support a finding that "Kerry Leuzinger attempted to purchase the subject property while it was in Auction," as alleged in the Discrimination Complaint.

35. On January 30, 2020, Mr. Miles appealed the County's decision to deny Petitioner's permit for an overlay to the Board.

36. The Board is composed of various professionals in the construction industry, none of whom are employed by Respondent. The role of the Board is to review cases to assess the reasonableness of the County's decision.

37. Petitioner's appeal was held before the Board on March 4, 2020. Chief Plans Examiner Eric Gebo presented on Respondent's behalf. Mr. Gebo never personally met Petitioner, never spoke with Petitioner, and did not know Petitioner's race. Petitioner did not present to the Board, rather, Mr. Miles presented on Petitioner's behalf. Mr. Leuzinger was not present.

38. The discussion regarding Petitioner's proposed roof-over lasted more than 30 minutes. The crux of the issue was whether the sheathing nailing on the roof could be verified as required under the applicable provisions of the Code. According to the County, because Petitioner's home was built before the Code's implementation and Respondent did not have evidence of a prior roof permit being pulled, the County could not verify that the underlying sheathing was ever inspected and could not verify that the sheathing complied with the Code without Petitioner first removing the existing layers of shingles. The position of the County on the issue was consistent with its decisions in other cases with similar facts.

39. During the hearing, Mr. Miles stated that, "[w]hen it comes down to the simple truth of this is that it's a difference of interpretation." He also advised the Board that he "wanted to actually have [the State] make a recommendation on this ... and they will not do it until [they] go through this process."

40. The Board members also discussed the need for clarification as to the Code. For example, while one Board member indicated that "the Code seems pretty clear," another member asked Mr. Gebo for clarification because he believed that "[they] cover roofs all the time without tearing them off."

41. After further discussion, the Board, by unanimous vote, concluded that Respondent correctly denied Petitioner's permit application. Even so, the Board encouraged Mr. Miles to seek a binding interpretation from the State because the wording in the Code "needs to be resolved."

42. On June 8, 2020, Mr. Miles filed a petition with DBPR on behalf of Petitioner requesting a binding interpretation of section 706.3 of the Code.<sup>2</sup> Following a telephonic hearing held before the Building Officials Association of Florida, on July 7, 2020, a binding interpretation of the Code was entered agreeing with Mr. Miles' interpretation that an overlay was permitted. The comment to the binding interpretation acknowledged that the wording of the section it interpreted "has created confusion."

#### CONCLUSIONS OF LAW

43. DOAH has jurisdiction over the parties and subject matter of this proceeding under sections 120.569 and 120.57(1), Florida Statutes.<sup>3</sup>

44. Petitioner's Discrimination Complaint alleges a violation under chapter 760, part II, sections 760.20-760.37, Florida Statutes, known as the Florida Fair Housing Act (FHA).

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<sup>2</sup> Section 706.3 of the Florida Building Code, excluding exceptions, provides:

New roof coverings shall not be installed without first removing all existing layers of roof coverings down to the roof deck where any of the following conditions occur:

1. Where the existing roof or roof covering is water soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.
2. Where the existing roof covering is wood shake, slate, clay, cement or asbestos-cement tile.
3. Where the existing roof has two or more applications of any type of roof covering.
4. When blisters exist in any roofing, unless blisters are cut or scraped open and remaining materials secured down before applying additional roofing.
5. Where the existing roof is to be used for attachment for a new roof system and compliance with the securement provisions of Section 1504.1 [relating to wind resistance performance requirements] of the *Florida Building Code, Building* cannot be met.

<sup>3</sup> Unless otherwise indicated, all references to the Florida Statutes, laws, and codes are to the 2019 versions applicable when the alleged discriminatory acts occurred.

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

46. Section 760.23(2) of the FHA provides:

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, disability, familial status, or religion.

47. Petitioner has the burden of establishing facts to prove a prima facie case of discrimination. *U.S. Dep’t of Hous. & Urban Dev. v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990).

48. As developed in federal cases, a prima facie case of discrimination may be established by statistical proof of a pattern of discrimination, or on the basis of direct evidence which, if believed, would prove the existence of discrimination without inference or presumption.<sup>4</sup> Usually, however, as in this case, direct evidence is lacking and one seeking to prove discrimination must rely on circumstantial evidence of discriminatory intent, using the shifting three-part “burden of proof” pattern established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

49. Under the three-part burden of proof pattern developed in *McDonnell Douglas*:

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<sup>4</sup> For instance, an example of direct evidence in an age discrimination case would be the employer's memorandum stating, “Fire [petitioner] – he is too old,” clearly and directly evincing that the plaintiff was terminated based on his age. *See Earley v. Champion Int’l Corp.*, 907 F.2d 1077, 1081 (11th Cir. 1990)).

First, [Petitioner] has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if [Petitioner] sufficiently establishes a prima facie case, the burden shifts to [Respondent] to “articulate some legitimate, nondiscriminatory reason” for its action. Third, if [Respondent] satisfies this burden, [Petitioner] has the opportunity to prove by preponderance that the legitimate reasons asserted by [Respondent] are in fact mere pretext.

*Blackwell*, 908 F.2d at 870 (citing *Pollitt v. Bramel*, 669 F. Supp. 172, 175 (S.D. Ohio 1987))(federal Fair Housing Act claim)(quoting *McDonnell Douglas*, 411 U.S. at 802, 804, 93 S. Ct. at 1824, 1825).

50. “[C]onclusory allegations of discrimination, without more, are not sufficient to raise an inference of pretext or intentional discrimination . . . .” *Young v. Gen’l Food Corp.*, 840 F.2d 825, 830 (11th Cir. 1988) (quoting *Grigsby v. Reynolds Metals Co.*, 821 F.2d 590, 597 (11th Cir. 1987)).  
Petitioner cannot rely upon suspicion or conjecture to prove that discrimination motivated Respondent’s actions. *Id.*

51. Applying the shifting of burden analysis to Petitioner’s claim, in order to establish the elements for a prima facie case of discrimination involving discriminatory terms and conditions in violation of section 760.23(2), a petitioner must establish that: (1) he or she 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) he or she was qualified, ready, willing, and able to receive services or use facilities consistent with the terms, policies, and procedures of respondent; (3) he or she requested the 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 are qualified or eligible for services or use of facilities; and (4) respondent, with knowledge of

petitioner's protected class, 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.

52. The services at issue in this case involve the issuance of a building permit for re-shingling of Petitioner's roof over existing shingles.

53. Petitioner has not met her burden with respect to establishing her alleged discrimination claim. Petitioner's claim of discrimination is based on allegations that Mr. Leuzinger targeted Petitioner because Petitioner outbid him at auction. Those allegations are not supported by the evidence. Even if they were, the case that Mr. Leuzinger did not like Petitioner because he was outbid does not equate to discrimination based on any protected characteristic.

54. Mr. Leuzinger did not bid on the Property as alleged. Petitioner never met Mr. Leuzinger face-to-face. Mr. Leuzinger did not know of Petitioner's race until over a year after the Stop Work Order was issued. Absent knowledge of her race, Mr. Leuzinger could not have discriminated against her because of it.

55. In addition, Petitioner has not identified any similarly-situated parties who had a permit approved by Respondent for comparable work during a period relatively near the time Respondent denied Petitioner's permit or at any other time. To the contrary, Respondent has issued Additional Information Requests analogous to the one issued to Petitioner when faced with similar circumstances.

56. Both Mr. Gebo and Mr. Leuzinger confirmed that during their years with Respondent, Respondent never approved a shingle-over-shingle overlay without first determining whether the sheathing was properly attached to the home. Mr. Schaare testified that he has never witnessed Respondent approve a permit for shingle-over-shingle on a roof that was in the condition of Petitioner's roof.

57. In sum, Petitioner failed to meet her burden of establishing a prima facie case of discrimination. Even if she had, the evidence demonstrated that Respondent issued the Stop Work Order and subsequently denied Petitioner's permit application for legitimate, nondiscriminatory reasons.

58. It is undisputed that Petitioner failed to obtain a permit prior to beginning the work. For this, Petitioner blames nobody but herself. For this reason, the County issued the Stop Work Order. Petitioner admits that she did not have contact with Respondent prior to issuance of the Stop Work Order.

59. Further, the County's denial of Petitioner's permit application was also for legitimate and nondiscriminatory reasons, based on its reasonable interpretation of section 706.3 of the Code. Specifically, Respondent interpreted the Code to prohibit Petitioner from installing a shingle-over-shingle overlay on her roof without first removing existing layers because Petitioner's home was built before the Code's implementation and Respondent did not have evidence of a prior roof permit being pulled and attendant inspections being performed. Respondent's explanation as to its interpretation of section 706.3 and denial of Petitioner's permit was consistent over the course of the parties' numerous discussions, and Respondent consistently applied this interpretation in similar circumstances. Indeed, although the County has abided by the State's binding interpretation since its issuance on July 7, 2020, Mr. Leuzinger still disagrees.

60. The fact that section 706.3 was subject to differing interpretations prior to Mr. Miles' request for a binding interpretation is evidenced by the various discussions that took place between Mr. Miles and the County and the discussions among the Board members during the March 4, 2020, hearing. The reasonableness and legitimacy of Respondent's interpretation of the Code is further evidenced by the Board's decision to uphold Respondent's denial, but even then, acknowledging the need for a binding interpretation. And finally, in the comment to the Binding Interpretation of the Code at

issue, it was recognized that there has been ongoing confusion regarding that section of the Code.

61. In sum, Respondent's denial of Petitioner's permit was based upon its reasonable interpretation of the Code. It had nothing to do with Petitioner's race, gender, sex, or any other protected characteristic. Petitioner, otherwise, failed to offer sufficient evidence to support her claim of discrimination or contradict the legitimate reasons supporting the County's actions.

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 dismissing Petitioner's Discrimination Complaint and Petition for Relief consistent with the terms of this Recommended Order.

DONE AND ENTERED this 17th day of September 2021, in Tallahassee, Leon County, Florida.



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JAMES H. PETERSON, III  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of September 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.