

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MIGUEL BRAVO,

Petitioner,

vs.

Case No. 22-1145

EDEN ISLES CONDOMINIUMS, INC., ET AL.;
CREAM MANAGEMENT AND CONSULTING
SERVICES, INC.,

Respondents.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a hearing was held in this case, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2022), by Zoom Conference on June 28 and 29, and July 5, 2022, before Administrative Law Judge ("ALJ") Cathy M. Sellers, of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Miguel Bravo, pro se
3725 Northeast 169th Street, Unit #108B
Miami Beach, Florida 33160

For Respondent: Marlon E. Bryan, Esquire
Law Office of Marlon E. Bryan, P.A.
101 Northeast Third Avenue, Suite 1500
Miami, Florida 33301

STATEMENT OF THE ISSUE

The issue in this case is whether Respondents, Eden Isles Condominiums, Inc., and Cream Management and Consulting Services, Inc.,¹ engaged in unlawful discrimination against Petitioner, Miguel Bravo, on the basis of disability, in violation of sections 760.23(2), (8), and (9)(b), 760.27, and 413.08(6), Florida Statutes, (2021).²

PRELIMINARY STATEMENT

On or about December 20, 2021, Petitioner filed a Housing Discrimination Complaint with the Florida Commission on Human Relations ("FCHR"), alleging that Respondents engaged in unlawful discrimination against him, in violation of the Florida Fair Housing Act ("FFHA") on the basis of his disability. Specifically, Petitioner alleged that Respondent has discriminated against him by not allowing his emotional support animal ("ESA"), which also is a certified service animal ("SA"), to accompany him in common areas at the Eden Isles Condominiums ("Eden Isles"), thereby effectively excluding him from these areas; and for refusing to grant his request for accommodation to allow him to keep his ESA in his dwelling. Petitioner further alleged that Respondents have harassed him and engaged in discriminatory conduct against him by requiring, on the ESA/SA registration form, the disclosure of certain medical/health information which is contrary to Florida Statutes, and by requiring the renewal of the ESA/SA registration form on an annual basis.

¹ Cream Management and Consulting Services, Inc. ("Cream"), managed the Eden Isles Condominium during the alleged incidents that gave rise to this proceeding. Since then, Cream has ceased managing the Eden Isles Condominium. Cream did not enter an appearance in this proceeding. Therefore, all references to "Respondent" are only to Eden Isles Condominiums, Inc.

² All references to chapters 760 and 413, Florida Statutes, are to the 2021 codification, which was in effect at the time of the alleged discriminatory conduct.

FCHR investigated the Housing Discrimination Complaint and issued a Determination (No Cause) and Notice of Determination of No Cause on March 25, 2022, determining that Respondents did not engage in unlawful discrimination against Petitioner in violation of the Florida Fair Housing Act.

On April 8, 2022, Petitioner filed a Petition for Relief ("Petition") with FCHR, alleging that Respondents engaged in discrimination against him on the basis of his disability, in violation of the FFHA. On April 13, 2022, the Petition was transmitted to DOAH for assignment of an ALJ to conduct a hearing under sections 120.569 and 120.57(1).

The final hearing was set for, and held, on June 28 and 29, 2022. The hearing did not conclude on June 29, 2022, so was continued to July 5 and 8, 2022. The hearing concluded on July 5, 2022.

Petitioner testified on his own behalf and presented the testimony of Jose Vidal, Lisa Sutherland, Cesar Garcia, and Hector Lopez. Petitioner's Exhibit Nos. 1 through 3 and 5 through 9 were admitted into evidence. Petitioner did not tender any other pre-filed proposed exhibits for admission into evidence. Respondent presented the testimony of Jose Vidal, and Respondent's Exhibit Nos. 2 through 6 and 9 were admitted into evidence. Respondent did not tender any other pre-filed proposed exhibits for admission into evidence.

The five-volume, 869-page Transcript of the final hearing was filed at DOAH on August 24, 2022. Pursuant to Florida Administrative Code Rule 28-106.216, the parties were given ten days, until September 5, 2022, to file their proposed recommended orders ("PROs"). Thereafter, pursuant to the parties' joint motion, the deadline for filing the PROs was extended to September 30, 2022. Petitioner timely filed his PRO on September 6, 2022. On October 3, 2022, Respondent filed its PRO, along with a motion for

extension of time to file its PRO based on hurricane-related circumstances which prevented Respondent from filing the PRO by 5:00 p.m. on September 30, 2022. On October 4, 2022, the undersigned issued an Order determining that good cause existed for the requested extension, and extending the deadline for filing the PROs through October 5, 2022. Respondent timely filed its PRO on October 3, 2022.

Both PROs were timely filed, and both have been duly considered in preparing this Recommended Order.

FINDINGS OF FACT

I. The Parties

1. Petitioner, Miguel Bravo, is a 43-year-old male who is disabled. He owns, and resides at, Unit 108B, Eden Isles Condominiums, 3725 Northeast 169th Street, Miami, Florida.

2. As further discussed below, it is undisputed that Petitioner is disabled.

3. Petitioner owns a dog named Coco, which is Petitioner's ESA and SA. Coco resides with Petitioner in his residential dwelling unit at Eden Isles, and Petitioner credibly testified that he needs Coco with him at all times, including accompanying him outside of his dwelling unit, within the Eden Isles community.

4. Respondent, Eden Isles Condominiums, Inc. (also herein referred to as "Association," as appropriate), is the condominium association which owns the common elements within the boundaries of Eden Isles Condominiums, located at 3725 Northeast 169th Street, North Miami Beach, Florida. It is governed by a Board of Directors ("Board").

5. Respondent exercises the powers conferred by chapter 718, Florida Statutes (2022), including, among other things, managing the condominium property and common areas, as authorized by chapter 718.

II. Evidence Adduced at the Final Hearing

A. The Petition for Relief

6. As noted above, Petitioner filed his Petition with FCHR on April 8, 2022, alleging that Respondent engaged in discrimination against him, in violation of the FFHA. Many of Petitioner's allegations were directed toward FCHR's findings in its Determination of No Cause, rather than stating anew the actions, incidents, and circumstances of alleged discrimination.

Nevertheless, the following allegations are gleaned from the Petition.

7. Petitioner states that he is disabled and that Respondent knew, and knows, that he is disabled.

8. Petitioner alleges that Respondent engaged in discriminatory conduct by requiring him, in order to obtain an accommodation to have, and be accompanied by, his ESA in the Eden Isles community, to complete a registration form that required the provision of certain health and medical information not under Florida Statutes.

9. Petitioner further alleges that the accommodation form is discriminatory because it requires, as a condition of obtaining an accommodation to have an ESA or SA, that the resident agree to "unknown yet created rules." He contends that non-disabled residents are not required to agree to comply with condominium association rules that have not yet been created.

10. Petitioner also alleges that requiring disabled residents to renew the ESA/SA accommodation form on an annual basis is discriminatory.

11. In addition, Petitioner alleges that Respondent has created an environment intended to harass disabled persons and limit them from accessing common areas in the Eden Isles community by posting signs throughout the community stating "No Dogs Allowed," without stating any exception for ESAs or SAs. He further alleges that Respondent "has a clear rule posted saying that ESA[s] are not allowed in some areas. The area is

[sic] the Condo Association Office and community center, the pool area, the sun bathing area, the back of the building area, the laundry room, and etc."

12. Petitioner also alleges that someone keyed his car to harass him on the basis of his disability, and further alleges that members of Respondent's Board have harassed him about his having an ESA/SA, questioned the existence of his disability, and told him that his ESA/SA is not allowed to accompany him outside of his residential unit.

B. Signs Erected in the Eden Isles Community Common Areas

13. Pursuant to the Declaration of Condominium of Eden Isles Condominium, no pets are allowed to be raised, bred, or kept in any of the residential units or in the common areas in Eden Isles. The parties do not dispute that Eden Isles is a "no pets" community.

14. Respondent has erected several signs in various common areas within Eden Isles stating that dogs and/or pets are not allowed within Eden Isles.

15. Specifically, there are "No Dogs Allowed" signs erected in the Eden Isles common area consisting of a grassy area and boardwalk immediately abutting a canal located behind the condominium units.

16. There is a "No Pets Allowed" sign depicting a silhouette of a dog with a slash over it on the gate to the fence-enclosed community swimming pool area. Additionally, a "No Dogs Allowed" sign also depicting a silhouette of a dog with a slash over it is erected outside of the enclosed swimming pool area.

17. A "Pool Rules" sign is located on a wall within the enclosed swimming pool area stating: "No animals in the pool area."

18. A "No Pets Allowed" sign depicting a silhouette of a dog with a slash over it is located on an outside wall immediately adjacent to the door to the Eden Isles office.

19. In at least one laundry room within Eden Isles, a sign is posted stating "No Dogs Allowed," depicting a silhouette of a dog with a slash over it.

20. None of these signs contains any express exceptions to the "no pets/no dogs" prohibition clarifying that ESAs or SAs are allowed in the Eden Isles common areas in which these signs are posted.

21. A "Resident Reminders" flyer is posted inside the Eden Isles office, on a glass-enclosed bulletin board. One paragraph of this flyer, titled "Animals," states, in pertinent part:

Residents with registered service animals or therapy animals must always leash them at all times outside of their unit. Animals must remain leashed while on Eden Isles property or sidewalks. Valid paperwork for registered animals must be on file in the association office. No animals are permitted to be walked behind Eden Isles buildings. Leashed animals must be walked in the designated areas in front of the buildings on the side street.

22. This paragraph makes clear that disabled Eden Isles residents are allowed to own and keep ESAs and/or SAs within their dwelling units, and that their ESA/SA may accompany them outside of their units, provided the ESA/SA is leashed. This is consistent with the testimony of Respondent's President, Jose Vidal, that disabled residents of Eden Isles are permitted to keep ESAs and SAs in their units and to have their animals accompany them outside of their units, within the community.

23. However, the second-to-last sentence of the "Animals" paragraph in the flyer arguably can be read as prohibiting disabled residents from accessing the areas behind the condominium buildings abutting the canal when accompanied by their ESA/SA.

24. Respondent's President, Jose Vidal, credibly testified that disabled residents are allowed to access the common area behind the condominium buildings while accompanied by their ESA or SA, but that ESAs and SAs are not allowed to be "walked" in these areas for the purpose of enabling them to urinate or defecate. Instead, ESAs and SAs must be "walked" for such

purposes in the right-of-way areas in front of the buildings along the side street.

25. Vidal also testified, credibly, that Respondent does not interpret the "Animals" paragraph in the posted flyer to prohibit disabled residents from accessing the area behind the condominium buildings or any other common areas in Eden Isles while accompanied by their ESAs/SAs.

26. He further testified, credibly, that Respondent has never taken action to enforce³ this paragraph against Petitioner or any other disabled Eden Isles residents to prohibit them from accessing any common areas, including the area behind the buildings while accompanied by their ESAs/SAs.

C. ESA/SA Accommodation Request Form

27. In order to obtain an accommodation to keep his ESA/SA at Eden Isles, Petitioner requested, and received from Cream, a form titled "Service/Emotional Support Animal Request To Be Exempted From 'No Pets' Restriction At Eden Isles" (hereafter, the "First ESA/SA Form").⁴

28. Petitioner objected to, and refused to complete and sign, the First ESA/SA Form because it requested that he provide information that effectively required him to disclose the nature of his disability, in violation of section 760.27.

29. Cream employee Jessica Lopez apologized to Petitioner and provided him a form that had been revised to reflect recent statutory changes regarding the information that legally can be required to be provided for an accommodation to have an ESA/SA.

30. This form, titled "Service/Emotional Support Animal Request Fo[rm] To Be Exempted From 'No Pets' Restriction at Eden Isles (hereafter, "Second ESA/SA Form" or "Form"), requires Eden Isles residents seeking an

³ Such enforcement may consist of levying fines, imposing a lien on the resident's unit, and/or bringing an action in court to enforce Respondent's rules, regulations, and procedures.

⁴ For purposes of distinguishing this form from another ESA/SA accommodation form subsequently provided to Petitioner, the First ESA/SA Form had the words "C/O Cream Management" beneath the "Eden Isles Condominium" logo at the top of the form.

accommodation for their ESA/SA to provide an explanatory letter from a healthcare practitioner, stating that the person seeking the accommodation has an emotional disability for which an ESA has been prescribed and identifying the emotional support provided by the ESA.

31. The Second ESA/SA Form also requires submittal of a copy of the ESA's or SA's compliance with state and local licensing and vaccination requirements, and requires that the Form be resubmitted on an annual basis.

32. As a condition of approval of the request for accommodation, the Second ESA/SA Form imposes several conditions. Among these is the following:

I understand and agree that should I violate or fail to ensure compliance with the foregoing rules and procedures, *and any other rules, regulations or procedures promulgated by the Association*, the Association may exercise all legal remedies available to it to ensure compliance. These remedies may include, but are not limited to, fines and/or the institution of legal action.

Second ESA/SA Form, p. 2 (emphasis added).

33. In compliance with the Second ESA/SA Form requirements, Petitioner provided letters from two treating physicians and a licensed mental health counselor, verifying that he is physically and mentally disabled and that he needs, and has been prescribed, the use of an ESA/SA to mitigate the effects of his disability and enable him to live independently.

34. As noted above, Respondent does not dispute, in this proceeding, that Petitioner has a disability as defined in section 760.22(3)(a).

35. However, Petitioner also refused to execute the Second ESA/SA Form, contending that Respondent was once again requesting information regarding his disability that it (Respondent) is not authorized, under Florida Statutes, to request.

36. However, a review of the Second ESA/SA Form shows that it does not require a disabled resident, including Petitioner, to provide information which is not specifically authorized under section 760.27 to be requested. In fact, the information requested on the Form closely tracks the language in section 760.27(2)(b)1. and 4., which authorizes a housing provider to request information that "reasonably supports that the person has a disability," and specifically identifies the type of supporting information that may be requested. Accordingly, Petitioner's contention that the Second ESA/SA form is discriminatory on this basis is unfounded and incorrect.

37. Petitioner also contends that Respondent is discriminating against disabled residents by requiring them, in executing the Second ESA/SA Form, to "agree to unknown future rules," while "non-disabled people don't need and are not required to agree to unknown future rules created by the [A]ssociation."

38. However, the plain language of the provision in the Second ESA/SA Form requiring compliance with "any other rules, regulations or procedures promulgated by the Association" makes no reference whatsoever to *future* rules, regulations, or procedures that may be adopted by the Association.

39. Petitioner also contends that requiring the Second ESA/SA Form to be renewed on an annual basis unlawfully discriminates against disabled persons seeking approval of an accommodation to keep an ESA or SA in Eden Isles. However, Petitioner did not elaborate, in the Petition or in his testimony at the final hearing, precisely why he contends that requiring annual renewal of the Form is unduly burdensome, and, therefore, unlawfully discriminatory.

40. Section 760.27(2)(a) authorizes a housing provider to deny an accommodation request for an ESA if the animal poses a direct threat to the safety or health of others, and section 760.27(2)(c) expressly authorizes a housing provider to require proof of compliance with state and local requirements for licensing and vaccinating each ESA. Additionally, section

413.08(6)(b) expressly authorizes a housing provider to request proof of an SA's compliance with vaccination requirements.

41. Pursuant to these provisions, it is both statutorily authorized and absolutely reasonable for Respondent to require annual renewal of the Second ESA/SA Form—which, by its plain terms, requires the owner of the ESA or SA to provide proof of the animal's compliance with state and local vaccination requirements.

42. In any event, Petitioner did not present any evidence showing that he completed, and submitted to Respondent, the executed Second ESA/SA Form requesting an accommodation for an ESA/SA. In fact, he testified that he refused to sign the second page of the form, which contains the rules compliance provision discussed above.

43. Because Petitioner never submitted a complete Second ESA/SA Form to Respondent requesting an accommodation for his ESA/SA, it is determined, as a matter of ultimate fact, that Respondent did not deny his request for an accommodation for his ESA/SA.

D. Harassment of Petitioner by Individual Eden Isles Residents

a. Petitioner's Rental Car Keyed

44. Petitioner alleges that his rental car was keyed while parked in his parking space at Eden Isles, and surmises that this was done by someone in Eden Isles. He contends that this action constitutes harassment on the basis of his disability.

45. However, Petitioner presented no evidence regarding the identity of the person who keyed his car, whether that person lives in Eden Isles, or whether that person had any animus against Petitioner on the basis of his disability.

46. Without such evidence, Petitioner's contention that this act was perpetrated because of his disability, by a member of Respondent's Board (or even by a resident of Eden Isles, for that matter), is pure speculation.

b. Confrontation with Resident at Mailroom

47. Petitioner testified that a member of Respondent's Board, David Gutierrez, confronted him in, or immediately outside of, the Eden Isles mailroom, telling him that he was not allowed to have his dog accompany him outside of his dwelling unit.

48. However, the credible evidence shows that at the time this incident took place, Gutierrez was not a member of Respondent's Board, and Petitioner did not present any evidence showing that Gutierrez's actions were sanctioned or otherwise ratified by Respondent's Board.

49. Accordingly, Gutierrez's actions in confronting Petitioner regarding having his ESA/SA accompany him outside of his dwelling unit cannot be ascribed to Respondent for purposes of finding that Respondent harassed Petitioner on the basis of his disability.

c. Confrontation with Residents in Pool Area

50. In further support of his contention that he was harassed by Respondent on the basis of his disability, Petitioner presented video footage of an incident that took place in a pool area within Eden Isles. The video, which consists of footage from a pool area surveillance camera (Camera 10) and does not have an accompanying audio recording, shows Petitioner walking to the edge of the pool, where five other residents are swimming. From the footage, it appears that Petitioner, using his cell phone camera, made a video recording of the persons in the pool. Petitioner then walked away. Video footage from the surveillance camera taken approximately one minute later shows Petitioner re-entering the pool area while talking on his cell phone. Shortly thereafter, a woman exited the pool, at which point Petitioner walked up to her and closely followed her as she went to her chair. The video shows Petitioner standing in very close proximity to the woman, then walking next to her, in very close proximity, as she walked back to the pool. Petitioner appeared to be using his cell phone to record a video of her as she walked back to the pool. As she reached the edge of the pool, she

appeared to push or strike Petitioner, and he appeared to respond by pushing her into the pool. Shortly thereafter, the people exited the pool and confronted Petitioner. One of the men shoved and pushed Petitioner, while the other slapped Petitioner and punched him in the face. Petitioner backed away, and the people followed him for a short distance before reentering the pool. Petitioner then exited the pool area.

51. Petitioner testified that in the course of the confrontation, the residents who were in the pool screamed at him, called him by name, called him "crazy" and a "whacko," told him to "take your prescription," and referred to him using a homophobic slur. Petitioner testified that he was shocked that they knew who he was and knew about his health information.

52. Petitioner referred to the residents in the pool with whom he had the confrontation as "members of the Association." However, he did not present any evidence showing that any of them were (or are) Board members.

53. Additionally, there is insufficient evidence on which to base a finding that the actions of these people were due to discriminatory animus toward Petitioner on the basis of his disability, rather than merely constituting a response to his behavior toward them.

54. In any event, even if these residents' actions were motivated by discriminatory animus toward Petitioner, there is an insufficient evidentiary basis for ascribing these actions to Respondent.

d. Confrontation with Resident Behind Condominium Buildings

55. Petitioner testified that on one occasion when he was walking behind the condominium buildings accompanied by his ESA/SA, a woman who also is a resident of Eden Isles confronted him, telling him that he was not allowed to have his dog with him behind the condominium buildings. Petitioner testified that he thought her name was "Eileen" or "Irene," although he did not know her name. He also thought that "she used to be a director."

56. Cesar Garcia, who testified that he was on the phone with Petitioner when this incident occurred, confirmed that a woman had confronted

Petitioner and told him that he was not allowed to have his dog behind the condominium buildings.

57. Garcia testified that "both of them [referring to the woman and to Gutierrez], if I can recall correctly, identified themselves as either, I believe, Board members of each of the buildings."

58. However, given that Garcia was not physically present when the incidents occurred, but, rather, was on the other end of a phone call with Petitioner at the time, the evidence does not establish that his testimony was based on his personal knowledge regarding these persons, or having heard either person state that he or she was a Board member. His testimony appears to be based on Petitioner having told him that these persons were, or said they were, Board members. As such, Garcia's testimony on this point is hearsay, and, therefore, has not been given weight for purposes of determining that either the woman or Gutierrez was on the Board at the time the confrontations with Petitioner occurred.

59. Furthermore, in any case, Petitioner did not present any evidence showing that either Gutierrez, or the woman who confronted him behind the building, were authorized by Respondent to confront Petitioner and to order him to remove his dog from the premises. Accordingly, their actions cannot be ascribed to Respondent.

60. Based on the foregoing, it is found, as a matter of ultimate fact, that Petitioner did not demonstrate, by a preponderance of the evidence, that Respondent harassed him on the basis of his disability.

CONCLUSIONS OF LAW

61. DOAH has jurisdiction over the subject matter of, and parties to, this proceeding, pursuant to sections 120.569, 120.57(1), and 760.35(5).

I. Applicable Statutes

62. Section 760.22(3)(a) defines "disability," in pertinent part, as: "[a] person has a physical or mental impairment which substantially limits one or

more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment[.]"

63. 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, disability, familial status, or religion.

* * *

(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[.]

* * *

(9) For purposes of subsection[...] (8), discrimination includes:

* * *

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

64. Section 760.27 states, in pertinent part:

(1) DEFINITIONS. — As used in this section, the term:

(a) "Emotional support animal" means an animal that does not require training to do work, perform tasks, provide assistance, or provide therapeutic emotional support by virtue of its presence which

alleviates one or more identified symptoms or effects of a person's disability.

(b) "Housing provider" means any person or entity engaging in conduct covered by the federal Fair Housing Act or s. 504 of the Rehabilitation Act of 1973, including the owner or lessor of a dwelling.

(2) REASONABLE ACCOMMODATION REQUESTS. —

To the extent required by federal law, rule, or regulation, it is unlawful to discriminate in the provision of housing to a person with a disability or disability-related need for, and who has or at any time obtains, an emotional support animal. A person with a disability or a disability-related need must, upon the person's request and approval by a housing provider, be allowed to keep such animal in his or her dwelling as a reasonable accommodation in housing, and such person may not be required to pay extra compensation for such animal. Unless otherwise prohibited by federal law, rule, or regulation, a housing provider may:

* * *

(b) If a person's disability is not readily apparent, request reliable information that reasonably supports that the person has a disability. Supporting information may include:

1. A determination of disability from any federal, state, or local government agency.
2. Receipt of disability benefits or services from any federal, state, or local government agency.
3. Proof of eligibility for housing assistance or a housing voucher received because of a disability.
4. Information from a health care practitioner, as defined in s. 456.001; a telehealth provider, as defined in s. 456.47; or any other similarly licensed

or certified practitioner or provider in good standing with his or her profession's regulatory body in another state but only if such out-of-state practitioner has provided in-person care or services to the tenant on at least one occasion. Such information is reliable if the practitioner or provider has personal knowledge of the person's disability and is acting within the scope of his or her practice to provide the supporting information.

5. Information from any other source that the housing provider reasonably determines to be reliable in accordance with the federal Fair Housing Act and s. 504 of the Rehabilitation Act of 1973.

(c) If a person's disability-related need for an emotional support animal is not readily apparent, request reliable information that reasonably supports the person's need for the particular emotional support animal being requested. Supporting information may include:

1. Information identifying the particular assistance or therapeutic emotional support provided by the specific animal from a health care practitioner, as defined in s. 456.001; a telehealth provider, as defined in s. 456.47; or any other similarly licensed or certified practitioner or provider in good standing with his or her profession's regulatory body in another state. Such information is reliable if the practitioner or provider has personal knowledge of the person's disability and is acting within the scope of his or her practice to provide the supporting information.

2. Information from any other source that the housing provider reasonably determines to be reliable in accordance with the federal Fair Housing Act and s. 504 of the Rehabilitation Act of 1973.

* * *

(e) Require proof of compliance with state and local requirements for licensing and vaccinating each emotional support animal.

(3) REQUEST LIMITATIONS.—

(a) Notwithstanding the authority to request information under subsection (2), a housing provider may not request information that discloses the diagnosis or severity of a person's disability or any medical records relating to the disability. However, a person may disclose such information or medical records to the housing provider at his or her discretion.

65. Section 413.08 addresses, among other things, the entitlement of disabled persons to full and equal access to housing accommodations, including the right to keep a service animal⁵ in the housing accommodations.

66. Section 413.08(6)(b) states:

An individual with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and such individual may not be required to pay extra compensation for such animal. However, such individual is liable for any damage done to the premises or to another individual on the premises by the animal. A housing accommodation may request proof of compliance with vaccination requirements.

⁵ Section 413.08(1)(d), in pertinent part, defines "service animal" as follows:

an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability[.] ... A service animal is not a pet. ... [T]he provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this definition.

Note, the distinction between an ESA and an SA is immaterial to the issues in this proceeding.

II. Analytical Framework

67. The FFHA is patterned after Title VII of the Civil Rights Act of 1968, as amended by the federal Fair Housing Act. As such, discriminatory acts prohibited under the federal Fair Housing Act also are prohibited under the FFHA, and case law interpreting the federal Fair Housing Act is applicable to proceedings brought under the FFHA. *See Brand v. Fla. Power Corp.*, 633 So. 2d 504, 509 (Fla. 1st DCA 1994).

68. In proceedings under the FFHA, the complainant has the burden to prove a prima facie case of discrimination by a preponderance of the evidence. § 760.34(5), Fla. Stat.; *Sec'y, U.S. Dep't of Hous. & Urban Dev. ex rel. Herron v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990). A “preponderance of the evidence” means the “greater weight” of the evidence, or evidence that “more likely than not” tends to prove the fact at issue. *Gross v. Lyons*, 763 So. 2d 276, 289 n.1 (Fla. 2000).

69. The federal Fair Housing Act, and, by extension, the FFHA, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related matters, based on disability. *See Palm Partners, LLC v. City of Oakland Park*, 102 F.Supp. 3d 1334, 1342 (S.D. Fla. 2015).

70. A complainant can bring a discrimination claim under the federal Fair Housing Act, and, by extension, the FFHA, for disparate treatment, which requires a showing of discriminatory intent, or for disparate impact, which requires a showing that a facially neutral policy has a discriminatory effect. *See Raytheon Co. v. Hernandez*, 540 U.S. 44, 52-53 (2003). In this case, Petitioner claims disparate treatment by Respondent.

71. Discrimination may be proved through direct or circumstantial evidence. *Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17, 22 (Fla. 3d DCA 2009).

72. 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 of discrimination.'" *Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1358-59 (11th Cir. 1999).

73. By 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). 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).

74. As discussed above, there is no direct evidence showing that Respondent intends, or intended, to discriminate against Respondent on the basis of his disability. Accordingly, the *McDonnell Douglas* burden-shifting analysis applies in this case. See *Savanna Club Worship Serv., Inc. v. Savannah Club Homeowners' Ass'n, Inc.*, 456 F. Supp. 2d 1223, 1232 (S.D. Fla. 2005).

75. Under this three-part test, the complainant—here, Petitioner—has the initial burden of establishing a prima facie case of unlawful discrimination. If Petitioner sufficiently establishes a prima facie case of discrimination, then the burden shifts to the defendant—here, Respondent—to articulate a legitimate, nondiscriminatory reason for its actions which are alleged to be discriminatory. If Respondent meets this burden, then the burden shifts back to Petitioner to prove that Respondent's espoused reasons constitute mere pretext. See *Palm Partners, LLC*, 102 F. Supp. 3d at 1344.

III. Alleged Violations of Sections 760.23(2), (8), and (9)

76. The Petition alleges conduct by Respondent which, if proven, would constitute discrimination on the basis of disability in violation of sections 760.23(2), (8), and (9).

77. To establish a prima facie case of housing discrimination under section 760.23(2), Petitioner must demonstrate that: (1) he is a member of a class protected under the FFHA; (2) he was qualified, ready, willing, and able to receive services or use facilities consistent with the terms, conditions, policies, and procedures of Respondent; (3) he requested the services or use of facilities, or attempted to use facilities consistent with the terms, 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 Petitioner's use of the facilities under the same terms and conditions applicable to all persons who are qualified or eligible for services or use of the facilities. *See Noah v. Assor*, 379 F. Supp. 3d 1284, 1298 (S.D. Fla. 2019).

A. "No Dogs" and "No Pets" Signs and "Resident Reminders" Flyer

78. The competent, substantial evidence establishes that Petitioner is disabled, and that Respondent knew, and knows, that Petitioner is disabled. In fact, Respondent does not dispute that Petitioner is disabled. Thus, Petitioner has established that he is a member of a class of persons protected under the FFHA from discrimination on the basis of his disability. Accordingly, the first element of a prima facie case of discrimination is established.

79. The competent substantial evidence also shows that Petitioner was qualified, ready, willing, and able to use Respondent's common area facilities consistent with the terms, conditions, policies, and procedures established by Respondent for all persons who are qualified or eligible to use those facilities. Accordingly, the second element of a prima facie case of discrimination is established.

80. Petitioner attempted to use, and, in fact, did use, Respondent's common areas, consistent with the terms, conditions, policies, and procedures established by Respondent for all persons qualified or eligible for use of those

common areas. Accordingly, the third element of a prima facie case of discrimination is established.

81. However, as discussed above, the competent, substantial, and persuasive evidence does not establish the existence of the fourth element of a prima facie case of discrimination—that is, that Respondent willfully or intentionally refused to permit Petitioner access to, and use of, the Eden Isles common areas under the same terms and conditions applicable to all persons who are qualified or eligible for services or use of those facilities.

82. As previously discussed, the "Animals" paragraph of the "Resident Reminders" flyer makes clear that ESAs and SAs are permitted to be kept in Eden Isles, subject to certain conditions—specifically, that they be leashed at all times while outside of the resident's dwelling unit, and that they must be "walked" along the side street.

83. Although the flyer does not expressly describe what "walking" an ESA/SA means, Jose Vidal clarified that the provision means that an ESA/SA can only be "walked," for the purpose of taking them out to urinate or defecate, in front of the buildings.

84. As previously discussed, Vidal testified, credibly, that disabled Eden Isles residents may access all common areas within Eden Isles, including the area behind the buildings abutting the canal, the pool areas, laundry rooms, and mailroom, while accompanied by their ESA/SA.

85. As also found above, Respondent does not interpret the "Animals" paragraph in the "Resident Reminders" flyer or the "No Pets" and "No Dogs" signs in the common areas as prohibiting ESAs/SAs from accompanying disabled Eden Isles residents in those areas.

86. To that point, Vidal credibly testified that Respondent does not enforce, and has not enforced—against Petitioner or any other disabled resident of Eden Isles—a strict "No Dogs"/"No Pets" policy to prohibit disabled residents from accessing those common areas while accompanied by their ESAs/SAs.

87. As such, the competent substantial evidence does not establish that Respondent, with knowledge of Petitioner's protected class, willfully failed or refused to provide services to Petitioner or permit Petitioner's use of the facilities under the same terms and conditions applicable to all persons who are qualified or eligible for services or use of the facilities.

88. Accordingly, it is concluded that Petitioner failed to establish a prima facie case of discrimination in violation of section 760.23(2), due to Respondent having posted "No Dogs" and "No Pets" signs in common areas and the "Resident Reminders" flyer containing the "Animals" paragraph in the Eden Isles Office.

B. Harassment of Petitioner by Individual Eden Isles Residents

89. The evidence also does not establish the existence of a prima facie case of discrimination by Respondent in violation of section 760.23(2), on the basis of conduct by individual Eden Isles residents directed toward Respondent.

90. As discussed above, the competent substantial evidence does not establish that any of the residents involved in the alleged incidents of harassment directed toward Petitioner were Respondent's Board members at the time they engaged in the confrontational conduct.

91. Moreover, even if they were, the competent substantial evidence does not establish that Respondent's Board encouraged, ratified, or otherwise sanctioned such conduct. Accordingly, these individual incidents of alleged harassment cannot be ascribed to Respondent.

92. Petitioner appears to contend that Respondent created a hostile housing environment based on his disability.

93. Courts that have held that to prevail on a hostile housing environment claim, complainants must establish that because they are a member of a protected class, they were subjected to unwelcome conduct that was so severe and pervasive as to alter the conditions of their housing and interfere with their right to the use and enjoyment of their property. *Noah v. Assor*, 379 F.Supp. 3d 1284, 1290 (S.D. Fla. 2019); *West v. DJ Mortg., LLC*, 164 F.Supp.

3d 1393, 1398 (N.D. Ga. 2016). Isolated or sporadic incidents of offensive utterances are not sufficiently severe or pervasive to support a hostile housing environment claim. *See West*, 164 F.Supp. 3d at 1398.

94. Whether a housing environment is illegally hostile can be determined only by looking at all circumstances, and the factors to be considered may include the frequency of the conduct; its severity; whether it is physically threatening or merely an offensive utterance; and whether it unreasonably interferes with the use and enjoyment of the premises. *See Jackson v. Park Place Condo. Ass'n Inc.*, 619 Fed.Appx. 699, 704 (10th Cir. 2015). *See also Mohamed v. McLaurin*, 390 F.Supp. 3d 520, 548-51 (D. Vt. 2019) (courts that recognize a hostile housing environment claim under the federal Fair Housing Act require the plaintiff to prove that the harassment resulted in constructive eviction); *Krieman v. Crystal Lake Apts. Ltd. Partnership*, 2006 WL 1519320, at *12 (N.D. Ill. 2006)(to establish a hostile housing environment, the harassment must be extreme, rather than merely rude or unpleasant conduct or utterances).

95. In this case, the competent, substantial, and persuasive evidence established that Petitioner was subjected to verbal harassment on two occasions by individual Eden Isles residents while he was accompanied by his ESA/SA in the Eden Isles community—once by Gutierrez, outside of the Eden Isles mailroom, and the other by the unidentified woman while Petitioner was accompanied by his ESA/SA in the common area behind the condominium buildings.

96. While the conduct directed toward Petitioner in both of these incidents was rude and offensive, the evidence did not show that it was physically threatening, nor does it establish that as a result of these incidents, Petitioner no longer accesses the Eden Isles common areas, including the area behind the condominium buildings or the mailroom. In short, these isolated incidents were not sufficiently severe and pervasive to constitute a hostile housing environment.

97. With respect to the confrontation between Petitioner and the residents in the pool area, there was no audio recording accompanying the video footage from the surveillance camera. Thus, the evidence does not definitively establish that these residents confronted Petitioner and physically assaulted him because he is disabled, rather than directly responding to Petitioner's conduct directed at them, which they (understandably) may have perceived as provocative.

98. Finally, Petitioner contended, but presented no evidence showing, that his rental car was keyed by a resident of Eden Isles, or that this action was taken specifically to harass him because he is disabled.

99. For these reasons, it is concluded that Respondent did not discriminate against Petitioner on the basis of disability in violation of section 760.23(2), as a result of two isolated incidents involving offensive and rude, but not objectively threatening, conduct by two Eden Isles residents.⁶

C. Requirement to Request Accommodation via Second ESA/SA Form

100. Petitioner also contends that Respondent violated section 760.23(8) and (9) by effectively denying his request for an accommodation for his ESA/SA.

101. However, as discussed above, Petitioner refused to sign the second page of the Second ESA/SA Form because it required that he agree to comply "any other rules, regulations, or procedures promulgated by the Association," which, as discussed above, Petitioner interpreted—inconsistent with the plain language of this provision—to mean that he had to agree to comply with rules, regulations, or procedures adopted in the future, which he contends nondisabled residents are not required to do.

⁶ Now that Respondent is on notice, in order to forestall future similar incidents of harassment of disabled residents by nondisabled residents who are unaware that disabled residents are permitted to have ESAs and SAs accompany them in the common areas in Eden Isles, Respondent may consider implementing certain informational measures, such as erecting additional signs in common areas, informing all residents that ESAs and SAs are permitted to accompany their owners in all common areas within Eden Isles.

102. Setting aside Petitioner's interpretation of the terms and conditions of the Second ESA/SA Form, the fact is that Petitioner did not complete the Form and submit it to Respondent. Therefore, as a matter of both fact and law, Respondent cannot be deemed to have denied his request for an accommodation to keep his ESA/SA. *See Schwarz v. The Villages Charter Sch., Inc.*, 165 F. Supp. 3d 1153, 1173 (M.D. Fla. 2016)(an element of disability discrimination is that the "*plaintiff also must establish that [he or she] requested an accommodation,*" and that the request was denied)(emphasis added).

103. Accordingly, it is concluded that Respondent did not deny Petitioner's request for an accommodation, in violation of section 760.23(8) and (9).

IV. Alleged Violations of Sections 760.27 and 413.08

104. Petitioner also alleges, on the grounds discussed above, that Respondent denied his request for an accommodation to allow him to keep his ESA/SA in Eden Isles, in violation of sections 760.27 and 413.08.

105. For the reasons extensively discussed above, it is concluded that Respondent's ESA/SA Form for an accommodation to keep an ESA/SA does not request any information that is not authorized, under section 760.27, to be requested as a condition of granting an accommodation.

106. Additionally, for the reasons discussed above, it is concluded that Respondent's requirement for a resident seeking an accommodation in order to keep an ESA/SA to resubmit the Second ESA/SA Form on an annual basis is authorized by sections 760.27(2)(e) and 413.08(6)(b).

107. Accordingly, it is concluded that Respondent did not deny Petitioner's request for an accommodation, in violation of sections 760.27 and 413.08.

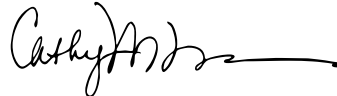
V. Conclusion

108. Based on the foregoing, it is concluded that Respondent did not discriminate against Petitioner on the basis of his disability, in violation of sections 760.23, 760.27, or pertinent provisions of chapter 413.

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 the Petition for Relief.

DONE AND ENTERED this 14th day of October, 2022, in Tallahassee, Leon County, Florida.



CATHY M. SELLERS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of October, 2022.

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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.