

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

VENIT BAPTISTE,

Petitioner,

vs.

Case No. 22-1826

WEST DADE LTD., II; ROLANDO BARRERO;
MAR-BAR, INC.; AND EVELIO
ECHEMENDIA,

Respondents.

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted before Administrative Law Judge Mary Li Creasy of the Division of Administrative Hearings (“DOAH”) by Zoom conference on August 17, 19, and 26, 2022.

APPEARANCES

For Petitioner: Venit Jean-Baptiste, pro se
Apartment 310
10335 Southwest 40th Street
Miami, Florida 33165

For Respondents: Juan Carlos Zorrilla, Esquire
Victor Mariano Velarde, Esquire
Fowler White Burnett, P.A.
Brickell Arch, Fourteenth Floor
1395 Brickell Avenue
Miami, Florida 33131

STATEMENT OF THE ISSUES

Whether Respondents discriminated against Venit Jean-Batiste (“Ms. Baptiste”) because of her race and gender with regard to receiving timely and adequate responses to her maintenance requests, and whether

Respondents discriminated against Ms. Baptiste's son because of a disability by denying him full enjoyment of the premises and a reasonable accommodation.

PRELIMINARY STATEMENT

On October 19, 2020, Ms. Baptiste filed her Complaint of Discrimination with the Florida Commission on Human Relations ("FCHR"). On May 31, 2022, FCHR issued its Determination of No Cause.

On June 4, 2022, Ms. Baptiste timely filed her Petition for Relief, requesting the following relief: (1) \$100 million in punitive damages; (2) \$50 million in compensatory damages; (3) injunctive relief; (4) criminal penalties; (5) equitable relief; and (6) civil penalties.

On July 22, 2022, the undersigned issued an Order striking Ms. Baptiste's request for punitive damages, civil and criminal penalties, injunctive and equitable relief, allegations of retaliation by Lorena Swaby, allegations of sexual harassment, and allegations relating to Ms. Baptiste's car being towed. The Order also dismissed Ms. Baptiste's claim under the Violence Against Women Act. The Order also provided that: (a) Ms. Baptiste may recover compensatory damages if she can prove quantifiable damages resulting from discrimination; and (b) allegations of ongoing repair issues based on race and gender were material issues of fact for the final hearing.

The final hearing took place on August 17, 19, and 26, 2022. Ms. Baptiste testified on her own behalf. The following exhibits of Ms. Baptiste were admitted: Petitioner's Exhibits 1, pages 3 through 11, 15, 17 through 21, 24, 30, 31, 34, 35, 40 through 42, 45 through 49, 53, 56, and 62 through 65; Exhibit 2, pages 8 through 18; and Exhibit 3, pages 3 through 15, 20, 23

through 27, and 28. Petitioner’s Exhibit 4 was identical to Petitioner’s Exhibit 1.

Respondent Evelio Echemendia (“Mr. Echemendia”) also testified on his own behalf. Respondents Mar-Bar, Inc. (“Marbar”), and West Dade, Ltd, II (“West Dade”), presented the testimony of Respondent Joseph Barrero (“Mr. Barrero”).¹ Respondents’ Exhibits 1, 2, 4 through 6, 8 through 11, 13, 14, 17, 20, 23, 24, and 29 through 31 were admitted.

The three-volume Transcript of the final hearing was filed with DOAH on September 6, 2022. All parties filed timely post-hearing submissions which were considered in the drafting of this Recommended Order. Unless otherwise noted, all references to Florida Statutes are the 2022 version.

FINDINGS OF FACT

The Parties

1. On August 1, 2019, Ms. Baptiste signed a Section 8 Lease Agreement with West Dade for the premises located at 10335 Southwest 40th Street, Unit 310, Miami, Florida.
2. Ms. Baptiste’s apartment building is located in a four-building complex, which includes building numbers 10305, 10335, 10355, and 10375.
3. West Dade is the owner of the four apartment buildings. Marbar is the managing company for the four apartment buildings.
4. Mr. Echemendia is the Property Manager who is responsible for performing the first inspection for each maintenance request or complaint of the West Dade tenants and signing off on Marbar’s work orders. Mr. Echemendia primarily speaks Spanish.

¹ Mr. Barrero is the person who testified at the final hearing and is believed to be the person Petitioner misidentified in her complaint as Respondent Rolando Barrero.

5. Mr. Barrero is an officer of West Dade and Marbar. Ms. Baptiste admitted that she has never had any interactions or communications with Mr. Barrero.

Ms. Baptiste's Claims of Discrimination

6. Ms. Baptiste is a Black woman. She claims that Respondents have discriminated against her on the basis of her race and gender. Ms. Baptiste's primary complaint is that during her tenancy, Respondents failed to timely and adequately respond to repair requests due to her race and gender. She believes that Hispanic tenants receive favorable treatment with regard to the timeliness of repairs.

7. Ms. Baptiste also claims that her son has allergies and is, therefore, disabled. She claims that Respondents have discriminated against her son by not providing the reasonable accommodation of timely repairs on the basis of his disability.

Ms. Baptiste's Tenancy and History of Maintenance Requests

8. Ms. Baptiste alleges that when she moved into her apartment in August 2019, she was given a unit with non-working appliances due to her race.

9. Pages 7 and 8 of the Lease Agreement provides that the appliances and air-conditioning unit of Ms. Baptiste's apartment (Unit 310) were in "Good Working Condition" at the time of move-in. Ms. Baptiste admitted that she initialed every page of the Lease Agreement and signed it.

10. Ms. Baptiste, however, testified that the checkmarks on pages 7 and 8 of the Lease Agreement (which indicated that the appliances and air-conditioning unit were in "Good Working Condition") were added after she initialed the pages. Ms. Baptiste later changed her testimony and testified that pages 7 and 8 were not provided to her at all and, therefore, the initials at the bottom of pages 7 and 8 were forged. This testimony was not credible.

11. Ms. Baptiste signed a Move-In Inspection document on August 1, 2019, indicating that every room in the apartment (Unit 310) was "OK"

and not reflecting any disrepair. Ms. Baptiste admitted that she signed the Move-In Inspection Acceptance, but did not remember if the indications that the rooms were “OK” were present when she signed. This testimony was not credible.

2019 Maintenance Requests

12. When a tenant of West Dade makes a request for a repair, usually the Property Manager, Mr. Echemendia, responds to inspect. He enters the unit only after having permission to enter from the tenant, unless it is an emergency situation. If it is something easily repairable, he makes the repair. If additional tools, equipment, parts, or other specialized work is involved, he generates a work order which is then assigned to a maintenance worker. Once the work is complete, the tenant signs the work order acknowledging the work is finished. If the tenant is not available to sign, the supervisor will sign.

13. Routine work orders are usually handled on a first-come, first-served basis. However, this can vary depending on the severity of the issue presented and the volume of other pending work orders. During the pandemic, waiting for parts or appliances slowed the repair process.

14. On October 11, 2019, Ms. Baptiste sent a text to Mr. Echemendia, the Property Manager, in Spanish (using Google translate), stating that she had an issue in her apartment. Ms. Baptiste testified that she did not remember what the issue was, whether the issue was resolved, or when it was resolved.

15. Next, Ms. Baptiste sent another text message to Mr. Echemendia at 8:42 a.m. on October 29, 2019, in Spanish, stating that she had an emergency situation in her apartment and asked that Mr. Echemendia inspect it. This issue was resolved within two days.

16. On November 22, 2019, Ms. Baptiste sent another text message to Mr. Echemendia in Spanish, at 8:13 a.m., stating that she locked herself out of her apartment and needed Mr. Echemendia to open her apartment door.

Because he was not on the premises, Mr. Echemendia sent his wife to unlock Ms. Baptiste's door.

17. Ms. Baptiste submitted a maintenance request on September 28, 2019, regarding her stove, which was fixed within four days. On December 13, 2019, Ms. Baptiste submitted a repair request regarding a scrape on the stairwell in front of her apartment, which was fixed in seven days.

18. Ms. Baptiste offered no comparative evidence regarding repairs for non-black or male tenants during this time period.²

2020 Complaints – Ceiling Leak

19. Ms. Baptiste first complained to Marbar about a leak in her ceiling on April 6, 2020. The April 6, 2020, work order reflects that Ms. Baptiste “authorizes entrance if she's not there” and that the inspection and repair took place on April 7, 2020.

20. On May 11, 2020, Ms. Baptiste filed a complaint with Miami-Dade Public Housing & Community Development (“PHCD”) that there was a leak in her bathroom ceiling.

21. On May 12, 2020, the tenant in the unit above Ms. Baptiste (Unit 410) requested maintenance on her bathroom drain, which was broken and caused a leak that affected Ms. Baptiste's unit (Unit 310). The leak was repaired by May 25, 2020. Ms. Baptiste did not complain to anyone about any leaks in her ceiling after May 25, 2020.

Air-Conditioning Complaints After 2019

22. On April 23, 2020, Ms. Baptiste hired Sears to inspect her air-conditioning unit due to her concerns about dust and mold. The Sears receipt stated that Ms. Baptiste's air-conditioning unit “need[ed] to be clean[ed]” but

² Ms. Baptiste offered several photographs purporting to show the delivery of new air-conditioning compressors or units to Hispanic tenants. She was not able to identify to whom those units were delivered, the date of such delivery, nor the state of the units being replaced. She also had no information regarding how long those tenants waited for new air-conditioning units. As such, these photographs were of no evidentiary value.

was otherwise “operational.” Ms. Baptiste did not provide the receipt to Marbar.

23. Instead, Ms. Baptiste filed a complaint directly with PHCD in May 2020. On May 7, 2020, PHCD issued a “Notice of emergency re-inspection” letter to Marbar and West Dade, stating that Ms. Baptiste’s “AC Unit needs to be clean[ed] / AC ducts needs to be clean[ed].”

24. Upon receipt of the complaint, Marbar created a work order on May 12, 2020. A Marbar employee spent approximately six hours on cleaning the air-conditioning unit on May 13, 2020.

25. Marbar also used a third-party vendor, BBL Air Duct Cleaning, to perform air-conditioning duct and vent cleaning for Ms. Baptiste’s unit on May 29, 2020. PHCD inspected Ms. Baptiste’s apartment again on June 15, 2020, and her air-conditioning unit passed the inspection.

26. In July 2020 (two months after Ms. Baptiste’s first complaint regarding her air-conditioning unit), Ms. Baptiste submitted a second complaint to PHCD. This time, Ms. Baptiste claimed that her air-conditioning unit “needs to be clean[ed], ... the unit is blowing dust inside the apartment.”

27. Marbar received the complaint from PHCD on July 9, 2020, and prepared a work order. PHCD’s Inspection Summary for this July 2020 complaint reflects that “due to COVID-19 [PHCD] can’t go into the unit to perform the inspection” but that PHCD “will contact the owner regarding the AC unit.”

28. When Marbar inspected Ms. Baptiste’s unit in July 2020, her air-conditioning unit was clean, but they nonetheless cleaned it again. The work order reflects that “the coil is very clean. I brushed the evaporator motor. Everything is very clean. It is cooling well. All OK.” PHCD inspected the unit on August 3, 2020, and passed the inspection.

29. Ms. Baptiste did not complain to Respondents or to PHCD about her air-conditioning unit again until almost two years later, in May 2022.

30. On May 10, 2022, Ms. Baptiste obtained a temporary restraining order against Mr. Echemendia. He was instructed by Marbar not to enter her building for any maintenance inspections or repairs.

31. On May 17, 2022, Ms. Baptiste submitted a complaint to PHCD that her air-conditioning unit was not working and needed to be repaired. Upon receipt of the complaint from PHCD, Marbar created a work order. On May 18, 2022, Lorena Swaby (“Ms. Swaby”), Marbar Property Management Assistant, contacted Ms. Baptiste requesting authorization to enter her unit. Ms. Baptiste responded via text messages stating, “Lorena [Swaby] you have called me only to harass me and lie to me ... for defective air conditioning unit for the past five days ... This is torture and abuse.”

32. Later that same day, Ms. Baptiste sent a letter to Ms. Swaby and Marbar stating, “I ... authorize Mar-Bar Management to send a ‘qualified technician’ to make repair to the defective air-conditioning unit ... On May 18, 2022 I am authorizing the necessary repairs between 3:45 – 4:00 p.m. when I am present due to unforeseen circumstances.”

33. Marbar could not inspect Ms. Baptiste’s air-conditioning unit on May 18, 2022, between 3:45 p.m. and 4:00 p.m., because: (1) Mr. Echemendia is the person who usually performs the first inspection, but Marbar instructed Mr. Echemendia not to enter the apartment building where Ms. Baptiste resides until her temporary restraining order against him was resolved; (2) Ms. Baptiste authorized entry on the condition of having a “qualified technician” inspect her air-conditioning unit; and (3) Marbar was not able to secure the attendance of a technician on same-day notice and for only the 15-minute window Ms. Baptiste authorized.

34. The temporary restraining order that Ms. Baptiste secured against Mr. Echemendia was dismissed after an evidentiary hearing held on June 3, 2022. Ms. Baptiste then initiated a criminal investigation against Mr. Echemendia with the Florida State Attorney’s Office. As a result of the

criminal complaint, Marbar again instructed Mr. Echemendia not to enter Ms. Baptiste's unit.

35. At or around this same time, Ms. Baptiste also filed a Florida Bar complaint against counsel for Marbar and a complaint with the Judicial Qualifications Committee against The Honorable Ayana Harris after she received an unfavorable ruling from Judge Harris at the June 3, 2022, hearing.

36. Given Ms. Baptiste's proclivity for litigation, Respondents' counsel contacted Ms. Baptiste by email on July 14, 2022, to schedule the evaluation and repair of her air-conditioning unit. Ms. Baptiste did not respond.

37. On July 15, 2022, Respondents' counsel again contacted Ms. Baptiste on two separate occasions to schedule the inspection of her air-conditioning unit. Ms. Baptiste responded on July 15, 2022, that she was "unavailable until further notice." On July 17, 2022, Respondents' counsel again contacted Ms. Baptiste to schedule the inspection of her air-conditioning unit. On July 22, 2022, Ms. Baptiste responded stating that she was available on July 25, 2022, between 10:00 a.m. and 3:00 p.m.

38. On July 25, 2022, Marbar performed an inspection of Ms. Baptiste's air-conditioning unit. The unit needed to be repaired due to a frayed wire but did not need to be replaced. Marbar's work order reflects that Ms. Baptiste's air-conditioning unit was repaired on July 27, 2022.

39. Ms. Baptiste testified that as of the date of the final hearing, her air-conditioning unit was operational and blowing cold air.³

Repairs for Other Tenants

40. Ms. Baptiste claims that Hispanic tenants received new air-conditioning units and that, as "the only black tenant" in the complex, she was denied a new unit. In support of this claim, she offered several

³ At the final hearing, Ms. Baptiste complained that the unit needs to be replaced because it still blows dust. However, no further complaints regarding the air-conditioning unit were received between July 27, 2022, and the final hearing on August 26, 2022.

photographs of what appear to be air-conditioning units she believes were delivered to Hispanic tenants in May 2022.

41. Marbar's records reflect that two Hispanic tenants received air-conditioning units in May 2022. However, this was only after the units were inspected, and it was ultimately determined by Marbar that these units were unrepairable. The two tenants who received the units cooperated with Marbar for the inspection and attempted repairs for their units.

42. One tenant waited for two months to have the non-working unit replaced. It took 20 days for the other non-working unit to be replaced.

43. A review of all the work orders, relating to maintenance requests for all tenants in the building where Ms. Baptiste resided during the period of May 2020 to September 2020 (the time period that FCHR previously determined was relevant), revealed that Marbar's turn-around time when addressing Ms. Baptiste's complaints is the same as Marbar's turn-around time when addressing the complaints of all other tenants.

44. Specifically, the evidence shows that Marbar addressed most maintenance requests (including most of Ms. Baptiste's maintenance requests) within one to seven days. The evidence also shows that Marbar addressed more involved maintenance requests (such as repairs that require new materials, replacing a kitchen stove, replacing an air-conditioning unit, etc.) of other tenants within 13 to 40 days.

45. While the resident composition of the apartment units is predominately Hispanic, Ms. Baptiste was not the only black tenant as she claims. In her building (10335) of 48 apartments, three were occupied by Black tenants. In building 10305, out of 44 units, five units are occupied by Black tenants. In building 10375, there are 44 units with five units occupied by Black tenants. In building 10355, there are two Black tenants out of 48 units. No other Black tenants have complained that Respondents discriminated against them on the basis of race.

46. Ms. Baptiste claims she heard Mr. Echemendia used the term “negro” when referring to her. Negro is the Spanish word for “black.” Even if true, this is not evidence of discrimination with regard to the terms or conditions of her tenancy based on race.

Alleged Gender Discrimination

47. Ms. Baptiste testified that she believed she was being discriminated against because she would not agree to engage in certain acts as a result of her gender. However, she denied being expressly propositioned for sexual favors.

48. Ms. Baptiste alleges that when Mr. Echemendia came to her apartment, he wore excessive cologne. This is insufficient to support a claim of gender discrimination.

49. She also believes that female tenants who were friendly to Mr. Echemendia received quicker responses to maintenance requests. No proof to support this assumption was offered.

Alleged Disability Discrimination

50. Ms. Baptiste asserts that her son, who has allergic rhinitis, is unable to fully enjoy the premises due to the dust and mold caused by the faulty air-conditioning unit, that the air-conditioning unit exacerbates her son’s condition making it difficult for him to breathe, and that Respondents failed to provide a reasonable accommodation by failing to replace her air-conditioning unit.

51. Notably, prior to the filing of her complaint of discrimination with FCHR, Ms. Baptiste provided no written notification to Respondents of the need for an accommodation due to her son’s condition. Respondents’ witnesses denied knowledge of Ms. Baptiste’s son’s condition or need for an accommodation. No medical documentation was provided to Marbar regarding a need for an accommodation.

52. Ms. Baptiste notified PHCD by text on May 7, 2021, that she wanted to transfer to a unit with central air and no carpets as a “reasonable

accommodation.” No written explanation of the nature of the disability or need for an accommodation was presented. In her follow-up to the inquiry of whether she still wanted a transfer, Ms. Baptiste replied, “They have finally sent someone to repair the door frame only.”⁴ Ms. Baptiste offered no credible explanation as to why she did not follow through with a transfer with PHCD or Marbar.

53. Ms. Baptiste sent a letter to Marbar on June 29, 2022, in which she references her son’s “disability” and claims that the excessive heat is causing him “a significant amount of emotional distress.” However, the nature and extent of his disability, or a suggested accommodation, is not included other than “Air Conditioning Unit Repair.” As described above, Ms. Baptiste made the interactive process of repair difficult, if not impossible, with her unreasonable restrictions on when an inspection could occur and who could perform the inspection or repair. The repair was ultimately completed on July 27, 2022.

54. Ms. Baptiste presented no evidence that a new air-conditioning unit, as opposed to a cleaning of the unit or repair to the wiring, would alleviate the problem for her son. While Ms. Baptiste presented photographs of her son’s backpack and other items covered with mold, no evidence was presented to show that this was an indoor air-quality issue that could be remedied with a new air-conditioning unit.

55. No recommendation from a healthcare provider regarding indoor air-quality was presented. The only link between Ms. Baptiste’s air-conditioning unit and her son’s allergies appears to be Ms. Baptiste’s own suppositions.

⁴ Ms. Baptiste entered photos into evidence of significant termite damage to the door frame of her unit. However, no comparative evidence was provided to show that a delay in repairs was a result of her race or gender.

Ultimate Findings of Fact

56. Ms. Baptiste failed to demonstrate, by a preponderance of the evidence, that she was discriminated against in the terms or conditions of her tenancy on the basis of race or gender.

57. Ms. Baptiste failed to demonstrate that her son suffers from a handicap within the meaning of the Florida Fair Housing Act (“the Act”) or that Respondents failed to provide a reasonable accommodation for the same.

CONCLUSIONS OF LAW

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

59. Section 760.23(1), 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 “race, color, national origin, sex, disability, familial status, or religion.” It is also unlawful to discriminate against a person associated with a buyer or renter on the basis of that person’s disability by “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.” See § 760.23(9)(b), Fla. Stat.

60. FCHR and Florida courts have determined that federal discrimination laws should be used as guidance when construing provisions of chapter 760. See *Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17 (Fla. 3d DCA 2009); *Brand v. Fla. Power Corp.*, 633 So. 2d 504, 509 (Fla. 1st DCA 1994).

Establishing Discrimination

61. 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).

62. “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.

63. “[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).

64. 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

65. In the instant case, Ms. Baptiste alleges that she was unlawfully discriminated against regarding the terms and conditions of her residency (specifically delayed responses to maintenance requests) because of her race, gender, and her son’s alleged disability.

66. Ms. Baptiste offered no direct evidence of discrimination on any basis.

Race and Gender Discrimination (Maintenance Issues)

67. To establish a prima facie case for denial of services/maintenance, Ms. Baptiste must show that she: (1) is a member of a protected class; (2) is qualified to receive the services/maintenance in question; (3) was denied or delayed services/maintenance by Respondents; and (4) Respondents treated similarly situated persons outside of the protected class more favorably. *See Boykin v. Bank of Am. Corp.*, 162 Fed. Appx. 837, 839 (11th Cir. 2005); *see also Jackson v. Comberg*, No. 8:05-cv-1713-T-24TMAP, 2007 WL 2774178, at *5 (M.D. Fla. Aug. 22, 2007).

68. Ms. Baptiste identifies as a Black woman. She belongs to a class of persons whom the Act protects from unlawful discrimination based on race and gender. And as a tenant in West Dade's apartment building, Ms. Baptiste was qualified to receive services or use the facilities consistent with the terms, policies, and procedures of Respondents.

69. The evidence presented at the final hearing, however, does not establish that Respondents refused or delayed services to Ms. Baptiste because of her protected class or treated similarly situated persons outside of the protected class more favorably.

70. To the contrary, the evidence presented reveals that Respondents addressed Ms. Baptiste's maintenance requests in the same fashion—and with the same turn-around times—as her Hispanic neighbors. The evidence presented also confirms that the Hispanic tenants who received new air-conditioning units were female and were not comparable to Ms. Baptiste because Ms. Baptiste's air-conditioning unit was determined to be repairable, and was repaired while the units of the Hispanic tenants were determined to be irreparable and had to be replaced.

71. The only maintenance request that Respondents took longer to resolve was Ms. Baptiste's May 18, 2022, complaint to PHCD regarding her air-conditioning unit not working. Ms. Baptiste provided Marbar with an unreasonably limited authorization to inspect her air-conditioning unit and,

thereafter, did not cooperate in scheduling Marbar’s inspection and repair. When Respondents (through counsel) were able to schedule an inspection date with Ms. Baptiste, Ms. Baptiste’s complaint/maintenance request was resolved within two days. The evidence also showed that the female Hispanic tenants who received new air-conditioning units were cooperative in scheduling Marbar’s inspection and repair.

72. Because Ms. Baptiste did not present any evidence that Respondents delayed or refused services because of her protected class (or any evidence that Respondents treated any persons outside of the protected class more favorably), Ms. Baptiste has failed to establish a prima facie case for housing discrimination on the basis of race or gender.

Disability Discrimination

73. A person is considered a “qualified individual” with a disability under the 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).⁵

74. 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

⁵ “The [Federal Fair Housing Act] and the Florida Fair Housing Act are substantively identical, and therefore the same legal analysis applies to each.” *Bhogaita v. Altamonte Heights Condo. Ass’n, Inc.*, 765 F.3d 1277, 1285 (11th Cir. 2014).

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).

75. Ms. Baptiste claims her son is disabled within the meaning of the Act due to his allergic rhinitis. No verification or corroboration was offered, such as a physician's affidavit, regarding the nature and extent to which her son is affected by his condition. Ms. Baptiste testified that her son's condition is a form of asthma which has necessitated trips to the emergency room and epinephrine injections. Unfortunately, she offered no evidence, other than her own belief, that his condition was caused by the lack of a new air-conditioning unit. There are myriad alternatives that could explain his allergies such as pet dander, grass, pollen, dust mites, or environmental exposure to irritants outside the home.

76. Even if it is assumed Ms. Baptiste's son suffers from a condition that meets the Act's definition of disability, she failed to meet the fourth prong of the prima facie case for a failure to accommodate claim. Ms. Baptiste did not advise Respondents of her son's allergy. "It is axiomatic that a [respondent] cannot be expected to make an accommodation for a handicap of which he is unaware." *McManus v. Cherry*, No. 1:08-cv-00110-MP-GRJ, 2010 WL 5638108, at *5 (N.D. Fla. Nov. 19, 2010).

Conclusion

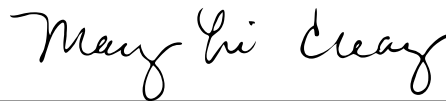
77. Although most of Ms. Baptiste’s testimony was deemed sincere and credible, and her concern for her family’s well-being and strong advocacy on her own behalf is commendable, she failed to demonstrate discrimination on the basis of any protected class.

78. Discrimination is often insidious and discreet. It is rare for discrimination to be blatant. However, a petitioner must offer more than gut instinct to prove a case of housing discrimination under the Act. The evidence failed to show that Respondents discriminated against or denied Ms. Baptiste or her son an equal opportunity to use and enjoy the premises.

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 in favor of Respondents and holding that Respondents have not engaged in any discriminatory housing practice against Ms. Baptiste at any point during her tenancy.

DONE AND ENTERED this 4th day of October, 2022, in Tallahassee, Leon County, Florida.



MARY LI CREASY
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of October, 2022.

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.