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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHELLY AND WAYNE STROCKBINE,

Petitioners,

vs.

Case No. 22-0780

RE/MAX ELITE, ELENA MANFREDI, TERRI
SELLON, AND SHERYL JONES,

Respondents.

_____ /

RECOMMENDED ORDER

On May 9, 2022, Administrative Law Judge Yolonda Y. Green of the Florida Division of Administrative Hearings (“DOAH”) conducted a duly-noticed hearing in Melbourne, Florida, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2021).

APPEARANCES

For Petitioner: Wayne Strockbine, pro se
Shelly Strockbine, pro se
1889 Trimble Road
Melbourne, Florida 32934

For Respondent: Jeffrey Wilkins, Esquire
Property Management Law Group
Post Office Box 5863
Jacksonville, Florida 32247

STATEMENT OF THE ISSUES

The issues to be determined are whether Respondent discriminated against Petitioners based on familial status and/or retaliated against Petitioners, in violation of the Fair Housing Act (“FHA”), chapter 760, part II, Florida Statutes (2020).

PRELIMINARY STATEMENT

On July 24, 2021, Petitioners, Wayne and Shelly Strockbine (“Petitioners,” or the “Strockbines”), filed a housing discrimination complaint with the Florida Commission on Human Relations (“FCHR”), alleging Respondents, RE/MAX Elite (“RE/MAX”), Sheryl Jones, Elena Manfredi, and Terri Sellon (collectively “Respondents”), discriminated against them based on familial status and retaliation, in violation of the FHA. Petitioners’ complaint alleged:

Complainants Shelly and Wayne Strockbine are the parents of minor children and are in the process of adoption. Therefore, Complainants belong to a class of persons whom the Fair Housing Act ("the Act") protects from unlawful discrimination by virtue of familial status. Complainants rent a single-family home located at 3030 Yukon CT Melbourne, Florida 32935, which is owned by Respondent Terri L. Sellon and managed by Respondent RE/MAX Elite. Complainants identified Respondent Elena Manfredi as the Property Manager and Respondent Sheryl J. Jones as Respondent Manfredi’s manager.

Complainants alleged that Respondents are verbally harassing them and making false claims regarding adoption. Complainants alleged that Respondent Manfredi arrived at the subject property unannounced during a repair occurring on the property. Complainants informed Respondent that they were in the process of gaining custody of 2 minor children. Complainants alleged that Respondent got visibly angry and stated Complainants could not adopt children and live at the subject property. Complainants alleged that when they asked Respondent, “if I [Complainant Shelly] were pregnant, would it still be so?” Complainants alleged Respondent responded in disgust, “you’re not pregnant now, are you?” Complainants alleged that following that conversation on February 16, 2021, they received a ‘7 day of Non-Compliance with the Opportunity to Cure’ on their door for not giving Respondents their rental insurance information. Complainants alleged they had already given that information,

and they called Respondent Sheryl Jones to investigate the issue. Complainants alleged Respondent Jones confirmed that they did have the rental information. Complainants alleged that Respondent Jones commented that Complainants are lucky to even live at the subject property with the number of children that Complainants have. Complainants alleged that Respondent Manfredi called them a few days later and stated that she spoke with her lawyer and that Complainants are not allowed to add children into the home, and “it would be like having my sister come live with us.” Complainants additionally alleged that Respondents had not provided service to a hole in the wall and the front door lock. Complainants alleged that every time they call to inform Respondents of any maintenance request, Respondents make Complainants feel like it is their fault for the number of children. Complainants further alleged Respondent Terri stated a couple of times, “If I knew how many kids you had, I would have never rented to you.” Complainants alleged Respondent Terri attempted to intimidate them into signing a lease they did not feel comfortable with, stating that the Complainants would find it difficult to find a rental property that would approve them with the number of pets they have. Complainants believe the Respondent was also insinuating about the number of children they have. Complainants further alleged that on June 8, 2021, they received from the Respondents a notice of non-renewal on their lease. As such, Complainants believe that Respondents have subjected them to discriminatory statements, discriminatory terms and conditions, and discriminatory acts under section 818 based on familial status.

On February 9, 2022, FCHR issued a “Notice of Determination of No Cause,” finding there was no reasonable cause to establish that Respondents committed a discriminatory housing practice against Petitioners.

On March 12, 2022, Ms. Robertson filed a Petition for Relief from Discriminatory Housing Practice with FCHR, maintaining her allegations that Respondents discriminated against them based on familial status and retaliated against them. FCHR transmitted the case to DOAH on March 14, 2022, for assignment to an Administrative Law Judge (“ALJ”) for a final hearing.

The undersigned scheduled this matter for a final hearing on May 9, 2022. The undersigned convened the final hearing on May 9, 2022, as scheduled. During preliminary matters, Respondents made an *ore tenus* Motion to Dismiss this matter on the basis that Petitioners’ Petition was untimely filed. The undersigned heard argument from both parties on the Motion to Dismiss. After hearing argument from the parties and reviewing the record, the undersigned denies the Motion to Dismiss. The findings related to the Motion to Dismiss are incorporated into the Findings of Fact below.

At the final hearing, Petitioners testified on their own behalf and offered no other witnesses. Petitioners Exhibits 1 through 13 were admitted without objection. During Respondents’ case, the following witnesses testified: Sheryl Jones (former RE/MAX office manager); ¹ Elena Manfredi (RE/MAX property manager); Terri Sellon (property owner); and Justin Brown (owner of RE/MAX). Respondents Exhibits A, B, H, I, and J were admitted into evidence.

¹ Ms. Jones appeared by Zoom technology.

At the conclusion of the hearing, the parties indicated that they would not be ordering a written transcript of the hearing.² Therefore, the deadline for filing post-hearing submittals was May 19, 2022. Petitioners timely filed their Proposed Recommended Order (“PRO”) on May 16, 2022. Although Respondents filed their PRO on May 20, 2022, it has been accepted as timely. Both PROs have been considered in preparing this Recommended Order.

Unless otherwise indicated, all statutory references are to the 2020 codification of the Florida Statutes, which were in effect at the time of the alleged discriminatory acts.

FINDINGS OF FACT

Based on the oral and documentary evidence offered at the final hearing, and the entire record of this proceeding, the following Findings of Fact are made:

1. Petitioners rented a single-family home located at 3030 Yukon Court, Melbourne, Florida 32935 (the “property”), from August 2016 through July 2021. Petitioners and their eight minor children were residents in the property.

2. Ms. Sellon was the owner of the property.

3. Petitioners initially signed a year lease in 2016 to live in the property. The lease was renewed thereafter for subsequent year-long lease agreements. Although not disclosed on the lease agreement, at some point after Petitioners moved into the property in 2016, Ms. Sellon learned from neighbors about the number of children living at the property. Between 2017 and 2020, Ms. Sellon continued to rent the property to Petitioners.

² On Friday, May 6, 2022, at 4:30 p.m., FCHR filed a Notice of Court Reporter indicating a court reporter would be present via Zoom conference to record the final hearing. However, a court reporter was not present at the final hearing. Based on agreement from the parties, the hearing was recorded using Zoom technology without a court reporter present. *See Fla. Admin. Code R. 28-106.214.*

4. Turning to the lease period at issue, in July 2020, Petitioners renewed their lease which listed ten individuals living in the home, including the eight minor children.

5. By way of background, in June 2020, Ms. Sellon provided to Petitioners a lease agreement that she drafted, which Petitioners rejected. The lease did not indicate any terms, conditions, or services would be based on the number of children in the home. Specifically, the agreement indicated the basis for any changes as follows:

Rent will increase \$50 to make it \$1,350 a month. This along with the other changes should help offset unexpected maintenance which has put a hardship on the landlord because she wanted to keep rent below the rates in the area (paid before the 5th of each month) and to keep rent affordable.

6. After Petitioners rejected the June 2020 proposed lease, the Strockbines continued to communicate with Ms. Sellon about renewing the lease.

7. On July 12, 2020, Ms. Sellon provided an option to renew the lease agreement, which provided the following options: 1) increase the rent to \$1,500 per month and add a \$500 pet fee; 2) vacate the property by July 31, 2020; or 3) remain at the property on a month to month basis with rent of \$1,600 per month.

8. Ms. Strockbine testified that at some point Ms. Sellon told her that if she knew how many children they had, she would not have rented to them. Ms. Sellon denied making the statement; however, a text exchange between Ms. Sellon and Petitioners about the new lease was as follows:

Strockbines: I had 5 pets when I moved in. Is this a property manager

You never had a problem with pets and you always agreed.

Sellon: On the original contract you signed you had two dogs. No I will disagree. You paid \$250 for two pets.

Strockbines: So what are you asking for

It is a Pandemic.

Sellon: Yes I had, but you would say one died...your story changes ... you also said you were watching animals

Strockbines: Is this the property manager lease

Sellon: Also all these pets shed and this cause all the coil problems.

Strockbines: Yes

Sellon: The property manager...but once you pick what you are doing...the property manager will go up a new lease. What I have is what the rent will be

Once you choose, she will know what to do next. She needs this ASAP or by 17 July.

Strockbines: \$60000 on time for 4 years and you raise it this much and say I will be pleased.

I would have never of gotten these pets if I would had to pay. We asked you agreed and now I pay never heard of that

Sellon: Yes she will cost me money but over 4 years I went broke fixing things or replacing. When you got upset and challenged me over what I wrote and did not want to talk...I then seeked a manager. Then I realized how the wear and tear I have been getting on my rental ...with a family of 9 and 6 animals. It would b to your benefit to make a decision soon. It will be hard to find a place that will take in 6 animals. Plus to live in this area the going rate is \$1500-\$1700. The original contract (not the application (sp)) is when we learned about the

2 dogs and 9 children. I am not going to entertain this anymore. I am calling the manager.

Shelly – next time whatever you do – please think first before you get bossy. You have had it made for 4 years...

Strockbines: Have her call me then thank you

Sellon: Ok.

You argued with me...you have no idea how sweet you had it. All it did was cost me over \$7000 at least in the last 4 years out of my own money. Now I am struggling. Paying on time is good because it usually is a \$\$ penalty to be late. Hense (sp) you see why I need to have someone to manage. No I never approved of all those animal's. Sorry. Nor stickers on the painted door, the kitchen floor, or the dark colors on the wall. I never bothered you or came over to inspect the house. I left you guys alone. A old small house on the beach side that isnt (sp) in good shape get \$1800.00 because of location. I was under priced from the beginning and tried to be a good landlord and compassionate. But it got me nothing but argument (sp) and denial from you. My agent is Elena. I will now block ---. She will call you.

9. Other than one additional text message requesting that Petitioners return Ms. Manfredi's call, Ms. Sellon had no further communication with Petitioners.

10. Due to death of her daughter and a friend as well as health concerns, in July 2020, Ms. Sellon hired RE/MAX Elite to manage the property. Ms. Manfredi was assigned as the property manager and continued to serve as the property manager until the sale of the property, in November 2021.

11. On July 29, 2020, Petitioners renewed their lease agreement for another year from August 1, 2020, through July 31, 2021. The lease agreement was the standard agreement used for properties managed by RE/MAX. Petitioners were both entitled to services, and subject to the conditions set forth in the lease. There was no other resident for comparison

as Petitioners lived in a single-family property, which was the only rental property Ms. Sellon owned. Petitioners also did not offer comparators who were tenants of other properties managed by RE/MAX.

12. The lease required tenants to comply with the terms of the lease agreement. The relevant terms of the lease are as follows:

2. OCCUPANCY: Only the following individuals shall occupy the property unless written consent of the LANDLORD is obtained: Wayne Strockbine, Shelly Strockbine, Sydney Strockbine, Faith Strockbine, Shayne Strockbine, Noah Strockbine, Tobey Strockbine, Naomi Strockbine, Jessie Strockbine and Hope Strockbine. A reasonable number of guests, at LANDLORD's discretion, may occupy the property without prior written consent of the LANDLORD if the stay is limited to no more than 7 consecutive days.

10. VACATING: TENANT agrees to vacate the property peacefully and without demand on the last day of the lease term. Upon vacating the property TENANT shall leave the property clean, and in as good of condition as received, in consideration of any repairs made during the lease, excepting ordinary wear and tear. TENANT agrees to a minimum mandatory cleaning fee of \$100.00 or the cost of the actual cleaning, whichever is greater, upon vacating the property. This cleaning fee may be waived by LANDLORD at its sole discretion. TENANT agrees to a minimum mandatory professional carpet/floor steam cleaning fee of \$100.00 or the cost of the actual cleaning, whichever is greater, upon vacating the property. This professional carpet/floor steam cleaning fee may be waived by LANDLORD at its sole discretion.

13. Property Maintenance and Repair: ... TENANT shall be responsible for the maintenance, replacement and/or repair of the following at the TENANT's sole expense: ... washer and window blinds. ...

37(e). TENANT acknowledges and agrees that if LANDLORD provides written permission to paint any portion of the property, then upon the termination of the lease agreement TENANT shall return that portion of the property to its original condition and color. TENANT acknowledges and agrees that it will be financially responsible for any damage to the property attributable to the TENANT as a result of the painting.

37(i). TENANT acknowledges and agrees that upon surrender of the property TENANT's responsibilities are as follows: a) clean stove, including oven, clean floors and leave the premises in a clean and sanitary condition; b) if walls or paint have been damaged, LANDLORD at TENANT expense shall return the property to the same condition as it was upon taking possession. ...

13. Soon after signing the lease, on August 7, 2020, Petitioners notified Ms. Manfredi and RE/MAX that the front door lock needed repair because Petitioners could not shut or lock the front door. On August 18, 2020, Ms. Manfredi sent a text message to Petitioners stating, "That is defiantly (sp) a wear and year (sp) issue. When you have 11+ people in and out of the house in (sp) a daily basis there will be some issues. I will touch base with Eric later today." Petitioners responded with a text stating, "Door has been an issue for five years. Always putting longer screws in for plate does not fix it. It is a safety issue because we keep getting locked out. Sorry for the inconvenience." The handyman repaired the front door on or about August 18, 2020.

14. On or about October 8, 2020, Petitioners notified Ms. Manfredi of a water leak in the closet of one of the bedrooms. The handyman began the repair on the wall by removing a portion of the drywall for replacement. However, the repair was not completed while Petitioners lived in the property. The messages with the handyman reflect that there were some attempts to coordinate repair of the hole. However, the hole was not repaired.

There was no evidence to demonstrate that the failure to repair the hole was due to the number of members in the Strockbine family.

15. On December 1, 2020, Petitioners received approval to adopt children.³

16. On or about January 5, 2021, Ms. Manfredi was at the property to accompany the air conditioning service repair technician. Ms. Strockbine testified that during that visit, she notified Ms. Manfredi that Petitioners were in the process of adopting two children. Ms. Manfredi told her that Petitioners could not live at the property if they added additional children. Ms. Strockbine then asked Ms. Manfredi, “if [I] were pregnant, would the answer be the same,” and Ms. Manfredi responded, “you’re not pregnant now, are you?” Ms. Manfredi denied that she told Ms. Strockbine that Petitioners could not have adoptive children in the home. She explained that she told Ms. Strockbine that Petitioners needed to add any additional persons to the lease.

17. On January 28, 2021, Ms. Manfredi sent a text message to Petitioners, “You need to get renters insurance ASAP-RE/MAX Elite needs to be listed on the policy.” Ms. Manfredi then sent Petitioners a Seven-Day Notice of Non-Compliance (With Opportunity to Cure) (“Notice to Cure”). Ms. Strockbine testified that Ms. Manfredi threatened to evict Petitioners because they planned to adopt children. At the time Ms. Manfredi sent the Notice to Cure, Petitioners had the proper renter’s insurance. At the final hearing, Ms. Manfredi conceded that she sent the Notice to Cure in error and it was withdrawn.

18. On June 4, 2021, Petitioners sent a text to Ms. Sellon as follows:

Good afternoon Terri,
I sent a note to your manger asking if we could have notice about your decision on the renewal of the lease and some other concerns. She had previously stater (sp) we can’t add any adoptive child to the lease. We are still having our home

³ On May 14, 2020, Mr. Strockbine received a certificate for completing training for prospective foster and adoptive parents.

study reviewed for potential matches. She also said you may be doing something illegal by renting to us with so many children already asked her to please clarify. She never did. We need to purchase a home if things are changing with the lease and ask you would you notify us to give us time. We will finish out until the end but please let us know your plans either way. We will give you notice of our plans also after we hear from you. Thank you, Shelly.

19. On June 8, 2021, Petitioners received a notice of non-renewal of their lease. Ms. Manfredi indicated that she understood that Petitioners had planned to purchase a home and Ms. Sellon wanted to sell the property.

20. Ms. Strockbine testified regarding the text at the final hearing. However, there was no evidence to corroborate the text (a hearsay statement) or her testimony, and thus, the undersigned cannot rely upon the statements for a finding of fact. Not surprisingly, Ms. Manfredi denied making the statement.

21. Petitioner signed a contract to purchase a home and determined that they did not intend to renew the lease agreement. On July 24, 2021, Petitioners filed a complaint against Respondents alleging housing discrimination.

22. On July 31, 2021, Petitioners vacated the property and took a video of the property as it appeared when they moved out. The video reflects holes in a closet door, damage to the walls, torn carpet, and no porch screen. At hearing, Petitioners acknowledged that they did not repaint the walls to the color that existed when they moved in; and that the replacement washer was not left in the property (because it was a gift to them).⁴

23. On August 25, 2022, RE/MAX notified Petitioners of its claim against the security deposit in the amount of \$1,300. Petitioners claim that

⁴ While the previous lease agreement required all *replaced* appliances to remain on the property, the agreement signed on August 2020 did not include that requirement.

Respondents did not refund their security deposit based on retaliation for filing the discrimination complaint.

24. Respondents, however, denied making a claim against the security deposit due to retaliation. Ms. Manfredi testified that Petitioners' security deposit was due to damages and cleaning costs that resulted from Petitioners living in the property. The itemized statement for repairs as of August 25, 2022, included the following:

Amount Held by Landlord	
Security Deposit	\$1,300
Last Month's Rent	\$0.00
Interest, if due	\$0.00
Total Held by Landlord/Agent	\$1,300
Amounts Owed By Tenant to Landlord	
Carpet Cleaning	\$225
Clean Home	\$300
Full paint/trim/doors	\$2,000
Screening for patio/door	\$350
3 kitchen drawers	\$325
Washer removed	\$300
Carpet repair	\$125
Broken window track	\$150
Missing blinds	\$325
General Repairs-list attached ^[5]	\$500
Total owed by Tenant	\$4,600
Amount due to Tenant	\$0
Amount due to Landlord	\$1,300

⁵ Petitioners offered the list into evidence at the hearing as part of Petitioners' Exhibit 5.

25. The deposit claim and itemized statement was sufficient evidence to support Respondents explanation.⁶

26. After its investigation, FCHR issued a Notice indicating “no cause” that was mailed to Petitioners on February 9, 2022. The Notice stated, in pertinent part:

The parties are further advised that the Complainant may request that a formal administrative proceeding be conducted. The request (i.e., Petition for Relief) must be filed with the FCHR within 30 days of the date of service of this Notice and should be in compliance with the provisions of rule 60Y-8.001 and Chapter 60Y-4, Florida Administrative Code, entitled General Procedures. A Petition for Relief form is enclosed. If you elect to file a Petition for Relief, it may be beneficial to seek legal counsel prior to filing the Petition.

This action will not become final until time has expired for Complainant to file a Petition for Relief. Failure of Complainant to timely file a Petition will result in dismissal of the complaint within the purview of Rule 60Y-2.004 (2) (g), Florida Administrative Code.

27. The email produced regarding delivery of the Petition demonstrates that Petitioners received the Notice on February 11, 2022. As a result, the time period for the Petition to be filed was no later than 30 days after the date of service, i.e., March 14, 2022.⁷

⁶ The undersigned has no jurisdiction to address the merits of the deposit claim. Thus, that issue will not be addressed in this Recommended Order.

⁷ The 30th day was on March 13, 2022, a Sunday. Thus, the time period for filing the Petition was the next business day, i.e. March 14, 2022. *See* Fla. Admin. Code R. 28-106.103.

28. Petitioners filed their Petition on March 12, 2022, a Saturday. The Petition was not deemed filed until the next business day of March 14, 2022. The evidence of record is sufficient to establish that Petitioners timely filed their Petition for Relief.

29. Based on the evidence offered at hearing, there was no persuasive evidence that Petitioners were denied anything or treated differently during their tenancy because of their familial status. Even the comments about the number of children living in the home attributed to Ms. Sellon did not establish that Ms. Sellon's actions were discriminatory. The discriminatory comment attributed to Ms. Manfredi, was not corroborated by any other admissible evidence. The text message sent by Ms. Manfredi referencing the number of persons in the home may have lacked tact, but it was not sufficient to demonstrate discriminatory intent. Moreover, no services were withheld due to familial status.

CONCLUSIONS OF LAW

30. DOAH has jurisdiction over the parties and subject matter of this cause. §§ 120.569, 120.57(1), and 760.35(5), Fla. Stat.

31. Section 760.35(5)(a)2. provides that "the aggrieved person may request administrative relief under chapter 120 within 30 days after receiving notice that the commission has concluded its investigation under s. 760.34."

32. Florida Administrative Code Rule 60Y-8.001(1) is the relevant FCHR rule governing Fair Housing Discrimination Proceedings. It states in pertinent part: "A complainant may file a Petition for Relief from a Discriminatory Housing Practice within 30 days of service of a Notice of Determination (No Cause) or Notice of Determination (Cause)."

33. Florida Administrative Code Rule 28-106.103 provides that "[i]n computing any period of time allowed ... by any applicable statute The last day of the period shall be included unless it is a Saturday, Sunday, or

legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.”

34. Rule 28-106.104(1) provides that “filing shall mean received by the office of the agency clerk during normal business hours.” In addition, rule 28-106.104(3) provides that “[a]ny document received by the office of the agency clerk . . . after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.”

35. The preponderance of the evidence proved that the Petition was received on Saturday, March 12, 2022. Based on the applicable rule, the Petition was timely filed on the next business day, i.e., Monday, March 14, 2022.

36. The FHA, sections 760.20 through 760.37, makes it unlawful to discriminate in the rental of housing. Section 760.23(2) provides that “[i]t 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.”

37. As to familial status, section 760.23(6) provides that “[t]he protections afforded under ss. 760.20-760.37 against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

38. Furthermore, as to familial status, section 760.22(6) provides as follows:

“Familial status” is established when an individual who has not attained the age of 18 years is domiciled with:

(a) A parent or other person having legal custody of such individual; or

(b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

39. The FHA is patterned after Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988. As such, discriminatory acts prohibited under the federal Fair Housing Act also are prohibited under the FHA, and federal case law interpreting the federal Fair Housing Act is applicable to proceedings brought under the FHA. *Savanna Club Worship Serv. v. Savanna Club Homeowners Ass’n*, 456 F. Supp. 2d 1223, 1224 n.1 (S.D. Fla. 2005); *see also Bhogaita v. Altamonte Heights Condo. Ass’n*, 765 F.3d 1277, 1285 (11th Cir. 2014) (“The [Federal Fair Housing Act] and the Florida Fair Housing Act are substantively identical, and therefore the same legal analysis applies to each.”).

40. To establish a claim under the FHA, in housing discrimination cases, the complainant has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. § 760.34(5), Fla. Stat.

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

42. Petitioner may establish a violation of the FHA through either direct evidence, or through the burden shifting framework of *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973). “Direct evidence encompasses conduct or statements that both (1) reflect directly the alleged discriminatory attitude, and (2) bear directly on the contested [housing] decision.” *Noel v. Aqua Vista Townhomes Condo. Ass’n*, 2019 WL 4345903 at *3 (S.D. Fla. Sept. 12, 2019).

43. Petitioners presented no credible, direct evidence of discrimination by Respondents relating to, or affecting the terms of, their lease that established

the requisite discriminatory intent necessary to prove actions motivated by discrimination.

44. 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*. Under the *McDonnell Douglas* framework, Petitioners must show that: (1) they are members of a protected class; (2) they suffered an injury because of the alleged discrimination; and (3) they were denied, based on their familial status, the provision of services protected by the FHA, which were available to other residents managed by RE/MAX. Because Petitioners' allegations amount to a claim of disparate treatment on account of their familial status, they must prove that they were treated differently than similarly-situated tenants outside their protected classes. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1216 (11th Cir. 2008).

45. Petitioners' complaints under the FHA are based on a claim that Respondents refused to address their service repair complaints, refused to rent to them, and refund their deposit due to familial status and retaliation. Because Petitioners' allegations amount to a claim of disparate treatment on account of their familial status, they must prove that they were treated differently than similarly-situated tenants outside their protected class. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1216 (11th Cir. 2008).

46. To establish a prima facie case for disparate treatment, Petitioners must show that they: a) are a member of a protected class; b) that they requested services be performed on terms comparable to others living in the community; and c) that, based on their race or national origin, they were denied provision of services that were available to other tenants. *See Miller v. Richman Prop. Servs., Laurel Oaks Apts.*, Case No. 12-3237 (Fla. DOAH Dec. 27, 2012; Fla. FCHR Mar. 11, 2013)(setting forth the elements of a prima facie disparate treatment claim based on race).

47. Petitioners established that they are members of a protected class based on their familial status as parents living with eight minor children and in the process of securing legal custody of a minor child.

48. Petitioners failed to present a prima facie case for disparate treatment, as there was no competent substantial evidence to prove that they requested services that were not performed based, compared to those received by other renters who were managed by RE/MAX or property owned by Ms. Sellon. In addition, there was no persuasive evidence that Petitioners were treated less favorably than other renters based on their familial status. While the property management company may have been delayed in their responses to Petitioners' requests, there is no evidence in this record that any of their actions were motivated by discriminatory intent. In addition, Ms. Sellon's and Ms. Manfredi's comments about the number of children living in the home may have been insensitive, but there were no actions motivated by discriminatory intent. In fact, Ms. Sellon continued to rent to Petitioners and RE/MAX facilitated repairs requested by Petitioners.

49. Although not required to do so as the burden of production never shifted to them, Respondents advanced legitimate, non-discriminatory explanations for their challenged conduct (Ms. Sellon intended to sell the property due to personal reasons) and the evidentiary record affirmatively establishes the non-pretextual nature of the explanation.

50. Regarding Petitioners' retaliation claim, when making such an allegation, they must show that: a) they engaged in a statutorily protected expression; b) that they suffered an adverse action; and c) there is a causal relation between the two events. *Olmsted v. Taco Bell Corp.*, 141 F.3d 1457, 1460 (11th Cir. 1998).

51. Even if the Strockbines satisfied the first element, they have failed to present any credible evidence of an adverse action (the deposit claim was not sufficient to show an adverse action) and they have failed to prove a causal

relation between the housing discrimination complaint and the deposit claim at issue in this case.

52. Moreover, Petitioners' claim of retaliation must be dismissed as it has not been investigated by FCHR or alleged in the Petition. The initial charge of discrimination on the basis of familial status was filed on July 24, 2021. The retaliation claim was asserted for the first time within the petition. Therefore, Petitioner's claim of retaliation must fail. Failure of the retaliation claim at this time does not bar Petitioners from filing a separate complaint so long as it is timely.

53. Based on the foregoing, no discriminatory housing practice was established and Petitioners' Petition for Relief should be dismissed.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a final order dismissing Shelly and Wayne Strockbine's Petition for Relief.

DONE AND ENTERED this 8th day of June, 2022, in Tallahassee, Leon County, Florida.



YOLONDA Y. GREEN
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of June, 2022.

COPIES FURNISHED:

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Tallahassee, Florida 32399-7020

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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.

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