



## Pinellas County Office of Human Rights

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February 28, 2017

### Determination

**Case Name:** Menefee, James v Japanese Gardens Mobile Estates, Inc.

**Case Number:** 04-16-5002-8/PC-16-075

#### I. Jurisdiction

A complaint was filed on August 18, 2016 alleging that the complainant(s) was injured by a discriminatory act. It is alleged that the respondent(s) was responsible for: Otherwise deny or make housing unavailable; and Discriminatory terms, conditions, privileges, or services and facilities. It is alleged that the respondent(s)'s acts were based on Handicap. The most recent act is alleged to have occurred on August 08, 2016, and is continuing. The property is located at: 2685 Rickshaw Dr, Clearwater, FL 33764. The property in question is not exempt under the applicable statutes. If proven, the allegation(s) would constitute a violation of Article II, Division 3 of Chapter 70 of the Code of Ordinances of Pinellas County, Florida and Sections 804a, and 804b of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

It is not known if the respondent(s) receive federal funding.

#### II. Complainant Allegations

James Menefee (CP) is a person with a disability who resides at 2685 Rickshaw Dr., Clearwater, FL 33764. CP owns the mobile home, however he rents the land which is owned by Japanese Gardens Mobile Estates, Inc. (R Japanese).

CP states that he believe R Japanese management is taking advantage of him due to his disability. CP states that he has been evicted unfairly. CP states that after having his wallet stolen, his accounts were frozen. CP states that while his accounts were frozen, R Japanese attempted to withdrawal the rent, which was declined. CP states that he attempted on several occasions to explain this to management for the Respondent. CP states that he in fact did make a payment after he received notice of an eviction. CP states that the Respondent returned the monies stating it was a "reimbursement". CP states that management knew of his disabilities and has harassed and made fun of him. CP states that the current manager calls him a "nut job".

CP states that he believes he has been discriminated against due to his disability and has been unfairly evicted from his home. CP states that when he purchased his mobile home several years ago he was never given the title to the unit. CP states this prevents him from selling his unit.

CP believes that the Respondent's actions constitute a violation of the Fair Housing Laws.

#### III. Respondent Defenses

On June 8, 2016, the Complainant was given a notice to pay rent for delinquent rent for January through June 2016. The Complainant failed to bring his rent current or make any payment towards his delinquent rent despite this notice. As a result of the Complainant's failure to cure his

delinquent rent, the respondent was forced to file for eviction. The respondent stated their eviction complaint was filed on 7/11/2016. Overall, the respondent denied they knew the Complainant was disabled, or were ever told any such information by the Complainant or others.

The respondent stated that "after receiving the five day notice for delinquent rent on June 8, 2016, Mr. Menefee made no attempt to pay his obligations to Japanese Garden or offer any payment plan to Japanese Garden for his delinquent rent. Instead, Mr. Menefee ignored his rental obligations and ignored the statutory notice to pay. As a result, Japanese Garden had no option but to proceed forward with the eviction proceedings." (C-1)

Regarding the accommodation request, the respondent stated "Please be advised that Japanese Gardens has no knowledge that Mr. Menefee's daughter was acting as his power of attorney. Neither Mr. Menefee nor Ms. Monahan ever provided a Power of Attorney to Japanese Gardens or made any request whether verbally or in writing requesting Ms. Monahan be contacted regarding Mr. Menefee's account. Mr. Menefee did list Ms. Monahan as an emergency contact but did not note that she was his power of attorney.

Regarding the allegation of harassment and name calling, the respondent denied this. Regarding the alleged statement, the respondent stated that "during a conversation with Mr. Menefee's daughter, Shannon Monahan, I once referred to Mr. Menefee as a little nutty, she agreed with me and stated that Mr. Menefee is a very nutty at times."

#### IV. Findings and Conclusions

##### **A. FINDINGS:**

1. 1/21/2014 Complainant signs lease agreement with respondent park. (C-3)
2. 7/1/2015 Complainant sent 5 day notice to pay rent; owed (\$1599.30); Sets up payment plan of \$50 a month.
3. 9/10/2015 Email from Complainant to Zink about 9/2015 rent payment; Zink wrote back she had not received any payment from him that month. (B-5)
4. 3/31/2016 Complainant email to respondent about turning off auto pay for April because he could not pay rent, then turning back on for May, 2016; (C-3)
5. 4/3/2016 Complainant does not pay rent; (B-1, (C-1)
6. 5/3/2016 Complainant pays rent; (C-3)
7. 6/3/2016 Complainant's rental payment not made. (C-3)
8. 6/6/2016: As of 6/6, Complainant delinquent on lot rent to respondent in the amount of for \$1,567.49. (C-3)
9. 6/7/2016 Notation on ledger that Complainant's case was to be sent to respondent attorney; (C-3)
10. 6/8/2016: Certified mail sent to Complainant; Five day notice posted on door for monies. (C-1)
11. 6/9/2016 Complainant notifies park of missing wallet; Police report filed; (
12. 7/5/2016 Complainant's auto debit rental payment of \$590.23 is deposited to the respondent;
13. 7/11/2016 Eviction filed by respondent.
14. 7/18/2016 Respondent email to Complainant about paying the attorney; It stated "Please note-if you want to mail payments and have been given a 5 day notice-all correspondence must go through our lawyer-Gary Lyons. Barbara cannot accept payments unless she gets approval to do so from Gary. Do you need his contact information?" (C-3)
15. 7/21/2016 Complainant deposits \$590.23 to the court with answer; (C-3)
16. 7/23/2016 Complainant sends letter to Zink stating "After received your "past due" invoices for your account 2685R...I filed a law suit in Pinellas County for return of all funds paid to Japanese Village up to July 13, 2016 be returned to me..." (C-3)

17. 8/2/2016 Court issues final disposition form in approving the eviction of the Complainant; insufficient monies paid to the court registry; (D-4)
18. 8/5/2016 Email from daughter Shannon Monahan to respondent Park; (C-3)
19. 8/8/2016 Email from Respondent park to daughter to contact respondent attorney; (C-3)
20. 8/8/2016 Email from Monahan to Complainant about her previous RA discussion with park: Was told by attorney to call park, whom Steve and Pat knew nothing about eviction because Barbara had handled it. Left messages for Barbara who did not return calls. (C-3)
21. 8/9/2016 Complainant files appeal; (D-4)
22. 8/24/2016 Court orders final appeal by Complainant to be filed by 9/20/2016. (D-4)
23. 9/2/2016 Order denying Motion to dismiss writ of possession; (C-3)
24. 9/29/2016 Order granting up to 11/1/2016 for Complainant to file appeal; (D-4)
25. 11/30/2016 Order dismissing appeal, as none had been filed by the Complainant; (D-4)

**B. LAW & ANALYSIS:**

804a/b: Refusal to rent through different terms and conditions due to disability:

1. Membership in protected category;
2. Respondent knew of this membership;
3. Complainant, disabled, was evicted for non-payment of rent;
4. Others, not disabled, were not evicted despite owing similar amounts of rent;

The Complainant states the respondent moved quickly to evict him due to his disability. Although never explicitly alleged to be a disparate treatment case, the Complainant and daughter alleged that the father's disability had been exploited in depriving him of his unit. Because this belief, the issue of different treatment was reviewed.

As the Complainant is disabled, the first element has been met. As it has been concluded the respondents understood him to be disabled, the 2nd element has been met. The respondent's knowledge of the Complainant's disability is discussed further in the RA section. As the Complainant is disabled and was evicted, the third element has been met. After review of available court information, it is not believed the 4th element has been met. This issue is further discussed and assessed in light of the respondent's defense, and comparison with other evictions filed by the respondent.

**Respondent defense:**

On June 8, 2016, the Complainant was given a notice to pay rent for delinquent rent for January through June 2016. The Complainant failed to bring his rent current or make any payment towards his delinquent rent despite this notice. As a result of the Complainant's failure to cure his delinquent rent, the respondent was forced to file for eviction. The respondent stated their eviction complaint was filed on 7/11/2016. Overall, the respondent denied they knew the Complainant was disabled, or were ever told any such information by the Complainant or others.

Regarding evictions, the respondent stated their standard operating procedure is to communicate with the resident to bring their account current if they fall behind on rent and once a resident is falls three (3) months behind on their rent obligations the bookkeeper Barbara Zink, turns the account over to legal counsel for a five day notice and potential eviction proceedings. The account is turned over via email to legal counsel and the owners of the park are copied on the email. The same procedure is used with every resident. If after the five day notice the tenant fails to pay their rent obligation or establish an acceptable payment plan a complaint an eviction is then filed.

The respondent stated the Complainant previously received a five day notice for failure to pay his rent on July 1, 2015. At that time, the Complainant reached out to Zink and entered into a payment plan to pay an additional \$50 per month to cure the delinquent rent.

In addition, the Complainant asked to be set up with auto-debit for the monthly rent. At the end of March 2016, the Complainant requested of Zink they stop the auto debit for April 2016 as he did not have the money to pay his rent. This put him further behind.

In June of 2016, the Complainant's auto debit was not executed due to insufficient funds. At that point, the Complainant's account was turned over to legal counsel for a 5 day notice.

"After receiving the five day notice for delinquent rent on June 8, 2016, Mr. Menefee made no attempt to pay his obligations to Japanese Garden or offer any payment plan to Japanese Garden for his delinquent rent. Instead, Mr. Menefee ignored his rental obligations and ignored the statutory notice to pay. As a result, Japanese Garden had no option but to proceed forward with the eviction proceedings." (C-1)

Analysis:

It is clear that the Complainant did owe back rent in the amount of \$1567.49, as of June 8, 2016. He was given a 5 day notice for this delinquency, as he had been in July of 2015, for a delinquency of \$1599.30.

During his tenancy, the Complainant had owed the respondent back rent at various times. The Complainant had purchased the unit in January of 2014, and by March 1, 2015, had a balance due of \$1,565.03. By May 1, 2015, his balance due was \$1036.30. (C-3)

When the Complainant failed to pay July 1, 2015 rent, he was given a 5 day notice for the amount due of \$1599.30. At that point, the Complainant agreed to pay \$50 extra a month to catch up with his rent. The Complainant then paid \$590.23 a month, instead of the usual \$540.23. The payments were made up to April of 2016, when the Complainant again failed to pay rent. At this time, he had to pay his electricity bill. As of March 1, 2016, his outstanding back rent had been \$502.03. With his April 2016 missed rent, his back rent went up to \$1042.26 (\$502.03+\$540.23 rent). After he made his May 2016 payment, his back rent owed was \$992.26. (\$540.23 May 2016 rent minus \$590.23 May 2016 rental payment: \$992.26).

The Complainant then missed his June 2016 rental payment when his account allegedly had insufficient funds. A review of his submitted bank account record appeared to show he had \$644.58 in his account when the electronic funds was attempted on 6/3/2016. Nonetheless, the amount was not paid. Thus, the Complainant then owed June's rent of \$540.23, with a return fee of \$35 added. This amount added to the previous balance of \$992.26, then became the \$1567.49, the total amount the Complainant was evicted for.

Thus, the three months the Complainant was evicted for was June 2016, April 2016, and the July 2015 month he was making payments on. Although directly asked, the respondent did not answer the question of which three months the Complainant had been delinquent for. Although the Complainant did pay his rent through auto debit for the month of July 2016, the month the eviction filing was made, the respondent returned the money.

Regardless of the chronology, a review of the most recent evictions showed that others were subjected to the eviction process for similar amounts of money owed.

The respondent submitted a list of 63 other evictions they had undertaken. A comparison of the

first 20 evictions[1], from 7/11/2016 (Complainant's) going back to 4/5/2013, showed the following:

1. 3 of the 20 evictions were for non-monetary reasons;
2. 10 of the remaining 16 (Complainant would be #17) were for monetary amounts less than Complainant's outstanding amount; the low was \$831.43, and high was \$1562.19, with an average of \$1315.26.
3. Of the remaining 6 evictions, 4 were for amounts of roughly \$2,000. The low was \$1,616.87, and the high \$2191.03, with an average of \$1977.28.
4. Only 3 of the 16 were for amounts above \$3,300+. The low was \$3,393.07, and high \$6,327.48, with an average of \$4,436.43.
5. The highest amount owed was \$6,327.48, for a resident who died.
6. The average outstanding amount for all 16 monetary related evictions was \$1752.72.
7. 8 of the monetary evictions were voluntarily dismissed after the outstanding amounts were paid. The low amount was \$831.43, and the high was \$2191.03. The average amount of the settled cases was \$1226.66; The longest delay in voluntarily dismissing a case was 46 days, and the shortest was 6 days. The average number of days for a voluntary dismissal was 29.5 days.

In light of the above, there appears to be no different treatment in the eviction policy as applied to the Complainant. That is, others, presumably some non-disabled, had eviction proceedings commenced for similar amounts of money after falling behind on rent.

However, it appears that roughly half of the persons subjected to an eviction were allowed to salvage their tenancy even after the filing of the eviction papers. Eight out of seventeen monetary evictions were apparently cured after the filing of an eviction. This would be 47%, or nearly half of those subjected to actual court filings.

Despite getting the notice on 6/8/2016 to pay the outstanding amount of \$1567.49, the Complainant did not tender that amount to the respondent. The Complainant personally had 33 days to tender rent, but failed to do so.

The Complainant stated he tendered his monthly rental amount for June 2016, various times, but had this returned to him each time, as it was not full payment. The respondent states the Complainant's daughter contacted the park on 6/10/2016, to discuss the outstanding monies. This issue is discussed further below.

The respondent then filed the eviction on 7/11/2016. On July 21, 2016, the Complainant filed a response and deposited \$590.23 into the registry of the court, and not the total outstanding delinquent rent as required by law. On 7/18, the Complainant wrote to the park asking for the contact information on various persons, including where to send the rent check. The park replied by email on the same date, writing, "If you want to mail payments, and have been given a 5 day notice-all correspondence must go through our lawyer-Gary Lyon. Barbara cannot accept payments unless she gets approval to do so from Gary. Do you need his contact information?" (C-3). It does not appear the Complainant proceeded with this offer.

On 7/23/2016, the Complainant wrote a note to Ms. Zink, writing, "after received your "past due" invoice for your account 2685R....I filed a law suit in Pinellas County for return of all funds paid to Japanese Village up to July 13, 2016 be returned to me...I have placed on deposit with the Clerk of the Pinellas Court for the July land rent payment, only upon agreement by both sides or a judge's order". (C-3) This did not appear to be an offer of full payment, but instead a notice he

would not be paying any amounts.

On 7/27/16, the Complainant filed a modified answer without depositing additional funds with the court. On 7/28/16, the Complainant filed an amended answer with the court again, without depositing the additional monies. On 8/2/16, the court entered a final judgment for eviction against the Complainant.

On 8/8/16, the Complainant filed an appeal to the final judgment. On 8/17, the Complainant filed a motion to stop the writ of possession, which was denied on 8/18/16. On 8/23, a writ of possession was issued by the court. On 8/25, there was an order to file an amended appeal. On 8/26, the emergency motion to stay the writ of possession was denied by the court, and executed on 8/31. On 9/2, the court denied the emergency motion to stay the writ. On 9/29, there was an order granting an extension of time to file an amended notice of appeal. On 12/16/2016, there was an order dismissing the appeal. (D-4)

During this time, the Complainant's daughter states she had been attempting to pay the outstanding amounts, but could not communicate with the respondents.

Daughter Shannon Monahan stated, "On or about April[2] 2016, I was advised by Mr. Menefee he had been evicted from Japanese Gardens because of lack of payment. I was never notified by any staff member of Japanese Gardens of any late payment or past due amount owed by Mr. Menefee as both he and I had requested at lease signing and informed by Linda Lyle because of his disability as well as Ms. Zinc....I left several messages at Japanese Gardens office phone number for payment arrangement. My call was never returned. Two separate occasion I reached Mr. Lyle on the office phone number and he refused to accept payment and referred me to contact this lawyer. I contacted his lawyer on several occasion. His assistant said that he was unable to speak with me because I was not his client. I spoke to Ms. Zinc who also indicated that she was told not to speak to me nor accept payment. I indicated to all of them that my father, Mr. Menefee, had the financial means to make payment in full, however, they would not accept it. There still remains a check that Mr. Menefee has not deposited from Japanese Gardens in an attempt to block him from making payments. Mr. Menefee was under the impression that he would be allowed to make payment based in the lack of communication." (B-7)

According the respondent Zinc, she never spoke with daughter Monahan prior to the eviction filing. According to respondent Lyle, he spoke to the Complainant's daughter on 6/10/2016. According to the respondent law firm, there was no record of contact from the daughter until after the eviction. (C-3)

According to the emails in the Complainant's park file, daughter Monahan contacted the respondent park on 8/5/2016, wherein she reiterated her father's disability related confusion and need for her involvement. The park replied on 8/8/2016, writing, "at this point you need to contact the lawyer if you haven't done so already-Gary Lyons, Esquire[.] His assistant is Lisa Schuman." (C-3)

On 8/8/2016, the Complainant wrote a summary email to her father, stating, "Called JG attorney and they refused to discuss case with me. Told me to call JG. Called Japanese Gardens and spoke to Steve and Pat. They said that they didn't know anything about the eviction because Barbara handled it. I told them that they took advantage of you by not accepting your payment and ignoring all your attempts to contact them. Left a message for Barbara after multiple calls. Message stated that she was supposed to contact me, your POA, should there be any financial issues. She has told me months ago that you 2 had worked it out. Waiting on lawyer from Gulf Coast Legal services to return my call Lisa from Human Rights recommended him." (B-7)

Despite asking the Complainant and daughter for specific dates wherein the respondent was contacted, they failed to do so. Daughter Monahan did not directly contradict Lyle's affidavit that she had contacted the park as of 6/10/2016. However, this date is not believed to be accurate. It is not believed she knew of the rental payment delinquency and legal proceedings until August of 2016. As shown above, the emails appear to indicate she was surprised at the lack of payment, and contacted the park immediately. Her filing with HUD, undertaken on 8/9/2016, stated that, "Last week my father reported that he received a final judgement eviction 10 day notice on his door. He explained what transpired leading up to this point....during this time I was unaware of the situation because my father felt that he had it under control." (B-1)

Overall, it appears that Mr. Menefee had ample opportunity to tender the full amount but failed to do so himself. However, it also appears that the respondent did not contact the daughter so as to allow for the payment of back monies owed. This would go to the issue of possible different treatment based on disability, and/or a denial of an accommodation. This is discussed in the RA allegation.

Regarding evidence of disparate treatment, during the investigation the Complainant's neighbor Jim Sullivan was interviewed. He stated he knew immediately that the Complainant would be evicted after manager Lyle had to play referee between the Complainant and another resident who were arguing over an abandoned grill. Despite the Complainant ultimately getting the grill, Sullivan stated "right then I said the Complainant would be evicted." Sullivan stated that Lyle said that "Jim [Complainant] was crazy". Sullivan stated that when he saw the Complainant was being evicted, he bought the Complainant's unit for \$100 dollars. Sullivan stated that Lyle later came to his house, and told Sullivan he could not buy it. Sullivan stated that Lyle said, "he's got to go and he is a nut." (D-5). Interestingly, when asked if the park considered the Complainant disabled, he replied no, that Steve would say that when he did not like someone. When asked if the park had ever spoken about the Complainant's eviction, Sullivan replied yes, that he would do it. When asked what the motivation was, Sullivan replied "he's nuts," in reference to Lyle's statements. When asked if this was not an indication of the Complainant's disability status, Sullivan stated "no-just Steve's reaction." When asked further if Lyle believed the Complainant had a mental condition, Sullivan replied "no, it was personal." (D-5)

As indicated by the daughter, once Complainant Menefee lost his electricity in April of 2016, he began hanging out in the clubhouse to use their wifi. Daughter Monahan stated her father had "verbal diarrhea", and was disliked by his neighbors due to this disability related conduct. Neighbor Cindy Avery also stated as much, saying the Complainant's unit was unkempt, and that he made people feel uncomfortable as he was socially inappropriate while using wifi in the clubhouse. She stated that he did not maintain his unit, did not clean up after his dog, and "whatever Jim's medical condition [was], he was a difficult tenant", she stated. Interestingly, she did not believe the office viewed him as disabled, but stated that the Complainant definitely needed to live in assisted living. A review of Menefee's file shows warning notices for necessary yardwork, removal of items around the dwelling and for speeding through the park. (C-3)

Regardless of the Complainant being possibly a difficult tenant, this was not the respondent's stated reason for their actions. Instead, their actions were based on the Complainant being a delinquent tenant.

As indicated above, it appears the Complainant was evicted for amounts similar to that of other residents. Thus, the filing of the eviction cannot be stated to be due to the Complainant's disability. However, the ability to cure the past due rent does appear to be affected by either the Complainant's disability related conduct, in light of Sullivan's statements, or the failure to grant the requested RA. As Complainant Menefee personally failed to tender the entire back rent as demanded, we will never know if there had been different treatment.

However, as discussed, had the Complainant's daughter been notified, it is believed the eviction could have been cured or halted.

Regarding the park's process and criteria for halting an eviction if full back rent were paid, the park did not answer any of these questions. The respondent did not address Monahan's allegations she had attempted to pay the back rent, or what their process was in accepting such. Thus, although asked, the respondent did not address questions regarding resolutions of pending evictions as evidenced by their previous practice.

Reasonable Accommodation request:

1. Complainant has a disability or is a person associated with a disabled person;
2. Respondent knew of the disability or could have been reasonably expected to know of it;
3. Accommodation of the disability may be necessary to afford complainant an equal opportunity to use and enjoy the dwelling and;
4. Respondent refused to make the requested accommodation.
5. Accommodation is not an undue burden on respondents.

The Complainant states he suffers from Traumatic Brain Injury due to a car crash and a subsequent stroke afterwards[3]. The Complainant stated that he suffered from confusion, short term memory loss and depression at times due to his condition. During the investigation, his daughter attested to the Complainant's disability, and both submitted affidavits stating that the Complainant was disabled.

During the investigation, the Complainant was asked for proof of his disability. He submitted various records related to a crash in 2013. A neuropsychological evaluation, dated 3/24/14, indicated severe impairment was found for visual attention, figure copy and recall, and working memory. The patient was noted to be of reduced deficit awareness, depressed and anxious. The diagnosis was cognitive disorder NOS." In the assessment, the Complainant reported being unable to fill out forms, difficulty driving, forgetting names, stuttering, losing things....behavioral observations were remarkable for the patient being disinhibited and tangential, impulsive and of questionable judgment." Ultimately, the report concluded, "neuropsychological evaluation finds deficits in motor speed and dexterity, visual processing speed, verbal and visual memory and emotional status.....He is impaired, with multiple factors of recent concussion, old stroke, possible ADHD and low mood contributing." (D-8)

Thus, the Complainant has met the first element.

Regarding whether the respondent knew or should have known of the disability, both sides submitted statements under penalty of perjury supporting their positions. The Complainant, his daughter and her husband, submitted affidavits stating they had told respondent Barbara Zink of the need for an accommodation due to the Complainant's disability. The Complainant's daughter, Shannon Monahan, further alleged she directly informed now deceased respondent manager Linda Lyle at the time of their arrival to the park. (B-7, D-7)

Similarly, the respondent submitted affidavits from manager Steve Lyle and Barbara Zinc, denying any knowledge the Complainant was disabled, or of any request that the Complainant's daughter be contacted due to such. (C-3)

Although denied by the respondent, it is believed the respondent knew of the Complainant's disabled status and accommodation request due the Complainant having his daughter and her husband as witnesses. Further, the Complainant had an assistance animal during his tenancy, and a



resident information sheet in the file stated, "Note: stroke Pt. Check when necessary", with the daughter as the emergency contact (underlines in the original). The Complainant stated he personally had told the manager various times, particularly when it came to mowing his grass, he suffered from brain injury. As the Complainant and his daughter, a Board Certified Assistant Behavior Analyst at a local mental health provider, have been consistent in their narrative, it is believed they are credible. Daughter Monahan stated she had been contacted by the Linda Lyle, once, about her father's lawn in the past, as evidence of their arrangement. She stated she had also spoken with the office about the Complainant father having home health aides visit. (B-7) Further, both Monahan and her husband stated, under penalty of perjury, that they had spoken with Zink on or about June of 2015 about a financial delinquency and the need to be contacted due to the father's disability. The husband stated his phone records would corroborate the communication with Zink. (B-7, D-7)

Thus, it is believed this element has been met.

Regarding whether the accommodation may be necessary for the Complainant to use and enjoy the dwelling, this is believed to have been met as well. For a person suffering from brain and stroke related confusion, having the park contact their daughter to ensure compliance with financial obligations would seem reasonable, and effective, in persons retaining their housing. In short, it is believed that the daughter would have recognized the legalities of the situation far better than the Complainant, who was busy arguing about the condition of the unit when sold to him, and/or the lack of title provided to him during the eviction process. Although granted an appeal, the Complainant failed to execute any further defenses or legal motions. (D-4, C-3)

Regarding the refusal to grant the requested accommodation, this occurred when the Complainant's daughter was not contacted during the crucial time period during the eviction process. Had the daughter been contacted, per her statements, she would have tendered the full amount. Thus, the failure to contact the daughter was the failure to grant the accommodation.

Lastly, the issue of undue burden was not argued by the respondent, nor believed to be one.

**Respondent reasonable accommodation defense:**

"Please be advised that Japanese Gardens has no knowledge that Mr. Menefee's daughter was acting as his power of attorney. Neither Mr. Menefee nor Ms. Monahan ever provided a Power of Attorney to Japanese Gardens or made any request whether verbally or in writing requesting Ms. Monahan be contacted regarding Mr. Menefee's account. Mr. Menefee did list Ms. Monahan as an emergency contact but did not note that she was his power of attorney. Further, when Mr. Menefee purchased his home a woman by the name of Janet Polk, was acting Power of attorney for Mr. Menefee[4]. Japanese Garden had no reason to believe or act as though Ms. Monahan was Mr. Menefee's Power of attorney." (C-3)

Regarding any contact by Monahan after the issuance of the 5 day notice of delinquent rent, the respondent stated "please be advised that our office has no record of Ms. Monahan contacting our office after the June 8, 2016 five day notice was served and prior to the eviction proceeding being filed. However, Ms. Monahan did contact our office after the eviction proceeding was pending with the court." (C-3)

As part of their defense, the respondent submitted affidavits from both manager Steve Lyle and bookkeeper Barbara Zink under penalty of perjury denying they were ever told by anyone that the Complainant was disabled, or that any request for contact due to disability was ever made by anyone at anytime. Both denied knowing that Monahan was the father's POA. Lyle, in his affidavit, stated that during a conversation with the daughter, he once referred to the Complainant as a little nutty, whereupon the daughter agreed with him and stated that the Complainant was a

very nutty at times. (C-3)

It is noted that despite a direct request, the Complainant never submitted a POA form showing his daughter was actually his POA at the time. Although the presence of such would buttress the RA claim, the omission is not believed to be fatal, as non-POAs can undertake accommodation functions.

Overall, it is believed the Complainant did disclose he was disabled, that a request was made and that the respondents did not grant the accommodation by failing to contact the daughter. Thus, a finding of Cause is recommended for this allegation.

**Issue of Title:**

On the face of the complaint, the Complainant alleged, "Complainant states that when he purchased his mobile home several years ago he was never given the title to the unit. Complainant states this prevents him from selling the unit." (A-1) However, there was no further information presented on what the motive was, or who got better treatment.

**Respondent defense:**

On March 1, 2014, the Complainant purchased the unit from O'Brien directly. The Complainant was given the title and bill of sale at the closing. At that time, POA Janet Polk, signed the title. The Complainant never attempted to register his home. The sale was handled by a former manager who has since deceased.

In January/February of 2015, Zink audited the records and contacted the owners for a sales audit. At that time, the Complainant was contacted and completed a questionnaire indicating he had received title.

On June 13, 2016, the respondent did a title search and found the Complainant had never put the unit into his name. When the Complainant went to register his title, he could not because the original title was in the POA's name. The Complainant then asked the respondent for assistance, who then visited O'Brien to have her sign it over to the Complainant. After having the bill of sale executed, manager Steve then escorted the Complainant to the tax collector's office who refused to issue a title to the Complainant as he did not have a photo ID on him. The respondent stated the Complainant then came back approximately a week later and had the title issued to him. As the issue date of the Florida Vehicle Record was 7/13/2016, that would have placed the visit to the tax collector's office as 7/6/2016, and many of the other moves back in late June.

**Analysis:**

As his rebuttal, the Complainant acknowledged the park may have sent him a survey in 2015, and did not contest his signature on the survey page. This would indicate the problem had impacted other persons in the park, and was not aimed at the Complainant. Further, it would appear to show it was an oversight, and not intentional. Moreover, there was no allegation of any missed or failed sales by the Complainant due to a lack of title. Thus, any speculation is simply not actionable, especially in light of the fact the Complainant had acknowledged through his signature, in 2015, that he had been given title.

The Complainant also confirmed that park personnel had assisted him in obtaining his title, albeit during the rental delinquency period. (B-5)

Importantly, and strangely, during this period of time wherein the title was being fixed, the Complainant had plenty of opportunity to cure his outstanding debt with the park. Instead, he proceeded to interact with the park manager in obtaining his title, without ever tendering the back rent owed.

In light of the above, a finding of No Cause is recommended for this allegation.

**Disability name calling:**

The respondent denied any allegation of harassment or name calling, stating they did not have enough specific information on who had allegedly stated such. However, they denied the Complainant was referred to as a nut job or was harassed by the management.

In their original response, the respondent stated they were not provided any details of the Complainant being called a "nut job", and denied "any allegations of harassment or name calling. At no time was Mr. Menefee ever referred to as a nut job or was he harassed by the management of Japanese Garden." (C-1)

In a subsequent reply, the respondent stated that "during a conversation with Mr. Menefee's daughter, Shannon Monahan, I once referred to Mr. Menefee as a little nutty, she agreed with me and stated that Mr. Menefee is a very nutty at times." (C-3)

Overall, the alleged name calling by Lyle to the daughter is not believed to be a separate harm. Even if true, a singular instance of use, without further allegations or evidence, would not rise to the level of altering the terms and conditions of housing. If anything, the singular use of the term "nut", under these facts, goes to evidence of bias, and not as an element of preference of limitation, or conduct.

Thus, a finding of No Cause is recommended for the Complainant's allegations of a failure to grant title due to disability.

**C. CONCLUSIONS:**

Therefore, based on the available evidence, we conclude that there is CAUSE to believe that the Respondent may have violated have violated Article II, Division 3 of Chapter 70 of the Code of Ordinances of Pinellas County, Florida on the Complainant's allegations.

*Reasonable Cause as it relates  
Determination to failure to reasonably accommodate.*

Paul Valenti, Human Rights Director

Date 2/28/17

- [1] The first 20 eviction records were on-line; the remaining were not.
- [2] It is believed Monahan meant August 2016
- [3] According to Neuropsychological evaluation, the stroke occurred in July of 2011, and car crash in 12/2013.
- [4] The respondent later clarified that Polk was not the complainant's POA.

V. Additional Information

Notwithstanding this determination by the Pinellas County Office of Human Rights, the Fair Housing Act provides that the complainant may file a civil action in an appropriate federal district court or state court within two years after the occurrence or termination of the alleged discriminatory housing practice. The computation of this two-year period does not include the time during which this administrative proceeding was pending. In addition, upon the application of either party to such civil action, the court may appoint an attorney, or may authorize the commencement of or continuation of the civil action without the payment of fees, costs, or security, if the court determines that such party is financially unable to bear the costs of the lawsuit.

The Department's regulations implementing the Act require that a dismissal, if any, be publicly disclosed, unless the respondent requests that no such release be made. Such request must be made by the respondent within thirty (30) days of receipt of the determination to the Field Office of Fair Housing and Equal Opportunity at the address contained in the enclosed summary. Notwithstanding such request by the respondent, the fact of a dismissal, including the names of all parties, is public information and is available upon request.

A copy of the final investigative report can be obtained from:

Paul V. Valenti, Human Rights/E. E. O. Officer