

**BEFORE THE HUMAN AND CIVIL RIGHTS COMMISSION
FOR THE STATE OF DELAWARE**

DIVISION OF HUMAN AND)	
CIVIL RIGHTS)	
Complainant, <i>ex. rel.</i>)	
)	
SARA CANSECO)	
Relator,)	Case No. S-H-2348-21
)	
v.)	
)	
THEODORE BANKS AND)	
SOUTHERN COMFORT)	
DELAWARE, L.L.C.)	
Respondents.)	

MEMORANDUM DECISION AND ORDER

HEARING PANEL:

Gail Launay-Tarlecki, *Commissioner and Panel Chairperson*
Joseph Dawson, *Commissioner and Panel Member*
Doris Cooper, *Commissioner and Panel Member*

APPEARANCES:

Kemba S. Lydia-Moore, Esq., Deputy Attorney General,
 Counsel for Human and Civil Rights Commission Panel
Nicole M. Mozee, Esq., Deputy Attorney General
 Counsel for Division of Human and Civil Rights
Damien R. Banks, Esq., The Banks Firm
 Counsel for Respondents

INTRODUCTION

Pursuant to due notice of time and place of meeting served on all parties in interest, the above-stated cause came before a Panel of the Delaware Human and Civil Rights Commission (“Commission”) via videoconference on February 13,

2023, February 23, 2023, March 10, 2023, March 29, 2023, and April 4, 2023 to determine whether a violation of the Delaware Fair Housing Act (“DFHA”), codified at 6 *Del. C.* Ch. 46, occurred. After the hearing concluded, the Commission conducted its deliberations.

BACKGROUND

This case originated when Sara Canseco (“Ms. Canseco”) filed a complaint¹ with the Delaware Division of Human and Civil Rights (“Division” or “Complainant”) pursuant to 6 *Del. C.* § 4610. Ms. Canseco alleged that Theodore Banks and Southern Comfort Delaware, L.L.C. (“Respondents”) discriminated against her on the basis of sex and marital status in violation of DFHA.

After receiving Ms. Canseco’s complaint, the Division conducted an investigation into the alleged discriminatory housing practices. As required by 6 *Del. C.* § 4610(b)(5), the Division prepared a final investigatory report wherein the Division determined that reasonable cause existed to believe that a discriminatory housing practice occurred. The Division then issued a *Charge* on behalf of Ms. Canseco for further proceedings pursuant to 6 *Del. C.* § 4612. According to the

¹ The complaint was admitted into evidence as Respondents’ Exhibit 3 (“RP Ex 3”). Hereinafter Respondents’ exhibits will be identified as “RP Ex ____”.

Charge, Respondents violated 6 *Del. C.* §§ 4603(b)(1)² and (b)(4)³ and the Commission held a hearing where the Division prosecuted the *Charge*.⁴

SUMMARY OF THE ALLEGATIONS

Ms. Canseco’s underlying complaint and the Division’s *Charge* allege that Respondents discriminated against Ms. Canseco due to her sex. The underlying complaint also alleged that Respondents discriminated against Ms. Canseco on the basis of her marital status.

According to the complaint and the *Charge*, Theodore Banks (“T. Banks”) agreed to lease Ms. Canseco real property located at 13 Frankford Avenue, Frankford, DE 19945 (“the property”). The property is owned by Southern Comfort Delaware L.L.C. (“Southern Comfort”) and T. Banks owns Southern Comfort. According to the complaint and the *Charge*, T. Banks violated DFHA by renegeing on the lease agreement upon learning that Ms. Canseco was a victim of domestic violence and by ultimately leasing the property to a man. According to the complaint and *Charge*, once Ms. Canseco disclosed that she had been

² According to 6 *Del. C.* § 4603(b)(1), “It shall be unlawful to discriminate in the...rental...or otherwise make unavailable or deny[] a dwelling to any person because of...sex...”

³ According to 6 *Del. C.* § 4603(b)(4), “It shall be unlawful to represent to any person because of...sex...that a dwelling is not available for...rental when such dwelling is in fact so available.”

⁴ The *Charge* was admitted into evidence as Complainant’s Exhibit 3 (“CP Ex 3”). Hereinafter Respondents’ exhibits will be identified as “CP Ex ____”.

victimized, T. Banks informed her he would not lease the property to her and explained that his daughter needed to live there, but T. Banks actually leased the property to a man.

PRE-HEARING MATTERS⁵

The Division specified that it was proceeding solely on the basis of sex discrimination.

The Division and Respondents requested sequestration of witnesses which was granted.

Respondents' counsel, Damien Banks ("D. Banks"), requested that the Commission instruct Ms. Canseco to respond to the interrogatories that D. Banks sent her. After discussion, the Commission determined it would not instruct Ms. Canseco to respond to the interrogatories because they were first sent to her on February 6, 2023, just one week before the scheduled hearing date of February 13, 2023, and were therefore untimely.

OPENING STATEMENTS

Both parties made opening statements which are part of the record but are not summarized here because opening statements are not evidence to be considered

⁵ Pursuant to Ms. Canseco's request, an interpreter duly sworn to translate Spanish to English and English to Spanish provided translation during the entire hearing.

by the Commission during deliberations.

SUMMARY OF THE EVIDENCE

A. Complainant's Case

1. Sara Canseco

Ms. Canseco, duly sworn, testified she has lived in Frankford, DE for eight years. Ms. Canseco said she and her four children reside in a trailer and she is employed as a house painter. Ms. Canseco said that in March 2021, when she was looking for a new place to live, she learned that the property was being renovated, she made contact with Julio Elias (“Julio”)⁶ who was employed as T. Banks’ assistant, Julio said he would talk to T. Banks, Julio said T. Banks wanted to meet with Ms. Canseco, and thereafter Ms. Canseco met with T. Banks.⁷ Ms. Canseco said that during their meeting she responded to T. Banks’ questions about her family and living situation. Ms. Canseco said T. Banks was unsure when the property would be available due to ongoing renovations, but T. Banks said he would let her know. Ms. Canseco said she told T. Banks she is a house painter and could paint the house. According to Ms. Canseco, T. Banks responded that that could be arranged. Ms. Canseco said she did not receive a rental application, but

⁶ Through later testimony the Panel learned that Julio’s given name is Elias Maldonado.

⁷ Ms. Canseco did not specify the date this meeting occurred but based on her testimony the Panel deduced that it occurred on or before March 10, 2021.

she offered to provide documentation of her proof of income.

Ms. Canseco testified that on March 10, 2021, she received a text message from T. Banks wherein he said he would lease the property to her for \$1,000 per month, which was a reduction from the original cost, and then there was further text message discussion about the property.⁸ Ms. Canseco said she was able to send text messages in English by using a translation service. Ms. Canseco explained she does not completely understand the English language, she can have a basic conversation in English, she asks questions to ensure she understands, and she asks that a statement be repeated or said another way if she does not understand.

Ms. Canseco testified that on one occasion, after her March 2021 meeting with T. Banks, she went to see the property and there were several people working, including three people who were friends of Ms. Canseco's ex-husband.⁹ Ms. Canseco said those three people do not like her and probably spoke badly about her.

Ms. Canseco testified that on April 5, 2021, she texted T. Banks and inquired when the property would be available, then on April 6, 2021, T. Banks responded that materials were on back order and the property might not be available until mid-May.¹⁰

⁸ The document was admitted into evidence as CP Ex 1.

⁹ Ms. Canseco did not specify the date she visited the property but based on her testimony the Panel deduced that it occurred on or after March 10, 2021.

¹⁰ CP Ex 1, page 3.

Ms. Canseco testified that on April 10, 2021, she called T. Banks about the progress of the renovations and T. Banks said he would call her back.¹¹ Ms. Canseco said she then called Julio who informed her she would not be permitted to lease the property because some of the workers that she saw at the property spoke badly about her to T. Banks. Ms. Canseco said that later the same day, she met with T. Banks in a black van located outside the property.¹² According to Ms. Canseco, Julio was present but T. Banks told him to leave and Julio complied. T. Banks then asked Ms. Canseco about her relationship with her ex-husband. Ms. Canseco said she spoke English during this conversation and only after T. Banks asked, she informed him she had been a victim of domestic violence. Ms. Canseco said she usually does not openly or readily share this information and although this was only her second time meeting T. Banks, she informed him of her past to ensure he had an accurate account of what happened. Ms. Canseco said that after providing this information T. Banks informed her he would not lease the property to her because he was going to lease it to his daughter. Ms. Canseco said that during this meeting T. Banks never stated he received bad references and he only asked about her ex-husband.

Ms. Canseco testified she later learned that T. Banks' stepdaughter never

¹¹ CP Ex 1, page 4.

¹² CP Ex 1, pages 4-5.

lived at the property and it was leased to a man. Ms. Canseco said she felt T. Banks did not lease the property to her because she had been a victim of domestic violence. According to Ms. Canseco, she still lives in the trailer, she has not found other housing, and she lost out on a comparable opportunity costing \$1,500 per month which she did not pursue in reliance upon T. Banks agreeing to lease the property to her.

Ms. Canseco testified she was once arrested but immediately released in relation to an altercation with Yoshuani Sanchez, she has never assaulted or been arrested for assaulting Jenny Jerez, neither her aunt Isabel Canseco¹³ nor her neighbor Veronica Mercado have restraining orders against her, and no one has a restraining order against her.¹⁴ Ms. Canseco said during the times that she and T. Banks communicated about leasing the property, T. Banks never asked about these people, restraining orders, or a criminal record; he never asked for copies of criminal background records or court records; and he never showed her copies of restraining orders.

¹³ Ms. Canseco identified her aunt as Alvira and not Isabel.

¹⁴ DAG Mozee repeatedly objected to the line of questioning that elicited this testimony on the bases of relevance and inadmissible character evidence of a prior bad act. D. Banks responded that T. Banks received bad references and information about Ms. Canseco's history of violence which is relevant to why he did not lease the property to her and it would be unfair and prejudicial to preclude this line of questioning. The Panel overruled the objection and noted that counsel could ask questions like whether Ms. Canseco had any arrests but details of the underlying facts were irrelevant. The Panel also noted that it would give the testimony the weight deserved, if any.

2. Claudia Sosa-Ducote

Ms. Sosa-Ducote, duly sworn, testified she has been employed with the Division for approximately 8.5 years as a Fair Housing and Equal Accommodations Investigator. Ms. Sosa-Ducote said her responsibilities entail reviewing and investigating allegations, conducting fact finding conferences,¹⁵ and facilitating conciliation. Ms. Sosa-Ducote said she is required to perform fair and objective investigations to ensure everyone is treated equally. Ms. Sosa-Ducote said she received intensive training at the beginning of her employment and has received annual training thereafter. She said she has also earned national fair housing certification and participates in Housing and Urban Development (“HUD”) continued education courses related to state and federal fair housing laws.

Ms. Sosa-Ducote testified that in April or May 2021, she received a phone call from Ms. Canseco who explained what occurred and in May 2021, Ms. Canseco completed and submitted an intake questionnaire. Ms. Sosa-Ducote said that on August 11, 2021, Ms. Canseco filed a complaint¹⁶ with the Division. Ms. Sosa-Ducote said she helped Ms. Canseco write the complaint and then Ms. Sosa-

¹⁵ Within thirty days after a complaint is filed, the Division is required to commence an investigation which may include issuing questionnaires and holding fact finding conferences. *See 1 Del. Admin. C. § 602-4.1.*

¹⁶ *See* RP Ex 3.

Ducote wrote the *Determination*¹⁷ which addressed whether there was cause (i.e., sufficient information to support a finding of discrimination) to proceed with the complaint. According to Ms. Sosa-Ducote, the *Charge* was issued based on the *Determination*.

Ms. Sosa-Ducote testified she determined there was cause on the basis of sex discrimination because Ms. Canseco is a female victim of domestic violence.¹⁸ Ms. Sosa-Ducote explained that based on HUD's fair housing law guidance, although "domestic violence victim" is not specifically identified as a class protected by DFHA, domestic violence victims are within the purview of the protected class "sex" because said victims are primarily women and landlords may refuse to lease property to them based on the belief that the victimization and related problems will continue at the leased property.

Ms. Sosa-Ducote testified that the cause finding was based on the following information received from Ms. Canseco and T. Banks: T. Banks agreed to lease the property to Ms. Canseco for \$1,000;¹⁹ Ms. Canseco offered to show proof of her ability to pay;²⁰ after learning that Ms. Canseco was a victim of domestic violence T. Banks said he would not lease the property to her because he had to lease it to

¹⁷ The *Determination* was admitted into evidence as CP Ex 2.

¹⁸ CP Ex 2, page 4.

¹⁹ *Id.*

²⁰ CP Ex 2, page 5.

his stepdaughter;²¹ and T. Banks did not lease the property to his stepdaughter but leased it to a male employee who, like Ms. Canseco, offered to make repairs in exchange for a reduction in cost.²² Ms. Sosa-Ducote said based on her investigation she determined T. Banks lied about the reason that Ms. Canseco was precluded from leasing the property. Ms. Sosa-Ducote admitted she never spoke with T. Banks' stepdaughter during her investigation and explained that the stepdaughter's reason for not leasing the property was irrelevant. According to Ms. Sosa-Ducote, the relevant facts were that once the stepdaughter did not lease the property T. Banks leased it to a man and did not re-offer it to Ms. Canseco although she was equally qualified. Ms. Sosa-Ducote further explained she determined that T. Banks lied because only after questioning Ms. Canseco about her past did Mr. Banks say he was going to lease the property to his stepdaughter.

Ms. Sosa-Ducote testified that during her investigation, she spoke with Ms. Canseco who explained what happened regarding her efforts to rent the property. Ms. Sosa-Ducote's testimony giving an account of Ms. Canseco's explanation was consistent with Ms. Canseco's testimony.

Ms. Sosa-Ducote testified that during her investigation she first spoke with T. Banks after he received notice of Ms. Canseco's complaint. According to Ms. Sosa-Ducote, during that initial conversation, T. Banks said he did not lease the

²¹ *Id.*

²² *Id.*

property to Ms. Canseco because he received bad references about her from various people and because he was informed that Ms. Canseco made false accusations which led to her husband's incarceration.

Ms. Sosa-Ducote testified she did not interview any of the people who T. Banks said provided bad references because T. Banks never provided their contact information despite that Ms. Sosa-Ducote instructed T. Banks and Ms. Canseco to provide information that would support their positions. Ms. Sosa-Ducote said T. Banks also did not provide documentation that Ms. Canseco has a criminal history nor documentation of Ms. Canseco's purported bad acts. Ms. Sosa-Ducote said if a landlord has proof that a prospective tenant has a history of being the aggressor, deciding whether to lease to the prospective tenant is within the landlord's discretion.

Ms. Sosa-Ducote testified that her second contact with T. Banks was at the fact-finding conference but she only spoke with his attorney, D. Banks, who gave a reason other than "bad references" for why T. Banks did not lease to Ms. Canseco. According to Ms. Sosa-Ducote, D. Banks said T. Banks needed to lease the property to his stepdaughter and therefore would not lease it to Ms. Canseco. Ms. Sosa-Ducote said T. Banks' gave the same reason in his questionnaire responses, which were submitted after Ms. Sosa-Ducote and T. Banks' initial conversation but before the fact finding conference. According to Ms. Sosa-Ducote, following their initial conversation, T. Banks never again said Ms. Canseco was precluded from

leasing the property because of the bad references but he maintained that the preclusion was due to his need to lease to his stepdaughter.

Ms. Sosa-Ducote testified that at the fact finding conference she notated Ms. Canseco and T. Banks' confirmation or denial of the allegations in the complaint.²³ Ms. Sosa-Ducote explained that her notes are separated into two columns to differentiate the responses received from Ms. Canseco and T. Banks. During the hearing, Ms. Sosa-Ducote was specifically questioned about three notations: "bad references yes",²⁴ "bad reference yes,"²⁵ and "no remember asking personal questions."²⁶ Ms. Sosa-Ducote said the "bad references yes" and "bad reference yes" notations do not indicate that T. Banks decided not to lease the property to Ms. Canseco due to the bad references. Ms. Sosa-Ducote said one of those notations pertained to whether there was a discussion about bad references during their meeting and the other notation was confirmation that Ms. Canseco was not precluded from leasing the property due to bad references.²⁷ Ms. Sosa-Ducote said the "no remember asking personal questions" notation, which appeared in the right column, pertained to T. Banks saying he did not recall asking Ms. Canseco any

²³ Ms. Sosa-Ducote's notes were admitted into evidence as RP Ex 2.

²⁴ RP Ex 2, page 1, left column.

²⁵ RP Ex 2, page 1, right column.

²⁶ RP Ex 2, page 2, right column.

²⁷ Ms. Sosa-Ducote was not asked and did not specify which explanation corresponded with which notation.

personal questions during their April 2021 meeting.²⁸

Ms. Sosa-Ducote identified a document entitled *Residential Lease for 13 Frankford Ave Frankford, Delaware 19945*²⁹ as a lease agreement for the property.

In that lease agreement, the tenant is identified as Manuel,³⁰ whom Ms. Sosa-Ducote said she verified as being a male and not T. Banks' stepdaughter.

According to Ms. Sosa-Ducote, T. Banks said when his stepdaughter did not move into the property he did not re-offer to lease the property to Ms. Canseco. Instead, T. Banks made arrangements with Manuel to lease the property beginning July 2021.³¹

Ms. Sosa-Ducote testified that Ms. Canseco said her ex-husband was the person that abused her, but Ms. Canseco did not provide his name. According to Ms. Sosa-Ducote, Ms. Canseco also said her ex-husband was incarcerated for a period of time and then released.³²

²⁸ Based on this testimony, the Panel deduced that the notes appearing in the left column of RP Ex 2 are based upon responses provided by Ms. Canseco and the notes appearing in the right column of RP Ex 2 are based upon responses provided by T. Banks.

²⁹ The document was admitted into evidence as CP Ex 5.

³⁰ The first paragraph on page 1 of CP Ex 5 identifies "Manuel Perez" as the landlord but the remainder of CP Ex 5 clearly establishes that Manuel was the tenant and T. Banks was the landlord. The Panel notes that in CP Ex 5, the typed content identifies Manuel's last name as Perez but the handwritten content identifies Manuel's last name as Lemus, nevertheless Manuel's correct last name is of no consequence to the Panel's decision.

³¹ CP Ex 4, pages 3 and 5.

³² DAG Mozee objected to D. Banks' questions seeking details about Ms. Canseco's history as a victim of domestic violence on the basis of relevance. D.

Ms. Sosa-Ducote testified that her investigation also revealed the following:

- T. Banks owned six single family homes in Frankford, DE;³³
- T. Banks did not use rental applications and he usually relied upon referrals;
- T. Banks did not perform credit or background checks on prospective tenants;
- There was no evidence to indicate that T. Banks informed prospective tenants about fair housing laws;
- Ms. Canseco was self-employed in the construction industry and worked as a house painter; and
- Manuel, the man who ultimately rented the property, was also in the construction industry and was part of the crew renovating the property.³⁴

Banks said the questions were relevant because the responses reveal the Complainant's failure to prove Ms. Canseco was actually a victim of domestic violence which precludes the Complainant from prevailing in this case. D. Banks also said the questions were relevant because they address T. Banks' position that the Division's investigation was biased. The Panel overruled the objection but admonished that the testimony sought must be more probative than prejudicial.

³³ This information was provided in response to the questionnaire that was sent to T. Banks during the Division's investigation. The questionnaire and responses were admitted into evidence as CP Ex 4.

³⁴ CP Ex 4, page 5.

B. Respondents' Case

1. Lindsey Furbush

Ms. Furbush, duly sworn, testified that T. Banks is her stepfather and she lived with him for approximately 5 years but she began looking for her own home in Spring 2021. Ms. Furbush said she was going to lease the property from T. Banks but she did not because she was able to live rent-free at her aunt's home. Ms. Furbush said in May 2022 when she learned that her aunt's home was to be sold, Ms. Furbush entered into a one year lease for the property effective August 1, 2022.³⁵ At the time of the hearing Ms. Furbush still resided at the property. Ms. Furbush said someone moved into the property between the period of April 2021 and August 2022, but she was unsure when they moved in.

2. Deysi Hernandez

Deysi Hernandez, duly sworn, testified she knows T. Banks through her husband. Ms. Hernandez said T. Banks showed her a list of potential tenants and asked if Ms. Hernandez was familiar with them. Ms. Hernandez said Ms. Canseco was one of the potential renters and she told T. Banks that Ms. Canseco had a verbal altercation with Yoshuani Sanchez³⁶ that Ms. Hernandez did not personally observe. Ms. Hernandez said she told T. Banks that Ms. Canseco was rumored to

³⁵ The lease was admitted into evidence as RP Ex 1.

³⁶ The Panel overruled DAG Mozee's objection to this line of questioning and determined that it was permissible for purposes of showing T. Banks' state of mind at the time he was deciding whether to lease the property to Ms. Canseco.

be having an affair with Jenny Jerez's husband. Ms. Hernandez confirmed that when she provided this information to T. Banks she told him it was based on rumor. Ms. Hernandez admitted she does not personally know Ms. Canseco, she does not talk to Ms. Canseco on a regular basis, and she has no knowledge of Ms. Canseco's family life.

3. Theodore Banks

T. Banks, duly sworn, testified that he has been in the business of purchasing, renovating, and then leasing real properties located in Frankford, DE for twenty five years. T. Banks said he has never had a formalized tenant application process. He relies on "word of mouth" and contacts the prospective tenant's previous landlord. T. Banks said he has never provided prospective tenants literature about fair housing rights. T. Banks said he has not previously been subjected to a housing discrimination complaint and upon receiving Ms. Canseco's complaint he registered to attend a fair housing training for which he was placed on a waiting list. T. Banks said due to financial hardship, in June 2021, he sold three of the six properties that he owned at that time and he still owned the three remaining properties as well as a commercial property at the time of this hearing.

T. Banks testified that Julio arranged a meeting between T. Banks and Ms. Canseco to discuss leasing the property. T. Banks said during that meeting, Ms. Canseco offered to paint the property once the renovations were completed. T. Banks said he verbally agreed to lease the property to Ms. Canseco and he texted

her on March 10, 2021 that the cost would be \$1,000 per month.³⁷ T. Banks said during all of their communications, Ms. Canseco communicated in English.

T. Banks testified he did not ultimately lease the property to Ms. Canseco because he needed to lease it to his stepdaughter and because after their meeting at least ten people, including the workers renovating the property and Deysi Hernandez, contacted him, gave bad references about Ms. Canseco, and said “please do not rent to her.”³⁸ T. Banks noted that the workers were the first people to provide the bad references about Ms. Canseco. T. Banks said he was informed by the various people that Ms. Canseco had been involved in acts of violence, police had been to Ms. Canseco’s home many times, Ms. Canseco caused her ex-husband to be incarcerated but with the help of an attorney the ex-husband was acquitted and granted citizenship due to the State’s mistake in prosecuting him, and a number of women had restraining orders against Ms. Canseco. T. Banks said he was made aware that Yosvani Sanchez had a restraining order against Ms. Canseco, Isabel Canseco obtained a restraining order after Ms. Canseco threatened her with a knife, and another woman obtained a restraining order after Ms. Canseco hit her in the head with a bottle. T. Banks confirmed he did not have personal knowledge of Ms. Canseco’s ex-husband’s case and he did not have

³⁷ CP Ex 1, page 1.

³⁸ T. Banks was unable to provide a time frame for when he received this information.

documentation of what occurred procedurally in that case. T. Banks also confirmed he did not have verification that the bad reference reports were accurate and explained he believed the reports were accurate because there were so many people providing the same information, including Ms. Canseco's family members.

T. Banks testified he also received a video of an incident that was one of the final bad references he received about Ms. Canseco.³⁹ T. Banks said he received the video from Veronica Mercado, who is Ms. Canseco's neighbor, and Ms. Mercado said the incident caused her to fear Ms. Canseco. T. Banks confirmed he was not physically present during the incident and has no knowledge of what occurred leading up to the incident. T. Banks said at the time the video was provided he had already decided not to lease the property to Ms. Canseco, but the video was "icing on the top" of his decision. T. Banks said Ms. Mercado identified the speaker in the video as Ms. Canseco. Upon reviewing the video, the Panel heard the speaker use the word "vieja" which the interpreter translated to mean "old lady" and "puta" which the interpreter translated to mean "whore."

T. Banks testified that he arranged the April 10, 2021 meeting to tell Ms. Canseco he would not lease the property to her because he needed to lease it to his stepdaughter and because he received bad references about Ms. Canseco. T. Banks said Julio did speak with Ms. Canseco before the April 10th meeting but T. Banks

³⁹ The video was admitted into evidence as RP Ex 4.

was not privy to their conversation. T. Banks said he made the decision not to lease to Ms. Canseco a few days prior to the April 10th meeting and during the meeting he did inform Ms. Canseco of his reasoning but he did not provide details of the bad references. When asked if he inquired about Ms. Canseco's domestic violence history, T. Banks said he did not recall what words he used or what was said during their conversation but he believed they were discussing the bad references when Ms. Canseco began crying and said her ex-husband had something to do with the decision. T. Banks said he informed Ms. Canseco that was not accurate.

T. Banks testified that his stepdaughter did not lease the property in April 2021, as planned, because she was able to live rent-free in her aunt's home. T. Banks said he did not attempt to lease the property to Ms. Canseco after his stepdaughter opted to live elsewhere due to the information he had received about Ms. Canseco. T. Banks said in July 2021 he leased the property to Manuel, who was one of the male workers renovating the property, and they agreed that Manuel would make some repairs as partial payment. T. Banks said while Ms. Canseco had offered to paint the property upon her moving in, there was more work to be completed before she could have moved in. T. Banks said after Manuel vacated the property in August 2022, his stepdaughter moved in approximately September 2022.

T. Banks testified that Ms. Sosa-Ducote did not request he provide contact information for the people who provided the bad references and Ms. Sosa-Ducote

never asked for T. Banks' defense to the allegations. T. Banks said Ms. Sosa-Ducote only asked "one-sided" questions in what appeared to be an effort to build a case against him. T. Banks said he did not discriminate against Ms. Canseco and her past victimization was not a factor in his decision not to lease the property to her.

C. Complainant's Rebuttal

1. Sara Canseco

Ms. Canseco, still under oath, testified that when she first met T. Banks in March 2021 Julio and another man were also present. Ms. Canseco said during this meeting she spoke in English to the best of her ability.

Ms. Canseco testified that upon arriving for her second meeting with T. Banks in April 2021, Julio was also present but T. Banks asked Julio to leave and he complied. Ms. Canseco said she spoke in English during this meeting.

Ms. Canseco testified she is the person heard speaking in CP Ex 4 and explained that she was wearing earbuds while talking on the phone to someone about a prior incident that did not involve her neighbor.

RESPONDENTS' MOTION FOR JUDGMENT AS A MATTER OF LAW

On March 29, 2023, at the conclusion of Complainant's case, Respondents made a motion for judgment of acquittal which the Panel treated as a motion for judgment as a matter of law in accordance with Del. Super. Civ. R. 50(a)(1) and (2).⁴⁰ First, Respondents argued that Complainant's case failed because T. Banks decided not to lease the property to Ms. Canseco prior to learning that she was purportedly a victim of domestic violence. In support of this argument, Respondents cite Ms. Canseco's testimony that Julio informed Ms. Canseco prior to her April 10th meeting with T. Banks that T. Banks would not lease the property to Ms. Canseco because he received bad references about her. Second, Respondents argued that Complainant failed to prove Ms. Canseco is a member of the protected class "sex", which according to Complainant is the applicable class due to Ms. Canseco having been a domestic violence victim, but Complainant did not in fact prove she was a victim of domestic violence. In support of this argument, Respondents relied upon the definition of "domestic violence" per 24

⁴⁰ A motion for judgment of acquittal, which is applicable in criminal cases, is akin to a motion for judgment as a matter of law, which is applicable in civil cases. According to Del. Super. Civ. R. 50(a)(1) and (2), "[i]f during a trial...a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable [trier of fact] to find for that party on that issue, the Court may determine the issue against the party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue. Motions for judgment as a matter of law may be made at any time before submission of the case to the [trier of fact]."

CFR § 5.2003⁴¹ and said Complainant must prove that a crime was committed against Ms. Canseco, but the investigator made no effort to obtain proof of a conviction and in turn Complainant provided no such evidence which hinders the ability to prove Ms. Canseco's protected class was "sex." Third, Respondents argued that "domestic violence victim" is not a protected class and in support of this argument cited *Delgado v. Morris County Housing Authority*, 2018 WL 5962478 (D. N.J. Nov. 13, 2018) wherein Delgado contended she was subjected to discrimination due to being a "domestic violence client who received public assistance," but the Court held there is no such protected class within the Federal Fair Housing Act ("FFHA").⁴² Fourth, Respondents cited *Jennings v. Housing*

⁴¹ According to 24 CFR § 5.2003, "Domestic violence **includes** felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship."

⁴² The Panel notes that DFHA is nearly identical to its federal counterpart, FFHA, and in such instances, Delaware Courts have utilized federal case law as a guide. *See Saville v. Quaker Hill Place*, 531 A.2d 201, 204 (Del. 1987) (Recognizing that in the absence of Delaware decisions, federal case law may be of assistance but cautioning that "the applicability of the existing federal antidiscrimination decisions must be determined on a case-by-case basis."); *Newark Landlord Ass'n v. City of Newark*, 2003 WL 21448560, at *9 (Del. Ch. June 13, 2003) (The Court noted that an absence of Delaware decisions construing the DFHA warrants review

Authority of Baltimore City, 2015 WL 1085574 (N.D. Md. March 10, 2015), and argued that even if a decision to not lease a property violates fair housing law, if there is a separate, legitimate reason then the decision withstands scrutiny.

According to Respondents, the property was also not leased to Ms. Canseco because T. Banks' stepdaughter needed to live there.

Complainant opposed Respondents motion on the basis that it had established a prima facie case by presenting the following evidence: Ms. Canseco was a victim of domestic violence; Ms. Canseco expressed interest in leasing the property which led to a meeting with T. Banks and thereafter T. Banks agreed to lease the property to her; T. Banks decided not to lease the property to Ms. Canseco upon learning during their April 2021 meeting that Ms. Canseco was a domestic violence victim and that was the only topic they discussed during said meeting; and CP Ex 5 shows that T. Banks leased the property to someone not within Ms. Canseco's protected class. Complainant noted that the evidence indicating T. Banks' expressed reason for not renting to Ms. Canseco may have changed from having received bad references to needing to lease the property to his stepdaughter, nevertheless the evidence is clear that T. Banks only informed Ms. Canseco he would not lease the property to her upon learning she had been a

of decisions construing federal antidiscrimination statutes which are similar in structure, language, and purpose.). Regarding the alleged violations at issue here, 6 *Del. C.* § 4603(b)(1) parallels 42 USC § 3604(b) and 6 *Del. C.* § 4603(b)(4) parallels 42 USC § 3604(d).

victim of domestic violence, and instead he leased to someone other than a victim of domestic violence.

Complainant also opposed Respondents' motion on the basis that Respondents misstated the law in application of the definition of "domestic violence" found in 24 CFR § 5.2003, which does not state there must be a criminal conviction to prove the existence of domestic violence, but simply states domestic violence includes felony and misdemeanor crimes of violence.

Complainant further opposed Respondents motion on the basis that there is significant HUD guidance and Delaware law that classifies survivors of domestic violence as members of the DFHA protected class "sex." In support of this position, Complainant relied upon the following:⁴³ the application of FFHA in conjunction with the Violence Against Women Act ("VAWA"),⁴⁴ which specifically provides housing protections to victims of domestic violence; HUD's February 9, 2011 memorandum addressing how to assess alleged violations of FFHA and VAWA and stating that such allegations are generally based on the protected class "sex,"⁴⁵ and 25 *Del. C.* § 5316(a) which identifies victims of

⁴³ DAG Mozee alluded to state and federal guidance in support of her opposition to Complainant's motion and later provided said guidance to Panel DAG Lydia-Moore and opposing counsel D. Banks via email.

⁴⁴ VAWA is a federal law that provides protections for survivors of domestic violence, dating violence, sexual assault, and stalking. *See* 34 U.S.C. § 12471, et. seq.

⁴⁵ *See* "Memorandum For: Fair Housing and Equal Opportunity Office Directors and Regional Directors; Memorandum From: Sara K. Pratt, Deputy Assistant

domestic violence as a protected class and affords them protection in the context of landlord-tenant relationships.⁴⁶

The Panel deliberated and then denied Respondents' motion. The Panel now provides further explanation for said denial. "Judgment as a matter of law may be granted when a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable [trier of fact] to find for the party on that issue."⁴⁷ "The evidence is to be considered in a light most favorable to the non-moving party [and will not be disturbed] where under any reasonable view of the evidence the [trier of fact] could...justifiably f[ind] for the non-moving party."⁴⁸ Because Complainant established a prima facie case,⁴⁹ there was a legally sufficient evidentiary basis for the Panel to ultimately find in Complainant's favor and therefore Respondents' motion must be denied.

Secretary for Enforcement and Programs; Subject: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)," dated February 9, 2011.

⁴⁶ According to 25 *Del. C.* § 5316(a), "[a] landlord may not pursue any action for summary possession, demand any increase in rent, decrease any services, or otherwise cause any tenant to quit a rental unit where said tenant is a victim of domestic abuse...and where said tenant has obtained or has sought assistance for domestic abuse...from any court, police, medical emergency, domestic violence, or sexual offenses program or service."

⁴⁷ *Mammarella v. Evantash*, 93 A.3d 629, 635 (Del. 2014) (internal quotation marks omitted).

⁴⁸ *Mazda Motor Corp. v. Lindahl*, 706 A.2d 526, 530 (Del. 1998).

⁴⁹ The Panel discusses this finding in more detail below.

D. Complainant's Closing Arguments

In closing, Complainant argued that it presented sufficient evidence to establish the four *prima facie* elements necessary to prove sex based discrimination. First, as a female and a survivor of domestic violence, Ms. Canseco is a member of the protected class "sex." Complainant explained that this protected class has been extended to include domestic violence victims and the law does not require a criminal conviction to prove a specific instance of domestic violence. Second, in March 2021, Ms. Canseco applied to lease the property and was clearly deemed qualified to do so because T. Banks agreed to lease the property to her. Third, Ms. Canseco's lease application was ultimately rejected in April 2021 after Ms. Canseco informed T. Banks she had been a victim of domestic violence. Fourth, in May 2021 when the property was available for habitation, T. Banks did not lease the property to Ms. Canseco or his stepdaughter and instead T. Banks first leased the property in July 2021 to Manuel, a male who did not have a known history of domestic violence.

Complainant argued that T. Banks failed to provide a legitimate, nondiscriminatory reason for not leasing the property to Ms. Canseco. Complainant said T. Banks testified he did not lease to Ms. Canseco because she had problems with the law and because he received unfavorable information about her, but T. Banks relied upon rumors and never sought documentation to support the information he received. Complainant said that T. Banks' "bad references"

reason as well as the reason that he needed to lease the property to his stepdaughter were pretext. Complainant argued that in actuality T. Banks did not lease the property to Ms. Canseco because she had a history of domestic violence that included her ex-husband being arrested and incarcerated. T. Banks deemed her history to be a problem and in turn he perpetuated the cycle of Ms. Canseco's victimization.

Complainant requested that the Panel find Respondents in violation of FHA and order the following relief:

- Respondents shall pay compensatory damages in the amount of \$20,000 for Ms. Canseco's lost housing opportunities, inconvenience, and emotional/mental distress.
- Respondents shall pay a civil penalty in the amount of \$5,000 to the Commission's special administration fund.
- Respondents shall contribute \$3,000 to the Division's education and outreach fund due to the Division expending resources at the investigatory and administrative stages of this case.
- Respondents shall ensure all employees and staff complete fair housing training within a timeframe that the Panel deems reasonable. The training must include a component on the intersection of fair

housing and domestic violence⁵⁰ and Respondents shall incur all fees and expenses associated with said training.

- Respondents shall create policies, regulations, and procedures that include addressing the rights of tenants who are survivors of domestic violence and that are consistent with current federal and state fair housing laws.
- Respondents shall create and implement a lease application process compliant with federal and state fair housing laws.
- Respondents shall include on all public facing advertising and documents the equal opportunity housing logo, a statement indicating that Respondents adhere to fair housing laws, and local resources for fair housing discrimination complaints.

E. Respondents' Closing Arguments

In closing, Respondents renewed their motion for judgment as a matter of law and incorporated by reference the arguments made in support of that motion.

Respondents argued that the *McDonnell Douglas*⁵¹ analysis only applies to summary judgment motions and does not apply here. According to Respondents, the burden of proof does not shift to Respondents, Complainant must prove that

⁵⁰ DAG Mozee noted that such a training has been offered by the Delaware Coalition Against Domestic Violence and Community Legal Aid Society, Inc.

⁵¹ See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

Respondents acted with a discriminatory purpose, and Complainant failed to satisfy its burden of proof because it did not provide evidence of a criminal conviction encompassing Ms. Canseco as the victim of domestic violence.

Respondents maintained that 24 CFR § 5.2003 requires documentation of a criminal conviction to prove the existence of domestic violence and cited 24 CFR § 5.2007⁵² to show that the law permits landlords to request documentation before protections are afforded to one claiming to be a victim of domestic violence.

Respondents said Complainant cannot prevail simply because Ms. Canseco says she was a victim of domestic violence and Complainant's failure to utilize available resources to obtain the requisite documentation yields a finding in Respondents' favor.

Respondents argued that Complainant's investigation was biased which supports a finding in Respondents' favor. Respondents contend Ms. Canseco's complaint, which specified that T. Banks did not lease the property to Ms. Canseco because of the bad references he received and because of his need to lease the property to his stepdaughter, was not thoroughly investigated, the investigator, Ms. Sosa-Ducote, did not try to verify the two reasons espoused for not leasing to Ms.

⁵² This federal regulation permits "covered housing providers," which is defined as by 24 CFR § 5.2003 as "the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections," to request that a prospective tenant submit documentation of the occurrence of domestic violence. Per § 5.2003 covered housing programs consists of the HUD programs that are specifically identified in § 5.2003.

Canseco, and Ms. Sosa-Ducote simply concluded that T. Banks was lying because he did not provide information to support the two reasons. According to Respondents, Ms. Sosa-Ducote did not contact T. Banks' stepdaughter despite having knowledge of her name and address and Ms. Sosa-Ducote never requested that T. Banks provide contact information for the persons who provided the bad references which could have easily been verified as evinced by the Respondents' presentation of evidence.

Respondents argued that the timing of T. Banks' decision not to lease to Ms. Canseco is critical and the evidence is clear that he made the decision prior to the April 2021 meeting, which Ms. Canseco verified by stating Julio informed her prior thereto that T. Banks would not lease the property to her due to receiving bad references. According to Respondents, this testimony shows that T. Banks did not act with a discriminatory purpose and that his decision was not based upon Ms. Canseco having been a victim of domestic violence. Respondents said although the lease application process "is not the best," that does not prove T. Banks discriminated against Ms. Canseco.

Respondents alternatively argued that even if the Panel determines T. Banks did not lease to Ms. Canseco because she had been a victim of domestic violence, there were additional, legitimate reasons for not leasing the property to her and according to *Jennings* those reasons negate a finding that T. Banks violated DFHA.

Respondents requested that the Panel find Complainants did not meet the

burden of proof and dismiss the case. In response to Complainant's requested relief, Respondents argued as follows:

- The request for compensatory damages in the amount of \$20,000 is excessive given that this case did not involve an eviction or financial duress resulting from eviction and that Ms. Canseco lives in the same home and did not sustain any loss related to having to remain there.
- The request that Respondents contribute \$3,000 to the Division's education and outreach fund because it expended resources on this case is not supported by the evidence.
- The request for a civil penalty in the amount of \$5,000 is inappropriate because Respondents have the right to present a defense for which they should not be punished and because T. Banks is unemployed and disabled.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The stated purpose of DFHA is "to eliminate, as to housing offered to the public for sale, rent or exchange, discrimination based upon race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation or disability, and to provide an administrative procedure through which disputes concerning the same may effectively and expeditiously be resolved

with fairness and due process for all parties concerned.”⁵³ The provisions of DFHA are to be “liberally construed” to safeguard the rights set forth therein.⁵⁴

There are two theories upon which an aggrieved person may allege violation of DFHA—disparate treatment and disparate impact.⁵⁵ “Disparate treatment occurs when a decision maker...treats some people less favorably than others because of a protected trait...[and a claim for disparate impact exists] when a decision maker’s practices are facially neutral in their treatment of different groups but in fact unjustifiably disadvantage one or more groups....”⁵⁶ The instant matter pertains to disparate treatment and therefore the three-part analysis developed in the employment discrimination context by the U.S. Supreme Court in *McDonnell Douglas Corp. v. Green*⁵⁷ is applicable.⁵⁸ The three-part analysis is as follows:

- (1) The Complainant must establish by a preponderance of the evidence a *prima facie* case of discrimination.
- (2) Once a *prima facie* case is established, the burden shifts to the respondent to present evidence of a legitimate, non-discriminatory reason for the adverse decision.
- (3) After this production of evidence, the complainant retains the burden of persuading by a preponderance of the evidence that the respondent’s proffered reason was a pretext for discrimination.⁵⁹

⁵³ 6 Del. C. § 4601(a).

⁵⁴ 6 Del. C. § 4601(b).

⁵⁵ *Newark Landlord Ass’n*, 2003 WL 21448560, at *10.

⁵⁶ *Id.* (internal quotation marks omitted).

⁵⁷ 411 U.S. 792 (1973).

⁵⁸ *Quaker Hill Place v. Saville*, 523 A.2d 947, 955 (Del. 1987).

⁵⁹ *McDonnell Douglas*, 411 U.S. at 802-804; *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 252-253 (1981).

Further, because DFHA hearings before the HCRC are subject to the provisions of Delaware’s Administrative Procedures Act (APA),⁶⁰ “the burden of proof shall always be upon the applicant or proponent.”⁶¹

A. Part I *McDonnell Douglas* Analysis – *Prima Facie* Case

To meet the initial burden of going forward and establishing a *prima facie* case of housing discrimination Complainant must show by a preponderance of the evidence that: (a) Ms. Canseco is a member of a protected class; (b) Ms. Canseco applied for and was qualified to lease certain property or housing; (c) Ms. Canseco’s lease application was rejected; and (d) the housing remained available thereafter.⁶²

Regarding the first *prima facie* prong, Complainant argued that there is significant HUD guidance and Delaware law that classifies survivors of domestic violence as members of the DFHA protected class “sex.” To the contrary, Respondents argued that “domestic violence victim” is not a protected class and therefore the first prong cannot be satisfied under the Complainant’s theory.

Respondents’ reliance upon *Delgado* in support of their position is misplaced. The instant matter is distinguishable from *Delgado* where the plaintiff

⁶⁰ 29 Del. C. Ch. 101.

⁶¹ 29 Del. C. § 10125(c). See also *Burdine*, 450 U.S. at 253.

⁶² *Lindsay v. Yates*, 578 F.3d 407 (6th Cir. Aug. 21, 2009).

alleged defendants violated FFHA on the basis that plaintiff was “a domestic violence client receiving public assistance” and where the Court said that is not an FFHA protected class. It is true that “domestic violence victim” is not a specified FFHA or DFHA class but here, Complainant contends Respondents violated DFHA on the basis of Ms. Canseco’s “sex” which is a specified FFHA and DFHA protected class. Furthermore, the instant matter is distinguishable because in *Delgado* the plaintiff never asserted that and the Court never considered whether being a domestic violence victim is within the purview of the protected class “sex.” Although Respondents did not rely upon *Barnett v. Pickering*, 2010 WL 144359 (D. N.H. Jan. 8, 2010), the Panel is aware *Barnett* also held that “domestic violence victim” is not an FFHA protected class, but like *Delgado*, the *Barnett* Court never considered whether being a domestic violence victim is within the purview of the protected class “sex.”

The Panel agrees with Complainant that being a domestic violence survivor may cause one to be classified as a member of the DFHA protected class “sex.” Although Delaware Courts have not yet addressed the issue, numerous federal courts have determined that evicting women who are survivors of domestic violence may constitute discrimination on the basis of sex. The Panel finds the federal precedent persuasive and equally applicable when a domestic violence survivor’s application to lease property is denied.

Two of the most recent federal cases reject the conclusions reached in

Delgado and Barnett. In *Antonelli v. Gloucester County Housing Authority*, 2019 WL 5485449 (D. N.J. Oct. 25, 2019),⁶³ the same Court that decided *Delgado* in 2018 later said *Delgado* was not persuasive because the opinion did not “consider whether evidence that the defendant was aware the plaintiff was a victim of domestic violence could give rise to an inference of sex discrimination...[and the Court] conclude[ed] that it would be inappropriate to dismiss Plaintiff’s claims of intentional sex discrimination in violation of the [FFHA] at this time.”⁶⁴ Likewise, in *Wilson v. Guardian Management LLC*, 383 F. Supp. 3d 1105 (D. Or. April 22, 2019),⁶⁵ the Court concluded that if a plaintiff is a domestic violence victim, that may give rise to a sex discrimination claim and the Court declined to adopt the *Delgado and Barnett* decisions by stating, “[t]he mere fact that being a victim of domestic violence is not specifically protected under the [FFHA]...is not dispositive.”⁶⁶ The *Wilson* Court further stated, “...summary judgment against Plaintiff’s housing discrimination claim is not warranted simply because those claims are based on her status as a domestic violence victim.”⁶⁷

⁶³ In *Antonelli*, the plaintiff, a victim of domestic violence, alleged that defendants violated her federal rights by downgrading and then terminating her federal subsidy voucher. Plaintiff further alleged that her voucher was terminated following an incident of domestic violence.

⁶⁴ *Antonelli*, 2019 WL 5485449, at *7-8.

⁶⁵ In *Wilson*, the plaintiff, a victim of domestic violence, alleged the defendant wanted the plaintiff to vacate her apartment after an incident of domestic violence with the ex-boyfriend that ended in the ex-boyfriend’s arrest.

⁶⁶ *Wilson*, 383 F. Supp. 3d at 1110.

⁶⁷ *Id.*

There are four earlier federal cases that also reach the same conclusion. In *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005), the defendant evicted plaintiff from her apartment less than 72 hours after plaintiff was assaulted by her husband and the Court held that plaintiff established a *prima facie* case for sex discrimination in violation of FFHA. In *Meister v. Kansas City*, 2011 WL 765887 (D. Kan. Feb. 25, 2011), the plaintiff was evicted from her apartment shortly after she was assaulted by her husband and in reliance upon *Bouley* the Court denied defendant's motion for summary judgment thereby permitting plaintiff's complaint of sex discrimination in violation of FFHA to proceed. In *Dickinson v. Zanesville Metro. Housing Auth.*, 975 F. Supp. 2d 863 (S.D. Ohio 2013), the Court found that defendant's eviction of plaintiff may amount to sex discrimination in violation of FFHA since defendant knew or should have known that plaintiff was a victim of longstanding and continuing domestic violence. In *Creason v. Singh*, 2013 WL 6185596 (N.D. Cal. Nov. 26, 2013), the Court agreed with *Bouley* that the eviction of a tenant because she is a victim of domestic violence might constitute unlawful discrimination under FFHA.

Notwithstanding that the aforementioned federal precedent is specific to situations involving evictions, in *Butler v. Sundo Capital, LLC*, 559 F. Supp. 3d 452 (W.D. Pa. 2021) the Court rejected defendant's argument that domestic violence victims' membership in an FFHA protected class is limited to eviction cases. The Court said,

[w]hile most of these cases were decided in the context of evictions, there is nothing in those decisions that specifies that domestic violence victims can only bring cases challenging evictions. Indeed, in *Dickinson*, the court held that plaintiff could bring a discrimination claim based on defendant’s act of sending negative reference letters to other landlords... This broader scope of potential claims makes sense given ‘the well established principle that in interpreting the [FFHA] courts are to give effect to the broad remedial intent of Congress embodied in the Act.’⁶⁸

The law is clear that being a “domestic violence victim” is within the purview of the protected class “sex” and the issue now becomes whether Complainant proved by a preponderance of the evidence that Ms. Canseco was a victim of domestic violence. Ms. Canseco testified that T. Banks did not lease the property to her because she was a victim of domestic violence; T. Banks knew she had been victimized because she told him during their April 10, 2021 meeting; and T. Banks reneged on the agreement to lease her the property upon learning she had been victimized. The Panel found Ms. Canseco to be a credible witness and although she did not provide details about her experience, the Panel credits her uncontroverted testimony and finds that Complainant satisfied its burden of proving that Ms. Canseco was a victim of domestic violence.

The Panel rejects Respondents’ argument that Ms. Canseco’s testimony, alone, is insufficient to satisfy the burden of proof. Respondents misconstrued the definition of “domestic violence” found in 24 CFR § 5.2003 to support their

⁶⁸ *Butler*, 559 F. Supp. 3d at 458 (quoting *Fair Housing Council Inc. v. Village of Olde St. Andrews, Inc.*, 210 F. App’x 469, 480 (6th Cir. 2006)).

position.⁶⁹ As Complainant correctly argued, § 5.2003 simply states misdemeanor and felony crimes of violence are **included** within the definition of “domestic violence” and there is nothing within § 5.2003 to indicate that a criminal conviction is the sole means of proving the existence of domestic violence.

Moreover, the Panel is well aware that violent crimes are oftentimes not reported, investigated, or adjudicated but that does not mean the crimes did not occur.

Certainly, it was not the intent of the federal legislature to preclude a domestic violence survivor from the protections afforded by CFR Title 24 in instances where the offender was not criminally convicted. Likewise, 24 CFR § 5.2007 does not bolster Respondents’ argument that a criminal conviction is required to prove domestic violence. According to § 5.2007, landlords may request documentation from prospective tenants who identify themselves as survivors of domestic violence, but § 5.2007 lists various forms of acceptable written documentation **including** documentation of a criminal conviction. It is nonsensical to conclude that the existence of domestic violence can only be proven with written documentation simply because § 5.2007 permits landlords to request such

⁶⁹ The Panel questions whether § 5.2003 is applicable here given that it is within CFR Title 24, Subtitle L which provides protections for victims of domestic violence who apply for and received assistance under HUD programs covered by VAWA and there is no indication that the property or Respondents are part of a HUD program. Nevertheless, because Delaware courts oftentimes utilize federal case law as a guide and because DFHA and FFHA are nearly identical the Panel takes into consideration CFR Title 24, Subtitle L.

documentation from prospective tenants.

The Panel finds that Complainant satisfied the first prong necessary to establish a *prima facie* case because as a domestic violence survivor, Ms. Canseco is a member of the protected class “sex”. Turning to the remaining *prima facie* prongs, it is undisputed that in May 2021, Ms. Canseco applied to lease the property and T. Banks agreed to lease it to her for \$1,000 per month. It is also undisputed that on April 10, 2021, T. Banks informed Ms. Canseco he would not lease the property to her and thereafter Ms. Canseco never inhabited the property. As such, the Panel finds that Complainant satisfied the second and third prongs necessary to establish a *prima facie* case.

Regarding the fourth *prima facie* prong, Complainant argues that in May 2021 when the property was available for habitation, T. Banks did not lease the property to Ms. Canseco or his stepdaughter and instead T. Banks first leased the property in July 2021 to Manuel. Respondents did not present a counterargument but T. Banks’ testimony about having rented the property to Manuel is of significance when assessing whether Complainant satisfied this prong. T. Banks testified that in July 2021 he leased the property to Manuel,⁷⁰ who was one of the male workers renovating the property, and they agreed that Manuel would make some repairs as partial payment. T. Banks’ text message that the property would

⁷⁰ See also RP Ex 5.

not be available until mid-May 2021⁷¹ is also of significance at this juncture. The Panel finds that the property was available for habitation in mid-May 2021 and was not inhabited until July 2021 which means that Complainant has satisfied the fourth *prima facie* prong because the property remained available after April 2021 when T. Banks refused to lease to Ms. Canseco.

Even if Respondents argued that the property was not actually ready for habitation in May 2021 because in July 2021 more repairs were necessary and Manuel agreed to perform those repairs as part of his lease agreement, the Panel notes that T. Banks never explained the nature of the repairs that purportedly remained in July 2021 and the very detailed lease agreement says nothing about Manuel performing repairs in exchange for a reduction in the cost. In fact, there is a section in the lease agreement entitled “Alterations or Reparations by Tenant” that states “...the Tenant may not alter or make repairs to the Premises without the Landlord’s prior written consent”⁷² and there is no evidence of said written consent. The Panel rejects T. Banks’ testimony that there were still repairs to be made in July 2021 but there was an agreement that Manuel would perform the repairs in exchange for a reduction in the cost. As such, it is clear that the property remained available between mid-May through June 2021.

⁷¹ CP Ex 1, page 3.

⁷² RP Ex 5, page 6.

B. Part II *McDonnell Douglas* Analysis - Legitimate Nondiscriminatory Reason

Having found that Complainant has established a *prima facie* case, there is a presumption that Respondents unlawfully discriminated against Ms. Canseco⁷³ by not leasing the property to her and according to part two of the *McDonnell Douglas* analysis, the burden shifts to Respondents to present evidence of a legitimate, non-discriminatory reason for not leasing the property to Ms. Canseco. Respondents' burden is one of production, not persuasion. Respondents only need to produce evidence of a legitimate, nondiscriminatory reason and are not required to persuade the Panel that T. Banks' actions were non-discriminatory.⁷⁴

T. Banks testified he did not lease the property to Ms. Canseco because at least ten people contacted him, gave bad references about Ms. Canseco, and said "please do not rent to her." T. Banks also testified he did not lease the property to Ms. Canseco because he needed to lease it to his stepdaughter.

The Panel finds that the reasons proffered by T. Banks satisfy Respondents burden of producing a legitimate, non-discriminatory reason for not leasing the property to Ms. Canseco.

⁷³ *Lindsay*, 578 F.3d at 416; *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 502-503 (1993).

⁷⁴ *Ennis v. Del. Transit Corp.*, 2015 WL 1542151, at *7 (Del. Super. Mar. 9, 2015).

C. Part III *McDonnell Douglas* Analysis - Pretext for Discrimination

Turning to part three of the *McDonnell Douglas* analysis, Complainant must prove by a preponderance of the evidence that Respondents' proffered reasons were pretext for discrimination. "[Complainant's] burden is twofold...[Complainant] must convince the factfinder [that] the...stated reason[s] w[ere] false...[and Complainant] must prove discrimination was the real reason..." that Ms. Canseco was not permitted to lease the property.⁷⁵ The law requires "...specific and significantly probative evidence that [Respondents'] alleged purpose is a pretext for discrimination."⁷⁶ Complainant "must point to weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the...proffered reasons such that a reasonable fact-finder could rationally find [the reasons] unworthy of credence."⁷⁷ The Panel finds that there are implausibilities in Respondents' proffered reasons which renders the reasons unworthy of credence.

T. Banks testified that on April 10, 2021, he informed Ms. Canseco he would not lease the property to her because he needed to lease it to his stepdaughter and because he received bad references about Ms. Canseco, but he did not elaborate on the substance of the bad references. T. Banks said this

⁷⁵ *Id.*

⁷⁶ *Boggerty v. Stewart*, 14 A.3d 542, 554 (Del. 2011) (internal quotation marks omitted).

⁷⁷ *Ennis*, 2015 WL 1542151, at *8 (citing *Keller v. Orix Credit Alliance Inc.*, 130 F.3d 1101, 1108-1109 (3d Cir. 1997) (internal quotation marks omitted)).

decision was made prior to the April 10th meeting as evidenced by Ms. Canseco's testimony that prior to the meeting Julio informed her T. Banks would not lease the property to her due to the bad references. Ms. Canseco testified that when she met with T. Banks for the second time on April 10th T. Banks initiated a discussion about her experience as a domestic violence victim and upon learning about Ms. Canseco's experience T. Banks said he would not lease the property to her. T. Banks testified he could not recall the discussion about Ms. Canseco's domestic violence experience but he did recall Ms. Canseco saying her ex-husband had a hand in T. Banks' decision.

The Panel maintains that Ms. Canseco was a credible witness and credits her testimony about the April 10th meeting over T. Banks' testimony. The Panel credits Ms. Canseco's testimony that T. Banks initiated the discussion about Ms. Canseco's domestic violence experience because it is believable and understandable, as contended by Ms. Canseco, that a survivor of domestic violence does not openly or readily discuss such an experience, and certainly not with someone during their second meeting. It is also believable that T. Banks initiated this discussion, perhaps not specifically in the context of domestic violence, because he had received information that Ms. Canseco was involved in acts of violence, police had been to Ms. Canseco's home many times, Ms. Canseco caused her ex-husband to be incarcerated but with the help of an attorney the ex-husband was acquitted and granted citizenship due to the State's mistake in prosecuting

him. Although T. Banks could not recall the discussion about Ms. Canseco's past, he did recall that Ms. Canseco blamed her ex-husband for T. Banks' decision not to lease the property her, which the Panel finds bolsters Ms. Canseco's testimony about the April 10th meeting. The Panel finds it implausible that Ms. Canseco would initiate a discussion on this topic or mention her ex-husband if T. Banks simply informed her that his stepdaughter needed to lease the property and that he had received bad references about Ms. Canseco without providing specific details.

The Panel also credits Ms. Canseco's testimony that during the April 10th meeting they only discussed her domestic violence experience, once Ms. Canseco informed T. Banks about her experience T. Banks said he would not lease the property to her, and T. Banks never said his decision was due to the bad references received or the need to lease it to his stepdaughter. The Panel finds this testimony believable because T. Banks began receiving the bad references following Ms. Canseco's visit to the property where she came upon the contractors who were friends with her ex-husband⁷⁸ but there was approximately one month (i.e., March 10, 2021 through April 10, 2021) during which T. Banks never told Ms. Canseco he would not lease the property to her. In fact, on April 6, 2021, just four days prior to their meeting, when T. Banks texted Ms. Canseco that the property would

⁷⁸ See footnote 8 where the Panel noted its deduction that Ms. Canseco visited the property on or after March 10, 2021.

not be available until mid-May 2021⁷⁹ there was no indication that T. Banks would not lease the property to her. Assuming arguendo that between April 6th and April 10th T. Banks determined his stepdaughter needed a place to live and the bad references warranted not leasing the property to Ms. Canseco, it was unnecessary to inquire about Ms. Canseco's domestic violence experience when they met on April 10th. But T. Banks did ask Ms. Canseco about her experience and then he told her the property would not be leased to her. The Panel finds it implausible that T. Banks sought unnecessary information, disregarded that information, and then relied on the purportedly legitimate, nondiscriminatory reasons as the bases for not leasing the property to her.

In addition to the aforementioned implausibilities, the Panel finds that the timing of T. Banks informing Ms. Canseco he would not lease the property to her is significant and further shows that Respondents' purported legitimate, nondiscriminatory reasons are pretext. In *Wentworth v. Hedson*, 493 F. Supp. 2d 559 (E.D. NY 2007), where White tenants, who provided voice lessons to Black people, alleged their landlord discriminated against them in violation of FFHA by instigating negative interactions with the tenants contemporaneous to Black students receiving voice lessons, the court said, "timing alone may be sufficient to establish pretext."⁸⁰ Likewise, in *Lindsay*, where a real property purchase

⁷⁹ CP Ex 1, page 3.

⁸⁰ *Wentworth*, 493 F. Supp. 2d at 570.

agreement was terminated by the buyers shortly after the buyers met with and observed that the purchasers were African-American, the Court said “the suspicious timing of the termination of the purchasing agreement provides the evidentiary basis for inferring the [buyers] acted with discriminatory motives.”⁸¹ Lastly, in *Bouley*, the Court determined that the timing of eviction and statements in the eviction letter could lead a reasonable jury to conclude that the purported lease violation was pretext and unlawful discrimination was the real reason for the eviction.

Because the Panel finds the proffered reasons to be implausible, the Panel has determined that the reasons are false and pretextual. Likewise, the timing of when T. Banks informed Ms. Canseco he would not lease the property to her establishes pretext. In making this determination, the Panel is aware that the existence of a *prima facie* case and a pretextual reason only permits the Panel to presume there was unlawful discrimination and does not compel a judgment in favor of Complainant because Complainant maintains the burden of proof and must prove by a preponderance of the evidence that discrimination was the real reason.⁸² For the reasons discussed herein, the Panel finds that Complainant has met that burden. When Ms. Canseco disclosed her domestic violence experience to T. Banks he suddenly decided he would not lease the property to her and he did not

⁸¹ *Lindsay*, 578 F. 3d at 418.

⁸² *St. Mary's Honor Center*, 509 U.S. at 502-503.

provide another reason for not leasing to her. Even if T. Banks received unfavorable information about Ms. Canseco or felt the need to lease the property to his stepdaughter, he did not renege on the verbal agreement to lease the property to Ms. Canseco until after she disclosed her domestic violence experience and that is telling.

The Panel is not persuaded by Respondents' argument, in reliance upon *Jennings*, that even if a decision to not lease property violates fair housing law, where there is a separate, legitimate reason the decision withstands scrutiny. Apparently, Respondents believe that even if the Panel finds Respondents violated DFHA by T. Banks communicating his decision to not lease the property after Ms. Canseco revealed her domestic violence history, there are two separate, legitimate, nondiscriminatory reasons for his decision that yield a finding that Respondents did not violate DFHA. The law does not support Respondents' position. A search for case law citing or adopting *Jennings* yielded one case where *Jennings* was cited for reasons unrelated to the position espoused by Respondents⁸³ and there is case law contrary to Respondents' position.

In *MHANY Management Inc. v Incorporated Village of Garden City*, 985 F. Supp. 2d 390 (E.D. NY 2013), where plaintiff sued defendants for violating FFHA by re-zoning certain land to prevent a developer from building low and middle

⁸³ See *AIRINC, Inc. v. Martin*, 2019 WL 398509 (D. Md. Jan. 30, 2019).

income housing on the land, the Court found that there were mixed motives for the re-zoning but the plaintiffs proved discrimination played a significant role in the re-zoning decision, defendants did not prove they would have made the same decision absent discriminatory considerations, and therefore the plaintiff established liability under FFHA.⁸⁴ Here, as discussed, Complainant proved discrimination played a significant role in T. Banks' decision and the fact that T. Banks informed Ms. Canseco of his decision after hearing about her domestic violence experience is proof that T. Banks did not disregard the information Ms. Canseco provided when making the decision not to rent to her.

CONCLUSION

After careful consideration of the evidence presented, the Panel, by unanimous vote, concludes that Complainant has shown that Respondents violated DFHA, 6 *Del. C.* §§ 4603(b)(1) and (b)(4).

ORDER

The Panel has found that Respondents violated §§ 4603(b)(1) and (b)(4) of DFHA. Pursuant to § 4612(g)(3) of DFHA, the Panel hereby orders the following relief:

(1) Respondents shall pay within 120 days from the date this Order

⁸⁴ *MHANY Management Inc.*, 985 F. Supp. 2d at 423-424.


becomes effective compensatory damages in the amount of \$10,000 for Ms. Canseco's lost housing opportunities, inconvenience, and emotional/mental distress.

- (2) Respondents shall pay within 120 days from the date this Order becomes effective a civil penalty in the amount of \$5,000 to the Commission's special administration fund. Payment shall be made to the Delaware Human and Civil Rights Commission and mailed to 820 North French Street, 4th Floor, Wilmington, DE 19801.
- (3) Respondents shall ensure all employees and staff complete fair housing training within six months after the date this Order becomes effective. Respondents shall incur all fees and expenses associated with said training and the training shall include a component on the intersection of fair housing and domestic violence.
- (4) Respondents shall create policies, regulations, and procedures that include addressing the rights of tenants who are survivors of domestic violence and that are consistent with current federal and state fair housing laws.
- (5) Respondents shall create and implement a lease application process compliant with federal and state fair housing laws.
- (6) Respondents shall include on all public facing advertising and documents the equal opportunity housing logo, a statement indicating


that Respondents adhere to fair housing laws, and local resources for fair housing discrimination complaints.

(7) On or before six months from the date that this Order becomes effective, Respondents shall submit documentation of compliance with the relief specified in paragraphs 3, 4, 5, and 6 to Delaware Human and Civil Rights Commission, Chairperson Joseph Dawson, 820 North French Street, 4th Floor, Wilmington, DE 19801.

IT IS SO ORDERED this 6th day of October, 2023.


Gail E. Tarlecki (Oct 5, 2023 16:00 EDT)

Gail Launay-Tarlecki, *Commissioner and Panel Chair*


Joseph Dawson (Oct 5, 2023 16:19 EDT)

Joseph Dawson, *Commissioner and Panel Member*


Doris Cooper (Oct 6, 2023 13:34 EDT)

Doris Cooper, *Commissioner and Panel Member*