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FLORIDA COMMISSION ON  
HUMAN RELATIONS

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

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VANESSA BROWN,

AT

Dmk-clos

Petitioner,

FCHR Case No. 21-02226

v.

DOAH Case No. 01-3882

CAPITAL CIRCLE HOTEL COMPANY,  
d/b/a SLEEP INN,

FCHR Order No. 03-014

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FILED  
ADMINISTRATIVE  
HEARINGS

Respondent.

**FINAL ORDER AWARDING AFFIRMATIVE RELIEF  
FROM UNLAWFUL PUBLIC ACCOMMODATION DISCRIMINATION**

Preliminary Matters

Petitioner Vanessa Brown filed a complaint of discrimination pursuant to Sections 509.092 and 760.11, Florida Statutes (1999), alleging that Respondent Capital Circle Hotel Company d/b/a Sleep Inn committed unlawful public accommodation discrimination on the basis of Petitioner's race (African-American) when it failed to rent Petitioner a room at the Sleep Inn in Temple Terrace, Florida.

The allegations set forth in the complaint were investigated, and, on August 22, 2001, the Executive Director issued his determination finding that there was reasonable cause to believe that unlawful discrimination had occurred.

Petitioner filed a Petition for Relief and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held on September 4, 2002, in Orlando, Florida, before Administrative Law Judge Daniel M. Kilbride.

Judge Kilbride issued a Recommended Order on October 17, 2002, recommending that the Commission enter a final order finding that Respondent unlawfully discriminated against Petitioner on the basis of Petitioner's race, and recommending affirmative relief.

Pursuant to notice, public deliberations were held on February 20, 2003, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Recommended Order.

### Findings of Fact

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

We adopt the Administrative Law Judge's findings of fact.

### Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter, but provide explanation regarding the issue of relief.

The Administrative Law Judge stated, "Petitioner has testified that the event has left her emotionally affected from the date of the incident to present time, and that the acts by Dodd on behalf of Respondent left her with continued apprehension of discriminatory treatment, which she did not have prior to May 27, 2000. Although Petitioner has not lost income as a result of the actions of Respondent by its agent Dodd, Petitioner has sought counseling on a few occasions but that the counseling had not proved effective, and she ceased the counseling. Based on Petitioner's testimony, she is entitled to \$500 for affirmative relief from the effects of the practice. No testimony was presented to refute Petitioner's testimony as to the effect of the incident on her emotional and mental state." Recommended Order, ¶ 31.

In Brill v. Ocean View Villas, 23 F.A.L.R. 1560 (FCHR 2001), the Administrative Law Judge awarded the Petitioner \$1000 "for compensation for her mental anguish" as part of the award for unlawful public accommodation discrimination. The Commission panel disallowed this award, stating, "While we recognize that compensation for mental anguish could have been awarded by a court had Petitioner filed a civil action following the issuance of the Executive Director's 'cause' determination in this matter (See Sections 509.092 and 760.11(4) and (5), Florida Statutes (1999), we conclude there is no statutory authority for the Commission to award compensation for mental anguish in situations such as this where Petitioner has sought relief through administrative hearing. See, Sections 509.092 and 760.11(4) and (6), Florida Statutes (1999)." Brill, supra, at 1561.

Nevertheless, in the absence of a transcript of the proceeding before the Administrative Law Judge, we are unable to conclude that the \$500 award recommended in this matter is not a "quantifiable" amount supported by the evidence presented. (Note that in Brill a transcript was filed. See Brill, supra, at 1564.)

Further, the Administrative Law Judge recommended that Petitioner be awarded, "A reasonable attorney's fee as part of the costs." Recommended Order, "Recommendation" section.

We recognize this to mean that Petitioner is entitled to "costs" in addition to attorney's fees. Accord, Bert v. Department of Education, 21 F.A.L.R. 1781, at 1784 (FCHR 1998).

We adopt the Administrative Law Judge's conclusions of law.

### Exceptions

Respondent filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Exceptions to Recommended Order."

As indicated, above, the Commission's file does not contain a transcript of the proceeding on the merits before the Administrative Law Judge. The filing of such a transcript is a requirement to the filing of exceptions to a Recommended Order. See, Fla. Admin. Code R. 60Y-4.025(3), and Fla. Admin. Code R. 60Y-4.027(1). In the absence of the filing of such a transcript the Commission has ordered exceptions stricken. See, e.g., Ebeh v. Consumer Credit Counseling Service of the Tampa Bay Area, Inc., 16 F.A.L.R. 2149, at 2150 (FCHR 1994), and Lee v. Emmer Development Corporation, 20 F.A.L.R. 3132, at 3134 (FCHR 1998).

Respondent's exceptions are hereby stricken.

### Affirmative Relief

Through our adoption of the Administrative Law Judge's findings of fact and conclusions of law, as set out above, we find that unlawful discrimination has occurred in this matter and have adopted the Administrative Law Judge's recommendations for the remedy of the discrimination.

Respondent is hereby ORDERED:

(1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner, as recommended by the Administrative Law Judge in the Recommended Order;

(2) to remit to Petitioner \$500 in affirmative relief in the manner recommended by the Administrative Law Judge in the Recommended Order;

(3) to pay Petitioner the statutorily established interest on the amount awarded Petitioner in (2), above;

(4) to pay Petitioner attorney's fees that have been reasonably incurred in this matter by Petitioner in the manner recommended by the Administrative Law Judge in the Recommended Order; and

(5) to pay Petitioner the amount of costs that has been reasonably incurred in this matter by Petitioner.

The Commission reserves jurisdiction over the determination of precise remedy in this matter, including, but not limited to, amounts of interest, attorney's fees, and costs awarded Petitioner.

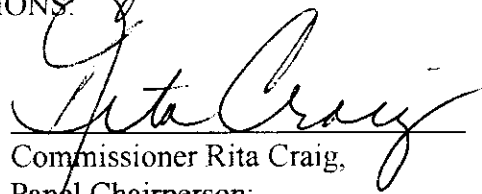
If, within 30 days of the date of the filing of this Order by the Clerk of the Commission, the parties have agreed to the appropriate remedy amounts for the unlawful public accommodations practice found to have occurred, the parties shall prepare and submit to the Commission a Joint Stipulation of Settlement.

If, within 30 days of the date of the filing of this Order by the Clerk of the Commission, the parties are unable to reach agreement as to the remedy amounts for the unlawful public

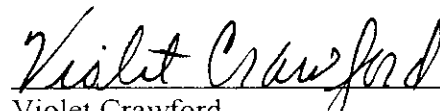
accommodations practice found to have occurred, the Petitioner is directed to file with the Commission a Notice of Failure of Settlement, and the case will be remanded to the Administrative Law Judge for determination of the appropriate remedy amounts in this matter, as ordered above.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 20 day of February 2003.  
FOR THE COMMISSION ON HUMAN RELATIONS.

  
Commissioner Rita Craig,  
Panel Chairperson;  
Commissioner Gayle Cannon; and  
Commissioner P.C. Wu

FILED this 7<sup>th</sup> day of March, 2003,  
in Tallahassee, Florida.

  
Violet Crawford  
Clerk, Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, FL 32301  
(850) 488-7082

Copies furnished to:

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Capital Circle Hotel Company, d/b/a Sleep Inn  
c/o Stephen F. Baker, Esq.  
Stephen F. Baker, P.A.  
800 First Street South  
Winter Haven, FL 33880

Daniel M. Kilbride, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 7<sup>th</sup> day of March, 2003.

By: *Vivit Crawford*  
Clerk of the Commission