STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VANESSA BROWN,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 01-3882
	)	
CAPITAL CIRCLE HOTEL COMPANY, d/b/a SLEEP INN,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

A formal hearing was held before Daniel M. Kilbride, Administrative Law Judge, Division of Administrative Hearings, on September 4, 2002, in Orlando, Florida. The following appearances were entered:

APPEARANCES

For Petitioner: Tricia A. Madden, Esquire
Tricia A. Madden, P.A.
500 East Altamonte Drive, Suite 200
Altamonte Springs, Florida 32701

For Respondent: Stephen F. Baker, Esquire
Stephen F. Baker, P.A.
800 First Street South
Winter Haven, Florida 33880

STATEMENT OF THE ISSUE

Whether Petitioner, Vanessa Brown, a member of a protected class, was denied rental of a room at the hotel called the Sleep Inn owned by Respondent, Capital Circle Hotel Company, on or

about May 27, 2000, on the basis of her race (African-American) in violation of the Florida Civil Rights Act of 1992.

PRELIMINARY STATEMENT

Petitioner filed a Public Accommodations Charge of Discrimination based on race against Respondent with the Florida Commission on Human Relations (FCHR) on May 24, 2001, under the Florida Civil Rights Act of 1992. Subsequently on August 22, 2001, the FCHR issued a Determination: Cause, finding that there was reasonable cause to believe that an unlawful public accommodations practice had occurred. On September 25, 2001, Petitioner timely filed a Petition for Relief with the FCHR. This matter was referred by the FCHR to the Division of Administrative Hearings for formal hearing on October 31, 2001. Following continuances jointly stipulated to by Petitioner and Respondent in order to complete discovery, a formal hearing was held on September 4, 2002.

At the hearing Petitioner testified on her own behalf, and presented the testimony of Frederich Mobley by video deposition and transcript taken August 28, 2002, marked and entered into evidence as Petitioner's Exhibit 1, and the testimony of Mitchell Jamerson by video deposition and transcript taken August 28, 2002, marked and entered into evidence as Petitioner's Exhibit 2. Respondent presented the testimony of Robert Bland and the testimony of Cheryl Dodd by video

deposition and transcript taken August 5, 2002, and entered into evidence as Respondent's Exhibit 1 and the video deposition and transcript testimony of John C. Walters, taken August 5, 2002, and marked as Respondent Exhibit 2. Respondent presented four other exhibits, a composite exhibit marked as Respondent's Exhibit 3, a one-page letter dated August 27, 2001, marked as Respondent's Exhibit 4, a copy of the Employee Handbook marked as Respondent's Exhibit 5, and a copy of the Sleep Inn Franchise Agreement marked as Respondent's Exhibit 6, which were admitted into evidence.

The hearing was recorded, but the transcript was not ordered. The parties, by request of Petitioner and agreed to by Respondent, were allowed 21 days to file proposed findings of fact and conclusions of law. Each party filed their Proposed Recommended Order on September 30, 2002. Each party's proposal has been carefully considered in rendering this Recommended Order.

FINDINGS OF FACT

1. Petitioner is a member of a protected class (African-American).

2. Respondent was on May 27, 2000, and is the owner of the Sleep Inn located in Temple Terrace, Florida, which is a public lodging establishment.

3. In the early morning hours of May 27, 2000, Petitioner was denied accommodations at the Sleep Inn.

4. Cheryl Dodd was working as night auditor and desk clerk for Respondent on May 26, 2000, and May 27, 2000. At approximately 4:00 a.m., Petitioner entered the Sleep Inn with Frederich Mobley (also African-American) and asked to rent a room. Before Petitioner could complete her request, Dodd told Petitioner she was sold out. Dodd made no effort to check the Sleep Inn computer system or reservation card system to determine if a room was available before immediately interrupting Respondent and telling her that no room was available and no room would be available until the next day in the afternoon.

5. Petitioner and Mobley left the lobby of the Sleep Inn and returned to the parking lot. In the parking lot, Mitchell Jamerson was wiping down his car, because he could not sleep. Jamerson (an African-American) struck up a conversation with Mobley and Respondent. He asked the two of them if they had been told there were no rooms available. Jamerson told them that he was with a softball team and four of his team members had called to tell him they had had car trouble, would not be able to get to the motel that night, and that their rooms would not be needed.

6. About ten minutes after Petitioner left the hotel lobby with Mobley, a Caucasian male entered the hotel lobby and came back out. Jamerson spoke to the gentleman, and he said he had just rented a room for him and his wife for the night, without a reservation. Jamerson accompanied Petitioner and Mobley back into the lobby. Petitioner asked Dodd why she could not have a room when a room had just been rented to the Caucasian male. Dodd said she had given the Caucasian male a room with a cot. Petitioner asked why she was not offered that room. Dodd told Petitioner that she did not think they would want a room with a cot and that there were no other rooms available. Dodd told Petitioner that she (Petitioner) could speak to the manager the next day, and gave her the card of John C. Walters. The time of the end of Petitioner's second visit to the lobby was 4:10 a.m. on May 27, 2000.

7. At approximately 12:00 a.m., Jamerson had gone to the front desk and told the desk clerk, Dodd, that three rooms reserved by his team would not be needed that night because his team members had had car trouble in Wildwood.

8. Jamerson and his team (other than the four mentioned above), including both African-Americans and Caucasians, had checked in at approximately 7:30 p.m. on the evening of May 26, 2000. The rooms they were given were missing towels. During the registration and when asking for towels, they believed they

were treated rudely. Jamerson stated that the clerk on duty at 12:00 a.m. midnight and at 4:00 a.m. on May 27, 2000, was the same person at the desk when he checked in with his team at 7:30 p.m. on May 26, 2000.

9. Dodd testified that she came on duty at 11:00 p.m. that night for an 11:00 p.m. to 7:00 a.m. shift. However, John C. Walters, the manager of the Sleep Inn, stated that Dodd often helped out during shifts other than the 11:00 p.m. to 7:00 a.m. shift. Neither Dodd nor Walters could identify who was on shift at the hotel for the 3:00 p.m. to 11:00 p.m. shift that night.

10. Dodd, contrary to the testimony of Jamerson, Petitioner, and Mobley, said Petitioner came into the hotel both times with two men. Dodd also said that she had checked in two sets of parents and two African-American females into two rooms at approximately 11:00 p.m. or 12:00 a.m. She stated that the individuals had reservations and were parents of members of the baseball team. Jamerson stated that his team was the only team in the hotel, that he knew the teams in the competition that were to attend and that all the teams were comprised of adult women. No parents of his team stayed at the hotel on May 26, 2000, or May 27, 2000. Dodd's testimony on this incident is not credible.

11. Dodd testified that she was running the night audit at the time Petitioner and Mobley entered the hotel, and could not

check whether a room was available. Dodd admitted that she did not make that information known to Petitioner or Mobley. Dodd testified that she had started running the audit sometime between 1:00 a.m. and 2:00 a.m. that night, as was her practice, and that the audit took one to one and a half or two hours to run. However, Walters testified that he was not there the night of May 26, 2000, or May 27, 2000, but the audit took about 45 minutes.

12. Dodd testified that she had had a gentleman call in to cancel a room because he had had car trouble. She testified that the gentleman had called approximately 30 to 45 minutes after Respondent and Mobley left the lobby. She said she told the gentleman that called that she would try to rent out the room, and if she could, she would not bill him even though according to policy she should. She then testified that the Caucasian male to whom she rented the room entered the lobby approximately 15 minutes later. Dodd testified that when she had a reservation and the person called in to cancel after 6:00 p.m. she would bill that client, but would rent out the room if possible. She said she could check people in and out while the audit was running. This testimony is not credible.

13. Robert Bland testified that the policy of Respondent was to bill the customer who had a reservation if they canceled after 6:00 p.m. and not to rent the room out. The policy was

based on the fact that the customer was being billed for the room and had a right to have that room available for him/her whether or not anyone else appeared to ask for the room. Bland presented a composite exhibit of the driver's license photographs of 14 African-Americans who rented rooms between May 10, 2000, and May 28, 2000. Bland could not confirm whether or not that was all the African-Americans who had rented rooms in the month of May or just all between the period of May 10, 2000, and May 28, 2000. Bland stated that all computer records of the registrations and other records other than the driver's license photos he presented for the period of May 2000 had been destroyed on a hard disk that had been damaged. Of those driver's licenses produced to demonstrate that the hotel did provide rooms to African-Americans, seven of those driver's licenses belonged to members of Jamerson's baseball team who had signed in on May 26, 2000, at 7:30 p.m. after Dodd was on duty. Jamerson's team had made reservations through one party by telephone and no identification had been made at the time of the reservations of their ethnic background.

14. Bland could not state who had accepted the reservations of the African-Americans identified by driver's license photographs who were not members of Jamerson's team. Bland could not state that he knew that Dodd had ever rented a

room to any African-American other than Jamerson's team members, who had arrived with prior reservations.

15. Bland stated that Dodd had been given a new employee manual which was developed after Bland took over as Director of Operations. This was sometime after Dodd had actually started work at the Sleep Inn. No training was given to Dodd or any other employee on that manual. The manual states that no one should discriminate on the basis of any categories of discrimination. No other information that was provided indicated that Bland could verify that Dodd had read the manual. Dodd stated that she was provided an Employee Manual which warned against discriminating against minorities, and she did know from working in the hospitality industry that she should not discriminate.

16. Dodd further testified that no one at the Sleep Inn asked her, suggested to her, or implied to her that she should give preferential treatment to Caucasians over African-Americans. Dodd specifically testified that at the time Petitioner came into the Sleep Inn, she was running the night audit of the motel on the computer and that to her knowledge no rooms were available at that time. Dodd further testified that early after Petitioner left the lobby, a room became available, that she was not aware Petitioner was waiting in the parking

lot, and that the next prospective guests to enter the motel were a Caucasian couple.

17. Walters testified that at the Sleep Inn, while he was there he rented to anyone who could rent a room. His purpose was to place "heads in beds."

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding, pursuant to Sections 120.569, 120.57(1), and 760.11(4), Florida Statutes.

19. Section 509.092, Florida Statutes, provides:

> Public Lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, physical disability, or national origin. A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to Section 760.11.

20. The court in LaRoche v. Denny's, Inc., 62 F.Supp. 2d 1375, 1382-1383 (S.D. Fla. 1999), a case dealing with racial discrimination, set forth the analysis which should be used in public accommodations cases in Florida:

> Under the McDonnell Douglas framework, as further elucidated in Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 252-53, 101 S.Ct. 1089, 67 L.Ed.2d 207

(1981), and St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993), the Plaintiffs must prove by a preponderance of the evidence a prima facie case of discrimination. Specifically, the Plaintiffs must prove that: (1) they are members of a protected class; (2) they attempted to contract for services and to afford themselves the full benefits and enjoyment of a public accommodation; (3) they were denied the right to contract for those services and, thus, were denied the full benefits or enjoyment of a public accommodation; and (4) such services were available to similarly situated persons outside the protected class who received full benefits or enjoyment or were treated better. United States v. Lansdowne Swim Club, 894 F.2d 83, 88 (3rd Cir. 1990).

Once the Plaintiffs meet this burden, they establish a presumption of intentional discrimination. Hicks, 509 U.S. at 506, 113 S.Ct. 2742. The effect of this presumption shifts the burden to the Defendant to produce evidence of a legitimate, non-discriminatory reason for the challenged action. Id. at 506-507, 113 S.Ct. 2742; McDonnell Douglas, 411 U.S. at 802, 93 S.Ct. 1817; Burdine, 450 U.S. at 254, 101 S.Ct. 1089. The Defendant's burden of production is a light one. Batey v. Stone, 24 F.3d 1330, 1334 (11th Cir. 1994).

When a defendant meets its burden of production, the presumption of discrimination which the McDonnell Douglas framework creates, "drops from the case" and "the factual inquiry proceeds to a new level of specificity." Burdine, 450 U.S. at 255, n. 10, 101 S.Ct. 1089. The burden then shifts back to the Plaintiffs to demonstrate that the Defendant's actions were not for the proffered reason, but were, in fact, motivated by race. Hicks, 509 U.S. at 507-08, 113 S.Ct. 2742; Burdine, 450 U.S. at

> 253, 101 S.Ct. 1089. Plaintiffs may prove this fact either by means of affirmative evidence that race played an impermissible role in Mr. Ibarra's action, or by showing that the proffered non-discriminatory reason does not merit credence. Id. at 256, 101 S.Ct. 1089. The ultimate burden is on the Plaintiffs to prove that they were the victims of intentional discrimination.

21. Petitioner may make a prima facie showing of housing discrimination sufficient to meet the first part of the three-part McDonnell Douglas burden of proof test by establishing that she applied to rent an available unit which she was qualified to rent, her application was rejected and, at the time of such rejection, she was a member of a protected class. Soules v. United States Department of Housing and Urban Development, 967 F.2d 817, 822 (2d Cir. 1992).

22. In the present case, Petitioner was a member of a protected class, African-American. She entered the lobby of the Sleep Inn to rent a room. Dodd immediately stated a room was not available before Petitioner could complete her request for a room. Approximately 15 minutes later, a room was rented to a Caucasian male. Petitioner was denied the full benefits or enjoyment of a public accommodation when she was denied the right to contract for a room. That service was made available to a similarly situated person, the Caucasian male, who is outside the protected class and who did receive the full benefits and enjoyment of the facilities. Petitioner has

established a prima facie case of intentional discrimination based on race.

23. Respondent now has the burden of producing evidence of a legitimate, non-discriminatory reason for Dodd's denial of the room to Petitioner. Respondent has attempted to provide evidence of a non-discriminatory reason for the challenged action, by claiming that Petitioner was denied the room because the audit was running and/or no room was available.

24. Respondent is responsible for the actions of its night auditor, Dodd, who also acted as desk clerk. Dodd has testified that she had handled room reservations contrary to company policy, which is in the Employee Manual and was testified to by Bland. Bland and Walters testified they supervised all the work at the facility. Therefore, they should have been or were aware of Dodd's failure to follow policy in at least one significant area--double billing for the same room. Since they took no action in this area to stop Dodd's double billing, there is evidence that they did not supervise her sufficiently to prevent her from violating other company policies, in this case discrimination. Further, the Employee Manual was developed after Dodd was hired and there was not evidence presented that she received any training on Respondent's non-discrimination policy, or how to implement it. Ferrill v. The Parker Group, Inc., 168 F.3d 468, 473 (11th Cir. 1999).

25. Respondent's explanation is not sufficiently credible when all the evidence is considered. Dodd claims that she denied the room to Petitioner because she was running a night audit and could not verify whether or not a room was available. Dodd stated that she would have started the night audit, as it was her practice, between 1:00 a.m. and 2:00 a.m. and that the audit could run from one to two hours. However, Walters testified that the audit runs about 45 minutes. Bland indicated that the audit took a short time period. At the longest time frame given by Dodd to attempt to explain her reason for denying rental of the room on the basis that the audit was not completed, the audit would have been finished more likely than not before Petitioner entered the hotel with Mobley at 3:45 a.m., at the earliest. If the audit had still been running, Dodd certainly should have known that, at that late time, the audit was practically finished and could have asked Petitioner to wait a moment while she checked the computer. Dodd, by her own testimony and that of Petitioner and Mobley, made absolutely no effort to check anything to see if a room was available. She immediately denied a room to Petitioner.

26. In addition, at the time that Petitioner requested a room at the hotel, Dodd had personal knowledge that three rooms were vacant that had previously been reserved. Dodd further knew that she could check at least to see if a room was

available. Further, Dodd stated that it was her policy to rent rooms that had been canceled even if she had billed the original customer with the reservation for the room.

27. Dodd's testimony that she did not know that there were any rooms available for rent is contradicted by her own testimony, but even further by the testimony of other witnesses. Jamerson testified that he had told Dodd at 12:00 midnight that three of the rooms that had been reserved for his team would not be used because four people had had car trouble. Walters' testimony as to the length of time it takes to run the audit would demonstrate that the audit would have been completed long before the time that Petitioner entered the lobby at 3:45 a.m. or 4:00 a.m. and certainly at the time of 4:10 a.m. when Petitioner had returned to the hotel lobby. Dodd's testimony that the audit was still running at the time Petitioner entered the lobby is not credible based on the time frames and the testimony given by others.

28. Bland's testimony on hotel policy for reservations and Dodd's own testimony contradict each other on reservation policy. Dodd's implementation of it was contrary to hotel policy and Bland's testimony. Dodd's testimony on her actions is also contradicted by Dodd and other representatives of Respondent that their job is to accommodate customers. This would certainly require more than a hasty "no room" response at

4:00 a.m. As with the reservation policy, Dodd did not always follow policy.

29. The burden then shifts back to Petitioner to demonstrate that Respondent's actions were not for the proffered reason, but were in fact motivated by race. Petitioner may prove this fact either by means of affirmative evidence that race played an impermissible role in Dodd's actions or by showing that the proffered non-discriminatory reason does not merit credence. In this matter, the evidence given by Dodd of the reason she denied a room to Petitioner does not merit credence considering the testimony of all parties and the evidence presented.

30. While a close question, in this case, there is sufficient evidence to satisfy Petitioner's burden that Respondent's employee's decision to deny a room to Petitioner was racially motivated. LaRoche v. Denny's Inc., supra at 1384.

31. Petitioner was a member of a protected class and was denied the use and enjoyment of the facilities. 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 had 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. LaRoche v. Denny's, Inc., supra at 1385. Section 760.11(7), Florida Statutes, authorizes the presiding Administrative Law Judge to recommend affirmative relief from the effects of unlawful discrimination by a public lodging establishment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered:

1. Finding that Respondent discriminated against Petitioner based on her race (African-American);

2. Awarding Petitioner $500 in compensatory damages;

3. Issuing a cease and desist order prohibiting Respondent from repeating this practice in the future; and

4. A reasonable attorney's fee as part of the costs.

DONE AND ENTERED this 17th day of October, 2002, in Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of October, 2002.

COPIES FURNISHED:

Stephen F. Baker, Esquire
Stephen F. Baker, P.A.
800 First Street South
Winter Haven, Florida 33880

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Tricia A. Madden, Esquire
Tricia A. Madden, P.A.
500 East Altamonte Drive, Suite 200
Altamonte Springs, Florida 32701

Cecil Howard, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.