

2-3-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

03 JUL -8 PM 12:56
DIVISION OF ADMINISTRATIVE
HEARINGS

TROY PERRY,

AT

Petitioner,

FCHR Case No. 21-02229

v.

DOAH Case No. 02-1624

JBC-CLW5

SPEEDWAY SUPERAMERICA, LLC,
d/b/a STARVIN' MARVIN,

FCHR Order No. 03-038

Respondent.

**FINAL ORDER DISMISSING PETITION FOR RELIEF
FROM UNLAWFUL PUBLIC ACCOMMODATION DISCRIMINATION**

Preliminary Matters

Petitioner Troy Perry filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 509.092 and 760.11, Florida Statutes (1999), alleging that Respondent Speedway SuperAmerica, LLC, d/b/a Starvin' Marvin, committed an unlawful public accommodation practice on the basis of Petitioner's race (African-American) when Respondent required Petitioner to pre-pay for gas he intended to pump.

The allegations set forth in the complaint were investigated, and, on March 11, 2002, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful public accommodation practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Public Accommodation Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

Following the issuance of a Recommended Order of Dismissal and the subsequent remand of the case to the Division of Administrative Hearings by the Commission, an evidentiary hearing was held in Viera, Florida, on December 18, 2002, before Administrative Law Judge Jeff B. Clark.

Judge Clark issued a Recommended Order of dismissal, dated February 3, 2003.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

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.

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

While recognizing that the Administrative Law Judge's conclusions of law result in a correct ultimate disposition of the matter, we note that the establishments subjected to the public accommodation discrimination provisions of the Florida Civil Rights Act of 1992 are limited to "public lodging establishments" and "public food service establishments." Section 509.092, Florida Statutes (2001).

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 3rd day of July, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Roosevelt Paige, Panel Chairperson;
Commissioner Leonie Hermantin; and
Commissioner Billy Whitefox Stall

Filed this 3rd day of July, 2003,
in Tallahassee, Florida.

Violet Crawford
Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-708

Copies furnished to:

Troy Perry
2010 Paradise Court
Palm Bay, FL 32905

Speedway SuperAmerica, LLC,
d/b/a Starvin' Marvin
c/o Susan P. Norton, Esq.
Allen, Norton & Blue, P.A.
121 Majorca Avenue, Suite 300
Coral Gables, FL 33134

Jeff B. Clark, 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 3rd day of July, 2003.

By: Violet Crawford
Clerk of the Commission
Florida Commission on Human Relations