

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED

2005 SEP 23 P 2:17

BETTY MCNAIR,

Petitioner,

v.

WESTGATE MOTEL,

Respondent.

FCHR Case No. 2004-22502

HEARINGS

DOAH Case No. 05-0025

pmk

FCHR Order No. 05-102

CWS

**ORDER REMANDING PETITION FOR  
RELIEF FROM AN UNLAWFUL PUBLIC ACCOMMODATION PRACTICE**

This matter is before the Commission for consideration of the Recommended Order of Dismissal, dated July 5, 2005, issued in the above-styled matter by Administrative Law Judge P. Michael Ruff.

Findings of Fact and Conclusions of Law

Judge Ruff's order reflects that Petitioner failed to appear at the scheduled administrative hearing in the matter. Consequently, Judge Ruff recommended the Commission issue a final order dismissing the matter based on Petitioner's lack of prosecution.

We note that the Commission typically dismisses Petitions for Relief in instances in which Petitioners fail to appear and consequently fail to meet their burden of proof. See, e.g., Wallace v. Finfrock, FCHR Order No. 05-045 (April 20, 2005), and Collins v. Tallahassee Housing Authority, FCHR Order No. 03-080 (December 26, 2003).

In this instance, however, it appears that the proceeding leading to the Recommended Order of Dismissal did not comply with the essential requirements of law because the Notice of Hearing for the hearing at which Petitioner failed to appear does not seem to have been sent to Petitioner's address of record. See, generally, Section 120.57(1)(l), Florida Statutes (2005), regarding the Commission's ability to determine whether a proceeding leading to an order before it complied with the essential requirements of law; and see also Fla. Admin. Code R. 28-106.208, regarding the requirement that notices of hearings be served on the parties at their address of record.

The Complaint of Discrimination and Petition for Relief in this matter both list Petitioner's address as P.O. Box 1358, Perry, FL 32347. Nevertheless, the March 23, 2005, Notice of Hearing, setting the May 9, 2005, hearing at which Petitioner failed to appear, lists a Zip Code of 32547 for Petitioner's P.O. Box address, rather than 32347, as listed on the two above-mentioned documents, both provided by Petitioner.

In our view, it does not appear that the March 23, 2005, Notice of Hearing, setting the hearing at which Petitioner failed to appear, was mailed to Petitioner's record address. (Parenthetically, the Recommended Order of Dismissal also uses the 32547 Zip Code for Petitioner's address.)

Exceptions

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

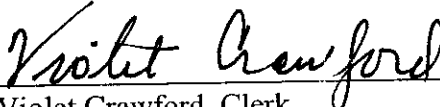
Remand

The Petition for Relief and Complaint of Discrimination are REMANDED to the Administrative Law Judge for further findings on whether Petitioner received notice of the May 9, 2005, administrative hearing that complied with the legal requirements for being provided notice, and if Petitioner did not, for further proceedings on the Petition for Relief. Accord, Cruz v. Legg, FCHR Order No. 05-002 (January 31, 2005).

DONE AND ORDERED this 23<sup>rd</sup> day of September, 2005.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson;  
Commissioner Gayle Cannon; and  
Commissioner Roosevelt Paige

Filed this 23<sup>rd</sup> day of September, 2005,  
in Tallahassee, Florida.

  
\_\_\_\_\_  
Violet Crawford, Clerk  
Commission on Human Relations  
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P. Michael Ruff, 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 23<sup>rd</sup> day of September, 2005.

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