

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED  
05 MAY 22 AM 8:31  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

KEVIN TIMMONS,

Petitioner,

FCHR Case No. 2005-01323

v.

DOAH Case No. 05-2085

WAFFLE HOUSE, INC.,

FCHR Order No. 06-047

SDC  
CW

Respondent.

**FINAL ORDER DISMISSING PETITION FOR  
RELIEF FROM AN UNLAWFUL PUBLIC ACCOMMODATIONS PRACTICE**

Preliminary Matters

Petitioner Kevin Timmons filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 509.092 and 760.11, Florida Statutes (2003), alleging that Respondent Waffle House, Inc., committed unlawful public accommodations practices on the basis of Petitioner's race (Black) by denying Petitioner service and by refusing Petitioner entry.

The allegations set forth in the complaint were investigated, and, on June 1, 2005, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful public accommodations practice 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 in Quincy, Florida, on November 7, 2005, before Administrative Law Judge Diane Cleavinger.

Judge Cleavinger issued a Recommended Order of dismissal, dated February 22, 2006.

Pursuant to notice, public deliberations were held on May 17, 2006, 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

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.

### Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Petitioner Kevin Timmons' Exceptions to Recommended Order." The document was apparently mistakenly filed with the Division of Administrative Hearings rather than with the Commission, but we conclude the filing to be timely (the Recommended Order is dated February 22, 2006, and the exceptions document was filed on the fifteenth day from that date, March 9, 2006). Accord, Brockman v. University of Miami-Bascom Palmer Eye Institute, FCHR Order No. 05-127 (November 21, 2005), and Welch v. Department of Children and Family Services, FCHR Order No. 05-118 (October 20, 2005).

Petitioner's document contains exceptions to findings of fact and conclusions of law that Petitioner argues are based on hearsay evidence.

First, Petitioner excepts to the finding at Recommended Order, ¶ 19, that Respondent's server refused Petitioner because of Petitioner's language and attitude, on the basis that the finding is based "entirely upon hearsay evidence." Second, Petitioner excepts to the finding of fact at Recommended Order, ¶ 20, that Respondent's server refused to serve the Petitioner because Petitioner's wife called the server a "Mother F'er," on the basis that this finding is based upon hearsay evidence. Finally, with regard to the conclusions of law, Petitioner notes that the Administrative Law Judge concluded that even if Petitioner had put forth a prima facie case of race discrimination the Respondent presented evidence of legitimate, nondiscriminatory reasons for Petitioner's failure to obtain service, and argues that no direct evidence of these reasons exists and that the conclusion that Respondent has put forth a nondiscriminatory reason for the server's conduct was based on hearsay and speculation.

In our view, even if these exceptions were accepted, the outcome of the case would not change. The Administrative Law Judge concluded that Petitioner failed to establish a prima facie case of discrimination because other African-American customers were being served at the Waffle House by the same waitress and that Petitioner failed to present any evidence of similarly-situated non-African-American customers who arrived after he and his party but received favorable treatment. Rather, the Administrative Law Judge found that all of the other customers, a few who were Caucasian and the vast majority of whom were African-American, appeared to have had their orders taken and/or received drinks or food. See Recommended Order, ¶ 37 and ¶ 38.

Petitioner's exceptions are rejected.

Dismissal

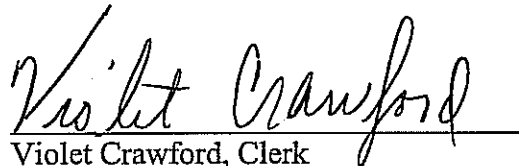
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 18th day of May, 2006.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner Gayle Cannon; and  
Commissioner Anice R. Prosser

Filed this 18th day of May, 2006,  
in Tallahassee, Florida.



Violet Crawford, Clerk  
Commission on Human Relations  
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Diane Cleavinger, 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 18th day of May, 2006.

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