

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
08 MAR 14 AM 10:09
DIVISION OF
ADMINISTRATIVE
HEARINGS

MICHELINE RAPHAEL,

Petitioner,

FCHR Case No. 2006-01563

v.

DOAH Case No. 07-2526

CARNIVAL CRUISE LINE,

FCHR Order No. 08-019

Respondent.

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

Preliminary Matters

Petitioner Micheline Raphael filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 509.092 and 760.01 - 760.11, Florida Statutes (2005), alleging that Respondent Carnival Cruise Line committed unlawful public accommodations practices by denying Petitioner service and harassing Petitioner based on her race (Black) during a cruise on one of Respondent's ships.

The allegations set forth in the complaint were investigated, and, on May 1, 2007, 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 Miami, Florida, on October 26, 2007, before Administrative Law Judge June C. McKinney.

Judge McKinney issued a Recommended Order of dismissal, dated January 22, 2008.

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 find it unnecessary to either accept or reject the conclusions of law set out in the Recommended Order that conclude that the Commission does not have jurisdiction over what the Administrative Law Judge terms "the Paris dining room incident; burnt pizza incident; housekeeping incident; cruise account incident; and the jewelry store incident," because they occurred in international waters, since, in our view, these conclusions are not ultimately dispositive of the case. See Fioravanti v. Carnival Cruise Lines, FCHR Order No. 07-011 (February 14, 2007), in which the Commission declined to either accept or reject similar conclusions of law regarding incidents occurring on a cruise ship outside of Florida territorial waters where, since the Administrative Law Judge also found on the merits that the incidents involved did not amount to unlawful public accommodation discrimination, the conclusions were not dispositive of the case; see, also, generally, Roche v. J.C. Penney Company, Inc., FCHR Order No. 06-078 (September 18, 2006), in which a Commission panel found it unnecessary to either accept or reject conclusions of law suggesting that the complaint of discrimination was not timely filed, when the Administrative Law Judge decided the case on other grounds, as well; see, also, generally, Cox v. University of Florida, FCHR Order No. 04-145 (November 4, 2004), in which a Commission panel declined to either accept or reject a conclusion of law which was not dispositive of the case given the decision on the merits, namely, that the Petition for Relief was not timely filed.

We conclude that as a matter of law, limited to the parties before us and the facts found in this case, the incidents referred to do not amount to an actionable denial of service. See McAdory v. Denny's Restaurant, FCHR Order No. 05-041 (March 8, 2005) adopting conclusions of law of the Administrative Law Judge indicating that to establish a prima facie case of public accommodation discrimination Petitioner must show "that 1) they are members of a protected class; 2) they attempted to contract for certain services; 3) *they were denied the right for certain services*; and 4) such services remained available to similarly situated persons outside the protected class(emphasis added);" see also Williams v. Sailorman, Inc., d/b/a Popeye's Chicken and Biscuits, FCHR Order No. 04-037 (June 2, 2004) regarding the Commission's limitation of conclusions to the facts of the case before the Commission.

Therefore, the location of the incidents is not dispositive of the matter.

With this comment, we otherwise adopt the Administrative Law Judge's conclusions of law.

Exceptions

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

Dismissal

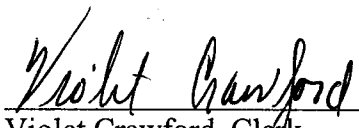
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 13th day of March, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Onelia A. Fajardo; and
Commissioner Billy Whitefox Stall

Filed this 13th day of March, 2008,
in Tallahassee, Florida.



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FCHR Order No. 08-019

Page 4

June C. McKinney, 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 13th day of March, 2008.

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