

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MICHELINE RAPHAEL,)
)
 Petitioner,)
)
 vs.) Case No. 07-2526
)
 CARNIVAL CRUISE LINE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case on October 26, 2007, in Miami, Florida, before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings, pursuant to the authority set forth in Sections 120.569 and 120.57(1), Florida Statutes.¹

APPEARANCES

For Petitioner: Micheline Raphael, pro se
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For Respondent: James S. Bramnick, Esquire
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SunTrust International Center, 28th Floor
One Southeast Third Avenue
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STATEMENT OF THE ISSUE

The issue is whether Respondent has committed a discriminatory act with respect to public accommodations in

violation of Chapter 760, Florida Statutes, and if so, what remedy should be provided.

PRELIMINARY STATEMENT

Micheline Raphael (Ms. Raphael or Petitioner), filed with the Florida Commission on Human Relations (Commission) a Public Accommodations Complaint of Discrimination, alleging that during a cruise on one of Respondent's vessels, Respondent discriminated against Ms. Raphael on the basis of "race" in violation of Florida Statute, Chapters "509/760." On May 1, 2007, the Commission issued its Determination: No Cause.

On May 31, 2007, Petitioner filed a Petition for Relief with the Commission, and on June 6, 2007, the Commission forwarded the matter to the Division of Administrative Hearings (DOAH) for the assignment of a DOAH administrative law judge.

The matter was noticed for hearing for September 25 and 26, 2007. The hearing was canceled and re-scheduled for October 26, 2007, and proceeded as scheduled.

At hearing, Petitioner presented only her testimony and Petitioner's Exhibits numbered 1 through 14 were admitted into evidence. Respondent presented the testimony Mark Mayer, Customs and Border Protection Officer; Leon Sutcliffe, Director of Port Operations; Mathew Paul, Triumph Chief Security Officer (by deposition transcript); Gloria Clayton (by deposition transcript); and Ian Smith, Vice President of Hotel Services

Carnival Cruise Lines (by deposition transcript). In addition, the following exhibits were offered and received into evidence: Respondent's 1 through 11, 13 through 18, and 21 through 23.

The proceeding was recorded and transcribed. The Transcript of the final hearing (consisting of two volumes) was filed with DOAH on November 8, 2007. The parties were given until December 10, 2007, to file proposed recommended orders. On November 28, 2007, Petitioner filed a letter assumed to be her Proposed Recommended Order. On December 7, 2007, Respondent filed its Proposed Recommended Order. On December 27, 2007, Respondent filed a Motion to Strike the letter. Striking the letter is not appropriate and the request to do so is denied. Due consideration was given to Petitioner's letter and Respondent's Proposed Recommended Order in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent operates a fleet of cruise ships. The Triumph is one of the ships in its fleet. It sails from Miami, Florida. Among the cruises that Respondent offers on the Triumph is a seven-day cruise to the Western Caribbean, which stops in Grand Cayman, Cayman Islands, Ocho Rios, Jamaica, and Cozumel, Mexico.

2. Ms. Raphael, a Black female, contracted to and took a seven-day Western Caribbean cruise on the Triumph from March 18-

25, 2006. It was Ms. Raphael's first cruise and she traveled by herself. The make up of the passengers and crew on the ship included all races: Asians, Caucasians, Indians, Hispanics, African Americans, etc.

3. The Triumph left the Port of Miami on March 18th and was at sea in international waters until it returned to the Port of Miami on the 25th. On the 20th, the ship docked at Cozumel. On the 22nd, the ship was at Grand Cayman and on the 23rd it docked in Ocho Rios. The Triumph sailed under a foreign flag and is registered in Panama.

4. When Ms. Raphael boarded the Triumph on March 18, 2006, her picture was taken with the rest of the passengers.

Paris Dining Room:

5. Upon boarding, Petitioner was given a card that assigned her to the Paris dining room, lower level, table 334, for 5:45 p.m. dining. During the first two days of the cruise, Petitioner did not go to her assigned table in the Paris dining room because she really didn't pay attention to where she was to go.

6. On the third day of the cruise, Ms. Raphael received another dining room reservation card for the Triumph's Paris dining room, table 334 at 5:45 p.m.

7. Petitioner's allegations in her petition relating to the incident in the Paris dining room were not substantiated by

the evidence at hearing. Ms. Raphael presented inconsistent testimony and failed to prove any of the allegations.

Pizza Incident:

8. While in international waters, Petitioner went to the pizzeria on the Lido deck to get pizza because she was hungry. She stood in line with other passengers to get a slice of pizza. Ms. Raphael took the last piece of pizza. The slice was burnt. After Ms. Raphael got the last slice of pizza, the server left to go get another pizza pie. Ms. Raphael didn't wait for him to return but, instead just threw the burnt pizza away. She neither asked for a new slice of pizza nor addressed or complained about the burnt slice to anybody.

Housekeeping Incident:

9. Ms. Raphael could not get her television in her cabin to work properly. She complained to the purser's office two times to get it fixed. On March 20, 2006, staff reported to the purser's office that Petitioner was using the television incorrectly and it was fine.

10. Petitioner reported to a Triumph employee that her room had not been cleaned for the first few days of the cruise. Housekeeping cleaned her room after she made her report.

11. Petitioner talked to a staff member assigned to clean her room about his national origin and found out that the crew member was from India. So, she informed him that she was from

Haiti. After the conversation, Ms. Raphael left her cabin. When she returned to her room it was clean and a towel in the shape of two little pigs and a sign that spelled out the word "Haiti" was left on her bed.²

12. Carnival's policy requires that stewards leave towel animals on all passengers' beds in their cabins nightly. The stateroom stewards are trained to make various towel animals for passenger cabins, including pigs. Carnival sells a book, Towel Creations with Freddy, which contains instructions for assembling animals. Over 800,000 copies of the book have been sold.

Petitioner's Cruise Account Incident:

13. Ms. Raphael went to the ship's casino to play Bingo. When she went to withdraw money to play, the employee she approached didn't provide her money because she did not have identification. So, Petitioner went back to her room to get her identification.

14. After Petitioner returned to the casino, showed her identification, and requested \$10.00, she was told there was no money in her account. This incident occurred on or about the fourth day of the cruise. Ms. Raphael witnessed passengers of other races in line getting money in the casino.

15. After Petitioner was denied any withdrawal of money, she went to another Carnival Cruise Line cashier to withdraw

money and was told that there was about 40 something dollars in her account. Petitioner did not go back to the casino to play bingo.³ Petitioner also got her account straight by having the cashier remove the service gratuity for meals off her account since she had not eaten in the dining room.

16. At the end of the cruise, Carnival Cruise gave the Petitioner a check for \$58.44. Although she complained at hearing that she made a \$200.00 deposit and she was given credit for a \$100.00 deposit, she accepted it without further complaint.

Jewelry Store Incident:

17. Petitioner went to the jewelry store on the cruise ship with fellow passenger Ms. Clayton and received what she considered was bad service.

18. The retail jewelry store is operated by Starboard Cruise Services Limited (Starboard), an independent contractor of Carnival Cruise Line. The employees of the retail jewelry shop are hired, trained, supervised, and employed by Starboard.

19. A male employee was assisting Petitioner and Ms. Clayton, answering their questions and showing them jewelry items, when three other people came up. The salesperson walked away from Petitioner to help the other customers before he finished assisting Ms. Raphael and Ms. Clayton.

20. Petitioner addressed this treatment with another cashier, an employee of Starboard, who apologized to her and said that he would report the matter to the head office. Ms. Raphael never made any additional complaints about the salesperson's rudeness after informing the cashier.

21. The jewelry store is only open while in international waters. Petitioner's visit to the jewelry store was made when the ship was at sea and in international waters.

Cabin Search Incident:

22. On March 24, 2006, Homeland Security Officer Mayer sent an e-mail to Triumph Chief Security Officer Paul requesting Ms. Raphael's "A-pass/on/off activity." After the request, Officer Paul provided Petitioner's A-pass activity to United States Customs and Boarder Protection (CBP), a part of the United States Department of Homeland Security.

23. CBP requested an escort to search Petitioner's room when the Triumph docked. Respondent neither initiated the search, requested the search, nor participated in the search of Petitioner's cabin, other than to have a security officer escort CBP Officers Mayer and Maize to Ms. Raphael's cabin. Respondent has no knowledge as to why CBP chose Ms. Raphael's cabin to search.

24. When the Triumph docked at the port in Miami on March 25, 2006, Homeland Security went to search Ms. Raphael's

cabin. After they knocked on her cabin door, at 6:49 a.m. Petitioner took approximately three minutes to open the door. Emanuel Moise, a Carnival crew member, was found in the bathroom when CBP came to search Petitioner's room. Petitioner waited in the hall with a female security officer while CBP performed the search of her cabin with a K-9 detector dog.

CONCLUSIONS OF LAW

25. DOAH has jurisdiction over the subject matter of and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes.

26. The Florida Civil Rights Act of 1992 (Act) is codified in Sections 760.01 thorough 760.11, Florida Statutes, and Section 509.092, Florida Statutes. § 760.01(1), Fla. Stat.

27. A "discriminatory practice," as defined in the Act, "means any practice made unlawful by the Florida Civil Rights Act of 1992." § 760.02(4), Fla. Stat.

28. Section 760.01 of the Act explains that the general purpose of the Act is to:

. . . [S]ecure for all individuals **within the state** freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the sate their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of

individuals **within the state.**" [Emphasis added.]

29. In the Petition for Relief filed in this matter, Ms. Raphael has alleged that, during her cruise on the Triumph, Respondent engaged in practices made unlawful by Section 760.08, Florida Statutes.

30. Article 2, Section 1 of the Florida Constitution defines the boundaries of the State of Florida in great detail, the relevant portion of the definition being "down the middle of [the St. Mary's] river to the Atlantic Ocean; thence due east to the edge of the Gulf Stream or a distance of three geographic miles whichever is the greater distance." See Fla. Const. Art. 2 §1 (a).

31. In this matter all acts complained of occurred outside the United States in international waters except the Homeland Security cabin search incident. The Commission does not have authority to act upon discriminatory complaints which extend beyond the boundaries of Florida as defined in the Constitution. Fioravanti v. Carnival Cruise Lines, Case No. 06-1433, Fla. Div. Adm. Hear LEXIS 566, December 7, 2006.

32. Therefore, as a matter of law, the Commission does not have jurisdiction over any of the allegations that occurred at sea in international waters: the Paris dining room incident;

burnt pizza incident; housekeeping incident; cruise account incident; and the jewelry store incident.

33. As to the remaining incident, Petitioner's complaint is based on a perceived violation of Section 760.08, Florida Statutes, which requires all persons to be entitled to the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in Chapter 760, Florida Statutes, without discrimination or segregation on the ground of race, color, national origin, sex, handicap, familial status or religion.

34. Pursuant to Section 760.02(11), Florida Statutes, "public accommodations" is defined as follows:

"Public accommodations" means places of public accommodation, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Each of the following establishments which serves the public is a place of public accommodation within the meaning of this section:

(a) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.

(b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.

(c) Any motion picture theater, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.

(d) Any establishment which is physically located within the premises of any establishment otherwise covered by this subsection, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

35. Respondent is a place of public accommodation as defined by Section 760.02(11)(a), Florida Statutes. See Fioravanti, Fla. Div. Adm. Hear LEXIS at 28.

36. The Act is patterned after Title VII, and federal case law dealing with Title VII is applicable to cases arising under the Florida Act. Florida State University v. Sondel, 685 So. 2d 923, 925n.1 (Fla. 1st DCA 1996); Velez v. Levy World Limited Partnership, 182 Fed. Appx. 929, 932 (11th Cir. 2006).

37. In order to prove discrimination violative of Section 760.08, Florida Statutes, Petitioner may demonstrate her case through direct evidence of discrimination; pattern and practice of discrimination; or circumstantial evidence of discrimination. Afkhami v. Carnival Cruise Lines, 305 F. Supp. 2d 1308, 1320

(S.D. Fla. 2004). Direct evidence of discrimination, which is "composed of only the most blatant remarks, where intent could be nothing other than to discriminate," Schoenfeld v. Babbitt, 168 F. 3d 1257, 1266 (11th Cir. 1999), is not at issue in this case. Likewise, Petitioner has not submitted evidence of a pattern and practice of discrimination. Akfhami, 305 F. Supp. 2d at 1321 (plaintiff must present evidence of a pattern and practice of differential treatment affecting other members of his or her class that is systematic as opposed to isolated, sporadic incidents).

38. In order to demonstrate discrimination by indirect or circumstantial evidence, Petitioner must establish: 1) that she is a member of a protected class; 2) that she attempted to contract for services and to afford herself the full benefits and enjoyment of a public accommodation; 3) that she was denied the right to contract for those services and thus denied the benefits and enjoyments of same; and 4) that similarly situated persons who were not members of the protected class received full benefits or enjoyment, or were treated better. Foster v Howard University Hospital, No. 06-244, 2006 U.S. Dist. LEXIS 74512 (D.C. 2006); Afkhami, 305 F. Supp. 2d at 3122; Laroche v. Denny's Inc., 62 F. Supp. 2d 1375, 1382 (S.D. 1999).

39. As to the remaining allegation, Petitioner's cabin search by Homeland Security, Petitioner has not established a

prima facie case of discrimination. While Petitioner proved that she is a member of a protected class and contracted for services aboard the Triumph, no evidence was presented that Carnival Cruise Line either initiated or performed the search, which was conducted by Homeland Security. The evidence demonstrated that Homeland Security was totally and solely responsible for the cabin search.

40. Therefore, Petitioner did not meet her burden of proving her public accommodation discrimination claim against Respondent relating to the cabin search.

41. If Carnival Cruise Line is subject to the Act and, therefore, subject to the jurisdiction of the Commission, there is no direct, indirect, or circumstantial evidence of discrimination on the basis of race against Ms. Raphael in the search of her cabin.

RECOMMENDATION

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

RECOMMENDED:

That a final order be entered that dismisses Petitioner's Public Accommodations Complaint of Discrimination.

DONE AND ENTERED this 22nd day of January, 2008, in
Tallahassee, Leon County, Florida.

S

JUNE C. MCKINNEY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of January, 2008.

ENDNOTES

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2007 codification.

^{2/} The housekeeping incident was not included in Petitioner's Petition for Relief. However, Respondent was aware of the issue and addressed it at deposition, with evidence at hearing, and in it's Proposed Recommended Order. Therefore, the housekeeping incident is accepted as an issue tried by consent to the parties.

^{3/} The cruise account incident was not included in Petitioner's Petition for Relief. However, Respondent was aware of the issue and addressed it at deposition, with evidence at hearing, and in it's Proposed Recommended Order. Therefore, the cruise account incident is accepted as an issue tried by consent to the parties.

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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.