

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BURNITA HENDERSON,)
)
 Petitioner,)
)
 vs.) Case No. 07-2847
)
 DAYS INN I-75,)
)
 Respondent.)
 _____)
 _____)

RECOMMENDED ORDER

On September 13, 2007, a hearing was held in Gainesville, Florida, pursuant to the authority set forth in Sections 120.569 and 120.57(1), Florida Statutes. The case was considered by Lisa Shearer Nelson, Administrative Law Judge.

APPEARANCES

For Petitioner: Burnita Henderson, pro se
5010 Southwest 63d Boulevard
Gainesville, Florida 32608

For Respondent: No appearance

STATEMENT OF THE ISSUE

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

On January 4, 2007, Petitioner filed a complaint with the Florida Commission on Human Relations (Commission), alleging that she had been discriminated against pursuant to Chapter 760, Florida Statutes. On May 7, 2007, the Commission made a Notice of Determination: Adverse Inference Cause, pursuant to Florida Administrative Code Rule 60Y-5.003(4), in light of Respondent's failure to provide any information to the Commission with respect to the Complaint.

On June 4, 2007, Petitioner filed a Petition for Relief with the Commission, and on June 26, 2007, the Commission forwarded the matter to the Division of Administrative Hearings for the assignment of an administrative law judge.

The matter was noticed for hearing September 13, 2007, and proceeded as scheduled. At the time appointed for hearing, no representative for Respondent appeared. A recess was taken to allow the Respondent an opportunity to make an appearance in the event that its representative was delayed by traffic. After a fifteen-minute recess, the hearing was reconvened and Respondent did not appear. Petitioner proceeded with her case. At the close of evidence, Respondent still had not appeared for the hearing.

The proceedings were recorded but not transcribed. The parties were given until September 24, 2007, to file proposed recommended orders. Petitioner filed a Proposed Recommended

Order which has been carefully considered in the preparation of this Recommended Order. No submission was received from Respondent.

FINDINGS OF FACT

1. Petitioner is an African-American woman living in the Gainesville area. She is married and has children.

2. On November 15, 2006, Petitioner went to the Days Inn at 7516 Newberry Road to make a reservation for her mother and sister. She was dressed casually and had her children with her.

3. When she arrived at the Days Inn, she spoke with John Osley, who was later identified as the manager of the hotel, and asked if all the rooms were entered from the outside. He told her that the Newberry Road hotel had outside rooms only but that the Days Inn on Archer Road had internal corridors.

4. Mr. Osley asked what dates she wanted to reserve. She told him November 23-24, which was Thanksgiving Day and the day after. Mr. Osley told her there were no rooms available those days because the hotel was the host hotel for a race-car event. She asked about cancellations and he told her to call back closer to the dates she needed the room to see if there were any. He gave her a business card for a person at the front desk. Upon her request, he allowed her to

look at one of the rooms. Petitioner thanked Mr. Osley and left.

5. After she left the hotel, she felt that she had not been treated appropriately. That evening, she checked on the Days Inn internet website to see if any rooms at the Newberry Road location were available online for November 23-24. She was able to make a reservation for the desired days via the internet.

6. Ultimately, her mother opted to stay at another hotel. As a result, the reservation at the Days Inn was canceled.

7. Petitioner was angry because she felt she had been mistreated at the hotel, and wrote to Joseph Kante, whom she identified as being in a management position for Days Inn. She also e-mailed him and within 24-hours, she received an apology from him. However, according to Petitioner, Mr. Kante indicated that each Days Inn is responsible for itself and the person she needed to speak to regarding the Days Inn on Newberry Street was John Osley.

8. Petitioner returned to the Days Inn on Newberry Road in an effort to speak with Mr. Osley, and also called the hotel. Each time, Mr. Osley was not present and she never spoke with him about her concerns. After her attempts to

reach him were unsuccessful, she filed her complaint with the Commission.

9. No evidence was presented regarding any other person of any race seeking a room at the same time as Ms. Henderson who was able to reserve a room when she could not.

10. No evidence was presented indicating that Mr. Osley was not being truthful when he stated that no rooms were available when Ms. Henderson originally sought to reserve a room.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes.

12. Petitioner has the burden of proving by a preponderance of the evidence that the Respondent committed an unlawful employment practice. Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

13. 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.

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

(11) "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.

15. Respondent is a place of public accommodation as defined by Section 760.02(11)(a), Florida Statutes.

16. Section 760.11(1), Florida Statutes, provides the procedural requirements for filing a complaint alleging violations of Chapter 760. It states in pertinent part:

(1) Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer . . . and describing the violation. . . . The complaint shall contain a short and plain statement of the facts describing the violation and the relief sought.

17. The Florida Civil Rights Act (FCRA) 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).

18. 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).

19. In order to demonstrate discrimination by indirect of 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 1322; Laroche v. Denny's, Inc., 62 F. Supp. 2d 1375, 1382 (S.D. 1999).

20. Petitioner has not established a prima facie case. While Petitioner proved that she went to Respondent's hotel

and was unable to reserve a room when appearing in person, she presented no evidence that a person who was not a member of her race was able to secure a reservation at the Days Inn.

21. Petitioner did present evidence that she attempted and was successful in securing a reservation through the internet, presumably in order to show that when the race of the person seeking the reservation is not known, accommodations were available. However, "similarly situated" means similar in all relevant respects. Afkhami, 305 F. Supp. 2d at 1322; Holifield v. Reno, 115 F.3d 1555, 1563 11th Cir. 1997). In this case, Petitioner would have to show that a person of another race presented to the front desk at the Days Inn when she was there and was given a reservation for November 23-24 when she was not. This is especially crucial in dealing with matters such as provision of hotel rooms, because of the fluid nature of reservations and cancellations for such rooms. Securing a reservation through the internet sometime later does not satisfy the requirement to show that someone else was treated better than Petitioner.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That a final order be entered that dismisses Petitioner's claim.

DONE AND ENTERED this 27th day of September, 2007, in Tallahassee, Leon County, Florida.

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Hearings

—
LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative

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Hearings

Filed with the Clerk of the
Division of Administrative

this 27th day of September, 2007.

COPIES FURNISHED:

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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.