

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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FILED
DIVISION OF
ADMINISTRATIVE
HEARINGS

MATTIE LOMAX,

Petitioner,

FCHR Case No. 2007-01263

v.

DOAH Case No. 08-0931

WAL-MART STORES EAST,

FCHR Order No. 08-072

Respondent.

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

Preliminary Matters

Petitioner Mattie Lomax 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 Wal-Mart Stores East committed an unlawful public accommodations practice on the basis of Petitioner's race (Black) by harassing Petitioner and denying Petitioner service.

The allegations set forth in the complaint were investigated, and, on January 24, 2008, 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 by video teleconference at sites in Miami and Tallahassee, Florida, on June 23, 2008, before Administrative Law Judge Stuart M. Lerner.

Judge Lerner issued a Recommended Order of dismissal, dated September 10, 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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed a document with the Commission entitled, "Petitioner/Pursuant to Sections 28-106.217 Exceptions, Response."

The document was received by the Commission on October 1, 2008, twenty-one days after the issuance of the Recommended Order on September 10, 2008.

The Administrative Procedure Act states, "The agency shall allow each party 15 days in which to submit written exceptions to the recommended order." Section 120.57(1)(k), Florida Statutes (2007). The Recommended Order, itself, advises the parties, "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." See Recommended Order, page 31. Finally, the Florida Administrative Code section dealing with the filing of exceptions to Recommended Orders states, "No additional time shall be added to the time limits for filing exceptions or responses to exceptions when service has been made by mail." Fla. Admin. Code R. 28-106.217(4).

The Commission's file contains no request from Petitioner for an extension of time to file exceptions to the Recommended Order.

The Commission's file contains a motion from Respondent to strike Petitioner's exceptions as untimely.

We find Petitioner's exceptions to be untimely and, therefore, decline to consider them. Accord, Hurtado v. North Florida Rehab and Specialty Care, FCHR Order No. 08-047 (July 29, 2008) in which a Commission panel declined to consider a filing to be an "exception" to a Recommended Order in part because it was not timely filed.

Dismissal

All motions pending before the Commission are disposed of by this Order.

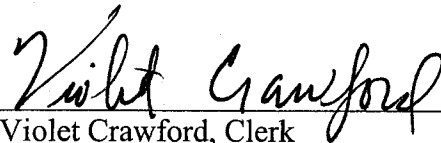
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 1st day of December, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Billy Whitefox Stall

Filed this 1st day of December, 2008,
in Tallahassee, Florida.



Violet Crawford, Clerk
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Stuart M. Lerner, 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 1st day of December, 2008.

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