

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
08 DEC -2 AM 10:06
DIVISION OF
ADMINISTRATIVE
HEARINGS

YONEL VIXAMAR,

Petitioner,

FCHR Case No. 2007-01641

v.

DOAH Case No. 08-1330

TRI-MANAGEMENT COMPANY, d/b/a
BURGER KING,

FCHR Order No. 08-073

Respondent.

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

Preliminary Matters

Petitioner Yonel Vixamar 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 Tri-Management Company, d/b/a Burger King committed an unlawful public accommodations practice on the bases of Petitioner's race (Black) and National Origin (Haitian) 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 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 Naples, Florida, on July 25, 2008, before Administrative Law Judge Daniel Manry.

Judge Manry issued a Recommended Order of dismissal, dated September 12, 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 wrote a letter to Denise Crawford, Clerk of the Commission, received by the Commission on September 21, 2008. The letter expresses Petitioner's desire to "appeal this case."

We note that the letter does not indicate that it was served on Respondent by Petitioner as is required by Fla. Admin. Code R. 28-106.104(2)(f) and (4), and Fla. Admin. Code R. 28-106.110, nor does it specifically address the findings of fact and conclusions of law found in the Recommended Order (see Section 120.57(1)(k), Florida Statutes (2007)).

The Commission published the letter to Respondent's counsel and placed the letter in the record of this case through the issuance of a Notice of Ex Parte Communication, dated October 1, 2008.

We decline to consider this letter an exceptions document. Accord, generally, Rodriguez v. Center Point Health and Rehab, FCHR Order No. 08-001 (January 14, 2008), and Coleus v. Walt Disney World, FCHR Order No. 02-029 (July 25, 2002).

Noting Petitioner's expression of interest to "appeal this case," Petitioner's right to appeal is set out in this Order, below.

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 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
Commission on Human Relations
2009 Apalachee Parkway, Suite 200
Tallahassee, FL 32301
(850) 488-7082

Copies furnished to:

Yonel Vixamar
14095 Collier Boulevard North
Naples, FL 34119

Tri-Management Company, d/b/a Burger King
c/o J. Scott Hudson, Esq.
Hudson Law Firm
200 South Orange Avenue, Suite 1220
Orlando, FL 32801

Daniel Manry, 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: 
Clerk of the Commission
Florida Commission on Human Relations