

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
09 JAN 29 PM 2:04
DIVISION OF
ADMINISTRATIVE
HEARINGS

JONNETTA BENEDICT,

Petitioner,

FCHR Case No. 2007-02150

v.

DOAH Case No. 08-1755

WAL-MART STORES EAST,

FCHR Order No. 09-011

Respondent.

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

Preliminary Matters

Petitioner Jonnetta Benedict filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 509.092 and 760.01 - 760.11, Florida Statutes (2007), alleging that Respondent Wal-Mart Stores East committed an unlawful public accommodations practice on the basis of Petitioner's race (Black) by denying Petitioner service at a deli counter.

The allegations set forth in the complaint were investigated, and, on February 29, 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 Tallahassee and Jacksonville, Florida, on September 18, 2008, before Administrative Law Judge Barbara J. Staros.

Judge Staros issued a Recommended Order of dismissal, dated November 19, 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 note that the Administrative Law Judge concluded, "Because the food at Respondent's deli is not consumed on the premises, Respondent does not fit within the definition of public accommodation as defined by Section 760.02(11), Florida Statutes." Recommended Order, ¶ 20. We decline to either accept or reject this conclusion of law since it is not necessarily dispositive of the case given the Administrative Law Judge's recommendation on the merits of the case relating to the ultimate issue of whether discrimination occurred. See, 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 note that the definition of "public accommodations" includes "any establishment...within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment." Section 760.02(11)(d), Florida Statutes (2007). Consequently, in our view, just because the food at Respondent's deli is not consumed on the premises this does not necessarily mean that the premises are not a public accommodation. Further, in our view, the Recommended Order does not contain facts sufficient to conclude that the premises in question are not a public accommodation.

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

Exceptions

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

Dismissal

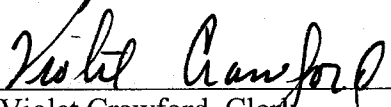
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 27th day of January, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Patty Ball Thomas

Filed this 27th day of January, 2009,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
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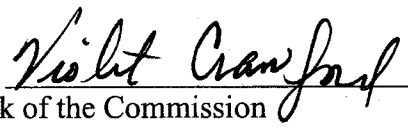
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Barbara J. Staros, Administrative Law Judge, DOAH

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 27th day of January, 2009.

By: 

Clerk of the Commission
Florida Commission on Human Relations