

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED  
09 JAN 13 PM 1:37  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

MICHEL J. THERMITUS,

Petitioner,

FCHR Case No. 2007-01650

v.

DOAH Case No. 08-2379

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

FCHR Order No. 09-001

Respondent.

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

Preliminary Matters

Petitioner Michel J. Thermitus 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 Fort Myers, Florida, on September 5, 2008, before Administrative Law Judge Daniel Manry.

Judge Manry issued a Recommended Order of dismissal, dated October 17, 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, "Since back pay is not at issue in a public accommodation case, DOAH is authorized to afford remedies that work to prohibit the practice and provide affirmative relief to that end. In cases where Petitioners have proven discrimination, some ALJ's have held that affirmative relief could include compensatory damages. Vanessa Brown v. Capital Circle Hotel Company, Case No. 01-3882 (DOAH October 17, 2002)."

We further note that in its final order for the case cited by the Administrative Law Judge upholding a \$500 award to the Petitioner in the case, the Commission stated, "In Brill v. Ocean View Villas, 23 F.A.L.R. 1560 (FCHR 2001), the Administrative Law Judge awarded the Petitioner \$1000 'for compensation for her mental anguish' as part of the award for unlawful public accommodation discrimination. The Commission panel disallowed this award, stating, 'While we recognize that compensation for mental anguish could have been awarded by a court had Petitioner filed a civil action following the issuance of the Executive Director's 'cause' determination in this matter (See Sections 509.092 and 760.11(4) and (5), Florida Statutes (1999)), we conclude there is no statutory authority for the Commission to award compensation for mental anguish in situations such as this where Petitioner has sought relief through administrative hearing. See, Sections 509.092 and 760.11(4) and (6), Florida Statutes (1999).' Brill, supra, at 1561. Nevertheless, in the absence of a transcript of the proceeding before the Administrative Law Judge, we are unable to conclude that the \$500 award recommended in this matter is not a 'quantifiable' amount supported by the evidence presented. (Note that in Brill a transcript was filed. See Brill, supra, at 1564.)" Brown v. Capital Circle Hotel Company, d/b/a Sleep Inn, FCHR Order No. 03-014 (March 7, 2003).

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.

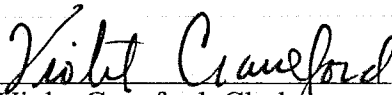
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right

to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 12<sup>th</sup> day of January, 2009.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;  
Commissioner Anice R. Prosser; and  
Commissioner Billy Whitefox Stall

Filed this 12<sup>th</sup> day of January, 2009,  
in Tallahassee, Florida.

  
\_\_\_\_\_  
Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 200  
Tallahassee, FL 32301  
(850) 488-7082

Copies furnished to:

Michel J. Thermitus  
Post Office Box 525  
Immokalee, FL 34143

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

Daniel Manry, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

FCHR Order No. 09-001  
Page 4

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 12<sup>th</sup> day of January, 2009.

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