

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MELISSA COOK,)
)
 Petitioner,)
)
 vs.) Case No. 09-5275
)
 ASTRO SKATE PINELLAS PARK, LLC,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of this case for the Division of Administrative Hearings (DOAH) on December 4, 2009, in St. Petersburg, Florida. The ALJ conducted the hearing by video teleconference from Tallahassee, Florida, with the parties, witnesses, and court reporter appearing in St. Petersburg.

APPEARANCES

For Petitioner: Eleanor Cook Johnson
Personal Representative of Melissa Cook
15047 Georgey Boulevard
Clearwater, Florida 33760

For Respondent: Chris Maganias
Astro Skate Pinellas Park, LLC
10001 66th Street North
Pinellas Park, Florida 33782

STATEMENT OF THE ISSUE

The issue is whether Respondent denied Petitioner access to a public accommodation on the basis of her disability in violation of Pinellas County Code Chapter 70 (the Code).

PRELIMINARY STATEMENT

On May 5, 2008, Petitioner timely filed a complaint of discrimination (the complaint) in a public accommodation with the Pinellas County Office of Human Rights (the Department). The Department referred the matter to DOAH to assign an ALJ to conduct an administrative hearing.

At the hearing, Petitioner's representative testified, Petitioner did not testify, and Petitioner's representative submitted one composite exhibit for admission into evidence. Respondent's representative testified and submitted four exhibits for admission into evidence.

The description of the exhibits, and any associated rulings, are reported in the record of the hearing. Neither party ordered a transcript of the hearing, and neither party filed a proposed recommended order (PRO).

FINDINGS OF FACT

1. The Department investigated the complaint of Petitioner and issued a determination on April 2, 2009, that reasonable cause exists to believe that Respondent denied Petitioner access to a public accommodation on the basis of her disability.

Respondent requested a hearing, and the Department referred the matter to DOAH.

2. Several facts are undisputed. Petitioner is a disabled female confined to a wheel chair. Mr. Chris Maganias is the owner and operator of the respondent company. The principal business of the company is the operation of a skating rink in Pinellas Park, Florida.

3. Petitioner did not present a prima facie case of denial of access to a public accommodation. After the representative for Petitioner was placed under oath, the representative stated the issue that she was there to resolve, but testified to no substantive matters or other evidence. Her testimony lasted less than three minutes. There was no cross-examination.

4. Petitioner did not testify. After excusing Petitioner's representative from her oath, the ALJ asked Petitioner if she wished to testify, and Petitioner stated that she did not want to testify.

5. Petitioner's lone exhibit is a two-page affidavit that lists the allegations which make up the complaint against Respondent. However, the affidavit does not explain or supplement competent and substantial testimony, or other evidence, of the representative or Petitioner at the hearing. This is a de novo hearing and not an appellate review of a determination previously made by the Department.

CONCLUSIONS OF LAW

6. DOAH has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2009). The parties received adequate notice of the final hearing.

7. Federal discrimination law may be used for guidance in evaluating the merits of claims arising under local jurisdictions. Tourville v. Securex, Inc., Inc., 769 So. 2d 491 (Fla. 4th DCA 2000); Greene v. Seminole Elec. Co-op. Inc., 701 So. 2d 646 (Fla. 5th DCA 1997); Brand v. Florida Power Corp., 633 So. 2d 504 (Fla. 1st DCA 1994). Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated the provisions of the Code that prohibit denial of equal access to public accommodations. Access Now, Inc. v. South Florida Stadium Corp., 161 F. Supp. 2d 1357, 1363 (S.D. Fla. 2001).

8. Petitioner can meet her burden of proof with either direct or circumstantial evidence. Damon v. Fleming Supermarkets of Florida, Inc., 196 F.3d 1354, 1358 (11th Cir. 1999), cert. denied, 529 U.S. 1109 (2000). Direct evidence must evince discrimination without the need for inference or presumption. Standard v. A.B.E.L. Services., Inc., 161 F.3d 1318, 1330 (11th Cir. 1998).

9. There is no direct evidence of discrimination in this case. In the absence of direct evidence, Petitioner must meet her burden of proof by circumstantial evidence.

10. Circumstantial evidence of discrimination is subject to the burden-shifting framework of proof established in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973); Reed v. A. W. Lawrence & Co., Inc., 95 F.3d 1170, 1178 (2nd Cir. 1996). Petitioner must first establish a prima facie case of discrimination. McDonnell Douglas, 411 U.S. at 802; Munoz v. Oceanside Resorts, Inc., 223 F.3d 1340, 1345 (11th Cir. 2000). See Ratliff v. State, 666 So. 2d 1008, 1013, n. 6 (Fla. 1st DCA 1996), aff'd, 679 So. 2d 1183 (Fla. 1996) (citing Arnold v. Burger Queen Sys., 509 So. 2d 958 (Fla. 2d DCA 1987)).

11. Petitioner did not make a prima facie case of denial of access to a public accommodation based on her disability in this de novo proceeding. The failure to make a prima facie case ends the inquiry.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that DOAH enter a final order no later than February 3, 2010, pursuant to Section 70-77(g)(13) of the Code, finding Respondent not guilty of the allegations in the complaint.

DONE AND ENTERED this 31st day of December, 2009, in
Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of December, 2009.

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 Division of Administrative Hearings as the agency that will issue the Final Order in this case.