

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES GANTZ, )  
)  
Petitioner, )  
)  
vs. ) Case No. 10-10472  
)  
ZION'S HOPE, INC., d/b/a )  
HOLY LAND EXPERIENCE, )  
)  
Respondent. )  
)  

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BETTE GANTZ, )  
)  
Petitioner, )  
)  
vs. ) Case No. 10-10473  
)  
ZION'S HOPE, INC., d/b/a )  
HOLY LAND EXPERIENCE, )  
)  
Respondent. )  

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RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case on March 8, 2011, by way of video teleconferencing with sites in Orlando and Tallahassee, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: James Gantz, pro se  
Bette Gantz, pro se  
4051 Heyward Street  
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For Respondent: John B. Casoria, Esquire  
Qualified Representative  
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Zion's Hope, Inc., d/b/a Holy Land Experience (hereinafter "HLE"), discriminated against Petitioners, James Gantz and Bette Gantz, by refusing Petitioners entry into HLE due to the Gantzes's disability, i.e., being hard of hearing and requiring the service of hearing ear dogs.

PRELIMINARY STATEMENT

The Florida Commission on Human Relations (the "Commission") filed a Transmittal of Petition with the Division of Administrative Hearings on December 2, 2010. The Transmittal contained Petitions for Relief filed by each of the Petitioners. The Commission had previously made a determination that cause existed under the allegations set forth in the Petitions. Inasmuch as Petitioners filed their own Petitions for Relief, the Commission did not appear at the final hearing on their behalf.

At the final hearing, Petitioners each testified on their own behalf. A witness offered by Petitioners was not allowed to testify based on a relevance objection and the witness's admitted lack of knowledge as to the facts upon which this case

must be decided. Petitioners offered two exhibits into evidence. Respondent called two witnesses: Michael Everett, general manager of HLE; and Jane Wilcox, guest services supervisor at HLE. Respondent did not offer any exhibits into evidence. Official recognition of two items was requested by Respondent: A Florida Attorney General Advisory Legal Opinion (No. AGO 2004-34) and the Division of Corporation records concerning HLE. The two items were officially recognized by the undersigned Administrative Law Judge.

The final hearing was taped by the presiding officer on a digital recorder, but no transcript of the tape was made. By rule, the parties were allowed ten days from the date of final hearing to submit proposed recommended orders. Petitioners and Respondent each submitted a post-hearing submission. Each was duly considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Zion's Hope, Inc., is a Florida not-for-profit corporation formed in 1989. It is a religious entity with a Section 501(c)3 designation under the U.S. Tax Code as a bona fide charitable organization. HLE is a privately-owned religious theme park operated by Zion's Hope. Religious services are conducted at HLE seven days a week.

2. HLE is located at 4655 Vineland Road, Orlando, Florida. The public, upon payment of an admission fee, is invited into HLE on a daily basis.

3. James and Bette Gantz are an elderly married couple who reside for part of each year in North Port, Florida. Both James and Bette are hard of hearing and have suffered from this affliction for many years. James and Bette each have a certified hearing ear dog which accompanies them almost everywhere they go. The dogs were present at the final hearing.

4. On March 19, 2010, James and Bette accompanied by their service dogs and Bette's sister, Lois Wilcox, decided to visit HLE. Upon arrival, they were told that the HLE parking lot was full, but that additional parking was available across the street. James dropped off Bette, the dogs, and Lois in front of the HLE entrance, then went to park the car across the street.

5. When Bette, Lois, and the dogs approached the ticket window to purchase admission into HLE, they talked to one of the employees about the service dogs to make sure the dogs could accompany them inside. The employee opted to call her superior, Jane Wilcox (no relation to Lois), to make a determination about the dogs. Jane Wilcox testified that she approached Bette and Lois in the lobby area, i.e., an enclosed area akin to a hotel lobby, which housed the ticket windows. Bette and Lois said they were never inside a building at HLE; rather, the

discussions that occurred happened outside on the sidewalk area. It seems most likely from the evidence that the conversation commenced inside the lobby and then continued outside.

6. Jane Wilcox did a cursory examination of the dogs and decided they did not appear to be service dogs. She also determined that the dogs appeared to be "frisky" in nature and were not like other service dogs she had seen. It was her practice to make a determination as to whether an animal was a service animal or not by asking reasonable questions. This is the way she handles each of the 100 or so cases a year in which guests show up with animals.

7. Jane Wilcox has not had any formal training from the Commission or other regulatory entity regarding service dogs. She was given on-the-job training by her predecessor and has studied written materials on the subject. Her experience in this area is somewhat extensive during her three and a-half year tenure at HLE.

8. After Jane Wilcox made an initial visual determination that the dogs appeared to be pets, Bette attempted to advise her that the dogs were certified and had certification documents on the capes they were wearing. Bette and James had taken the dogs into numerous other businesses and had been asked many times for proof of the dogs' certification. Thus, they kept the certification documents on the dogs at all times.

9. Jane Wilcox refused to look at the certification documents because she has been provided bogus certification documents on occasion. That being the case, she did not put any stock in documents that were presented to her by guests. Rather, it was her normal practice to ask questions of the owners and to visually examine the animals. Based on the answers and her observation, Jane Wilcox would come to a conclusion about the animal in question.

10. The discussion between Jane Wilcox and Bette became somewhat heated once Jane Wilcox made her initial determination about the dogs. Bette was talking loudly, but she is prone to do that because of her hearing impairment. Jane Wilcox viewed Bette as being very excited and possibly offended by the refusal to admit the dogs into HLE. After a few moments, Jane Wilcox determined that communication with Bette had broken down to the point that further conversation was useless. At that point, she called for security assistance.<sup>1/</sup> It appears that the matter could have been resolved to everyone's satisfaction had the conversation not degenerated into a contentious debate between the parties. However, it is impossible to ascertain from the facts submitted whether one party or the other was more responsible for the verbal melee. Therefore, no finding can be made as to that point.

11. The security officer who arrived took Bette and Lois to his small security building, where they were joined by James. The security officer said that Jane Wilcox was within her rights to refuse their admission into HLE with the service dogs. He advised them that there was a facility nearby that would care for the dogs while the guests were at HLE.

12. The security officer allegedly told the Gantzes that HLE was a private facility and not subject to federal or state law regarding disabled persons. He also supposedly said that HLE considers dogs like those belonging to the Gantzes as pets, rather than service animals. According to Bette, this "colored" security officer would not listen to her or allow her to talk. A Caucasian guard, however, allegedly told Bette that maybe the dogs should be allowed into HLE, but he was overruled by the first guard.

13. The Gantzes then asked the security officer to call the local (Orlando) police, which he did. When the police officer arrived, he advised the Gantzes that he could not force HLE to admit the dogs, but that he would write up a report. The report written by the police officer indicates that "security officer Santis" called in the request for assistance. It is not clear from the evidence at final hearing which of the two aforementioned security officers was Santis. The incident narrative in the police report simply states:

Contact was made with all parties. 'Gantz' were acc[ompanied] by certified service dogs for hearing along with proper documentation. Upon Mngt request to leave, did so without incident.

14. The Gantzes and Lois Wilcox opted not to board the dogs at the nearby facility. Rather, they left HLE and, ultimately, filed a complaint against Zion's Hope with the Commission.

15. HLE does have a policy of admitting service animals inside the attraction. However, as a private religious facility, it does not believe that it has to do so, i.e., it does not believe it is governed by the Americans with Disabilities Act. Of the 100 or so service animals appearing for admission each year, about 70 percent of them are admitted. The others are boarded or the owners opt not to enter HLE.

16. HLE does have a strict policy disallowing pets from admission to the park. Inasmuch as Jane Wilcox found the animals with the Gantzes to be pets, they were denied admission on that basis.

#### CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2010).<sup>2/</sup>



18. Sections 760.01 through 760.11 and 509.092, Florida Statutes, comprise the "Florida Civil Rights Act of 1992" (the "Act"). The general purpose of the Act is to provide all citizens of this State freedom from discrimination based on race, color, religion, sex, national origin, age, handicap, or marital status. The Act is intended to incorporate the accessibility requirements of the Americans With Disabilities Act of 1990, 42 U.S.C. Section 12101, et seq. (the "ADA").

19. Under the Act, persons with disabilities are protected from discrimination in public accommodations. Public accommodations means "places of public accommodation, lodgings, facilities, principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments . . . ." The Act's definition of public accommodations is consistent with the ADA. The ADA removed from its coverage, among others, private clubs or religious organizations (or entities controlled by religious organizations, including places of worship). See 42 U.S.C. § 12187. Florida Americans With Disabilities Accessibility Implementation Act, sections 553.501 through 553.513, Florida Statutes (the "Implementation Act"), removes the exemption for private clubs, but does not remove the exemption for religious organizations. However, the exemption set forth in the Exemption Act relates specifically to

construction of facilities in accordance with ADA and the Act. It does not address or relate to denial of access to a public accommodation by the operators of the business. Thus, contrary to HLE's argument, there is no exemption from the Act for religious organizations or the businesses they operate.

20. The Department of Justice has implemented regulations to implement Title III of the ADA which prohibits discrimination in places of public accommodation. 28 C.F.R. § 36.101. In the implementing regulations, "religious entity" is defined as a religious organization or entity controlled by a religious organization, including a place of worship. As stated in 28 C.F.R. section 36, Appendix B, under "Religious Entity,"

The ADA's exemption of religious organizations and religious entities is very broad, encompassing a wide variety of situations. Religious entities . . . have no obligations under the ADA. Even when a religious organization carries out activities that would otherwise make it a public accommodation, the religious organization is exempt from ADA coverage. . . The religious entity would not lose its exemption merely because the services provided were open to the general public. The test is whether the church or other religious organization operates the public accommodation, not which individuals receive the public accommodation's services.

21. Even though the ADA does not appear to apply to HLE, there is no religious exemption set forth in the Act. There is little guidance in the Act, however, relating to individuals

requiring a hearing ear dog as a service animal. The Vocational Rehabilitation statutes (chapter 413, Florida Statutes), do provide some helpful definitions.

22. Section 413.08 reads in pertinent part:

(1) (b) "Individual with a disability" means a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled. As used in this paragraph, the term:

1. "Hard of hearing" means an individual who has suffered a permanent hearing impairment that is severe enough to necessitate the use of amplification devices to discriminate speech sounds in verbal communication.

\* \* \*

(c) "Public accommodation" means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable to all persons.

(d) "Service animal" means an animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks. A service animal is not a pet.

\* \* \*

(3) An individual with a disability has the right to be accompanied by a service animal in all areas of a public accommodation that the public or customers are normally permitted to occupy.

(a) Documentation that the service animal is trained is not a precondition for providing service to an individual accompanied by a service animal. A public accommodation may ask if an animal is a service animal or what tasks the animal has been trained to perform in order to determine the difference between a service animal and a pet. . . .

23. Both James and Bette Gantz are physically disabled as defined above. It is quite possible that the dogs they attempted to get into HLE were service dogs; however, there was no persuasive proof of that fact presented at final hearing in this matter. Petitioners stated repeatedly that the dogs were certified and had been trained, but presented no documentation to support their assertion; nor did Petitioners present the certification documents which they attempted to present to HLE on the day in issue. However, an analysis under the Act will be undertaken as if the fact had been proven.

24. Petitioners would have the initial burden of proving by a preponderance of the evidence that HLE violated their rights by refusing to allow their dogs into HLE as alleged in their complaint to the Commission. § 120.57(1)(j).

25. The United States Supreme Court has established an analytical framework within which courts should examine claims of discrimination. In cases alleging discriminatory treatment, Petitioners have the initial burden of establishing, by a preponderance of the evidence, a prima facie case. St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993); Combs v. Plantation Patterns, 106 F.3d 1519 (11th Cir. 1997). A prima facie showing of discrimination simply requires Petitioners to show that they were ready, willing and able to go into HLE and that they are members of a protected class. See, e.g., Sheely v. MRI Radiology Network, 505 F.3d 1173 (11th Cir. 2007); Soules v. U.S. Dep't of Hous. & Urban Dev., 967 F.2d 817, 822 (2d Cir. 1992) (a housing discrimination case, but with the same kind of shifting burden requirements set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), utilized in Florida cases under the Act. As hearing impaired persons, the Gantzes are members of a protected class who were not allowed into a public accommodation. Petitioners established their prima facie case of discrimination.

26. The burden would then shift to HLE to show that the actions they took, refusing to allow the Gantzes's service dogs into the park, was not discriminatory, but was based on other factors. Cf., McDonnell Douglas, 411 U.S. at 800-01. It is HLE's contention that the animals were not allowed into the park

because they appeared to be pets, and pets are specifically prohibited from admission. Under section 413.08(3)(a), a public accommodation may inquire as to the animals' duties or tasks performed in order to determine if the animal is indeed a service dog versus a pet.<sup>3/</sup> HLE began to make reasonable inquiry of the Gantzes for this purpose before communications between the parties deteriorated. HLE made a determination that the dogs appeared to be pets, rather than service animals.

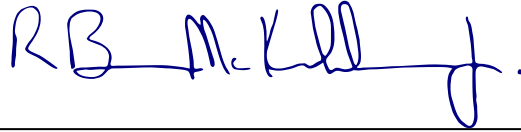
27. That being the case, the burden would shift back to Petitioners to prove that HLE's reasons were mere pretext and that the real reason for its actions was discrimination. There is insufficient evidence in the record to support that contention. HLE has a clear policy of allowing service animals into its park. It has an equally clear policy of prohibiting pets from admission. Inasmuch as it was reasonably determined that the Gantzes were accompanied by pets, rather than service animals, discrimination based on a handicap was not the basis for denying the Gantzes admission to the park.

#### RECOMMENDATION

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

RECOMMENDED that a final order be entered by the Florida Commission on Human Relations dismissing the Petitions for Relief filed by James Gantz and Bette Gantz in their entirety.

DONE AND ENTERED this 31st day of March, 2011, in  
Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of March, 2011.

ENDNOTES

<sup>1/</sup> Bette Gantz was somewhat excitable in nature at the final hearing. During Jane Wilcox's testimony, Bette was muttering comments which were audible to others in attendance. When asked to refrain, Bette said that she was just talking to herself and didn't mean others to hear her comments.

<sup>2/</sup> All statutory references are to Florida Statutes (2010), unless otherwise noted.

<sup>3/</sup> Counsel for HLE argued at final hearing that section 413.08(3)(a) means that HLE did not have to consider the Gantzes's documentation for their dogs. His interpretation is in error. The statute only says that having documentation is not a prerequisite to admission to the park.

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 agency that will issue the Final Order in this case.