

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

JAMES GANTZ,

Petitioner,

v.

ZION'S HOPE, INC., d/b/a
HOLY LAND EXPERIENCE,

Respondent.

BETTE GANTZ,

Petitioner,

v.

ZION'S HOPE, INC., d/b/a
HOLY LAND EXPERIENCE,

Respondent.

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DIVISION OF
ADMINISTRATIVE
HEARINGS

FCHR Case No. 2010-01543

DOAH Case No. 10-10472

FCHR Order No. 11-048

FCHR Case No. 2010-02297

DOAH Case No. 10-10473

FCHR Order No. 11-048

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

Preliminary Matters

Petitioner James Gantz filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 509.092 and 760.01 - 760.11, Florida Statutes (2009), alleging that Respondent Zion's Hope, Inc., d/b/a Holy Land Experience, committed an unlawful public accommodations practice on the basis of the disability of Petitioner and his wife by denying Petitioner and his wife (Bette Gantz) the ability to be accompanied in Respondent's Holy Land Experience theme park by their service animals (dogs).

The allegations set forth in the complaint were investigated, and, on August 27, 2010, the Executive Director issued his determination finding that there was reasonable cause to believe that an unlawful public accommodations practice had occurred.

Petitioner Bette Gantz filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 509.092 and 760.01 - 760.11, Florida Statutes (2009), alleging that Respondent Zion's Hope, Inc., d/b/a Holy Land Experience, committed an unlawful public accommodations practice on the basis of the disability of Petitioner and her husband by denying Petitioner and her husband (James Gantz) the ability to be

accompanied in Respondent's Holy Land Experience theme park by their service animals (dogs).

The allegations set forth in the complaint were investigated, and, on August 31, 2010, the Executive Director issued his determination finding that there was reasonable cause to believe that an unlawful public accommodations practice had occurred.

Petitioners filed Petitions for Relief and the cases were transmitted to the Division of Administrative Hearings for the conduct of formal proceedings.

The Division of Administrative Hearings consolidated the cases for the purposes of final hearing and the issuance of a Recommended Order.

An evidentiary hearing was held by video teleconference on March 8, 2011, with Administrative Law Judge R. Bruce McKibben presiding in Tallahassee, Florida.

Judge McKibben issued a Recommended Order of dismissal, dated March 31, 2011.

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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. In the absence of a transcript of the proceeding before the Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988). Accord, Mack v. Agency for Persons with Disabilities, FCHR Order No. 11-026 (March 17, 2011), Hall v. Villages of West Oaks HOA, FCHR Order No. 08-007 (January 14, 2008), Beach-Gutierrez v. Bay Medical Center, FCHR Order No. 05-011 (January 19, 2005), and Waaser v. Streit's Motorsports, FCHR Order No. 04-157 (November 30, 2004).

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

The Administrative Law Judge made the following finding of fact: "Both James and Bette Gantz are physically disabled... It is quite possible that the dogs they attempted to get into [Holy Land Experience] 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 [Holy Land Experience] on the day in issue." Recommended Order, ¶ 23.

In addition, the Administrative Law Judge specifically found that even if the dogs were service dogs, "Inasmuch as it was reasonably determined that the Gantzes were

accompanied by pets, rather than service animals, discrimination based on handicap was not the basis for denying the Gantzes admission to the park.” Recommended Order, ¶ 27.

In the absence of a transcript of the proceeding before the Administrative Law Judge, the Commission is bound by the facts found in the Recommended Order, since there is no way for the Commission to determine the extent to which the facts found are supported by the testimony presented. Gainey v. Winn Dixie Stores, Inc., FCHR Order No. 07-054 (October 12, 2007).

Further, it has been stated, “The ultimate question of the existence of discrimination is a question of fact.” Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1209 (Fla. 1st DCA 1991). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010).

Noting these findings, and recognizing that no transcript of the proceeding before the Administrative Law Judge was filed with the Commission, we have no choice but to 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

Petitioners filed exceptions to the Administrative Law Judge’s Recommended Order in a document entitled “Exceptions to the Order,” received by the Division of Administrative Hearings on or about April 15, 2011.

While the exceptions document was filed with the Division of Administrative Hearings instead of the Commission, the document was timely filed, and the Commission will consider the document even though it was filed in the wrong forum. Accord, generally, Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), and cases cited therein. See also, Hogg v. Arena Sports Cafe, FCHR Order No. 10-049 (May 25, 2010).

There is no indication on the document that it was provided to Respondent as is required by Fla. Admin. Code R. 28-106.104(4) and Fla. Admin. Code R. 28-106.110. However, the Commission published the document to the Respondent, and placed the document in the record of this case, through the issuance of a notice of ex parte communication, mailed to the parties on April 20, 2011.

Petitioners’ exceptions document essentially attempts to enter into the record evidence that is not already in the record that Petitioners’ dogs are in fact service animals.

As indicated, above, while finding that no evidence was presented that the dogs were service animals, the Administrative Law Judge decided the case as if they were service animals and still found that no discrimination occurred because Respondent “reasonably determined” that Petitioners were accompanied by pets, rather than service animals. See Recommended Order, ¶ 23 through ¶ 27.

In addition, the Commission has declined to accept “exceptions” which seek to introduce evidence into the record that was not presented at the hearing before the

Administrative Law Judge. See, e.g., Jennings v. Superior Optical Shop, FCHR Order No. 10-077 (October 26, 2010), Bobo v. First Student, Inc., FCHR Order No. 09-032 (April 9, 2009), and Hurtado v. North Florida Rehab and Specialty Care, FCHR Order No. 08-047 (July 29, 2008).

Petitioners' exceptions are rejected.

Dismissal


The Petitions for Relief and Complaints 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 6th day of June, 2011.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Joanna Sharp; and
Commissioner Billy Whitefox Stall

Filed this 6th day of June, 2011,
in Tallahassee, Florida.



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R. Bruce McKibben, 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 6th day of June, 2011.

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