

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

CARI ANDERSON,

Petitioner,

FCHR Case No. 2009-03078

v.

DOAH Case No. 11-0055

WAL-MART STORES EAST,

FCHR Order No. 12-002

Respondent.

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

Preliminary Matters

Petitioner Cari Anderson filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 509.092 and 760.01 - 760.11, Florida Statutes (2008), alleging that Respondent Wal-Mart Stores East committed unlawful public accommodations practices on the basis of Petitioner's disability by objecting to the presence of Petitioner's service dogs while Petitioner was in the checkout line at Respondent's store and later by allegedly having Petitioner arrested while she was leaving the store.

The allegations set forth in the complaint were investigated, and, on April 13, 2010, 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 in Panama City, Florida, on August 17, 2011, before Administrative Law Judge Diane Cleavinger.

Judge Cleavinger issued a Recommended Order of dismissal, dated November 1, 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

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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled "Notice of Right to Exceptions."

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2011); see, also, Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

A review of Petitioner's exceptions document suggests that it does not comply with this statutory provision for every exception presented.

Nevertheless, it can be said, generally, that Petitioner excepts to the Administrative Law Judge's finding that no discrimination occurred in this matter, and takes issue with facts found, credibility determinations made, and inferences drawn from the evidence presented.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005) and Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011).

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) and Eaves, supra.

Noting that we have above found the facts as found by the Administrative Law Judge to be supported by competent substantial evidence and the Administrative Law

Judge's application of the law to the facts to result in a correct disposition of the matter, Petitioner's exceptions are rejected.

Dismissal

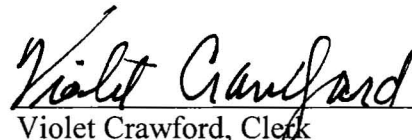
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 25th day of January, 2012.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Lizzette Romano; and
Commissioner Billy Whitefox Stall

Filed this 25th day of January, 2012,
in Tallahassee, Florida.



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Diane Cleavinger, 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 25th day of January, 2012.

By: 
Clerk of the Commission
Florida Commission on Human Relations