

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

TESIA RIDDLE,

Petitioner,

FCHR Case No. 2014-00844

v.

DOAH Case No. 14-4845

PUBLIX, INC.,

FCHR Order No. 15-019

Respondent.

**ORDER REMANDING CASE TO ADMINISTRATIVE LAW JUDGE
FOR FURTHER PROCEEDINGS ON PETITION FOR RELIEF**

This matter is before the Commission for consideration of the Order Closing File and Relinquishing Jurisdiction, dated January 6, 2015, issued in the above-styled case by Administrative Law Judge Linzie F. Bogan.

Findings of Fact and Conclusions of Law

Judge Bogan's order recommends that the Commission dismiss Petitioner's allegations of unlawful public accommodation discrimination for lack of jurisdiction, based on the conclusion that there is no support in the Florida Civil Rights Act of 1992 that a "grocery store", such as Respondent, is a "public accommodation" for purposes of Section 760.08, Florida Statutes. Citing the Recommended Order in Baker v. Maycom Communications / Sprint-Nextel, DOAH Case No. 08-5809 (December 22, 2008), the order states, "the fact that retail stores (i.e. grocery stores) are not specifically listed in section 760.02(11) [the section of the Florida Civil Rights Act of 1992 defining "public accommodation"] reflects a legislative intent that the statute does not encompass such establishments."

In a case in which a Petitioner alleged he was unlawfully discriminated against in the manner in which he was treated as he attempted to pay for groceries at a Winn Dixie grocery store, a Commission Panel commented, "We note that the Administrative Law Judge's conclusion that 'a Winn Dixie grocery store is not a public accommodation' is limited to the facts developed in this case, and that circumstances could exist in which a grocery store could be found to be a 'public accommodation'." Morales v. Winn Dixie Stores, Inc., FCHR Order No. 09-024 (March 16, 2009).

Further, in Fabiano v. Target Corporation, FCHR Order No. 09-057 (July 1, 2009), a Commission Panel stated, "We note that the definition of 'public accommodations' includes '[a]ny restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located in a retail establishment'... and... 'any

establishment...within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.’ Sections 760.02(11)(b) and (d), Florida Statutes (2007). Consequently, in our view, if a food establishment as described in the statute, above, is located within a ‘retail store,’ the ‘retail store’ would be a ‘public accommodation’ by definition, regardless that the statute does not specifically say that ‘retail stores’ are public accommodations.”

Finally, it should be noted that in Baker, supra, cited in the order currently before the Commission, Petitioner was issued an Order to Show Cause to present the factual basis on which Petitioner contended that Respondent was a “public accommodation.”

Based on the foregoing, we conclude that circumstances can exist in which a grocery store falls within the statutory definition of “public accommodation.” And, while Petitioner did respond to Respondent’s Motion to Dismiss, the record reflects no direction to Petitioner to address the issue of whether facts exist to establish that Respondent is a “public accommodation” within the definition of the Florida Civil Rights Act of 1992.

While it may well be that the ultimate conclusion reached in this matter is that Respondent is not a “public accommodation,” we conclude that given the current posture of the case the matter should be remanded to the Administrative Law Judge for further proceedings on the Petition for Relief.

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge’s Order Closing File and Relinquishing Jurisdiction.

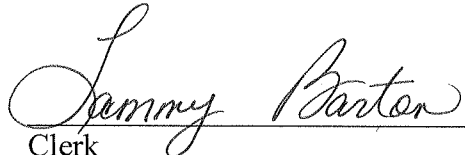
Remand

The matter is REMANDED to the Administrative Law Judge for further proceedings on the Petition for Relief.

DONE AND ORDERED this 26 day of March, 2015.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Michael Keller, Panel Chairperson;
Commissioner Rebecca Steele; and
Commissioner Billy Whitefox Stall

Filed this 26 day of March, 2015,
in Tallahassee, Florida.


Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
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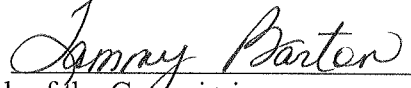
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Linzie F. Bogan, Administrative Law Judge, DOAH

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 26 day of March, 2015.

By: 
Clerk of the Commission
Florida Commission on Human Relations