

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

JUAN "JOHN" BOCARDO,

Petitioner,

FCHR Case No. 2015-00586

v.

DOAH Case No. 15-6147

WALT DISNEY PARKS AND RESORTS  
US, INC.,

FCHR Order No. 16-035

Respondent.

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

Preliminary Matters

Petitioner Juan "John" Bocardo filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 509.092 and 760.01 - 760.11, Florida Statutes (2014), alleging that Respondent Walt Disney Parks and Resorts US, Inc., committed unlawful public accommodations practices on the basis of Petitioner's disability when on several occasions Respondent denied Petitioner access to theme parks and properties because Petitioner's service animal was unleashed.

The allegations set forth in the complaint were investigated, and, on August 26, 2015, the Executive Director issued a determination finding that there was reasonable cause to believe that an unlawful public accommodations practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held by video teleconference at sites in Orlando and Tallahassee, Florida, on January 15, 2016, before Administrative Law Judge D. R. Alexander.

Judge Alexander issued a Recommended Order of dismissal, dated April 26, 2016.

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.

Respondent's rule relating to service animals states as follows: "Service animals must be under the control of the owner at all times and should remain on a leash or in a harness. Due to the nature of some attractions, service animals may not be permitted to ride certain attractions." Respondent's Exhibit 1.

The applicable Code of Federal Regulations sections state as follows: "A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes or generalizations about individuals with disabilities." 28 CFR § 36.301(b). "A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash or tether, or the use of the harness, leash or tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must otherwise be under the handler's control (e.g., voice control, signals, or other effective means)." 28 CFR § 36.302(c)(4). "This part does not require a public accommodation to permit an individual to participate and benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a threat to the health or safety of others. In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk." 28 CFR § 36.208(a) and (b).

The Florida Statutes state: "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. The service animal must be under the control of its handler and must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or tether, or the use of a harness, leash or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control by means of voice control, signals, or other effective means." Section 413.08(3)(a), Florida Statutes (2015).

With regard to Respondent's rule requiring service animals to be on a leash or in a harness, the Administrative Law Judge made the following findings of fact: "Thus, Disney has a real and legitimate safety concern, and not one based on mere speculation, that allowing unleashed service animals on its property poses a potential safety threat to other guests, especially children." Recommended Order, ¶ 7. "For reasons expressed

above, there are legitimate safety concerns that underpin this rule.” Recommended Order, ¶ 13. “Here, the evidence shows that Disney’s policy to require all service animals to be on a leash is based on legitimate safety concerns, not speculation.” Recommended Order, ¶ 42.

In reviewing a Recommended Order, the Commission is not permitted to freely substitute its judgment for that of the Administrative Law Judge. Rather the Administrative Procedure Act establishes the extent to which the Commission can modify or reject a finding of fact or conclusion of law contained in a Recommended Order. It states, “The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and the interpretation of administrative rules over which it has substantive jurisdiction...Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.” Section 120.57(1)(l), Florida Statutes (2015).

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), Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011) and Taylor v. Universal Studios, FCHR Order No. 14-007 (March 26, 2014).

The Code of Federal Regulations and Florida Statutes clearly assume circumstances in which a service animal is not required to be leashed while in a public accommodation. Yet, the Code of Federal Regulations also sets out that a public accommodation may impose safety requirements that are necessary for safe operation. The Code of Federal Regulations further establishes that a public accommodation is not required to allow an “individual” to participate in the public accommodation when the “individual” poses a direct threat to the health and safety of others, but that in determining whether this is the case an “individualized assessment” must be made by the public accommodation.

In our view, it cannot be said that the Administrative Law Judge’s findings of fact set out above are not supported by at least some competent substantial evidence in the record, although, certainly there is evidence in the record to support contrary findings.

Therefore, as directed by the Administrative Procedure Act sections cited above, and recognizing the role of the Administrative Law Judge in these proceedings as set out above, we cannot reject those findings of fact, nor can we reject the application of the above cited Federal Regulations that result in the conclusion that no unlawful public accommodations practice occurred.

With these comments, 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, "Petitioner's Exceptions to Recommended Order," received by the Commission on May 11, 2016.

Respondent filed a document entitled, "Response to Petitioner's Exceptions to Recommended Order," received by the Commission on May 23, 2016.

Petitioner's exceptions document contains eight numbered paragraphs containing exceptions to the Recommended Order.

Paragraphs numbered 1 through 7 contain exceptions to inferences drawn from the evidence presented and credibility determinations made by the Administrative Law Judge. For reasons set out in the Conclusions of Law section of this Order, explaining the Commission's scope of review as to findings of fact, as well as the role of the Administrative Law Judge in these proceedings, these exceptions are rejected.

Paragraph 8 of the exceptions document appears to argue that Respondent made no "individualized assessment" as to the risk of allowing Petitioner's service animal onto its properties. In a case in which a hospital denied a service animal access to its emergency services department where patients were being treated, a Court found that the "individualized assessment" requirement did not apply, since the "individualized assessment" requirement deals with the risk created by an "individual," and the hospital did not deny the "individual" access to the area – it denied the service animal access. "Rather, the controlling principle is established in 28 CFR 36.301(b), which provides that safety considerations may permit a public accommodation to impose restrictions, where the considerations are premised on an assessment of 'actual risks and not mere speculation, stereotypes, or generalizations about individuals with disabilities,'" concluded the Court. Pool v. Riverside Health Servs., 1995 U.S. Dist. LEXIS 12724 (Dist. Kansas 1995). Likewise, in the instant case, the Administrative Law Judge found that Respondent did not deny Petitioner access to Epcot (Recommended Order, ¶ 24), Downtown Disney (Recommended Order, ¶ 30), or Animal Kingdom (Recommended Order, ¶ 35), and further found that "...Disney has a real and legitimate safety concern, and not one based on mere speculation, that allowing unleashed service animals on its property poses a potential safety threat to other guests, especially children." Recommended Order, ¶ 7.

The exception set out in Paragraph 8 of the exceptions document is rejected.

Dismissal

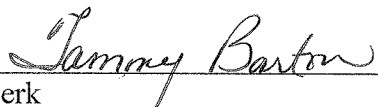
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 23 day of June, 2016.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;  
Commissioner Tony Jenkins; and  
Commissioner Jay Pichard

Filed this 23 day of June, 2016,  
in Tallahassee, Florida.

  
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D. R. Alexander, 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 23 day of June, 2016.

By: Sammy Barton  
Clerk of the Commission  
Florida Commission on Human Relations