

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

DIANE SCOTT,

Petitioner,

FCHR Case No. 2015-01567

v.

DOAH Case No. 16-1075

P.E.B. PURVEYORS, d/b/a
MCDONALD'S,

FCHR Order No. 16-039

Respondent.

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

Preliminary Matters

Petitioner Diane Scott filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 509.092 and 760.01 - 760.11, Florida Statutes (2015), alleging that Respondent P.E.B. Purveyors, d/b/a McDonald's, committed an unlawful public accommodations practice on the basis of Petitioner's race (African American) in the manner in which Petitioner was treated as a customer of Respondent's restaurant.

The allegations set forth in the complaint were investigated, and, on February 4, 2016, the Executive Director issued a 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 Marathon, Florida, on April 15, 2016, before Administrative Law Judge Robert L. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated May 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.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order, received by the Commission on June 20, 2016.

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, emailed to the parties on June 22, 2016.

Respondent filed a response to Petitioner's exceptions, received by the Commission on July 1, 2016.

Petitioner's exceptions document excepts to the following Recommended Order paragraphs: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 25 and 26.

In each instance, the exception takes issue with inferences drawn from the evidence presented and / or contains comment / argument about the content of the indicated Recommended Order paragraph.

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).

In addition, 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.

Finally, Petitioner was granted an extension of time to file exceptions to the Recommended Order until close-of-business on June 17, 2016. Petitioner's exceptions document was not received by the Commission until June 20, 2016. It appears that Petitioner's exceptions were mailed to the Commission by Petitioner on June 15, 2016.

“Filing” means “received by the office of the agency clerk during normal business hours...” Fla. Admin. Code R. 28-106.104(1). “No additional time shall be added to the time limits for filing exceptions or responses to exceptions when service has been made by mail.” Fla. Admin. Code R. 28-106.217(4).

Petitioner’s exceptions are untimely. See generally, De Matas v. H and R Block Enterprises, FCHR Order No. 15-074 (December 16, 2015) and cases cited therein.

Petitioner’s exceptions are rejected for all the above reasons.

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 4 day of August, 2016.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner Donna Elam

Filed this 4 day of August, 2016,
in Tallahassee, Florida.


Clerk
Commission on Human Relations
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Robert L. Kilbride, 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 4 day of August, 2016.

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