

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

JENNIFER M. FOSTER-GARVEY,

Petitioner,

FCHR Case No. 2016-00710

v.

DOAH Case No. 16-6982

MCDONALD'S BAM-B ENTERPRISES,
d/b/a MCDONALD'S,

FCHR Order No. 17-056

Respondent.

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

Preliminary Matters

Petitioner Jennifer M. Foster-Garvey 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 McDonald's Bam-B Enterprises, d/b/a McDonald's, committed an unlawful public accommodations practice on the bases of Petitioner's race (Black), color (Black), sex (female), national origin (Jamaican) and disability in the manner in which she was treated when at Respondent's restaurant.

The allegations set forth in the complaint were investigated, and, on November 4, 2016, the Executive Director issued a determination finding that there was no reasonable cause to believe that unlawful discrimination 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 by video teleconference at sites in Orlando and Tallahassee, Florida, on February 17, 2017, before Administrative Law Judge Elizabeth W. McArthur.

Judge McArthur issued a Recommended Order of dismissal, dated May 11, 2017.

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, "Petitioner's Exceptions to ALJ McArthur's Recommended Order," received by the Commission on May 26, 2017.

The exceptions document contains exceptions numbered 1 through 30, although there are two exceptions numbered 12, 13, 14, 15 and 17, and there is no exception numbered 23.

These numbered paragraphs except to the following numbered paragraphs of the Recommended Order: 1, 2, 6, 8, 10, 12, 13, 14, 15, 16, 17, 21, 25, 27, 29, 30, 31, 44, 45, 46, 47, 48, 51, 52, 53, endnote 3, endnote 5, endnote 6, endnote 7 and endnote 8.

In each instance, the indicated exception excepts to inferences drawn by the Administrative Law Judge 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), 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).

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), Eaves, supra, and Taylor, supra.

Petitioner's exceptions are rejected.

Dismissal

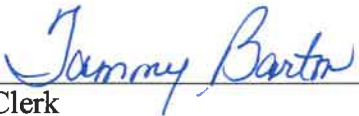
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 3 day of August, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner Sandra Turner

Filed this 3 day of August, 2017,
in Tallahassee, Florida.



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Elizabeth W. McArthur, 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 3 day of August, 2017.

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