

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

JAVIER A. MUNIZ-PAGAN,

Petitioner,

FCHR Case No. 2016-01989

v.

DOAH Case No. 17-2653

UNIVERSAL CITY DEVELOPMENT  
PARTNERS, d/b/a UNIVERSAL  
STUDIOS ORLANDO,

FCHR Order No. 18-016

Respondent.

\_\_\_\_\_ /

**FINAL ORDER AWARDING AFFIRMATIVE RELIEF FROM AN UNLAWFUL  
PUBLIC ACCOMMODATIONS PRACTICE**

Preliminary Matters

Petitioner Javier A. Muniz-Pagan filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 509.092 and 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent Universal City Development Partners, d/b/a Universal Studios Orlando committed an unlawful public accommodations practice on the basis of Petitioner's disability by denying Petitioner full and equal enjoyment of Respondent's facilities.

The allegations set forth in the complaint were investigated, and, on April 7, 2017, 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 by video conference between sites in Orlando and Tallahassee, Florida, on August 25, 2017, before Administrative Law Judge Linzie F. Bogan.

Judge Bogan issued a Recommended Order, dated October 6, 2017, recommending that the Commission find that an unlawful public accommodations practice occurred and recommending affirmative relief.

The Commission issued an "Interlocutory Order Remanding Case to Administrative Law Judge for Further Proceedings on Petition for Relief," FCHR Order No. 17-092, dated December 13, 2017.

Judge Bogan issued an Order Closing File and Rejecting FCHR's Interlocutory Order Remanding Case to Administrative Law Judge, dated December 18, 2017.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Order Closing File and Rejecting FCHR's Interlocutory Order Remanding Case to Administrative Law Judge.

#### Findings of Fact

We incorporate by reference the Findings of Fact section of FCHR Order No. 17-092 as it relates to the order of the Administrative Law Judge reviewed by the Commission order.

#### Conclusions of Law

We incorporate by reference the Conclusions of Law section of FCHR Order No. 17-092 as it relates to the order of the Administrative Law Judge reviewed by the Commission order.

We again find the Administrative Law Judge erred in concluding that a public accommodation may not impose legitimate safety concerns, pursuant to 28 C.F.R. § 36.301(b), to power-driven wheelchairs. In Bocado v. Walt Disney Parks and Resorts US, Inc., FCHR Order No. 16-035 (June 23, 2016), the Commission recognized that the Code of Federal Regulations, specifically C.F.R. § 36.301(b), confers upon a public accommodation the right to "impose safety requirements that are necessary for safe operation."

The Commission, in FCHR Order No. 17-092, accepted Respondent's exception that 28 C.F.R. § 36.301(b) has an "overarching safety application." We again hold that it was an error by the Administrative Law Judge to ignore the applicability of 28 C.F.R. § 36.301(b) to 28 C.F.R. § 36.311(a) (covering wheelchairs) just because "legitimate safety requirements" is listed as a factor in 28 C.F.R. § 36.311(b), and not 28 C.F.R. § 36.311(a), that a public accommodation may use as a basis to disallow the use of "other power-driven mobility devices." The Commission holds that it is reasonable to conclude that the issue of safety is explicitly raised in 28 C.F.R. § 36.311(b), and not 28 C.F.R. § 36.311(a), because the drafters of the former were addressing mobility devices typically not designed primarily for individuals with disabilities (e.g., golf carts, Segway PTs, ATVs, etc.). This action, however, does not affect the overarching safety application of 28 C.F.R. § 36.301(b) to both 28 C.F.R. § 36.311(a) and 28 C.F.R. § 36.311(b).

Nevertheless, the Commission notes that the Recommended Order contains no findings to support that Respondent acted in accordance with the legitimate safety requirements of 28 C.F.R. § 36.301(b), specifically that Respondent's actions were "based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities."

### Exceptions

Respondent filed exceptions to the Administrative Law Judge's Order Closing File and Rejecting FCHR's Interlocutory Order Remanding Case to Administrative Law Judge in a document entitled, "Respondent's, Universal Orlando, Exceptions to Administrative Law Judge's Recommendation, Order Closing File and Rejecting FCHR's Interlocutory Order Remanding Case to Administrative Law Judge."

Respondent subsequently filed, "Errata to Respondent's, Universal Orlando, Exceptions to Administrative Law Judge's Order Closing File and Rejecting FCHR's Interlocutory Order Remanding Case to Administrative Law Judge."

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 (2017).

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. 1<sup>st</sup> DCA 1991). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010), Eaves, supra, and Taylor, supra.

Respondent's exception number 1 argues that the Administrative Law Judge erred in finding that Petitioner visited specific ride venues of Respondent and was denied access within the statutory limitations period. Specifically, Respondent excepts to the Administrative Law Judge's finding that "On the Dates in question, Petitioner was denied

access to the following attractions: Skull Island: Reign of Kong; E.T. Adventure; Jurassic Park River Adventure; and Dudley Do-Right's Ripsaw Falls." Petitioner, however, indicated that he visited ride venues, within the statutory limitations period, on his "power chair." (TR 19 l. 1-9).

Respondent's exception number 1 is rejected. This also disposes of Respondent's exception number 1 to the initial Recommended Order.

Respondent's exception number 2 excepts to the Administrative Law Judge's conclusion of law that the "legitimate safety requirements" considerations of 28 C.F.R. § 36.301(b) do not apply to power-driven wheelchairs because power-driven wheelchairs are not a type of device covered by 28 C.F.R. § 36.311(b), to which legitimate safety requirements apply.

Respondent's exception number 2 is accepted (discussed in Conclusions of Law).

Respondent's exception number 3 argues that the Administrative Law Judge "failed to consider, and by rejecting remand has refused to consider, that Petitioner was seeking only his preferred method of access, and not access per se" to "enter the E.T. Line through the Main Queue."

Respondent's exception number 3 assumes Petitioner has requested a reasonable accommodation. In our view, Petitioner has not requested a reasonable accommodation but rather maintains that under 28 C.F.R. § 36.311(a) Petitioner is entitled to enter the attractions in the same manner as pedestrians not using a wheelchair.

Respondent's exception number 3 is rejected.

Respondent's exception number 4 and Respondent's exception number 2 to the initial Recommended Order except to the Administrative Law Judge's recommended injunction. Respondent argues that "the recommended injunction far exceeds the scope of the proof offered in the hearing."

Appropriate injunction language is set out in the Affirmative Relief section of this Order.


### Affirmative Relief

Through our adoption of the Administrative Law Judge's findings of fact and our discussion of the conclusions of law, as set out above, we find that unlawful discrimination occurred in this matter in the manner found by the Administrative Law Judge. Respondent Universal City Development Partners, d/b/a Universal Studios Orlando is ORDERED to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner. 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 8 day of March, 2018.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;  
Commissioner Donna Elam; and  
Commissioner Sandra Turner (not participating –  
replaced by Governor after being empaneled)

Filed this 8 day of March, 2018,  
in Tallahassee, Florida.

  
\_\_\_\_\_  
Clerk  
Commission on Human Relations  
4075 Esplanade Way, Room 110  
Tallahassee, FL 32399  
(850) 488-7082

Copies furnished to:


Javier A. Muniz-Pagan  
4038 Montara Court  
Orlando, FL 32817

Universal City Development Partners, d/b/a/ Universal Studios Orlando  
c/o J. Lester Kaney, Esq.  
Law Office of J. Lester Kaney  
Post Office Box 731148  
Ormond Beach, FL 32173-1148

Linzie F. Bogan, Administrative Law Judge, DOAH

Steven J. Zuilkowski, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above  
listed addressees this 8 day of March, 2018.

By:   
\_\_\_\_\_  
Clerk of the Commission  
Florida Commission on Human Relations