

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. 17-092

Respondent.

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

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 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 subject to the Commission reserving ruling on Respondent's exceptions to findings of fact.

Conclusions of Law

We 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 (see Exceptions for discussion).

In modifying this conclusion of law of the Administrative Law Judge, we conclude: (1) that the conclusion of law being modified is a conclusion of law over which the Commission has substantive jurisdiction, namely a conclusion of law stating what must be demonstrated to establish unlawful discrimination under the Florida Civil Rights Act of 1992; (2) that the reason the modification is being made by the Commission is that the conclusion of law as stated runs contrary to a previous Commission decision on the issue; and (3) that in making this modification the conclusion of law being substituted is as or more reasonable than the conclusion of law which has been rejected. See, Section 120.57(1)(l), Florida Statutes (2017).

Exceptions

Respondent filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Respondent's, Universal Orlando, Exceptions to Recommended Order."

Petitioner subsequently filed, "Petitioner Respond to Exceptions of Recommended Order."

Respondent 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 argues that 28 C.F.R. § 36.301(b) has an "overarching safety application" and that "safety must always remain a paramount concern." In Bocardo 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." Respondent's exception is accepted.

Respondent also argues that "Petitioner offered no proof of denials at specific ride venues 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." The Commission reserves ruling on this exception until the case on remand is returned to the Commission.

Respondent also excepts 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." The Commission reserves ruling on this exception until the case on remand is returned to the Commission.


Remand

The matter is REMANDED to the Administrative Law Judge for a determination of whether Respondent acted in accordance with the legitimate safety requirements of 28 C.F.R. § 36.301(b), specifically whether Respondent's actions were "based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities."

DONE AND ORDERED this 13 day of December, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

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

Filed this 13 day of December, 2017,
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

FCHR Order No. 17-092
Page 4

Linzie F. Bogan, Administrative Law Judge, DOAH

Stanley G. Gorsica, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 13 day of December, 2017.

By: Tammy Berto
Clerk of the Commission
Florida Commission on Human Relations