

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JUSTO LOPEZ,

Petitioner,

vs.

Case No. 20-1763

HOMEWOOD SUITES HILTON,

Respondent.

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RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (Division), conducted the final hearing in this case by Zoom video conference on June 26, 29, and July 20, 2020.

APPEARANCES

For Petitioner: Justo Lopez, Pro Se  
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Ithica, New York 14851-6845

For Respondent: Stacey M. Bosch, Esquire  
Richard B. Mangan, Jr., Esquire  
Rissman, Weisberg, Barrett, Hurt,  
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STATEMENT OF THE ISSUE

Did Respondent, Homewood Suites Hilton (Homewood) located at 16450 Corporate Commerce Way, Fort Myers, Florida, discriminate in provision of public accommodation to Petitioner, Justo Lopez, on account of his race or ethnicity in violation of section 760.08, Florida Statutes (2019)?<sup>1</sup>

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<sup>1</sup> All references to the Florida Statutes are to the 2019 compilation unless noted otherwise.

### PRELIMINARY STATEMENT

Mr. Lopez filed a Public Accommodation Complaint of Discrimination with the Florida Commission on Human Relations (Commission) alleging that Homewood discriminated against him on account of his race, color, sex, and national origin. The Commission issued a Determination of No Reasonable Cause. Mr. Lopez filed a Petition for Relief from a Discriminatory Public Accommodation Practice. On April 9, 2020, the Commission referred the dispute to the Division to conduct a hearing. The undersigned conducted the hearing.

Mr. Lopez presented his testimony and Petitioner's Exhibits 1 and 2. Homewood presented the testimony of Deborah Clark and Respondent's Exhibit 3. The parties timely submitted proposed recommended orders. They have been considered in the preparation of this Order.

### FINDINGS OF FACT

1. Mr. Lopez is a disabled Navy veteran. Mr. Lopez had stayed at Homewood before the events at issue here. On August 3 and 4, 2019, Mr. Lopez was a guest of Homewood. He was there with his wife and four-year-old grandchild. That afternoon Mr. Lopez was doing laundry in the hotel laundry room. He was using both dryers for his clothes. His clothes were drying slowly. While Mr. Lopez was in the laundry room, Deborah Borchart, a Caucasian woman, washed her clothes. Mr. Lopez left the room planning to return later to check on his clothes.

2. Mr. Lopez received a call from the desk clerk telling him another guest wanted to use the dryers. That guest was Ms. Borchart. Mr. Lopez explained that the clothes were drying slowly and needed another half hour. A little later the desk clerk called again about Ms. Borchart wanting to use the dryers.

3. Mr. Lopez returned to check on his clothes. The clothes were not dry. He added coins to the dryer. He told Ms. Borchart that the clothes were not dry and that there would be a wait. Ms. Borchart began yelling and cursing at him, shouting that he was not the only person in the hotel. Mr. Lopez asked her to wait and said that he too was entitled to use the dryers. "Why are you using both dryers?" she asked. She said: "Everybody needs to use the dryers. Take your stuff out or I will call the police."

4. Mr. Lopez removed lint from the dryers to speed up the drying process. He emptied the lint in the garbage can. Mr. Lopez passed within two or three feet of Ms. Borchart to throw the lint away. He did not push Ms. Borchart or step on her foot.

5. After leaving the laundry room, Mr. Lopez told the desk clerk of Ms. Borchart's verbal abuse and threat to call the police. There is no evidence that the desk clerk reported this to the manager, Deborah Clark, who was not on site.

6. After ten or 15 minutes, Mr. Lopez returned to the laundry room to check on his clothes. Ms. Borchart again cursed him, complained about him using the dryers, and threatened to call the police.

7. Mr. Lopez removed his clothes although they were still damp. When he left, he told Ms. Borchart, "Sorry for any inconvenience." He put the clothes in his room. Then he left with his wife and grandchild to find a place to eat.

8. During all of these encounters, Mr. Lopez and Ms. Borchart were the only people in the laundry room. Ms. Borchart told the desk clerk that Mr. Lopez yelled at her, stepped on her foot, and shoved her. Ms. Borchart asked the clerk to call the police. Mr. Lopez did not shove Ms. Borchart or stamp on her foot.

9. Homewood attempted to support Ms. Borchart's reported account of events with hearsay that was not admissible pursuant to a proven hearsay exception and did not corroborate any admissible adverse evidence.

10. The desk clerk called Ms. Clark to report Ms. Borchart's complaint and her demand for a call to law enforcement. Ms. Clark directed the clerk to contact law enforcement and transfer her to the laundry room telephone so she could speak to Ms. Borchart. Ms. Clark did not attempt to speak to Mr. Lopez. The desk clerk called law enforcement for Ms. Borchart. Two deputy sheriffs responded.

11. While Mr. Lopez and his family were looking for a place to eat, a deputy called him and asked where he was. Mr. Lopez told the deputy that he was with his family looking for a place to eat. The deputy called again asking when he would return. The deputy said he and a colleague were at the hotel waiting for Mr. Lopez. Mr. Lopez and his family returned to the hotel to speak with the deputies. One deputy spoke to Mr. Lopez. The other spoke to his wife.

12. The deputies also spoke to employees of Homewood. The deputies did not arrest Mr. Lopez or bring charges against him. Their report of the incident questions the credibility of Ms. Borchart and notes that her foot was not injured. It concludes that "probable cause for an arrest could not be developed for this incident."

13. Ms. Clark claimed she did not know Mr. Lopez's ethnicity. However, Ms. Clark knew Mr. Lopez from previous stays at Homewood. She had met him twice before. These interactions gave her an opportunity to see and hear him. She knew that he was both African American and Hispanic. Mr. Lopez's race is apparent when you look at him. His surname and accent reveal his Hispanic heritage. Ms. Clark's testimony that she did not know Mr. Lopez's ethnicity is not credible, and a factor undermining her credibility in general.<sup>2</sup>

14. Ms. Clark directed Homewood employees to evict Mr. Lopez and enlisted assistance from law enforcement. She based this decision solely on

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<sup>2</sup> Disbelief of the explanation for the alleged discriminatory act accompanied by a suspicion of mendacity permits the trier of fact to infer the ultimate fact of intentional discrimination. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147 (2000).

Ms. Borchart's description of events, either statements made directly to Ms. Clark or statements to Homewood employees. The employees were not present in the laundry room and could only report what Ms. Borchart told them.

15. After interviewing employees, Ms. Borchart, Mr. Lopez, and motel employees to whom Ms. Borchart had talked, a deputy advised Ms. Clark of the conclusion that a crime had not occurred and there was no probable cause for an arrest. It is reasonable to infer that the deputy relayed the observations and conclusions memorialized in an Incident Report, including that Ms. Borchart had no injury, that her statements were inconsistent, that her statements omitted information, and that neither she nor the desk clerk disclosed Mr. Lopez's earlier complaint to the desk clerk about Ms. Borchart's verbal abuse.

16. Nonetheless, Ms. Clark directed the desk clerk to evict Mr. Lopez and his family and ask the deputies to escort them out. Mr. Lopez asked to speak to Ms. Clark. His request was not granted. There is no explanation why Ms. Clark did not speak to Mr. Lopez.

17. Mr. Lopez and Ms. Borchart were similarly situated. Both were guests of Homewood. Both were using the motel's laundry facility. Both complained of the other being abusive.

18. Homewood treated Mr. Lopez differently and worse than it treated Ms. Borchart. Ms. Clark relied solely upon Ms. Borchart's account of events, as recounted by Ms. Borchart or as relayed by Homewood employees. The record offers no explanation why Ms. Clark did not speak to Mr. Lopez. The evidence does not prove why Ms. Clark evicted Mr. Lopez, an African American Hispanic, paying, repeat guest and his family solely upon the statement of a Caucasian female without speaking to the African American Hispanic guest. The totality of the circumstances, the demeanor of the witnesses, and the lack of a persuasive explanation for the decision to evict Mr. Lopez's family without speaking to him reasonably support an inference

that the decision was the result of bias against Mr. Lopez on account of his race, ethnicity or both.

19. At Homewood's request, a deputy escorted Mr. Lopez, his wife, and his grandchild to their fifth floor room to gather their belongings. The family was given ten minutes to accomplish this. The officers then escorted the Lopez family to their car on a rainy night.

20. Mr. Lopez begged the employees to permit them to stay the night. They said they were required to comply with Ms. Clark's instruction.

21. During all these events, each time Mr. Lopez and his family passed near the lobby Ms. Borchart, laughing loudly, watched them.

22. A few weeks later, in response to a complaint from Mr. Lopez, Homewood refunded Mr. Lopez's payment for the August 4, 2019, stay.

#### CONCLUSIONS OF LAW

23. Sections 120.569, 120.57(1), and 760.11(7), Florida Statutes, grant the Division jurisdiction over the parties and subject matter of this cause. *See also* Fla. Admin. Code R. 60Y-4.016.

24. Mr. Lopez brings this action under the Florida Civil Rights Act (Civil Rights Act). He alleges that Homewood discriminated against him on account of his ethnicity and race in violation of section 760.23. Mr. Lopez must prove by a preponderance of the evidence that Homewood violated the Civil Rights Act by discriminating against him because of his race or ethnicity.

§ 120.57(1)(j), Fla. Stat.; *See Young v. Dep't of Cmty. Aff.*, 625 So. 2d 831 (Fla. 1993) (The general rule is that a party asserting the affirmative of an issue bears the burden of proof.).

25. The Civil Rights Act prohibits discrimination in places of public accommodation. It provides, in pertinent part:

All persons are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any

place of public accommodation without discrimination or segregation on the ground of race, color, national origin, sex, pregnancy, handicap, familial status, or religion.

§ 760.08, Fla. Stat. A motel like Homewood is a place of public accommodation. § 760.02(11)(a), Fla Stat.

26. The Florida Legislature modeled the Civil Rights Act after Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 12182. Consequently, interpretation of the federal law is instructive and persuasive in applying Florida's Civil Rights Act. *See e.g. Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17, 21 (Fla. 3d DCA 2009); *Dornbach v. Holley*, 854 So. 2d 211, 213 (Fla. 2d DCA 2002); *Bhogaita v. Altamonte Heights Condo. Ass'n, Inc.*, 765 F.3d 1277, 1285 (11th Cir. 2014). Injured individuals may prove intentional discrimination through direct evidence, pattern and practice evidence, or circumstantial evidence. Direct evidence is evidence that, if believed, would prove discrimination without need for inference or presumption. Pattern or practice evidence shows discrimination is a standard operating procedure using historical evidence and/or statistical evidence. *Brooks v. Collis Foods, Inc.*, 365 F. Supp. 2d 1342, 1352 (N.D. Ga. 2005). There is no direct evidence of discrimination against Mr. Lopez. Nor is there pattern and practice evidence. The preponderance of the circumstantial evidence, however, proves unlawful discrimination.

27. Claims of discrimination in public accommodations under the Civil Rights Act relying on circumstantial evidence apply the same *prima facie* standards and burdens of proof as employment discrimination claims under federal law. *Riley v. Red Carpet Inn*, Case No. 04-4453 (Fla. DOAH May 25, 2005; FCHR Case No. 2004-22163 July 21, 2005). This means Mr. Lopez must prove a *prima facie* case of discrimination with circumstantial evidence that supports a fair inference of unlawful discrimination. If he does so, Homewood may counter with evidence that it evicted him for legitimate

nondiscriminatory reasons. Mr. Lopez may show that Homewood's explanations are not credible or are only a pretext for discrimination.

*St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993); *Powell v. Super 8 Motels, Inc.*, 181 F. Supp. 2d 561 (E.D. NC 2000).

28. Mr. Lopez must prove the following elements to establish his *prima facie* case: (1) he is a member of a protected class; (2) he attempted to enjoy the full benefits and enjoyment of a public accommodation; and (3) he was denied those benefits and enjoyment; and (4) similarly situated people who are not members of the protected class received the full benefits and enjoyments of the public accommodation or were treated better. *Riley v. Red Carpet Inn*, Case No. 04-4453 (Fla. DOAH May 25, 2005; FCHR Case No. 2004-22163 July 21, 2005). If he does, Homewood may counter that it had a legitimate non-discriminatory business reason for evicting him. Mr. Lopez may show that the reason is a pretext. The parties presented evidence relevant to all these elements and defenses.

29. The following are the determinative facts to which the legal analysis must be applied.

A. Mr. Lopez, his wife, and their four-year old grandchild were paying guests of Homewood on August 3 and 4, 2019.

B. Mr. Lopez is clearly Hispanic and African American. This would have been obvious to the desk clerk. The manager, Ms. Clark, knew Mr. Lopez was Hispanic and African American because she knew him from previous stays at the motel. Ms. Clark's claim that she only knew that Mr. Lopez was African American is not credible and undermines the credibility and persuasiveness of her other testimony.

C. Mr. Lopez was using the dryers in the motel laundry room. As a guest, he had every right to use them.

D. Ms. Borchart, a Caucasian female, was upset about Mr. Lopez using the dryers, was verbally abusive to him, and said she would call the police if he did not remove his clothes from the dryer.



E. Mr. Lopez complained to the Homewood desk clerk about Ms. Borchart's verbal abuse and threat.

F. The desk clerk took no action and did not report Mr. Lopez's complaint of abuse to the manager.

G. Later, at Ms. Borchart's request, the desk clerk called Mr. Lopez to tell him Ms. Borchart had complained about him and to encourage Mr. Lopez to acquiesce in her demand to remove his laundry before it was dry. This contrasts with the clerk's inaction in response to Mr. Lopez's complaint.

H. When Mr. Lopez returned to the laundry room and removed his clothes, Ms. Borchart continued her verbal abuse and threats to call the police.

I. Mr. Lopez removed his clothes although they were still damp, and left with his family.

J. Mr. Lopez did not push Ms. Borchart or step on her foot.

K. Ms. Borchart told the desk clerk that Mr. Lopez pushed her and stepped on her foot and had been verbally abusive.

L. The desk clerk called the manager, Ms. Clark, about Ms. Borchart's claims although she had not called about Mr. Lopez's complaint. Ms. Clark had the clerk transfer the call to the laundry room and spoke to Ms. Borchart.

M. Ms. Borchart asked Ms. Clark to call law enforcement. Ms. Clark did.

N. Ms. Clark spoke to two other employees about the alleged incident. They, like the desk clerk, only knew what Ms. Borchart told them.

O. Deputy Sheriffs responded to the call. After investigating, the deputies advised Ms. Clark that they learned nothing that required action.

P. Ms. Clark never spoke to Mr. Lopez or attempted to speak to him.

Q. Mr. Lopez asked to speak to Ms. Clark. She did not speak to him.

R. Ms. Clark evicted Mr. Lopez, his wife, and four-year-old grandchild into the rainy night relying only on the complaint of Ms. Borchart.

S. Ms. Clark says that she evicted Mr. Lopez and his family for guests' safety. However, there is no evidence of risks to any guest other than

Ms. Borchart's claims about a single, specific dispute in the laundry room about use of the dryers that was over.

T. Homewood and its witnesses offered no explanation of why Mr. Lopez's complaint about Ms. Borchart's abusive behavior was not relayed to Ms. Clark.

U. Homewood and its witnesses offer no explanation why Ms. Clark would not speak to Mr. Lopez or why she took a Caucasian woman's word about the incident without speaking to Mr. Lopez, even though the deputies' investigation revealed no need for them to take action.

30. The facts established that Mr. Lopez and Ms. Borchart were similarly situated. Both were guests of Homewood. Both reported conflict in the laundry room.

31. The facts establish that Homewood treated them differently. Homewood did not take Mr. Lopez's report seriously or act upon it. Homewood did take Ms. Borchart's report seriously. Homewood obtained Ms. Borchart's version of the second encounter in the laundry room. It did not seek Mr. Lopez's account. Homewood rejected Mr. Lopez's request to speak to the manager and provide his version of events. Homewood does not explain why one guest's account was accepted without question and used to evict a family while another guest's account was not even heard.

32. The fair and reasonable inference is that Mr. Lopez's race and ethnicity were the reason Homewood accepted Ms. Borchart's account without question and did not even permit Mr. Lopez to provide his account.

33. The evidence also does not establish, as Ms. Clark claimed, that Mr. Lopez was a safety risk to guests. Even accepting Ms. Borchart's version of the event, it was an isolated occurrence involving a specific dispute over use of dryers, and it was over. (Of course all the testimony about Ms. Borchart's description of events was hearsay that cannot be the basis for a finding of fact. § 120.57(1)(c), Fla. Stat.) Homewood did not prove a legitimate business purpose for refusing to hear Mr. Lopez's account of events in the

laundry room or for evicting his family without doing so. The evidence proved that Homewood intentionally discriminated against Mr. Lopez on account of his race and ethnicity.

34. Section 760.11(7) determines the remedies to which Mr. Lopez is entitled. It provides:

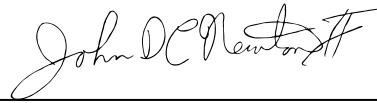
If the administrative law judge finds that a violation of the Florida Civil Rights Act of 1992 has occurred, he or she shall issue an appropriate recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including back pay.

35. Mr. Lopez seeks \$100,000 for pain and suffering of his family, a letter of apology from Homewood, and a requirement that he be permitted to stay at the motel in the future. The law does not make the first two remedies available. The third remedy is available and recommended.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that The Florida Commission on Human Relations enter a final order granting Mr. Lopez's Petition for Relief and prohibiting Respondent, Homewood Suites, Hilton, from discriminating against Mr. Lopez or any other Hispanic or African American guest in the terms and conditions of lodging there including, but not limited to, accommodations, and guest privileges.

DONE AND ENTERED this 18th day of August, 2020, in Tallahassee, Leon County, Florida.



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JOHN D. C. NEWTON, II  
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Filed with the Clerk of the  
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.