

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

AYINDE CRESPO,

Petitioner,

vs.

Case No. 20-2501

STEAK-N-SHAKE,

Respondent.

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RECOMMENDED ORDER

Administrative Law Judge ("ALJ") Brittany O. Finkbeiner conducted the final hearing in this case for the Division of Administrative Hearings ("DOAH") on October 13, 2020, by Zoom conference.

APPEARANCES

For Petitioner: Andrew Williams, Esquire  
The Williams Law Group  
6273 Sunset Drive, Suite D-3  
Miami, FL 33143-8815

For Respondent: J. Robert McCormack, Esquire  
Ina F. Young, Esquire  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
100 North Tampa Street, Suite 3600  
Tampa, FL 33602

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Steak-N-Shake ("Respondent"), is liable to Petitioner, Ayinde Crespo ("Petitioner"), for discrimination in a place of public accommodation, in violation of section 760.08, Florida Statutes.

## PRELIMINARY STATEMENT

Petitioner filed a complaint with the Florida Commission on Human Relations ("Commission") on May 14, 2019, alleging that Respondent discriminated against him pursuant to chapter 760, the Florida Civil Rights Act ("FCRA"), on the basis of his "race" and "color." On April 23, 2020, following an investigation, the Commission issued a determination that there was no reasonable cause to conclude that an unlawful practice occurred.

Petitioner elected to pursue administrative remedies, timely filing a Petition for Relief with the Commission on May 28, 2020. The Commission referred the matter to DOAH to assign an ALJ to conduct the final hearing. The final hearing was held on October 13, 2020.

Petitioner testified on his own behalf and did not call any other witnesses. Petitioner's Exhibits 1 through 3 were admitted into evidence. Respondent presented the testimony of Steven Lebrun ("Mr. Lebrun") and Latoya Nelson ("Ms. Nelson"). Respondent's Exhibit 6 was admitted into evidence. The parties did not order a transcript of the proceedings. However, both parties filed proposed recommended orders, which were considered in the drafting of this Recommended Order.

Unless otherwise indicated, references to the Florida Statutes are to the 2018 version.

## FINDINGS OF FACT

1. Petitioner is an African American male.
2. On August 21, 2018, Petitioner visited Respondent's restaurant located at 990 Federal Highway, in Hallandale Beach, Florida.

3. At some point during his time in Respondent's restaurant, Petitioner began arguing with the manager of the restaurant, Mr. Lebrun, who then called law enforcement to assist in removing Petitioner from the restaurant.

4. Based on the credible testimony of Respondent's employees, Mr. Lebrun and Ms. Nelson, Petitioner left Respondent's restaurant without paying for his food on a previous occasion. Petitioner paid for his meal, on the previous occasion, only after Mr. Lebrun confronted him outside of the restaurant about his failure to pay.

5. Petitioner testified that, on August 21, 2018, Mr. Lebrun insulted him with unprompted homophobic slurs and forced him to leave the restaurant without finishing his meal after Petitioner requested extra onions. Petitioner testified that he perceived the words and actions of Mr. Lebrun, who is also African American, to be based on intra-racial discriminatory animus. Petitioner further testified that Mr. Lebrun called law enforcement with the intent to intimidate Petitioner. Petitioner's version of events lacks credibility, is not supported by the evidence, and is, therefore, rejected.

6. Petitioner filmed part of his interaction with Mr. Lebrun. The footage, however, did not include racist or homophobic language, or any other indicator of discrimination. A Caucasian female patron, whom Petitioner offered as a comparator, was visible in the video. However, no further evidence was presented to make a comparison between that patron and Petitioner.

#### CONCLUSIONS OF LAW

7. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

8. Section 760.08 states, in its entirety:

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.

9. The FCRA is modeled after Title VII of the Civil Rights Act of 1964. Accordingly, cases interpreting federal discrimination law are instructive and persuasive in analyzing claims under the FCRA. *See, e.g., Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17, 21 (Fla. 3d DCA 2009).

10. Petitioner must prove the elements of public accommodation discrimination by a preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

11. In this case, Petitioner must first prove a *prima facie* case of discrimination with circumstantial evidence that supports a fair inference of unlawful discrimination. If he does so, Respondent may explain that it prevented Petitioner from remaining in the restaurant for nondiscriminatory reasons. If Respondent satisfies this burden, Petitioner may show that Respondent's explanations are not credible or are only a pretext for discrimination. *See LaRoche v. Denny's, Inc.*, 62 F. Supp. 2d 1366 (S.D. Fla. 1999).

12. To prove his *prima facie* case, Petitioner must establish that he:

- (1) is a member of a protected class;
- (2) attempted to afford himself the full benefits and enjoyment of a public accommodation;
- (3) was denied the full benefit or enjoyment of a public accommodation; and
- (4) such services were available to similarly situated persons outside his protected class who received full benefits or who were treated better.

*Id.* at 1370.

13. Petitioner satisfied the first prong by establishing that he is part of a protected class within the meaning of the FCRA, which prohibits

discrimination, in pertinent part, based on "race" and "color." Petitioner established that he is a black African American.

14. It is undisputed that Respondent is a public accommodation, which is defined, in pertinent part, as: "facilities principally engaged in selling food for consumption on the premises..." § 760.02(11), Fla. Stat. Further, it is undisputed that Petitioner attempted to afford himself of the full benefits and enjoyment of Respondent's restaurant and that he was removed from the restaurant during his meal, thus satisfying the second and third prongs.

15. Turning to the fourth prong, there was no evidence that similarly situated patrons outside of Petitioner's class were given preferential treatment by Respondent. Valid comparators in a discrimination case must be "similarly situated in all material respects." *Lewis v. City of Union City, Ga.*, 918 F. 3d 1213, 1218 (11th Cir. 2019). Petitioner did not identify any valid comparators to illustrate his claim of disparate treatment. Although Petitioner identified a Caucasian female patron, who was dining in the restaurant during the incident at issue in this case, no evidence was presented to show that she was similarly situated to Petitioner.

16. Because Petitioner did not meet his burden of proving a *prima facie* case of discrimination by a preponderance of the evidence, Respondent's reasons for removing Petitioner from the restaurant, and whether those reasons were pretexts, need not be discussed. *See generally, Adams v. Holland*, 2019 WL 4451454, at \*6 (M.D. Fla. Sept. 17, 2019)(noting where plaintiff did not show a comparator outside his protective class, he could not establish a *prima facie* case for discrimination and the court did not need to address whether defendants had a non-discriminatory reason for his treatment, or whether such a reason was pretextual).

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 dismissing the Petition for Relief.

DONE AND ENTERED this 11th day of March, 2021, in Tallahassee, Leon County, Florida.



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BRITTANY O. FINKBEINER  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of March, 2021.

COPIES FURNISHED:

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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.