

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MICHAEL GRASSO,

EEOC Case No. N/A

Petitioner,

FCHR Case No. 2020-22791

v.

DOAH Case No. 20-3036

ST. MARKS STONE CRAB FESTIVAL, INC.,

FCHR Order No. 21-013

Respondent.

**INTERLOCUTORY ORDER AWARDING AFFIRMATIVE RELIEF
FROM AN UNLAWFUL PUBLIC ACCOMMODATION PRACTICE
AND REMANDING CASE TO ADMINISTRATIVE LAW JUDGE
FOR ISSUANCE OF RECOMMENDED ORDER REGARDING AMOUNTS OF
COSTS OWED PETITIONER**

Preliminary Matters

On December 20, 2019, Petitioner Michael Grasso filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2019), alleging that Respondent, St. Marks Stone Crab Festival, Inc., committed an unlawful public accommodation practice on the basis of Petitioner's disability by refusing Petitioner access to the festival because Petitioner was accompanied by his service animal, Zuko.

The allegations set forth in the complaint were investigated, and, on June 5, 2020, the Executive Director issued a determination finding that there was reasonable cause to believe that an unlawful public accommodation practice had occurred.

On July 6, 2020, Petitioner filed a Petition for Relief from an Unlawful Public Accommodation Practice, and, on July 7, 2020, the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held on August 27, 2020, in Tallahassee, Florida, before Administrative Law Judge Garnett W. Chisenhall, but was continued until September 17, 2020 when the final proceeding was completed.

Judge Chisenhall issued a Recommended Order, dated November 10, 2020, recommending that the Commission find that an unlawful public accommodation 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.

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

Respondent filed a document called "Respondent's Response to Recommended Order" with the Division of Administrative Hearings on November 25, 2020. We will consider the exceptions even though they were filed in the wrong forum.

Petitioner filed a document called "Petitioner's Response to Recommended Order" with the Division of Administrative Hearings on November 25, 2020. We will consider the exceptions even though they were filed in the wrong forum.

The Administrative Procedure Act states that, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2018); see, also Taylor v. Universal Studios, FCHR Order No 14-007 (March 26, 2014), McNeil v. HealthPort Technologies, FCHR Order No. 12-026 (June 27, 2012), and Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

Respondent's exceptions document did not clearly identify the disputed portion of the recommended order by page number or paragraph and it did not identify the legal basis for the exception with appropriate and specific citations to the record. Therefore, it is not possible to rule on specific exceptions for Respondent.

We acknowledge that Petitioner's service animal is named Zuko. However, Petitioner's exceptions document did not clearly identify the disputed portion of the recommended order by page number or paragraph, and it did not identify the legal basis for the exception with appropriate and specific citations to the record. Therefore, it is not possible to rule on specific exceptions for Petitioner.

The exceptions documents provide each party's explanation of the facts. Respondent's exceptions essentially take issue with inferences drawn from the evidence presented by the Administrative Law Judge in the Recommended Order.

With regard to findings of fact set out in Recommended Orders, the Administrative Procedure Act states, "The agency may not reject or modify the 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 on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law [emphasis added]." Section 120.57(1)(l), Florida Statutes (2017).

Further, 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) and Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011).

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).

Respondent’s exceptions are rejected.

Petitioner’s exceptions are rejected.

Affirmative Relief and Remand

Through our adoption of the Administrative Law Judge’s findings of fact and 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 and have adopted the Administrative Law Judge’s recommendations for the remedy of the discrimination. We also conclude that Petitioner is entitled to costs in this matter pursuant to section 760.11(6), *Florida Statutes*.

Respondent is hereby ORDERED:

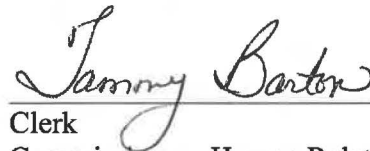
1. to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner; and
2. to pay the Petitioner the amount of costs that have been reasonably incurred in this matter by Petitioner.

This matter is REMANDED to the Administrative Law Judge for further proceedings to determine the amounts of costs owed Petitioner and the issuance of a Recommended Order as to those amounts.

DONE AND ORDERED this 25 day of February, 2021.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Darrick McGhee, Panel Chairperson;
Commissioner Larry Hart; and
Commissioner Angela Primiano

Filed this 25 day of February, 2021,
in Tallahassee, Florida.



Clerk
Commission on Human Relations
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Copies furnished to:

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Tallahassee, Florida 32301

Garnett W. Chisenhall, Administrative Law Judge, DOAH

Sarah Stewart, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed
addressees this 25 day of February, 2021.

By: 
Clerk of the Commission
Florida Commission on Human Relations