IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

DENNIS BARROS,

Petitioner,

v.

OFFICE OF HUMAN RELATIONS and
CHAPTER 57 REVIEW BOARD OF
ORLANDO,

Respondents.
_____ /

WRIT NO.: 2009-WR-61-A-O

CASE NO.: 2009-CA-12387-O

On a Petition for a Writ of Certiorari, for a Writ of Mandamus and for Declaratory Relief.

Michael E. Morris, Esquire,
for Petitioner.

Austin L. Moore, Esquire,
for Respondents.

Before Shea, Mihok and Lauten, JJ.

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS, DENYING PETITION FOR WRIT OF CERTIORARI and DENYING PETITION FOR DECLARATORY RELIEF

PER CURIAM.

Dennis Barros ("Petitioner" or "Barros"), petitions the Court for a writ of certiorari, a writ of mandamus and declaratory relief. Having considered all of the papers submitted in this matter and after having heard oral argument we grant the petition for a writ of mandamus and direct the respondent, Chapter 57 Review Board ("Board" or "Respondent"), to conduct a formal hearing pursuant to section 57.06 (6) (b) of the Orlando Code ("Code"), make written findings at the conclusion of the hearing pursuant to section 57.06 (7) of the Code and enter a remedial order

or orders should the Board conclude that discrimination has occurred or is occurring. We deny the other relief sought.

FACTS

Dennis Barros is a gay man who filed a discrimination complaint with the City of Orlando Office of Human Relations ("OHR"). The complaint alleged that Frank Riggall, M.D., violated Chapter 57 of the Code, Orlando's anti-discrimination ordinance ("Ordinance"), by discriminating against Barros in public accommodations because of his sexual orientation. OHR investigated the complaint and concluded that there was no reasonable cause to believe that Riggall had discriminated against Barros as alleged. Barros sought review by the Board which remanded the matter to OHR for more investigation. After completing its further investigation, OHR adhered to its "no cause" position and Barros again sought review by the Board. On February 19, 2009, the Board "voted 2-1 against the no-cause finding." (Pet. Cert. Ex. A-7). The Board would not take further action so Barros came to this Court seeking certiorari, mandamus and declaratory relief.

DISCUSSION

The City of Orlando has a broad anti-discrimination ordinance which includes homosexuals among its protected classes. Much of the responsibility under the Ordinance is reposed in the Chapter 57 Review Board.

The functions of the Board, as defined in the Ordinance are:

> (1) To foster mutual understanding and respect among all racial, religious, age, disability and ethnic groups in the City of Orlando;
> (2) To encourage equality of treatment for, and prevent discrimination against, any racial, religious, age, disability or ethnic group or its members;
> (3) To cooperate with governmental and nongovernmental agencies and organizations having like or kindred functions;

> (4) To make such investigations and studies in the field of human relations as in the judgment of the Board will aid in effectuating its general purposes;
> (5) To assist various groups and agencies of the community to cooperate in educational campaigns devoted to the elimination of group prejudices, racial tension, intolerance or discrimination;
> (6) To aid in permitting the City of Orlando to benefit from the fullest realization of its human resources; and
> (7) To accept grants and donations on behalf of the City from foundations and others for the purpose of carrying out the above listed functions, subject to the approval of the Mayor and City Council.
> (8) To hear appeals of decisions from the Certification Board as provided in Section 57.30.

Orlando, Fla., Code § 57.03 (1)-(8) (2007).

The Ordinance sets out the Board's powers and duties as:

> (1) To receive, to review and copy documents deemed necessary by the Board, cause investigations of and pass upon complaints and otherwise cause investigations of: (a) Racial, religious and ethnic group tension, prejudice, intolerance, bigotry and disorder occasioned thereby; (b) Discrimination against any person, group of persons, organization or corporation, in violation of the provisions of this Chapter.
> (2) To propose reasonable rules and regulations as are necessary to effectuate the policies of this Chapter. Such rules and regulations shall become effective upon approval by City Council.
> (3) To hold hearings and mediation conferences compel the attendance of witnesses, compel the production of documents for investigative purposes and for introduction at hearings, administer oaths and take the testimony of any person under oath.
> (4) To perform such other duties as may be necessary to accomplish the function of the Board as defined in Section 57.03
>
> of this Chapter.

Orlando, Fla., Code § 57.04 (1)-(4) (2007).

Contrasted with these general expressions of purposes is the Ordinance's section setting forth procedures for the processing of complaints. *See* Orlando, Fla., Code § 57.06 (2007). The procedural provisions are not a model of clarity. Jumbled procedure, however, will not stymie

plain purpose. The issue presented is: When the Board rejects an OHR "no cause" determination, what happens next?

As a threshold matter, we recognize that generally an "extraordinary writ of mandamus may not be used to establish the existence of an enforceable right, but rather only to enforce a right already clearly and certainly established in law." *Sancho v. Joanos*, 715 So. 2d 382, 385 (Fla. 1st DCA 1998). "To be entitled to a writ of mandamus, the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy." *Jenkins v. State*, 957 So. 2d 20, 22 (Fla. 5th DCA 2007). However, "[t]he fact that we may need to examine and interpret the [ordinance] in order to determine whether there is such a right [for the petitioner] does not make the right any more or less 'clear.'" *Fla. Caucus of Black State Legislators, Inc. v. Crosby*, 877 So. 2d 861, 863 (Fla. 1st DCA 2004) (*quoting Schmidt v. Crusoe*, 878 So. 2d 361, 363 (Fla. 2003)). In other words, the Board cannot resist mandamus on the grounds that the Ordinance creates a dead end street for processing certain discrimination complaints, i.e. those where the Board rejects an OHR "no cause" finding. We note that one of the Board's functions is to "pass upon complaints." Orlando, Fla., Code §57.04 (1). Clearly, Chapter 57 gives a complainant the right to the processing of his or her discrimination complaint to finality. The Ordinance's failure to make plain the *means* for Barros to secure that right does not detract from the clarity of the right itself.

To discern the meaning of the Board's action we examine and construe the Ordinance. "It is well settled that statutory rules of construction are applicable to municipal ordinances." *Great Outdoors Trading, Inc. v. City of High Springs*, 550 So. 2d 483, 485 (Fla. 1st DCA 1989). "[S]tatutes must be interpreted to facilitate the achievement of their goals in accordance with

reason and common sense." *Alderman v. Unemployment Appeals Comm'n*, 664 So. 2d 1160, 1161 (Fla. 5th DCA 1995). *See also Sch. Bd. of Palm Beach County v. Survivors Charter Sch., Inc*., 3 So. 3d 1220, 1235 (Fla. 2009) ("We are not required to abandon either our common sense or principles of logic in statutory interpretation."). The overriding goal of Chapter 57 is the prevention of discrimination. Orlando, Fla., Code § 57.03 (2). The Ordinance "is remedial and requires a liberal construction to preserve and promote access to the remedy intended by [its drafters]." *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000). The Board's refusal to take further action on the Barros complaint blocks his ability to even pursue a remedy, surely an unintended result.

Our efforts are assisted by the rule that "[t]he meaning of a judicial order must be ascertained from the language employed in the order itself, aided, when necessary, by appropriate rules of construction and the surrounding circumstances of the case." *Stein v. Prof'l Ctr., S.A*., 666 So. 2d 264, 266 (Fla. 3d DCA 1996). We apply this to the Board's minutes which describe its vote in terms of a double negative. An "appropriate rule of construction" here is the traditional precept of grammar that a double negative forms a positive. Our common sense tells us to construe the Board's vote *against* "no cause" as equivalent of one *for* "cause" to believe that the ordinance may have been violated.

In addition to our application of fundamental cannons of construction, we find guidance in caselaw. *Woodham v. Blue Cross & Blue Shield of Florida, Inc*., 829 So. 2d 891 (Fla. 2002), involved the Florida Civil Rights Act ("FCRA"). There, a discrimination complainant received a notice that an agency investigation was "unable to conclude that the information obtained establishes violations of the statutes." *Woodham v. Blue Cross & Blue Shield of Fla., Inc*., 829 So. 2d 891, 893 (Fla. 2002). The FCRA, however, speaks only of notices which advise whether

"there is reasonable cause to believe that discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992." § 760.11(3), Fla. Stat. (1999). *See also Woodham v. Blue Cross & Blue Shield of Fla., Inc*., 829 So. 2d at 894-96. If there is a "reasonable cause" determination, a claimant may either 1) bring a civil action or 2) request an administrative hearing. *Id*. at 894 (*citing* § 760.11(4), Fla. Stat). On the other hand, if a "no cause" determination is made, a claimant may only request an administrative hearing. *Id*. at 894-95 (*citing* § 760.11(7), Fla. Stat.) A "no cause" determination precludes the filing of a civil suit under FCRA. After receiving his "unable to conclude" notice, Woodham filed suit. The circuit court treated the "unable to conclude" language as the equivalent of "no cause" and dismissed the case. The district court affirmed. *Woodham v. Blue Cross & Blue Shield of Fla., Inc*., 793 So. 2d 41 (Fla. 3d DCA 2002).

The Florida Supreme Court quashed the district court's decision and, before reaching the other issues in the case, first decided the effect of the "unable to conclude" notice:

> Without having received a proper "no cause" determination, Woodham was . . . permitted to proceed under [the Florida Civil Rights Act] "as if the [Florida Commission on Human Relations] made a 'reasonable cause' determination," because the [Florida Commission on Human Relations] failed to make a determination either way regarding whether reasonable cause existed.

Id. at 897 (*quoting* § 760.11(8), Fla. Stat.).

This language is instructive. Here, the Board rejected the OHR's "no cause" finding, yet it made no explicit determination of its own, one way or another, whether reasonable cause existed. The Board's vote to "not accept" the "no cause" finding created ambiguity. *Woodham* teaches (among other things) that this uncertainty should not redound to the detriment of the complaining party.

We make no comment about the merits, if any, of Barros's complaint and emphasize that a "cause" determination is *not* a finding that discrimination has occurred. *See EEOC v. Keco Industries, Inc.*, 748 F. 2d 1097, 1110 (6th Cir. 1984) ("EEOC's reasonable cause determination does not adjudicate rights and liabilities; it merely places the defendant on notice of the charges against him."); *EEOC v. Chesapeake & Ohio Ry. Co*., 577 F. 2d 229, 232 (4th Cir. 1978) ("[R]easonable cause determination is not designed to adjudicate an employer's alleged violations of the Act but to notify an employer of the commission's findings and to provide common ground for conciliation."); *see also* 29 C.F.R. § 1601.21 ("A determination finding reasonable cause is based on, and limited to, evidence obtained by the Commission and does not reflect any judgment on the merits of allegations not addressed in the determination."). Further, a conclusion that an investigative "cause" finding is tantamount to a determination that the Ordinance had been violated would trammel the due process rights of Riggall who did not have notice that he was in jeopardy of being found guilty of Barros's charge.[1]

The Board advises, and under the facts of this case we agree, that a "cause" finding triggers a hearing under section 57.06 (6) (b). Inasmuch as we have concluded that the Board made a "cause" finding by voting to "not accept" OHR's "no cause" determination, both Chapter 57 and due process considerations provide a clear right to a hearing. The Board does not suggest that any remedy other than mandamus may be available to Barros and we conclude that there is

[1] We hardly need to advise the City of Orlando that if it disagrees with our conclusion in this matter, it can amend the Ordinance for future cases. With our decision we have jump-started a stalled Chapter 57 process but this is only a one-time fix. The Ordinance needs more than a tune-up and we strongly urge a thorough overhaul of its complaint-processing provisions, at the least. As long as it aspires to the eradication of discrimination in Orlando, the City is well-advised to set out clear, consistent and discrete duties, responsibilities and procedures for doing so. Of particular importance to this Court is that the Ordinance consistently indicate which actions are "final" for purposes of judicial review.

none. Therefore, the requirements for mandamus relief having been met, we grant the petition for a writ of mandamus and direct that a formal hearing take place.[2] With our interpretation of the Board's action, we rescue Barros's OHR complaint from an administrative black hole. Barros may now proceed to try to prove his allegations and, if successful, secure a remedy.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

1) The Petition for a Writ of Mandamus of petitioner, Dennis Barros, be and hereby is **GRANTED**;

2) The Petition for a Writ of Certiorari of the petitioner, Dennis Barros, be and hereby is **DENIED;**

3) The Petition for declaratory relief of the petitioner, Dennis Barros, be and hereby is **DENIED**; and

4) This matter be and hereby is **REMANDED** to the Chapter 57 Review Board of the City of Orlando with directions to conduct a formal hearing pursuant to section 57.06 (6)(b) of the Orlando Code; to make written findings pursuant to section 57.06 (7) of the Orlando Code; and should the Board determine that unlawful discrimination has occurred or is occurring, to issue a remedial order or orders.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, on this _12th_____ day of _April_, 2013.

/S/_____
TIM SHEA
Circuit Judge

/S/_____
A. THOMAS MIHOK
Circuit Judge

/S/_____
FREDERICK J. LAUTEN
Circuit Judge

[2] At oral argument, the parties advised that conciliation efforts were unsuccessful.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been furnished via U.S. mail or hand delivery to:

1) Michael E. Morris, Esq., 2014 East Robinson Street, Orlando, Florida 328303;

2) Gregory R. Nevins, Esq., Lambda Legal Defense & Education Fund, Southern Regional Office, 730 Peachtree Street N.E., Suite 1070, Atlanta, Georgia 30308-1210; and

3) Austin L. Moore, Esq., P.O. Box 4990, 3rd Floor, Orlando, Florida 32808;

on this _12th_____ day of _April__, 2013.

/S/_____
Judicial Assistant