



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

PA17-0362

March 15, 2018

Jeanne E. McArdle (Manlius, NY)

v.

Café Dry Dock Inn¹ (Southwest Harbor)

Summary of Case:

Complainant, an individual with a disability who visited Respondent's business, alleged that she was initially denied entry and unlawfully asked for documentation for her service animal. Respondent, a restaurant, denied discrimination and stated Complainant was not denied entry or service. The Investigator conducted a preliminary investigation, which included reviewing all documents submitted by the parties. Based upon this information, the Investigator recommends a finding that reasonable grounds to believe that Complainant was discriminated against on the basis of disability.

Jurisdictional Data:

- 1) Dates of alleged discrimination: 7/22/2017.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): 8/7/2017.
- 3) Respondent is a public accommodation subject to the Maine Human Rights Act ("MHRA"), the Americans with Disabilities Act ("ADA"), and state and federal regulations.
- 4) Neither part is represented by legal counsel.

IV. Development of Facts:

- 1) Complainant provided the following in support of her claims:

Complainant, who has a service dog, visited Respondent's restaurant with her husband. The hostess ("Hostess") asked for the dog's "papers". Complainant told Hostess this request was unlawful but still provided training documents. The restaurant's owner ("Owner") stated she alone could decide if service dogs were allowed inside, and that Complainant would need to sit outside. Complainant said that she

¹ Complainant named "Café Dry Dock Inn" as the Respondent in her complaint; Respondent provided that its legal name is "Mary Jane Hanscome, Inc.". Because Complainant did not amend her complaint, the name she used has been retained.

needed to sit inside due to the heat. Respondent's owner ("Owner") told Hostess to seat them but stated that she would be calling the police. Complainant pulled up a website about the ADA on a cell phone, which she showed to Hostess. Complainant also offered to show this to Owner, who told Complainant she could stay only if they did not talk to Hostess. Owner was verbally abusive. Complainant and her husband soon left because she did not feel safe. They offered to pay for what they had ordered. Owner told them to just leave and called Complainant "nasty".

2) Respondent provided the following in support of its position:

Complainant was never denied entry into the restaurant; she was only slightly delayed when Hostess asked for documentation for her dog. She and her guest were seated where they requested. She was asked to stop insisting that Hostess view a website on her phone. Complainant made no complaints about how she was treated, and ordered food and drinks, but left before the food was served. Complainant was not asked about her disability or for any medical information. She was not asked for any special identification card or training documentation, or for a demonstration of the dog's service. The staff did not go beyond what the regulations allow. Complainant left because she was annoyed that staff ignored her.

3) The Investigator made the following findings of fact:

- a) Complainant has a [REDACTED] which substantially impairs her health. Respondent did not appear to question that Complainant's asserted medical condition is a disability.
- b) Complainant's service animal received specialized training from a third-party agency and performs a number of tasks related to her disability. The animal retrieves objects for her so that she does not have to bend over, which often leads to injury – these objects include dropped items, items on low shelves, and Complainant's cane. He also opens doors and helps Complainant with dressing and undressing.
- c) On 7/22/2017, Complainant and her service dog, along with her husband ("Husband") visited Respondent's restaurant. Hostess asked Complainant for documentation² for her dog, which she provided. When Hostess refused to allow them into the dining area, Complainant asked to see Owner. Complainant claims that Owner stated they could only sit outside, to which Complainant objected. They were eventually seated in the interior portion of the restaurant, where they ordered food and beverages. Owner stated that she would be contacting the police department.
- d) Complainant attempted to show Hostess and Owner an ADA website on a phone. Owner asked or told Complainant to refrain from showing the website to Hostess. Complainant asserts that Owner told them they would be allowed to stay at the restaurant only if they did not talk to Hostess.
- e) Complainant and Husband left before receiving their meal. Respondent believes that they decided to leave because Complainant was annoyed that staff would not look at the ADA website. Complainant provided that their decision to leave was based upon fear of Owner, her threat to call the police, and the hostile atmosphere that had been created by Respondent's prior actions.

² In some submissions to the Commission, Respondent asserted that "no special identification or training documentation was requested." However, it also inconsistently asserted that, "Complainant was asked for documentation of her animal" Respondent also stated in another submission that "[a]sking for documentation of the Complainant's animal did not violate any law or regulation." Therefore, while it might be arguably true that Hostess did not ask for any *special* identification or training document, it is undisputed that Complainant was asked to provide some type of documentation.

- f) In Respondent's final two submissions,³ it asserted for the first time that Complainant and Husband had engaged in theft of services by walking out of the restaurant without paying. Complainant and her husband have both provided sworn statements indicating that they offered to pay for food and beverage order, but that Owner told them to just leave instead.

V. Analysis:

1. The MHRA requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("M.R.S.") § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
2. The MHRA makes it unlawful for a public accommodation to "refuse to permit the use of a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the public accommodation unless it is shown by defense that the service animal poses a direct threat to the health or safety of others or the use of the service animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the public accommodation by others." 5 M.R.S. § 4592(8). Generally, a public accommodation "shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability". 94 Code of Maine Regulations ("C.M.R.") 348, Chapter 7, § 7.16(C)(1).
3. A "service animal" is defined, in relevant part, as "a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. The work or tasks performed by a service animal must be directly related to the individual's disability." 5 M.R.S. §4553(9-E)(B).
4. A public accommodation is limited in the information it can request in determining whether an animal qualifies as a service animal under the MHRA:

A public accommodation shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.

Commission Regulations, Chapter 7, § 7.16(C)(6)(emphasis added).

5. In this case, Complainant has established that her dog is a service animal by providing that her dog has been trained to perform specific tasks relating to her difficulty bending due to her disability. These tasks include picking up low lying objects, retrieving needed items such as a cane or walking stick, removing laundry from the washer and dryer, and assisting Complainant with dressing and undressing.
6. Respondent has not disputed that Complainant has a disability or that her dog is a service animal. Rather, Respondent's defense appears to be solely that Complainant was never actually denied service, and that she was only briefly delayed while Respondent requested the dog's "papers."

³ The two submissions contain all the same information, although the second and final submission also includes a notary stamp and signature, without the standard jurat indicating that all statements therein are sworn to be true.

7. Even assuming that Respondent's version of events is correct, its actions still amount to a violation of the MHRA, with reasoning as follows:
- a. As noted above, the MHRA specifically prohibits places of public accommodation from asking for documentation providing that an animal is a service animal. It is irrelevant whether any "special identification card or training documentation" was requested. Respondent admitted that Hostess asked Complainant's for her dog's "papers," which is prohibited. Respondent could ask only whether the dog was required because of a disability, and what work or task the animal had been trained to perform.
 - b. In addition to this improper inquiry, Complainant was detained, albeit briefly, because Respondent believed it had the right to prohibit service animals in its restaurant. She was also told she would have to sit outside because of her animal, which is impermissible under the MHRA. It appears from the record that Respondent likely relented only because other patrons were waiting behind Complainant. While the matter was resolved relatively quickly, Respondent still imposed discriminatory conditions on Complainant because of her disability-related need for a service animal.
 - c. The record shows that Complainant has been consistent in her detailed recounting of the incident in multiple forums, and Respondent has provided only broad-based denials and accusations. Moreover, Respondent's credibility is in question given the last-minute assertion by Owner's husband that Complainant and Husband engaged in theft of services by leaving the restaurant without paying their bill. While this claim has no bearing on the issue of discrimination, it is notable that Complainant stated in both her sworn complaint and sworn rebuttal that they offered to pay their bill before leaving, but Owner told them to just leave. Respondent filed responsive submissions to each of these, and at no time claimed contradicted Complainant's claim they had offered to pay.
8. It is found that Respondent discriminated against Complainant based on her disability by unlawfully requesting documentation of her service animal as a condition to entering the restaurant.

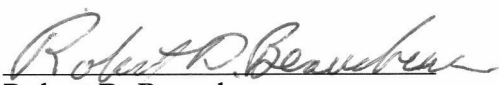
VI. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following finding:

- a. There are **Reasonable Grounds** to believe that Respondent Café Dry Dock Inn discriminated against Jeanne E. McArdle on the basis of her disability (use of service animal: unlawful inquiry, terms and conditions); and
- b. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



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