



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

MHRC PA17-0424-A/B

September 27, 2019

Patricia Sarchi (Falmouth)

v.

Uber Technologies, Inc. (San Francisco, CA)
Rasier, LLC (San Francisco, CA)

I. Summary of Case:

Complainant, a blind woman, alleged that one of Respondents' drivers refused to give her a ride because she has a service animal. Respondents, a ride-sharing business and its wholly-owned subsidiary, denied Complainant's allegations and stated that first, Respondent Uber ("Uber") is not a public accommodation and second, that Respondents' drivers are not employees and Respondents are therefore not liable for their actions. The Investigator conducted a preliminary investigation and, based upon the extensive record, the Investigator recommends a finding that there are reasonable grounds to believe that unlawful discrimination has occurred.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: January 5, 2017.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): September 19, 2017.¹
- 3) Respondents are a transportation provider and its wholly-owned subsidiary and are public accommodations under the MHRA.
- 4) Complainant is represented by Kristin Aiello, Esq. Respondents are represented by Asha Santos, Esq.

III. Development of Facts:

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

¹ The Maine Human Rights Act ("MHRA") provides that "[t]he commission must conclude an investigation under this paragraph within 2 years after the complaint is filed with the commission." 5 M.R.S. § 4612(1)(B). "An investigation is concluded for purposes of this requirement upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs." 94-348 C.M.R. Ch. 2, § 2.05(J). Because Complainant's signed and notarized complaint was filed with the Commission on September 19, 2017, the Commission's investigation should have been concluded on or before September 19, 2019. A number of procedural issues, none of which can be attributed to the parties, delayed the conclusion of the investigation of this case.

Complainant is [REDACTED] and uses a guide dog to assist her. Complainant's guide dog has received extensive training and responds to specific voice commands to assist Complainant with various tasks. On January 5, 2017, Complainant had a nail appointment at a spa in Portland. After the appointment, Complainant's manicurist ("Manicurist") requested a ride for Complainant from Uber. Manicurist walked with Complainant and Complainant's guide dog to the car that arrived pursuant to the Uber request. Manicurist opened the door, and the driver ("Driver") said, "No dogs." Manicurist explained that Complainant's guide dog is a service animal and Driver could not deny Complainant a ride because of her service animal. Driver insisted that no dogs were allowed in his vehicle and left. Complainant later received an email from Uber informing her that she had been charged \$5.00 for canceling the trip. Complainant would like to be able to use Uber in the future but is afraid they will continue to discriminate against her.

2) Respondents provided the following in support of their position:

Uber is not a place of public accommodation, nor does it own, operate, or lease a place of public accommodation. Uber offers a smartphone app that connects riders and drivers. Smartphone apps or other virtual spaces are not listed in the MHRA as "places of public accommodation" and therefore are not subject to the MHRA. Even if Complainant could establish that Uber is a place of public accommodation, Uber drivers are not employees, but rather independent contractors, and therefore Uber cannot be held liable for their conduct. Further, Complainant was not denied the full enjoyment of the services Uber provides, namely, the Uber App, which has at all times been fully available to Complainant.

3) The Investigator made the following findings of fact based on the documentation submitted by the parties:

- a) Complainant is a [REDACTED] woman who uses a service animal, specifically a guide dog.
- b) On January 5, 2017, Complainant went to a spa in Portland for a nail appointment. She brought her service animal with her.
- c) After the appointment, Manicurist helped Complainant request a ride from Uber.
- d) When the Uber driver arrived and saw Complainant's service animal, he refused to allow Complainant into the car with her service animal. Manicurist attempted to explain that Driver could not refuse to transport a service animal. Nevertheless, Driver refused to provide transportation to Complainant and her service animal.
- e) Later that day Complainant received an email from Uber charging her \$5.00 for canceling the ride.

IV. Analysis:

The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary 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 the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

Uber is a public accommodation under the MHRA

- 1) The MHRA defines “public accommodation” to be “[a]ny establishment that in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public.” 5 M.R.S. § 4553(N).
- 2) By its actions, Uber quite clearly falls within this definition. Uber offers its services to, and solicits and accepts patronage from, the general public. Uber, however, argues that because it has no physical space, it cannot be a public accommodation. Uber contends that the general public accesses its services through a smartphone app, which is not a physical space and is not otherwise listed in 5 M.R.S. §4553. This argument is unavailing. The United States Court of Appeals for the First Circuit has held that:

“[S]ervice establishments” include providers of services which do not require a person to physically enter an actual physical structure...one can easily imagine the existence of [] service establishments conducting business by mail and phone without providing facilities for their customers to enter in order to utilize their services. It would be irrational to conclude that persons who enter an office to purchase services are protected by the A[mericans with] D[isabilities] A[ct],² but persons who purchase the same services over the telephone or by mail are not.

Carparts Distribution Ctr., Inc. v. Auto. Wholesaler’s Ass’n of New England, Inc. 37 F.3d 12, 19 (1st Cir. 1994). Several cases since *Carparts* have affirmed that virtual spaces such as websites are public accommodations. See, e.g., *Nat’l Ass’n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196 (D. Mass. 2012); *Nat’l Fed’n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 953 (N.D.Cal. 2006); *Nat’l Fed’n of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565, 571 (D. Vt. 2015); *Access Now, Inc. v. Blue Apron, LLC*, No. 17-CV-116-JL, 2017 WL 5186354 at *2 (D.N.H. Nov. 8, 2017).

- 3) Further, the MHRA covers the services “of” a public accommodation, not “in” a public accommodation. Consistent with the reasoning in *Carparts*, the State Legislature intended the MHRA’s remedial provisions to “be given broad construction” and for its exceptions to be narrowly construed. 94-348 C.M.R. Ch. 5, Part I(C)(1).
- 4) Uber is a public accommodation within the MHRA definition.

Uber is liable for the actions of its driver

- 5) Uber exercises extensive control over its drivers. Among other things, Uber sets “ground rules” for drivers and maintains the right to terminate drivers who do not meet them; Uber sets requirements for the type and age of vehicles that drivers use; Uber sets driver behavior standards for rides; Uber drivers must undergo thorough driving and criminal history reviews; Uber monitors drivers and any new criminal offenses and can remove drivers from the app if charged with a new offense; Uber removes drivers with high cancellation rates; Uber reactivates drivers if they meet Uber’s reactivation requirements; Uber provides drivers with turn-by-turn directions for rides; Uber assists drivers in buying or leasing vehicles; and Uber, not the

² As the Maine Supreme Judicial Court, sitting as the Law Court, has explained, Maine's courts frequently "look[] to federal human rights legislation, and the cases interpreting it, for aid interpreting the MHRA", but only when the language is "substantially identical". *Scamman v. Shaw's Supermarkets, Inc.* 2017 ME 41, paras. 25-26 (internal quotation marks and citations omitted). Because the language of the MHRA here is substantially identical to that in Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a(a), case law interpreting Title II is helpful in analyzing this claim.

drivers, collect all fares – drivers are paid for their rides through Respondent Rasier, LLC.

- 6) In Maine, the test for determining whether there is an employee/employer relationship consists of several factors, the most important of which, according to Uber, is control, including “the rights both to employ and to discharge subordinates and the power to control and direct the details of the work.” *Legassie v. Bangor Publ. Co.*, 1999 ME 180, ¶6, 741 A.1d 442 (Me. 1999).
- 7) Here, Uber has sole discretion over whether or not an applicant is accepted to be a driver and can in many instances discharge the driver over the driver’s objection. Uber controls everything about the rides its drivers provide from topics of conversation drivers can engage in to the exact route the driver takes. Clearly, drivers are not the “third-party independent transportation providers” Uber claims in its submissions. They may have control over how many hours they work and what rides they accept (to an extent; Uber can remove a driver with a high cancellation rate), but Uber controls nearly everything else about how the rides are provided.

Disability discrimination on the basis of Complainant’s use of a service animal

- 8) A service animal is “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. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. 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).
- 9) The MHRA makes it unlawful “[f]or any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of 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 other.” 5 M.R.S. § 4592(8).
- 10) Individuals with service animals may not be segregated from other members of the public based on the presence of their service animal. Service animals shall be allowed in all areas of a place of public accommodation where members of the public, program participants, clients, customers, or patrons are allowed to go.
- 11) A service animal may be excluded if it is not housebroken, or if it is not under the handler’s control. Generally, this means the animal must be on a leash or other tether. If the use of a leash or tether would interfere with the animal’s safe and effective performance of its work, the animal must be otherwise under the handler’s control (*i.e.* via voice control). If the service animal is removed, the individual with a disability must be offered the opportunity to access the accommodation’s goods or services without the animal present. 94-348 C.M.R. Ch. 7, § 7.16(C)(2)-(4). Respondents did not allege that the service animal was excluded for any of these permissible reasons.
- 12) Here, Complainant has shown that Respondents discriminated against her in access to public accommodation because of Complainant’s use of a service animal. Reasoning is as follows:

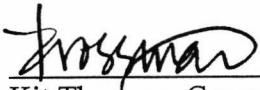
- a. Complainant has established that she is an individual with a disability – [REDACTED], which is a disability without regard to severity, *see* 5 M.R.S. § 4553-A(1)(B) – who uses a service animal.
- b. Respondents do not deny that Driver refused to provide Complainant with a ride due to her service animal.
- c. As established above, Respondents' arguments that Uber is not a public accommodation and that Respondents are not liable for Driver's refusal to provide a ride to Complainant and her service animal fail.

13) It is found that Respondents discriminated against Complainant based on her disability by unlawfully refusing her access to their services.

V. Recommendation:

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

- 1) There are **Reasonable Grounds** to believe that Uber Technologies and Rasier, LLC, discriminated against Patricia Sarchi on the basis of disability; and
- 2) Conciliation should be attempted in accordance with 5 M.R.S. §4612(3).



Kit Thomson Crossman, Investigator