



Maine Human Rights Commission

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INVESTIGATOR'S REPORT MHRC Case No. PA17-0500-A & B April 2, 2019

Karen Wood (Columbia, MD)

v.

Jacqueline Bevins (Ogunquit, ME) and Jackie's Too (Ogunquit, ME)

I. Summary of Case:

Complainant Karen Wood, an individual with a disability who visited Respondent's business, alleged that Respondents discriminated against her when they did not afford her equal access to the business because of her service animal. Respondents Jackie's Too ("Restaurant") and Jacqueline Bevins ("Bevins"), a restaurant and its owner, denied discrimination and stated Complainant was denied indoor seating because the indoor section was not staffed. The Investigator conducted a preliminary investigation, which included reviewing all documents submitted by the parties, holding an Issues & Resolution Conference ("IRC"), and requesting additional information. Based upon this information, the Investigator recommends a finding that there are **reasonable grounds** to believe that Complainant was discriminated against on the basis of disability.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: September 13, 2017.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): November 17, 2017.
- 3) Respondents are a place of public accommodation and its owner,¹ and are subject to the Maine Human Rights Act ("MHRA"), the Americans with Disabilities Act ("ADA"), and state and federal regulations.
- 4) Complainant is not represented by counsel. Respondent is represented by Melissa A. Hewey, Esq.

III. Development of Facts:

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

Complainant, who has a service animal, visited Respondents' restaurant with her companion ("Companion"). The hostess ("Hostess") stated that Respondents did not allow dogs inside the restaurant. Complainant explained that she was [REDACTED] and her dog was a service animal and therefore

¹ Both Respondents are covered under the public accommodations provisions of the MHRA. See 5 M.R.S. § 4592(1). Because the claims against Bevins all fall within the scope of her work as owner of Jackie's Too, the claims against her rise and fall with the claim against the restaurant. Accordingly, the claims against Bevins will not be analyzed separately.

they could not be excluded. Hostess told Complainant that she could only be seated in the outdoor deck. Complainant continued to object and called the Ogunquit Police ("Police"). While waiting for the Police to arrive, Bevins went outside and told Complainant, "I said you could sit outside on the deck." The Police sent a Resolution Officer and an Officer ("Officer") to speak with Respondents. Bevins said that she was afraid the dog would poop on her floor. Officer spoke with Bevins and noted in his police report that Respondents did not want the dog urinating on the inside carpet and that all parties with dogs were seated outside. Officer informed Bevins that she was in violation of the ADA by denying Complainant access to Restaurant. During these encounters, Complainant heard Hostess asking other customers whether they wanted to be seated inside or outside. Neither Hostess nor Bevins told her that inside seating was not available. Complainant had been to Restaurant before September 13, 2017, and was seated inside at the bar.

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

On September 13, 2017, Complainant arrived at Restaurant with Companion and her service animal. On that day, customers were being seated only on the outside patio of Restaurant due to limited staffing. Indoor seating at Restaurant was not staffed either before or after Complainant arrived. Hostess responded to Complainant's request to be seated inside by telling her that the inside was not open for seating on that day. Hostess never told Complainant that Respondents did not allow dogs inside Restaurant. Bevins went to the hostess stand to speak with Complainant and explained that there was no indoor seating on that day, and offered seating in the outside patio area. Complainant called the Police. Officer spoke with Bevins, who explained to the Officer that there was no indoor seating available. Officer never told Bevins that she was violating the ADA.

3) The Investigator made the following findings of fact based on the documentation submitted by the parties and the information gathered at the IRC:

- a) Complainant is [REDACTED]. Respondents did not question that Complainant's condition is a disability.
- b) Complainant's service animal was individually trained to perform a number of tasks related to her disability. Predominantly, the service animal guides Complainant by walking around obstacles, stopping and listening to traffic, finding doors and elevators, etc. Respondents did not contest the dog's status as a service animal.
- c) On September 13, 2017, Complainant and her service animal, along with Companion, visited Restaurant. Complainant asked Hostess to seat them indoors.² Hostess informed Complainant that they could not be seated indoors,³ to which Complainant objected. She also spoke with Bevins, who confirmed that Complainant could not be seated inside with her dog.

² The record indicates that there was indoor seating available at the bar. During the IRC, Respondents provided a floor plan of Jackie's Too which labeled which seats were indoors and which were outdoors. The floor plan indicates that tables 11-15 and 90-95 are indoors, but Respondent took the position that these tables are outdoors because during the summer, sliding doors leading outside are completely open.

³ The record indicates that during the late summer months, there is less wait staff available.

- d) After being denied indoor seating by Hostess and Bevins, Complainant called the Police. The Officer reported that Respondents did not allow Complainant to be seated inside because she did not want the dog urinating on the carpet.⁴

IV. Analysis:

- 1) The MHRA requires the Commission to “determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even change of Complainant prevailing in a civil action.
- 2) 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).
- 3) 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 others.” 5 M.R.S. § 4592(8).
- 4) 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. Me. Hum. Rights Comm’n Reg. Ch. 7, § 7.16(C)(7).
- 5) 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. Me. Hum. Rights Comm’n Reg. Ch. 7, § 7.16(C)(2)-(4).
- 6) 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 claim that they denied Complainant indoor seating as she requested because no indoor seating was available on September 13, 2017. Respondents told Complainant that she would have to

⁴ Respondents state that there is no carpet inside Restaurant.

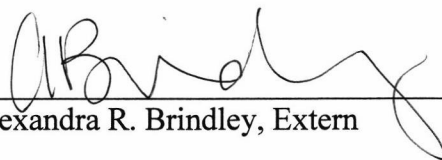
sit outside.⁵ The record indicates that there was indoor seating available at the bar, and that Companion and Complainant heard Hostess offering others indoor seating. The evidence does not support Respondents' reasoning.

- c) The police report submitted by Complainant indicates that Respondents told Officer that Complainant could not sit inside because Complainant's service animal might relieve itself inside. There is no reason to believe that Officer falsified his report, which corroborates Complainant's position.
 - d) Respondents did not suggest that Complainant's service animal was a direct threat or a public safety concern or would damage property or interfere with others' enjoyment of the premises.
- 7) It is found that Respondents discriminated against Complainant based on her disability by unlawfully denying her equal access to the restaurant.

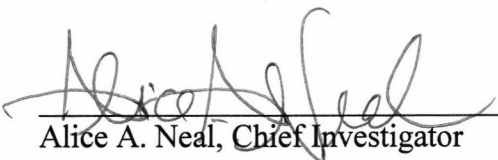
V. Recommendation:

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

There are **Reasonable Grounds** to believe that Respondents Jacqueline Bevins and Jackie's Too discriminated against Complainant Karen Wood on the basis of disability, and the claims should be conciliated in accordance with 5 M.R.S. § 4612(3).



Alexandra R. Brindley, Extern



Alice A. Neal, Chief Investigator

⁵ Complainant argues that the reason Respondents said she had to sit outside was due to her service animal. Respondents disagree, and provided that there was no indoor seating available that day.