



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT PA14-0362

September 25, 2015

**Craig A. Widdecombe (Rockland)**

v.

**Jan Mee Restaurant (Portland)<sup>1</sup>**

### **I. Complainant's Complaint:**

Complainant Craig A. Widdecombe alleged that Respondent Jan Mee Restaurant discriminated against him on the basis of disability by denying him the full and equal enjoyment of a place of public accommodation by refusing to allow him to use his service animal.

### **II. Respondent's Answer:**

Respondent denied discriminating against Complainant. Respondent was concerned about sanitation.

### **III. Jurisdictional Data:**

- 1) Dates of alleged discrimination: May 12, 2014.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): July 18, 2014.
- 3) Respondent was an establishment that offered services to the general public and was a "public accommodation" under the Maine Human Rights Act ("MHRA") and Americans with Disabilities Act ("ADA").
- 4) Complainant is not represented by counsel. Respondent is represented by Roger Therriault, Esq.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties and a witness interview. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

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<sup>1</sup> Complainant's complaint listed Respondent's name as Jan Mee Restaurant. Respondent provided that its legal name is Red Sun Co, Inc. Because Complainant has not amended his complaint to use Respondent's legal name, the name used by Complainant has been retained.

**IV. Development of Facts:**

- 1) The parties and issues in this case are as follows:
  - a) Complainant has [REDACTED] disabilities for which he has a service animal, a [REDACTED] [REDACTED]
  - b) Respondent was a restaurant that operated in Portland, Maine until it closed on June 29, 2014.
- 2) Complainant provided the following in support of his position:
  - a) On May 12, 2014, at approximately 5:15 p.m., Complainant arrived at Respondent's restaurant with a friend ("Friend") and Complainant's service animal to have dinner. Complainant had patronized Respondent's restaurant in the past, prior to having a service animal, without incident. On this evening, as Complainant and Friend entered Respondent's restaurant, a waitress ("Waitress") told Complainant he could not enter with his dog. Complainant identified his dog as a service animal and indicated that his dog needed to stay with him.
  - b) The owner ("Owner") was notified about Complainant's service animal. Owner came over to Complainant and told Complainant that he could not enter with his service animal. Then Owner offered to seat Complainant and Friend in a back room away from the other customers. Owner told Complainant that he could not eat from the buffet table. Complainant told Owner that he would call the police about Owner's denial of services. Owner told Complainant, "Go ahead, call the police and your lawyers".
  - c) Complainant was never allowed entry or seated in Respondent's restaurant. Owner never offered to assist Complainant with food from the buffet table.
  - d) A police officer ("Officer") arrived at Respondent's restaurant and spoke to Owner. Owner told Officer that he was concerned about sanitation issues related to Complainant's service animal. Officer told Owner that denying entry to a disabled individual with a service animal was illegal. Owner told Officer that he understood the law. Owner still refused to allow Complainant to go back inside the restaurant. Owner was issued a summons for denying admittance to a service animal.
- 3) Respondent provided the following in response to Complainant's Complaint:
  - a) Owner's English is heavily accented.
  - b) Owner did not have any problem seating Complainant or Friend; Owner did not want to seat Complainant and his dog near the buffet table.<sup>2</sup> Owner identified that Complainant's dog was a service animal. This was the first time Complainant brought his service animal to the restaurant. A dispute arose when Complainant insisted on taking his service animal to the buffet table. Owner said, "[Complainant] told me he has to bring the service dog with him, to

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<sup>2</sup> *Investigator Note:* Respondent's Answer states that Owner seated Complainant. Respondent stated in a later submission that Complainant was offered a seat in an area away from the buffet table, but Complainant chose not to be seated.

the buffet tables in the middle of the dining area, but, I told him due to Health Department Sanitary Code on serving food, he cannot have the dog with him. Instead, I offered him a seating area which is not going to cause a problem[] with the Codes, or upset other patrons who were in the dining area before him. I also offered my generous service that I would let him sit the dog and I would help him at the buffet tables with the foods. He refused and went outside to call the police.”<sup>3</sup>

- c) Owner denied telling Complainant that he was not welcome with his service animal.
- d) Waitress observed the incident and concurred that her supervisor “was following the Health Department Sanitary Code at the time”.
- e) Owner did not think it was appropriate to take the service animal to the buffet table. Owner thought Respondent would violate health code if he permitted Complainant’s service animal at the buffet table. Instead, Owner offered to help Complainant at the buffet table as a further accommodation. Owner believed he would be responsible if a rule was broken and that he would lose hundreds of dollars’ worth of food if Complainant’s service animal was allowed at the buffet table. This was not an acceptable accommodation for Complainant. Owner believed there was no need for service animal at the buffet table.<sup>4</sup>
- f) Owner believed that “[Complainant] did it on purpose to cause trouble on that day because, firstly, he cannot ██████ personally and, secondly, how the service dog would assist him at the buffet tables and know so many different foods on there.”
- g) If Complainant was asked to leave, it was because he insisted on taking his service animal to the buffet table.
- h) Owner spoke to Officer. Officer then spoke to other customers in the restaurant and told them to leave the establishment because Owner would not serve a customer with a disability.
- i) Owner was issued a criminal summons for denying access to Complainant and his service animal to Respondent’s restaurant. Owner pled guilty to that charge.
- j) No internal corrective action took place following the May 12, 2014 incident. Respondent did not deny access to it restaurant to individuals with service animals between 2011 and 2014.

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<sup>3</sup> *Investigator Note:* The Commission requested copies of Respondent’s policies about its practices relevant to Complainant’s Complaint. No policies were provided. Respondent did not identify which health codes were violated by Complainant bringing his service animal to the buffet table.

<sup>4</sup> *Investigator Note:* Title 17 Maine Revised Statues (“M.R.S.”) § 3966 provides that: “It is unlawful for any person to bring an animal into a store where food is sold for human consumption or into a restaurant where food is prepared and served on the premises. This section does not apply to a person requiring the services of a service animal.” (Emphasis added.)

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4) Investigator:

a) The Commission received a copy of the Police Incident Report related to Complainant's complaint. Officer's statement provided:

- i. On May 12, 2014, Officer arrived at Respondent's restaurant at approximately 5:51 p.m. in response to Complainant's call. Complainant has a [REDACTED] requiring a service animal and Respondent denied Complainant and his service animal entrance to Respondent's restaurant.
- ii. Complainant waited outside of Respondent's restaurant. Complainant told Officer that he intended to eat dinner that evening at Respondent's restaurant. Complainant had been a long-time patron and had not previously had an issue with management. Complainant had recently obtained a service animal to assist him with his [REDACTED] [REDACTED] [REDACTED]. Complainant showed a card identifying his dog as a service animal.
- iii. Complainant reported to Officer that when Complainant and Friend entered Respondent's restaurant, they were stopped by Waitress. Waitress told Complainant that he could not enter with his dog. Complainant told Waitress his dog was a service animal and indicated that his service animal needed to stay with him. Waitress brought Owner over, and Owner also told Complainant that he could not enter with his service animal. Owner offered to seat Complainant and Friend in a back room away from other customers. Complainant told Owner he would call the police. Owner said, "Go ahead call the police, and your lawyers". Complainant left Respondent's restaurant and called the police. Complainant felt embarrassed and unwanted by Respondent's employees.
- iv. Officer spoke to Owner. Owner confirmed that Complainant attempted to go into Respondent's restaurant for service. Owner was concerned about sanitation issues related to Complainant's service animal. Owner told Complainant that he would not be allowed near the buffet table or other customers. Officer expressed to Owner that he understood Owner's concern about sanitation, and then discussed with Owner that under the ADA, Owner's actions were illegal. Owner said he understood the law, but that he would not let Complainant back in. Officer was concerned that Owner might not understand what he was saying and told Owner he could face possible criminal prosecution if he did not allow Complainant into Respondent's restaurant to enjoy the services provided by Respondent. Owner told Officer to take him to jail, and "do what you need to do but he isn't coming back in".
- v. Officer issued a criminal summons to Owner for Denying Admittance to a Service Dog. Complainant provided a written statement.

b) During a phone interview with Friend, Friend provided:

- i. Friend accompanied Complainant to Respondent's restaurant to have dinner. Complainant had his service animal with him. They made it as far as the front hallway, where Owner refused to let them into Respondent's restaurant. Owner told them they could not bring the dog in. Complainant tried to explain that the dog was a service

animal. Owner said the service animal could not go in, "not in my restaurant". Owner said they could sit in the back and he would bring food to them. Owner was rude.

- ii. Complainant tried to explain that Owner could get in trouble for not letting Complainant in with his service animal. Owner said he did not care and told them to call the police, call your lawyer. Complainant called the police. Friend was able to sit at the bar and have a soda while Complainant called and spoke with the police.
- iii. They did not discuss the buffet table with Owner.

## **V. Analysis:**

- 1) 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 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.
- 2) The MHRA prohibits discrimination on the basis of disability by 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 or public entity. 5 M.R.S. §4592(1).
- 3) Here, Complainant alleged that Respondent discriminated against him by denying him the use of his service animal in accessing Respondent's services. Respondent denied discriminating against Complainant.<sup>5</sup>
- 4) The MHRA provides, in part, that it is unlawful:

For 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. The use of a service animal may not be conditioned on the payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such a service animal.

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. Commission Regulations, 94-348 Code of Maine Regulations Chapter 7, § 7.16(C)(1).

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<sup>5</sup> Respondent frames the offer to bring Complainant food from the buffet table as a reasonable accommodation based on Respondent's concern about sanitation. Complainant's Complaint was based on his denial of access to Respondent's restaurant to enjoy its services, not a request for a modification based on a disability. As such, a claim for reasonable modification is not analyzed in this report.

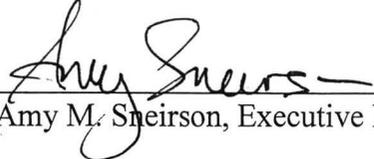
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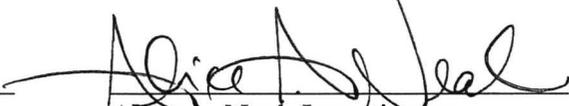
- 5) Here, Complainant had a service animal and he was told by Owner that he could not enter Respondent's restaurant with his service animal. Alternatively, Complainant was told he could not go to the buffet table and would have to sit away from other customers.<sup>6</sup> As stated above, refusal to permit the use of a service animal is a violation of the MHRA.
- 6) Respondent argues that it offered an accommodation to Complainant, to bring food to him, but that it was not acceptable. This offer does not impact the outcome here, as Complainant had a right to bring his service animal into the restaurant. Respondent was concerned about sanitation; however, there is a statutory exception pertaining to service animals in restaurants. Respondent's further offers to relegate Complainant to a specific seating area and Owner's refusal to allow Complainant to take his service animal to the buffet table show discriminatory intent, despite Owner's characterization of his own actions as generous.
- 7) After Officer spoke to Owner and told Owner that he might face prosecution for denying access to Complainant, Owner said Complainant would not be allowed back in, even telling Officer to take him to jail. Thus, the offer to seat Complainant and bring him food was no longer an option. Friend corroborated that Owner denied Complainant entry because of his service animal. In fact, Friend entered the restaurant alone and had a soda while waiting for Complainant. Complainant left Respondent's restaurant. Complainant was unable to enjoy Respondent's services.
- 8) It is found that Respondent discriminated against Complainant on the basis of disability by refusing to allow the use of his service animal.

**VI. Recommendation:**

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

There are **Reasonable Grounds** to believe that the Jan Mee Restaurant discriminated against Craig A. Widdecombe on the basis of disability by denying him access to the full and equal enjoyment of a place of public accommodation; and conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).

  
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Amy M. Sheirson, Executive Director

  
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Alice A. Neal, Investigator

<sup>6</sup> Respondent's inconsistent statements about whether Complainant was seated in Respondent's restaurant could indicate that Respondent's explanations are pretextual or irrelevant and ultimately that its actions were discriminatory.