



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT

PA16-0011

November 7, 2017

**Christopher Thomas (Westbrook)**

v.

**Cafua Management d/b/a Dunkin Donuts<sup>1</sup> (Methuen, MA)**

### Summary of Case:

Complainant, a customer at coffee shop managed by Respondent, a management services company, alleged that a clerk denied him service because of his sexual orientation. Respondent denied discrimination and claimed that Complainant was denied service because he was confrontational with an employee. The Investigator conducted a preliminary investigation, which included reviewing all of the documents submitted by the parties and holding a Fact Finding Conference ("FFC"). Based upon this information, the Investigator recommends that the Commission find reasonable grounds to believe that Complainant was discriminated against on the basis of sex/sexual orientation.

### Jurisdictional Data:

- 1) Date of alleged discrimination: 11/8/2015.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): 1/11/2016.
- 3) Respondent Cafua Management d/b/a Dunkin Donuts ("DD") is a restaurant and a "public accommodation" subject to the Maine Human Rights Act ("MHRA"), and state rules and regulations.
- 4) Complainant is not represented by counsel. Complainant is represented by Matthew D. Freeman, Esq.

### IV. Development of Facts:

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

Complainant is gay. On 11/8/2015, he was refused service at DD's store located on Deering Avenue in Portland, Maine. The clerk ("Clerk") told Complainant that she would not serve a homosexual. She said

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<sup>1</sup> Complainant named Cafua Management d/b/a Dunkin Donuts as the Respondent in his complaint; Respondent provided that its legal name is Cafua Management Company, LLC. Because Complainant did not amend his complaint to use the name Respondent provided, the name Complainant used has been retained.

she could tell he was gay by his voice and mannerisms. Complainant immediately reported the incident to the District Manager and he requested that the store's owner contact him, but this never happened.

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

On 11/8/2015, Complainant reported to the DD consumer hotline that he had been denied service because of his sexual orientation. He said his mother had been treated rudely, and that he entered the store to ask to for a manager. He reported that Clerk refused to provide her name, and that when she saw his rainbow keychain she stated, "I'm not going to serve you, you fag." The store manager investigated. Clerk denied making the comment and the only coworker present said that she did not recall Clerk using the word "fag." Management contacted Complainant twice over the next few days, but he did not return these calls.

3) The Investigator made the following findings of fact:

- a) On 11/8/2015, Complainant visited Respondent's store location on Deering Ave. in Portland. He was accompanied at the time by his mother (who drove) and one of her friends.
- b) Complainant's mother ("Mother") entered the store, most likely after her friend was already inside. Mother had a verbal dispute with Clerk. After Mother returned to her vehicle, Complainant entered the store. He likely did so in order to complain about the incident involving Mother, although he denies this and claims he entered to purchase a soft drink.
- c) Complainant also had an argument with Clerk. Respondent claimed that the argument was a dispute about the incident involving Mother, while Complainant claims the argument related to Clerk calling him a "fag," and refusing to serve him because of his sexual orientation.
- d) Complainant asked to see the manager, but he was not on duty. Complainant asked Clerk for her name but she initially refused to provide it. Clerk refused to serve Complainant. Clerk claims that this was because she was insecure and uncomfortable because Complainant was confrontational.
- e) Clerk walked away from the cash register area for a few minutes. More customers entered the store. Clerk returned to the cash register and told Complainant her name. Complainant claims that he then purchased a Coke and left. The employee claims she offered to take his order but he said he did not want anything.
- f) Complainant called the store several times after this incident in order to speak to the store manager. Complainant claims that after he made this request during the initial call, Clerk hung up on him, so he called back a few more times but no one ever answered. Clerk claims that Complainant called the store five or six times in order to harass her.
- g) Later that day, Complainant contacted Respondent's corporate office to file a complaint. Notes taken by Respondent indicate that Complainant claimed his mother had been treated rudely by an employee and that he entered the store to purchase a soda. He further claimed that after the employee saw his rainbow keychain, she said, "I'm not going to serve you, you fag." He was very upset that he was denied service.
- h) Complainant spoke to the District Manager about the incident, who informed Complainant that the situation was under investigation. Respondent claims that the District Manager and the Director of

Communications and Marketing subsequently left phone messages for Complainant but he never returned their calls. Complainant denies that any further contact occurred.

**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 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 directly or indirectly refuse, discriminate against or in any manner withhold from or deny the full and equal enjoyment to any person, on account of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin, any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to accommodation, advantages, facilities, goods, services and privileges may depend.

5 M.R.S. § 4592(1). Because this language is similar 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.

3) In order to establish a prima-facie case of public accommodations discrimination, Complainant may show that he “(1) is a member of a protected class, (2) attempted to contract for services and afford himself or herself of the full benefits and enjoyment of a public accommodation, (3) was denied the full benefits or enjoyment of a public accommodation, and (4) such services were available to similarly situated persons outside his or her protected class who received full benefits or were treated better.” *Jackson v. Waffle House, Inc.*, 413 F.Supp.2d 1338, 1361 (N.D.Ga. 2006) (Title II).

4) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse treatment. *Id.* at 1355-56. *See also Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1262 (Me. 1979). After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse action. *See id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet his overall burden at this stage by showing that (1) the circumstances underlying the articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16. In order to prevail, Complainant must show that he would not have suffered the adverse treatment but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See City of Auburn*, 408 A.2d at 1268.

5) Here, Complainant established a prima-facie case by demonstrating that he was a member of a protected class (gay), he attempted to access the full benefits and enjoyment of a public accommodation by making a

purchase, he was refused service, and others outside of his protected class were allowed to purchase items at the store.

- 6) Respondent articulated a legitimate, non-discriminatory reason for the adverse treatment: Complainant was denied service (at least initially) because he had been confrontational with an employee.
- 7) Ultimately, Complainant established that it is more likely than not that he was subjected to less favorable terms and conditions in accessing a public accommodation because of his sex/sexual orientation, with reasoning as follows:
  - a. Complainant was generally credible at the FFC, despite some inconsistencies in his recollection of the events. The most important of these inconsistencies relate to his description of what led Clerk to conclude that he is gay. In his intake and sworn charge he asserted that Clerk stated she could tell he was gay by his voice and mannerisms, while in his written rebuttal to the charge (and at the FFC), he claimed that it was his rainbow keychain that led to employee making the comment about not serving him because he was a "fag." In addition, Complainant is not found to be credible on his claim that the sole reason he entered the store was to purchase a beverage, and not to confront the employee about her interaction with his mother.
  - b. However, Complainant was found to be credible on the primary issue in this case – whether he was refused service because of his sexual orientation. It is undisputed that at some point while Complainant was in the store he stated that he wanted to make a purchase, and that Clerk (at least initially) refused to serve him.<sup>2</sup>
  - c. Clerk claimed that she refused to serve Complainant because his confrontational attitude made her feel "insecure and uncomfortable." However, even in her version of the event, she confirmed that Complainant asked for her name and position and that she refused to provide it to him. This suggests that Clerk knew she had done something inappropriate, since she would have no reason not to provide this information if she had done nothing wrong. She claims that she refused to provide her name because Complainant was not in the store when the incident with Mother occurred; this explanation is not credible.<sup>3</sup>
  - d. Clerk's written statement also raises questions about consistency and credibility.<sup>4</sup> She claimed that a man (presumably Mother's friend) placed an order, and that when it was time to pay, he looked like he was trying to figure out how to pay for it. Clerk then wrote that, "a few minutes after receiving his coffee and donuts, a woman (presumably Mother) walked in." Clerk said it appeared the male customer and the woman knew each other because "they were laughing and talking and it looked like she was going to pay." It does not make sense that Clerk would have given the man coffee and donuts without paying for it and then allow him to stand at the counter for "a few minutes," on the off chance that someone might come in and pay for his order. Clerk also wrote that it was "about 15 minutes later" that

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<sup>2</sup> Clerk provided that the only reason she ultimately served Complainant was because other customers began stacking up behind him in line.

<sup>3</sup> The employee's refusal to provide this information occurred prior to Complainant allegedly calling her a "hooker," which – if true – might have explained why she would not want him to know her name. Complainant denies making this statement.

<sup>4</sup> Both the employee and the District Manager involved in the incident were no longer employees at the time of the FFC.

Complainant entered and asked to speak to a manager. It seems unlikely that it would have taken this much time for Mother to describe the incident and for Complainant to react by entering the store.

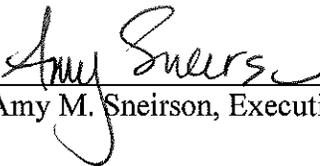
- e. Complainant also reported the incident to Respondent's corporate office shortly after it occurred, and the information he reported is largely consistent with the information he provided in his complaint and at the FFC. Although Complainant did not mention his gay pride keychain as a motivating factor in Clerk's actions in his sworn charge, he did include this in his report to corporate, in his rebuttal to Respondent's answer, and at the FFC. The absence of this detail in his charge does not necessarily contradict his claim that the employee also stated that she knew Complainant was gay due to his voice and mannerisms.

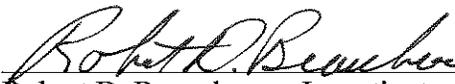
8) Discrimination on the basis of sex/sexual orientation is found.

**VI. Recommendation:**

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

- 1) There are **Reasonable Grounds** to believe that Christopher Thomas was subjected to discrimination on the basis of sex/sexual orientation when he was denied full and equal access to the goods and services offered by Respondent Cafua Management d/b/a Dunkin Donuts; and
- 2) The claim should be conciliated in keeping with 5 M.R.S. § 4612(3).

  
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Amy M. Sneirson, Executive Director

  
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Robert D. Beauchesne, Investigator