

Clifford B. Aaron v. 88 Café and Johnny Wong, Individually
Docket No.: PG10WB-60508

SUMMARY OF RESPONSE

Respondent denied that Complainant was discriminated against for any unlawful reason, including disability. Respondent admits that when Complainant and his family appeared at the restaurant he informed Complainant that animals are not allowed on the premises. Respondent's, Mr. Wong asserts he did not realize that Complainant was blind, or that the dog was a guide dog. However, after Respondent was shown identification to substantiate that Complainant was disabled, Mr. Wong offered Complainant's party, including Alto, a table on the ground floor, which Complainant refused and chose to call the police. Lastly, Respondent asserts he did not intend to discriminate against Complainant but was concerned that Complainant's dog would frighten his other customers.

BACKGROUND

Complainant, who resides in Livingston, Essex County, New Jersey, has a visual impairment in that he is blind. Due to this disability, Complainant is accompanied with his guide dog, Alto. Complainant visited Respondent's restaurant on February 5, 2009 with his wife, daughter and guide dog, Alto.

Respondent is a Chinese restaurant, known as 88 Café. The restaurant is located in Livingston, Essex County, New Jersey. Mr. Johnny Wong is the manager of the restaurant.

SUMMARY OF INVESTIGATION

This investigation revealed sufficient evidence to support a reasonable suspicion that Complainant was subjected to unlawful discrimination when he was denied the services offered by Respondent to the general public. Pursuant to N.J.S.A. 10:5-29, any person with a disability who is accompanied by a service dog trained by a recognized agency is entitled to the same advantages available to a non-disabled person.

On February 5, 2009, Complainant entered Respondent's restaurant, 88 Café, with his wife and daughter to have dinner. Since Complainant is visually impaired (blind), he was also accompanied with his trained guide dog, a golden retriever, named Alto. Alto received his training at the Seeing Eye organization in Morristown, New Jersey and wears a guide dog harness to identify him as a working guide dog and to differentiate him from a family pet.

There is no dispute that when Complainant and his party entered the restaurant he was informed that pets are not allowed. There is also no dispute that Complainant presented Respondent

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with identification to support Complainant's disability and that Alto was his guide dog. The investigation found that Respondent eventually offered Complainant a table on the main floor near the kitchen, but Complainant insisted that he and his family be seated in the main dining room near a window. The Respondent, Mr. Wong, admits that there was an open table in the main dining room, however, when Respondent delayed seating Complainant, Complainant decided to call the police.

According to Respondent Mr. Johnny Wong, the restaurant had a "no pets allowed" policy but in his rebuttal to the discrimination charge, Mr. Wong stated he "decided to make an exception to the restaurant policy and offered Mr. Aaron's party, including Alto, a table on the ground floor because I was not sure if the other patrons upstairs would mind having Alto sit near them." This table was located near the kitchen and Complainant found this unacceptable. However, after the police were called and the officers educated Mr. Wong pertaining to State and Federal laws that protect persons with seeing eye dogs, Mr. Wong agreed that Complainant and his family could sit at any open table. Nevertheless, before he would seat Complainant, Mr. Wong admits that he polled the customers asking if they would mind having Alto seated near them. Complainant stated that this action by Mr. Wong only added to his humiliation and Complainant decided to leave the premises and have dinner elsewhere.

In reviewing the police report, it shows that Ptl. Michael Herbert and Ptl. Michael Prendergast responded to the call, arriving at the restaurant at approximately 6:00 p.m. The officers wrote that, "manager Johnnie Wong stated that he wanted to seat the Aarons at a table away from other patrons because they might be afraid of the dog. The report also notes that Mr. Wong asked the patrons in the dining room if they would be bothered by the dog.

ANALYSIS

At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40,56 (App. Div.1988), rev'd on other grounds, 120 N.J. 73 (1990), cert.den., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218,226 (App.Div.1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

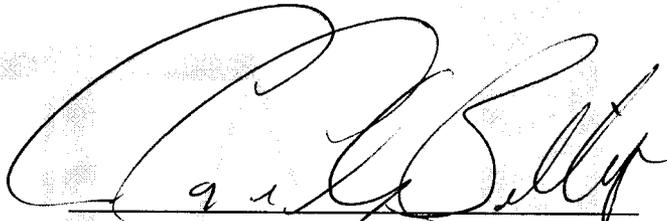
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In the instant case, Respondent failed to provide a legitimate non-discriminatory reason for not allowing the service dog to enter the restaurant with Complainant. Instead, the investigation disclosed sufficient credible evidence to support a reasonable suspicion that Complainant was subjected to unlawful discrimination when he was denied the same service offered to a non-disabled patron, solely because he was accompanied with a service dog.

FINDING OF PROBABLE CAUSE

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

July 10, 2009
Date


C. Carlos Bellido, Esq., Acting Director
New Jersey Division on Civil Rights