

_____)	
Dalvin Adebiyi and the Director of)	
the NJ Division on Civil Rights,)	<u>Administrative Action</u>
)	
Complainants,)	FINDING OF PROBABLE CAUSE
)	
v.)	
)	
Broughten Deli,)	
)	
Respondent.)	
_____)	

The Director of the New Jersey Division on Civil Rights (DCR), pursuant to N.J.S.A. 10:5-14 and attendant procedural regulations, hereby finds that probable cause exists to believe that a discriminatory practice has occurred in this matter in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42.

This is a disability discrimination case. The material facts are not in dispute. Complainant Dalvin Adebiyi, who resides in Bloomfield, New Jersey, is legally blind.¹ He has used a guide dog for the past five years. Respondent Broughten Deli, located on 81 Broughten Avenue, Bloomfield, New Jersey, is owned and operated by Kalpana Sonani. Ms. Sonani's husband is Devraj Sonani.

In June 2013, Complainant contacted the Division for the Blind & Visually Impaired (DBVI) within the New Jersey Department of Human Service, for assistance in learning a walking route to a pharmacy.

¹ The Director of the Division on Civil Rights hereby intervenes as a complainant in this matter in the public interest pursuant to N.J.A.C. 13:4-2.2 (e). However, for purposes of this determination, the term "Complainant" will refer solely to Mr. Adebiyi.

The DBVI assigned an orientation and mobility specialist--Instructor Ireneo Martinez--to assist Complainant. On July 12, 2013, and August 2, 2013, Martinez and Complainant walked the new route. On August 2, 2013, at approximately 12 p.m., Complainant became hungry and they entered Respondent's deli to buy a sandwich.

Devraj Sonani asked Complainant to remove the dog from the shop. Martinez identified himself and explained that he was assisting Complainant, and that the dog was a service animal that by law was allowed to enter the establishment. Sonani maintained that although both men could enter the deli, the dog could not.

On August 19, 2013, Complainant filed a verified complaint with the DCR alleging that Respondent was "denied service in a place of public accommodation because of his disability."

a. Guide Dogs

The LAD makes it illegal to discriminate against a person because he or she has a disability and is accompanied by a guide dog. The LAD states:

Any person with a disability accompanied by service or guide dog trained by a recognized training agency or school is entitled, with his dog, to the full and equal enjoyment, advantages, facilities and privileges of all public facilities, subject only to the following conditions:

- a. A person with a disability, if accompanied by a service or guide dog, shall keep such dog in his immediate custody at all times;
- b. A person with a disability accompanied by a service or guide dog shall not be charged any extra fee or payment for admission to or use of any public facility;
- c. A person with a disability who has a service or guide dog in his possession shall be liable for any damages done to the premises of a public facility by such dog.

[N.J.S.A. 10:5-29.]

The LAD defines guide dogs as seeing-eye or hearing-ear dogs "trained by any organization generally recognized by agencies involved in the rehabilitation of the blind or deaf as reputable and competent to provide dogs with training of this type." N.J.S.A. 10:5-5s.

Here, Respondent does not challenge whether the Complainant had a qualifying disability or whether the dog was a guide dog. Instead, Respondent argues that the

Complainant was not denied service. Respondent argues, "The Complainant was accompanied by another personnel [sic], Mr. Martinez, thus the Respondent requested the Complainant to wait outside while Mr. Martinez obtain [sic] his items." Respondent stated, "The Respondent never bluntly stated in any manner for the Complainant and his assistance [sic] to directly leave, but requested that one person stay with the dog outside and one person gladly shop in the store on behalf."

Respondent also notes that it had heard a week earlier about a "tragic experience from another customer about a dog that was well trained by its owner yet violently bit the customer's child's head" requiring the child to get thirteen stitches. Respondent insists that it did not mean to offend or harm Complainant but simply "wanted to take precaution for the well-being" of its customers.

The Director finds Respondent's arguments to be unpersuasive. The LAD states that a person with a disability is "entitled, with his dog, to the full and equal enjoyment, advantages, facilities and privileges of all public facilities." N.J.S.A. 10:5-29 (emphasis added). Thus, any public facility such as a store, park, or college, which imposes a blanket rule that persons with disabilities may enter as long their guide dogs are left off the premises is in violation of the LAD.

The issue of service animals is also governed by the Americans with Disabilities Act (ADA). The U.S. Department of Justice, which enforces the ADA, issued a guidance document that addresses the safety issue raised by Respondent. See U.S. Dept of Justice, Civil Rights Div., "Service Animals," ADA Revised Requirement (2010). In particular, the DOJ guidance document states that a person with a disability can be asked to remove the service animal from the premises if the animal is out of control and the handler fails to take effective action to control it or the dog is not housebroken. Ibid. However, a general fear of dogs is not a valid reason for denying access or refusing service to people using service animals. Ibid. Here, there was no allegation or evidence that Complainant's dog was in any way out of control.

b. Place of Public Accommodation

The LAD also makes it illegal for any “owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof” on the basis of disability. N.J.S.A. 10:5-12(f). The LAD defines “place of public accommodation” broadly to include any “retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises . . .” N.J.S.A. 10:5-5(l).

The Director finds, for purposes of this disposition, that the Respondent qualifies as a place of public accommodation and Complainant is a person with a disability who was denied “accommodations, advantages, facilities or privileges thereof.” Just as Respondent could not lawfully refuse to serve a customer unless he agreed to leave his cane, wheelchair, or medication outside the deli, its conduct toward Complainant amounted to disability discrimination.

Finding of Probable Cause

At the conclusion of an investigation, the DCR Director is required to determine whether “probable cause exists to credit the allegations of the verified discrimination.” N.J.A.C. 13:4-10.2. “Probable cause” for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” Ibid. A finding of probable cause is not an adjudication on the merits, but merely an initial “culling-out process” whereby the DCR makes a preliminary determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” 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. In view of the above, the Director finds that there is a “reasonable ground of suspicion supported

by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that" the Respondent violated the LAD on two separate grounds: N.J.S.A. 10:5-29 (denial of access to public facility to person with a disability accompanied by guide dog) and N.J.S.A. 10:5-12(f) (disability discrimination in a place of public accommodation).

THEREFORE, it is hereby determined and found that probable cause exists to credit Complainant's allegations of discrimination.

DATE:

1-14-14



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS