

**STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. PN25HB-66134**

██████████ and )  
RACHEL WAINER APTER, Director, )  
New Jersey Division on Civil Rights )  
 )  
Complainants, )  
 )  
v. )  
 )  
OCEAN PLACE RESORT AND SPA, )  
 )  
Respondent. )

Administrative Action

**FINDING OF PROBABLE CAUSE**

On September 29, 2016, ██████████ (Complainant) filed a verified complaint (Verified Complaint) with the New Jersey Division on Civil Rights (DCR), alleging that Ocean Place Resort & Spa (Ocean Place or Respondent), discriminated against her based on disability, in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49 (LAD). Respondent denied the allegations of discrimination in their entirety. DCR’s investigation found as follows.

**SUMMARY OF INVESTIGATION**

Ocean Place is a hotel and spa facility located on the beachfront in Long Branch, New Jersey. Ocean Place markets its location on the beachfront and its views of the Atlantic Ocean as one of its hallmarks and a key piece of the experience it offers. Ocean Place has a total of 255 guest rooms, 44 of which have east-facing views and are classified by Ocean Place as “ocean front.” Ocean Place has 202 guest rooms it classifies as a “coastline view.” Coastline view rooms have a north-facing or south-facing view, consisting primarily of other shoreline buildings and spaces adjacent to the beach. In the coastline view rooms, the ocean is partially or peripherally visible from the room’s balcony.

Complainant, who is physically disabled and uses a wheelchair for mobility, alleges that in late August 2016, she called Respondent to reserve a wheelchair-accessible hotel room with an ocean view. Complainant alleges that the person with whom she spoke stated that Ocean Place did not have any wheelchair-accessible rooms with an ocean view. Complainant alleges that she asked why, and the person with whom she spoke<sup>1</sup> stated “unfortunately, we don’t have anything with an ocean view or ocean front view that is accessible for wheelchairs.” Complainant alleges

---

<sup>1</sup> Complainant did not request the person’s name or title.

that because there were no accessible<sup>2</sup> rooms with an ocean view, she and other disabled persons were denied the accommodations that Ocean Place offers to non-disabled persons. Complainant stated that the view was important to her because, as a result of her disability, she is not able to get in the water or come close to the water and would like to admire the ocean from her guest room.

In its response to the Verified Complaint, Respondent denied discriminating against Complainant or other disabled persons. Respondent stated that it complies with “all public accommodations statutes and regulations,” does not deny service based on disability, and that all of Ocean Place’s handicap accessible rooms have “an ocean view.” Specifically, Respondent stated that seven (7) of its guest rooms are handicap accessible and that each of those rooms has an ocean view. Respondent provided DCR with a photo of the view from one of its rooms designated accessible. In the photo, the ocean is partially visible at an angle to the balcony. The photo appeared to be taken from a coastline view room.

Respondent did not dispute that Ocean Place has no “ocean front” accessible rooms. Instead, Respondent stated that a change to the configuration of guest rooms to provide an ocean front accessible room was not readily achievable and would constitute an undue burden. Respondent stated that “an obligation to provide disabled individuals with the option to book every conceivable room category that [Ocean Place] offers to non-disabled individuals would be extremely burdensome, onerous and present a substantial undue hardship.” Respondent did not detail why the undertaking would be extremely burdensome, nor did Respondent address the burden or cost of providing one accessible ocean front room or an accommodation to guests utilizing wheelchairs short of total reconfiguration of its guest rooms.

Respondent took the position that it was not legally required to provide accessible ocean front rooms or accessible rooms with any ocean view at all, so long as Ocean Place provided the required total number of accessible guest rooms. Respondent added that all of Ocean Place’s common spaces are accessible. Respondent’s position suggested that calculation of the cumulative accessible space at Ocean Place, as opposed to focus on the features of available guest rooms, was sufficient to demonstrate equal treatment of disabled guests.

DCR conducted a field visit to Ocean Place. DCR met with and asked questions of Respondent’s General Manager Kyle Johnson. During the field visit, Johnson stated that although the doors to the ocean front rooms are wide enough for wheelchair access, those rooms are not equipped as accessible. The field visit revealed that all accessible rooms are located on either the north or south side of the building and have a coastline view; none are located on the east side of the building facing the ocean. On its website and in its floor plans, Respondent makes a distinction between coastline view and ocean front rooms. The rooms are classified separately and ocean front rooms are priced higher.

DCR’s field visit also revealed that both standard and accessible rooms have a 2 to 3-inch kick plate at the base of the sliding glass doors that lead to the guest room balcony, blocking

---

<sup>2</sup> “Accessible” is used throughout this Finding of Probable Cause to denote a guest room equipped with features for wheelchair access and navigation. The term is not intended here to encompass features for disabled guests other than those allowing for wheelchair access and navigation.

wheelchair access to the balcony. Respondent stated that the kick plates are present to prevent flooding. There was no mechanism in place to allow a wheelchair to overcome the kick plate and Respondent did not offer, at the time of the DCR field visit or in written responses to DCR, information on how a wheelchair user would access a guest room balcony.

## ANALYSIS

At the conclusion of an investigation, the DCR Director is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2(a). “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.” N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial “culling-out process” in which the Director makes a threshold 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., 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

The LAD prohibits discrimination in places of public accommodation, including hotel and spa facilities, on the basis of a person’s disability. N.J.S.A. 10:5-4.1; N.J.S.A. 10:5-12(f); N.J.S.A. 10:5-5(l). Differential treatment is defined to include failure to make reasonable accommodations required to allow disabled patrons an equal opportunity to use and enjoy the premises. N.J.A.C. 13:13-4.11(a)(emphasis added) provides:

An owner ... of any place of public accommodation shall make reasonable accommodations to the limitations of a patron or prospective patron who is a person with a disability, including making such reasonable modifications in policies, practices, or procedures, as may be required to afford goods, services, facilities, privileges, advantages, or accommodations to a person with a disability, unless the owner, lessee, proprietor, manager, superintendent, agent or employee of the place of public accommodation demonstrates that making the accommodations would impose an undue burden on its operation.

N.J.A.C. 13:13-4.12 provides examples of reasonable accommodations, which include “making reasonable structural alterations” to a building. N.J.A.C. 13:13-4.12(a)(2). In determining whether an accommodation is *unreasonable*, factors to consider include the size and budget of the public accommodation, the nature and cost of the accommodation requested, and whether the accommodation will result in a fundamental alteration to the services offered. Ibid. Whether or not the place of public accommodation is subject to or already in compliance with

technical design or construction standards of another body of law, the reasonable accommodation standards of the LAD apply and may compel a modification. See Stoney v. Maple Shade Township, 426 N.J. Super. 297, 309 (App. Div. 2012). If a place of public accommodation can modify its premises in a manner that is not unduly burdensome and serves to allow disabled patrons an equal opportunity to use and enjoy the premises, the modification should be made. See id. at 316-17; see also Kalani v. Starbucks Corp., 117 F.Supp.3d 1078, 1091-92 (N.D. Ca. 2015) (finding requested modification of seating would allow disabled patron an opportunity to enjoy the same experience as non-disabled patrons and would not impose undue hardship on the business).

In addition to the public accommodations provisions of the LAD, Ocean Place is subject to Title III of the Americans with Disabilities Act, 42 U.S.C. 12181 to -12189 (ADA or Title III), and the ADA's accompanying rules of accessibility, the Americans with Disabilities Act Accessibility Guidelines (ADAAG).<sup>3</sup> The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation, and includes an obligation to make reasonable modifications necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities. 42 U.S.C. 12182(a); 42 U.S.C. 12182(b)(2)(A)(ii). The ADA also makes it unlawful to fail to remove an architectural barrier where such removal is readily achievable. 42 U.S.C. 12182(b)(2)(A)(iv). Whether such removal is readily achievable depends upon the financial and human resources available to the facility. 42 U.S.C. 12182(b)(2)(A)(iv).

The ADA is analogous to the LAD's disability protections and the legal standards flowing from the ADA are applicable to the analysis of LAD claims. Jones v. Aluminum Shapes, Inc., 339 N.J. Super. 412, 421 (App. Div. 2001). As to LAD disability claims, federal anti-discrimination law is "a key source of interpretive authority." Grigoletti v. Ortho Pharmaceutical Corp., 118 N.J. 89, 97 (1990); see also Borngesser v. Jersey Shore Medical Center, 340 N.J. Super. 369, 380 (App. Div. 2001) (applying federal disability law to an LAD claim). Where the ADAAG sets forth requirements for places of public accommodation, those requirements provide a framework to determine whether an LAD violation has occurred.

The ADAAG requires hotels to disperse accessible guest rooms "among the various classes of guest rooms" and "provide choices of types of guest rooms, number of beds, and other amenities comparable to the choices provided to other guests." 36 C.F.R. 1191, App. B, 224.5. An advisory statement accompanying this ADA regulation provides that "view" is one factor to be considered in providing disabled guests an equivalent range of guest room options. Ibid. Where the minimum number of guest rooms required to be made accessible is not sufficient to allow for complete dispersion across a hotel's various classes of guest rooms, "guest rooms shall be dispersed in the following priority: guest room type, number of beds, and amenities." 36 C.F.R. 1191, App. B, 224.5 (emphasis added).

The ADAAG also requires that exterior spaces serving the guest room, including balconies, be made accessible. 36 C.F.R. 1191, App. D, 806.2.2. Where the threshold to a guest room balcony cannot be constructed as accessible because wind or water damage will result, a ramp or

---

<sup>3</sup> The ADAAG provisions addressing places of public accommodation are adopted as federal regulations at 36 C.F.R. 1191, Appendices B and D, and 28 C.F.R. 26, Subpart D.

raised deck may be used in place of an accessible threshold. ADAAG 9.2.2. Access to the balcony over the raised threshold should be facilitated in some manner. Ibid.

Within the legal framework set forth above, DCR's investigation revealed sufficient evidence that Respondent subjected Complainant to unlawful discrimination on the basis of disability in failing to provide one or more accessible ocean front rooms. While Respondent may dispute precisely what Complainant was told during her phone call to Ocean Place, there is no dispute about the actual classification of guest rooms at the time of Complainant's call and the location of Respondent's 7 accessible guest rooms. All 44 ocean front rooms were unavailable to guests who required an accessible room. Further, Respondent had no guest rooms with an accessible balcony, rendering even the limited ocean view of the coastline view rooms unavailable to Complainant and other disabled persons.

Respondent emphasized throughout the investigation that an ocean view is available in all 7 of its accessible rooms, suggesting no distinction between the ocean front and coastline view rooms. Respondent's position was effectively contradicted by the classifications Respondent itself created and maintains on its own website, as the ocean front room is an upgrade from the coastline view room. DCR's investigation revealed information consistent with Respondent's classifications. In the investigator's inspection, the coastline view room provides a much more limited view of the ocean. Moreover, Respondent's failure to provide for wheelchair balcony access renders even the partial ocean view in the "coastline view" accessible rooms virtually unavailable to Complainant. An ocean front room with accessible interior features would at least have provided Complainant with a better opportunity to view the ocean, whereas the only meaningful opportunity the coastline view room provides is from a position on the balcony, where Complainant cannot reach in her wheelchair. DCR's field visit, as well as its review of the Ocean Place floor plans, website, and pricing, support a finding that when it comes to an ocean front view, Ocean Place does not offer the same or reasonably similar accommodations to disabled and nondisabled guests.

Through the time of the investigation, Respondent offered no alternative or modification that would have allowed Complainant to stay in an ocean front room or to access the balcony in a coastline view room. There is probable cause to believe this violates Ocean Place's obligations under the ADA and LAD to accommodate disabled guests. Ocean Place is required to disperse its accessible rooms among its various classes of guest rooms to the fullest extent possible. Its failure to modify even one ocean front room to render it accessible is without apparent justification, other than Respondent's belief that it has no legal obligation to make such modification. While Ocean Place stated that allowing disabled guests to book every conceivable room category was an extreme burden, it did not offer any information (technical, budgetary, personnel-related, or otherwise) to support that statement. Respondent also did not address the feasibility of providing something less than an accessible room in every room category. Finally, Respondent did not offer a technical or business reason for its decision in the first place to locate all accessible rooms on the north and south sides of the building with only "coastline views," rather than including accessible rooms on the ocean-facing east side of the building as well.

Linked to the issue of whether Respondent is required to provide one or more accessible ocean front rooms, Respondent has not introduced a means to overcome the kick plate at the threshold of the guest room balconies, foreclosing the only meaningful opportunity for

Complainant and other wheelchair users to view the ocean from a coastline view room. While the presence of the kick plate may serve a legitimate purpose, Respondent is nonetheless required to accommodate a wheelchair user's inability to access the balcony with a ramp or other mechanism.

In response to the absence of ocean front accessible rooms and the problem DCR noted with guest room balcony access, Respondent offered that common spaces at Ocean Place are accessible. While this is good news, it does not change the legal analysis, as disabled guests should, absent an undue burden, have the same opportunity to enjoy the guest rooms and view the ocean from the privacy of a guest room as non-disabled patrons.

Under the LAD and ADA, Respondent is required to provide disabled guests a choice of guest rooms comparable to the choices available to nondisabled guests unless it can prove an undue burden. DCR's investigation revealed sufficient evidence that, at least with respect to view and wheelchair balcony access, Respondent has not done so. And Respondent did not prove that its failure is justified by an undue burden, either technical, budgetary, personnel-related, or otherwise.

At this threshold stage in the process, there is sufficient basis to warrant "proceed[ing] to the next step on the road to an adjudication on the merits." Frank, 228 N.J. Super. at 56. Therefore, the Director finds probable cause to support Complainant's allegations that she was subjected to discrimination on the basis of disability. The Director joins this complaint, pursuant to N.J.A.C. 13:4-2.2(e), in the public interest to ensure the protection of all disabled persons who may seek the accommodations, advantages, facilities, or privileges offered at Ocean Place.



Rachel Wainer Apter, Director  
NJ Division on Civil Rights

Date: July 2, 2019