



Maine Human Rights Commission

51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330

Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711

www.maine.gov/mhrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

INVESTIGATOR'S REPORT

PA15-0132

January 8, 2016

Kenneth Stanhope (Dennysville)

v.

Skywalker's Pub & Grille (Machias)

I. Complainant's Charge:

Complainant Kenneth Stanhope alleged that he was unlawfully discriminated against because of his disabilities by Skywalker's Pub & Grille ("Skywalker's") when the owner demanded that he and his service animal leave the bar and had him served with a no trespass order.

II. Respondent's Answer:

Respondent declined to provide any written response to Complainant's allegations.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: 7/21/2014.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): 3/18/2015.
- 3) Skywalker's is a restaurant and is a public accommodation subject to the Maine Human Rights Act ("MHRA"), the Americans with Disabilities Act, and state and federal regulations.
- 4) Neither party is represented by legal counsel.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties. 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.

IV. Development of Facts:

- 1) The parties and issues in this case are as follows:

a) Complainant Kenneth Stanhope is an individual who suffers from both physical and mental disabilities, including a [REDACTED] [REDACTED] [REDACTED].

- b) In March 2015, Complainant's healthcare provider determined that, due to his disability, it was necessary for a service animal to accompany him whenever he was outside of his home in order to avoid falls.¹
- c) Respondent Skywalker's is a restaurant in Machias.

Complainant's Complaint

- 1) Complainant has disabilities and has two service animals.
- 2) On or about 7/21/2014, he went to Respondent's restaurant accompanied by one of his service animals, a dog named Sneg, who was muzzled.
- 3) He was approached by the owner of the restaurant ("Owner"), who asked Complainant to leave because he was not buying any alcohol and because Owner had an issue with the dog's hair/fur.
- 4) Owner then informed Complainant that the Machias Police Department had informed the Owner that he could kick Complainant out of the restaurant any time that he wanted and that Complainant's dog was not a service animal. Owner also threatened to hurt Complainant and his dog. Shortly thereafter, the police arrived and issued Complainant a "no trespass" order.
- 5) Complainant believes that he was subjected to unlawful discrimination (made to leave, police called, no-trespass order issued) when Respondent denied him the full and equal enjoyment of its services because of his disabilities and his need for a service animal.

Respondent's Answer to Complainant's Complaint

- 6) Although Respondent confirmed receiving a copy of Complainant's Commission complaint, Owner stated to the Chief Investigator during a telephone conversation on 9/29/2015 that it was declining to respond in writing to any of Complainant's allegations upon the advice of legal counsel.

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 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

¹ Although the healthcare provider also determined that the presence of the dog would also provide an emotional benefit to Complainant, that would not be relevant to the determination of whether it was in fact a service animal, for the purpose of access to a place of public accommodation.

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. 94 Code of Maine Regulations ("C.M.R.") 348, Chapter 7, § 7.16(C)(1).

3. "Service animal" is defined, in relevant part, as follows:

[A] dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability. . . . The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of such work or tasks include, but are not limited to, assisting an individual who is totally or partially blind with navigation and other tasks, alerting an individual who is deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting an individual to the presence of allergens, retrieving items such as medicine or a telephone, providing physical support and assistance with balance and stability to an individual with a mobility disability and helping a person with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort or companionship do not constitute work or tasks for the purposes of this definition.

5 M.R.S. §4553(9-E)(B).

4. A public accommodation is limited in the information it can request in determining whether an animal qualifies as a service animal under the MHRA:

A public accommodation shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public accommodation may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

Commission Regulations, Chapter 7, § 7.16(C)(6)(emphasis added).

5. In this case, Complainant has provided a March 2015 note from his healthcare provider indicating that it is necessary for him to have his service animal Sneg accompany him whenever he is outside of his home in

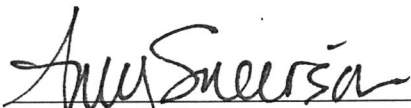
order to avoid falls that could occur while he is walking or standing, due to [REDACTED] related to his physical and mental disabilities.

6. Respondent has chosen not to respond or controvert any of the claims Complainant raised in his Commission complaint, including, but not limited to, whether the dog that accompanied him to Skywalker's restaurant was a service animal. Although the note from Complainant's healthcare provider is dated nearly nine months after the event that gave rise to the Commission complaint, there is nothing in that note, nor in any other documentation submitted to the Commission to suggest that Complainant's dog was not considered to be a service animal in July 2014, when the incident occurred.
7. Since Respondent has not refuted or in any way responded to the allegations contained in Complainant's sworn Commission complaint, all material facts in his complaint are presumed to be true, since it is reasonable to draw the presumption that Respondent would have provided exculpatory or explanatory evidence if any were available.
8. Accordingly, it is found that Respondent removed Complainant from the restaurant because of his disabilities and the presence of his service animal. It is further found that Respondent threatened Complainant and his service animal, and said that he could make them leave whenever he wanted to because Sneg was not a service animal.
9. It is found that Skywalker's Bar and Grille discriminated against Mr. Stanhope based on his disability by denying him access to a place of public accommodation.


VI. Recommendation:

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

- a. There are **Reasonable Grounds** to believe that Respondent Skywalker's Bar and Grille discriminated against Kenneth Stanhope on the basis of his disabilities by denying him access to a place of public accommodation; and
- b. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson
Executive Director



Robert D. Beauchesne
Investigator