State of Wisconsin

Labor and Industry Review Commission

Susan Shott, Complainant **Lake Geneva Animal Hospital**, Respondent ERD Case Nos. CR202000313 and CR202001147	**Public Accommodation Decision** **Dated and Mailed:** November 11, 2021 shottsu_err.doc:164

The decision of the administrative law judge is **reversed**. Accordingly, the administrative law judge's decision is set aside and the matter is remanded to the Equal Rights Division for a hearing on the issue of probable cause.

By the Commission:

/s/
Michael H. Gillick, Chairperson

/s/
Georgia E. Maxwell, Commissioner

/s/
Marilyn Townsend, Commissioner

Procedural Posture

On January 30, 2020, the complainant filed a complaint with the Equal Rights Division (hereinafter "Division") of the Department of Workforce Development in which she alleged that the respondent discriminated against her based upon her sexual orientation, in violation of the Wisconsin Public Accommodation and Amusement Law (hereinafter "WPAAL"). On March 31, 2020, the complainant filed a second complaint containing additional allegations. On September 29, 2020, an equal rights officer from the Division issued two separate initial determinations finding no probable cause to believe that discrimination occurred. The complainant filed a timely appeal of both initial determinations, and the matter was certified to hearing. However, prior to holding any hearing the administrative law judge issued a decision dismissing both complaints based upon a lack of jurisdiction. The complainant has filed a timely petition for commission review.

Memorandum Opinion

The complainant, who identifies as bisexual, alleges that after the respondent learned of her sexual orientation it restricted her access to veterinary services at its clinic by limiting the veterinarians she could see and the types of services it would provide to her. She therefore filed a complaint under the WPAAL.

Wisconsin Stat. § 106.52(3)(a)1. provides that that no person may:

> Deny to another or charge another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of sex, race, color, creed, sexual orientation, national origin or ancestry.

The statute further provides, at Wis. Stat. § 106.52(3)(a)2., that no person may:

> Give preferential treatment to some classes of persons in providing services or facilities in any public place of accommodation or amusement because of sex, race, color, creed, sexual orientation, national origin or ancestry.

The definition of a "public place of accommodation or amusement" in the statute is as follows:

> "Public place of accommodation or amusement" shall be interpreted broadly to include, but not be limited to, places of business or recreation; lodging establishments; restaurants; taverns; barber or cosmetologist; aesthetician, electrologist or manicuring establishments; nursing homes; clinics; hospitals; cemeteries; and any place where accommodations, amusement, goods or services are available either free or for a consideration. . ."

Wis. Stat. § 106.52(1)(e)1.

The administrative law judge determined that the Division lacks jurisdiction over this matter because an animal hospital is not the type of business covered by the WPAAL. In arriving at this conclusion, the administrative law judge relied on a published court of appeals decision in which the court stated that in order to be a place of public accommodation under the law, the business must be "comparable to or consistent with the businesses enumerated in the statute," and that the legislature did not intend to include businesses that are "totally dissimilar" from those listed in the statute. *Hatheway v. Gannett Satellite Network*, 157 Wis. 2d 395, 400-401, 459 N.W.2d 873 (Ct. App. 1990).

The administrative law judge explained that, unlike the businesses referenced in the statute, the respondent provides services to animals. The administrative law judge stated that pets are "property," and that the terms "nursing homes, clinics, and hospitals," in the statute relate to the healthcare of humans, not the care of property. He therefore concluded that the protections of the WPAAL do not extend to the services provided at animal hospitals.

The commission disagrees with this analysis. In the first place, nothing in the statute specifies that the hospitals or clinics referenced in the statute must be solely for the care of humans. However, even assuming that is the case, the statute, which is to be broadly construed in favor of coverage, covers "places of business" and "any place where. . . services are available." A veterinary hospital is a place of business, and pet health care is a service. As such, the respondent's business would appear to fit squarely within the statutory definition of a "public place of accommodation or amusement." The fact that veterinary services are not specifically referenced in the statute does not compel a different result; the nature of the business is not dissimilar to those listed in the statute, and the issues raised by the court in *Hatheway*--in which a newspaper's classified advertising section was found to not be covered by the statute--do not apply.

In its brief to the commission, the respondent argues that the administrative law judge correctly concluded that it is not covered under the WPAAL. In support of this argument, the respondent references a prior commission decision that was also cited by the administrative law judge, *Young v. Trimble*, ERD Case No. 9253479 (LIRC July 11, 1994), in which the commission stated:

> The nature of the businesses listed in the Public Accommodations Law involve businesses that offer health and beauty aids, food, drink, recreation and lodging to patrons. They are accommodations generally offered by businesses classified as service industry businesses.

However, the businesses referenced by the commission in the *Young* decision do not constitute an exhaustive list of businesses covered by the WPAAL, but were intended to stand as examples of the types of businesses that are covered. The commission correctly observed that the businesses referenced in the statute are generally classified as service industry businesses. Veterinary services are also a service industry, just like restaurants or hair salons. By contrast, the business that was found to *not* be covered in *Young*, a business that leased real property to entrepreneurs for the establishment of their own places of business, could accurately be characterized as "totally dissimilar" to those enumerated in the statute.

For the reasons set forth above, the commission finds that veterinary services are covered under the WPAAL. It has therefore remanded this matter to the Equal Rights Division so that the complainant may have the opportunity to present her case at a hearing on the issue of probable cause.

cc: Attorney Joe Malone
Dr. Mona Hodkiewicz