State of Wisconsin

Labor and Industry Review Commission

Starsha Sewell, Complainant **PESI Inc.**, Respondent A and **Evergreen Certifications LLC**, Respondent B ERD Case No. CR202300888	**Public Accommodation Decision**[1] **Dated and Mailed:** February 20, 2025 sewelst_rsd.doc:164

The decision of the administrative law judge is **affirmed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/
Michael H. Gillick, Chairperson

/s/
Georgia E. Maxwell, Commissioner

/s/
Marilyn Townsend, Commissioner

[1] **Appeal Rights**: See the pink enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review. Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website, http://lirc.wisconsin.gov.

Procedural Posture

The complainant filed a complaint with the Equal Rights Division (hereinafter "Division") of the Department of Workforce Development alleging that the respondents discriminated against her based upon her race, sex, and creed, in violation of the Wisconsin Public Accommodation and Amusement Law (hereinafter "WPAAL"). An equal rights officer for the Division issued an initial determination finding no probable cause to believe discrimination occurred. The complainant filed an appeal of that determination and the matter was certified to hearing before an administrative law judge. However, before any hearing could be held the respondents filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted. The administrative law assigned to the case agreed with that contention and issued a decision granting the motion to dismiss. The complainant has filed a timely petition for commission review of that decision.

The commission has considered the petition and the positions of the parties, and it has reviewed the information that was before the administrative law judge. Based on its review, the commission agrees with the decision of the administrative law judge, and it adopts the findings and conclusions in that decision as its own.

Memorandum Opinion

The definition of a "public place of accommodation or amusement" as provided under section 106.52(1)(e)1 of the WPAAL 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...

This definition was considered by the Wisconsin Court of Appeals in *Hatheway v. Gannett Satellite Information Network, Inc.*, 157 Wis. 2d 395, 459 N.W.2d 873 (Ct. App. 1990), in which the plaintiffs argued that the classified ad section of a newspaper was a public place of accommodation because it was a place where goods and services were available, and that the respondent was therefore prohibited by the WPAAL from denying ad space to the plaintiffs based on their sexual orientation. The court did not accept the plaintiffs' argument, noting that the illustrative list of businesses in the definition of the WPAAL was meant to limit the scope of what should be considered a place of public accommodation or amusement. On that point, the court stated:

> … to be a place of public accommodation under the public accommodation act, the business must be comparable to or consistent with the businesses enumerated in the statute itself. Newspapers do

> not offer the public "accommodations" in the sense that this term is normally understood. A newspaper does not supply necessities and/or comforts of the kind offered by the listed businesses. Newspapers are totally dissimilar in nature from the businesses listed in the public accommodation act.

Id. at 401.

The respondents in this case offer online classes and professional certifications to workers. An organization providing online classes and/or professional certifications is, like the classified ad section discussed in *Hatheway*, totally dissimilar from the businesses listed in the WPAAL. To begin with, the respondents are not a physical "place," but rather are businesses that offer on-line classes and certifications. The commission has previously held that an internet or online space is not the same type of "place" as the physical businesses enumerated in the statute and is not covered by the WPAAL. *Sauers v. Anime Milwaukee*, ERD Case No. CR201901216 (LIRC Sept. 27, 2019).

In her petition for commission review, the complainant argues that the respondents provide in-person training and are therefore places of public accommodation, as defined in Wis. Stat. § 106.52. The commission disagrees. In her complaint the complainant alleged that she was denied an opportunity to participate in an online professional recertification program, specifically contending that the respondents "failed to accommodate me by giving me a seat in a virtual training class room." It was only after the Division issued an initial determination which included findings that the respondents had no physical place of business and that all of the allegations involved online services that the complainant indicated the respondents also provided in-person training. The commission is unpersuaded that the possible existence of some in-person course opportunities is sufficient to render the respondents "places" of public accommodation, within the meaning of the statute. Further, even if that were the case, the complainant did not allege that she was denied access to an in-person course offered by the respondents, and instead specifically contended that she was denied a seat in a "virtual training class room." Thus, the complainant has not alleged that she was denied equal access to a "place" of public accommodation.

Further, the respondents here do not provide the type of goods, services, or amusements provided by the businesses listed in the statute; the opportunity to participate in a recertification program is not the type of service or opportunity that is offered to the general public subject only to the ability to pay, as contemplated by the WPAAL. *See*, *Neldaughter v. Dickeyville Athletic Club*, ERD Case No. 8900539 (LIRC July 31, 1991), citing *Jones v. Broadway Roller Rink Company*, 136 Wis. 595 (1980); *McCann v. Midwest Family Broadcasting Group*, ERD Case No. CR202100879 (LIRC Nov. 11, 2021). Acceptance into a professional certification

program is a matter involving a degree of selectivity, requiring participants to establish, at minimum, that they possess the requisite academic credentials. As such, the services offered by the respondents are not akin to those offered by the types of businesses enumerated in the statute.

Because the commission agrees with the administrative law judge that the complainant's claim that she was denied admission into a virtual education program that would allow her to obtain professional recertification failed to state a claim that is covered by the WPAAL, the dismissal of her complaint is affirmed.

cc: Attorney Katelynn Williams