

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD & BRUCE BRUNEAU,  
Complainants

v.

DOCKET NO. 00-BPA-2878

G & G Lambert's, Inc.,  
Respondent

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Appearances:

Geraldine Fasnacht, Esquire, Commission Counsel

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about September 25, 2000, Complainant Bruce Bruneau filed a complaint with this Commission charging Respondent G. & G. Lambert's, Inc. with handicap discrimination in a place of public accommodation in violation of M.G.L.c.272§98 and §98A. The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed and the case was certified for public hearing. A public hearing was held before me on February 11, 2004. Respondent failed to appear at the hearing, Respondent's default was entered

into the record and the hearing proceeded as a default hearing, pursuant to 804 CMR 1.21(8). Respondent was duly notified of its default and failed to seek removal of the default or otherwise respond. After considering the entire record of the proceedings, I make the following findings of fact, conclusions of law, and order.

## II. FINDINGS OF FACT

1. Complainant Bruce Bruneau resides in Chelsea, Massachusetts. Complainant is employed by the Massachusetts Office on Disability where he trains architects, building inspectors and consumers with respect to laws regarding access for the handicapped.

2. Respondent G. & G. Lambert's, Inc. ("Lambert's") operates a store located in Franklin, Massachusetts with a fruit stand as well as a deli where food is served. Gregory Lambert is an owner of Respondent. I find that Respondent is a place of public accommodation as defined by M.G.L.c.272§92.

3. Complainant suffers from several illnesses, including interstitial fibrosis, a clotting disorder that

has damaged his legs, breathing problems and diabetes, all of which severely limit his ability to walk. He also has trouble bending and reaching. Complainant cannot walk for more than 15 feet without experiencing excruciating pain and has utilized a wheelchair for 22 years. I find that Complainant is a handicapped person within the meaning of M.G.L. c. 151B§17.

4. For over three years, Complainant has used the services of Luke, a black Labrador retriever and trained assistance dog that is Complainant's constant companion. Luke underwent extensive training at an organization called NEADS<sup>1</sup> in order to qualify as a service dog. He assists Complainant with many tasks of daily living including retrieving objects, opening the door to Complainant's apartment, pulling his wheelchair, pressing elevator buttons and shutting light switches.

5. Complainant carries two cards containing information pertaining to the legal rights of persons with assistance dogs; One is a photo-bearing identification card from NEADS that identifies Luke as an assistance dog; The other is a card printed by the Massachusetts Office on

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<sup>1</sup> National Education for Assistance Dog Services

Disability that contains general information regarding the legal rights of persons with assistance dogs.

6. Ralph Hickey has worked as an access specialist with the Office on Disability since 1983 and has worked with Complainant for 20 years.

7. On September 21, 2000, around noon, Complainant and Ralph Hickey were driving back to Boston after performing an inspection on Cape Cod. Hickey recommended stopping for lunch at Lambert's, which he told Complainant was a great place for sandwiches.

8. After parking their van, Complainant and Hickey, accompanied by Luke, approached Lambert's. Complainant was in his wheelchair. They noted that the entry way contained pumpkins and flowers, making it inaccessible to a wheelchair. Hickey asked the staff to clear the path, which they did reluctantly, according to Hickey's credible testimony.

9. After clearing away some of the objects, a man whom they later identified as owner Gregory Lambert, met them at the door and told them: "You can't bring that dog

in here." Complainant explained that Luke was a trained service dog, but Lambert responded; "I don't care. The board of health says 'no dogs allowed'". Complainant tried to explain that service dogs were exempt from board of health rules. He showed Lambert the card from the Office on Disability describing service animals, but Lambert ripped up the card. I credit Complainant's testimony, which was corroborated by Hickey.

10. After ten minutes of discussion regarding service animals, Lambert relented and allowed them to enter the store, but stated, "If the dog touches anything, you own it." I credit this testimony, which was corroborated by Hickey.

11. Complainant testified that after they entered the store, Lambert never took his eyes off him and Luke. After Complainant and Hickey had been in the store for a matter of minutes, Lambert picked up an orange, claiming that Luke's tail had hit the orange and telling Complainant, "This is going to cost you four dollars."

12. Complainant testified that because of Lambert's conduct he and Hickey left the store and did not have lunch there.

13. Upon leaving Lambert's, Complainant and Hickey proceeded next door to a pizza place where they were welcomed and the owner brought out a large dish of water for Luke. They experienced a "totally different attitude" from Lambert's.

14. Complainant testified Lambert's conduct made him feel "like a criminal." He never experienced anything like that before and, to this day, he continues to feel like a criminal when thinking about this incident. I credit his testimony.

15. Hickey testified that Lambert was angry and would not listen to what they said when they tried to discuss the role of a service animal. He said he did not care what the card said; he was going to do what he wanted.

16. Hickey testified that Complainant was very nervous and upset about Lambert's attitude and was afraid of Luke bumping into the fruit. Complainant told Hickey

that he was very upset and would like to leave. I credit this testimony.

### III. CONCLUSIONS OF LAW

M.G.L.c.272§98A states that "...any physically handicapped person accompanied by a dog guide shall be entitled to any and all accommodations, advantages, facilities and privileges of all...places of public accommodation, within the commonwealth to which persons not accompanied by dogs are entitled..." M. G. L. c.151B§5 grants the Commission authority to entertain and adjudicate complaints for violations of M.G.L. c. 272§98A.

Complainant must first establish a prima facie case of discrimination which may be done by direct evidence or by an inferential model of proof. A prima facie case of discrimination under G.L. c. 272§98A requires a showing that a physically handicapped person accompanied by a dog guide was denied access to, or restricted in the use of, a place of public accommodation. G.L. c.272§98A. Complainant is also required to carry and display, upon demand, written evidence that the dog accompanying him is a dog guide. G.L. c. 272§98A. Canuel v. Mentavlos and Savas Pizza, 16 MDLR 1062 (1994).

Complainant has made out a prima facie case of discrimination in public accommodation by direct evidence. Complainant is a handicapped individual who requires the use of a service dog. Testimony of both Complainant and Hickey support the finding that Complainant was initially denied access to the restaurant because he was accompanied by his service dog. Even after gaining admission, Complainant was subjected to such strict and unreasonable monitoring that his ability to enjoy the privileges of the facility was diminished. Complainant was made to feel so unwelcome and uncomfortable by Lambert's actions that he felt compelled to leave the premises without having eaten. See Canuel, supra. As Respondent did not appear at the hearing and I credited the testimony of Complainant and his witness, Ralph Hickey, I conclude that Complainant has established an un rebutted, prima facie case of discrimination in violation of M.G.L.c.272§98A.

#### IV. REMEDY

Upon a finding of unlawful discrimination, the Commission is authorized to grant remedies to effectuate the purpose of c. 151B and to make the Complainant whole, Bournewood Hospital v. MCAD, 371 Mass. 303, 315-6 (1976),

including damages for any emotional distress incurred as a result of the discriminatory act. The finding of discrimination alone permits the inference of emotional distress as a normal adjunct of such discrimination. id, at 317 (1976).

I conclude that Complainant suffered from emotional distress as the result of Respondent's unlawful conduct. Complainant testified that he felt like a criminal as he and his dog were being strictly monitored in Respondent's establishment and yelled at to pay for fruit that his dog's tail supposedly touched. Further, Lambert tore up Complainant's card explaining the rights of persons with service dogs. He testified that these feelings of humiliation at his treatment continue to this day. I conclude that an award in the amount of \$15,000.00 is appropriate to compensate Complainant for the emotional distress he suffered as a result of Respondent's unlawful conduct.

M.G.L.c.151B§5 states, in part, "If, upon all the evidence at any such hearing, the commission shall find that a respondent has engaged in any such unlawful practice, it may, in addition to any other action which it may take under this section, assess a civil penalty against

the respondent: (a) in an amount not to exceed \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory practice." Having found that Respondent has engaged in a discriminatory practice, that included egregious conduct such as ripping up Complainant's card and scrutinizing his conduct, I conclude that a civil penalty in the amount of \$10,000.00 is warranted.

#### V. ORDER

Pursuant to the authority granted the Commission under G.L. 151B§5 it is ordered that:

(1) Respondent shall cease and desist from any further acts of discrimination against all potential patrons to its store seeking admission with a service animal and shall not deny access or limit service to any patron requiring the presence of a service animal.

(2) Respondent shall pay the Complainant the sum of \$15,000.00 in damages for emotional distress, with interest thereon at the rate of 12% per annum from the date of filing of the complaint until such date as payment is made or until such date as this obligation is reduced to a court judgment and post-judgment interest begins to accrue.

(3) Respondent shall pay to the Commonwealth of Massachusetts the sum of \$10,000.00 as a civil penalty.

(4) Respondent shall notify each of its employees in writing of the policy that persons with disabilities accompanied by service animals are welcome to use all facilities available to the general public, as set forth in ATTACHMENT A, incorporated by reference herein.

(5) Respondent shall post appropriate signage, as set out in ATTACHMENT B, incorporated by reference herein, prominently on or by the door of the main entrance of its store.

(6) Respondent shall place a written notification as set forth in ATTACHMENT A in all employee rules, policy manuals, or handbooks.

(7) Within 45 days of the date of this decision, Respondent shall provide to the Clerk of the Commission evidence, satisfactory to the Commission, that it has completed the above obligations. This evidence will take the form of:

- a. Copies of the written notifications to employees, customers, and potential customers required by paragraphs (4), (5) and (6) above.

b. Photographs of the signs required by paragraph (5), above.

Respondent shall complete all of the obligations in paragraphs (4)-(6), above, no later than 45 days from the date of this decision.

The parties shall notify the Clerk of the Commission as soon as the ordered payments have been made. If any Respondent fails to comply with the terms of this Order Within the time period allotted, Complainant shall notify the Clerk of the Commission.

This represents the final decision of the hearing officer. Any party aggrieved by this decision may, within ten days of receipt of the decision, file a notice of appeal with the Commission. Within thirty days of receipt of the decision the appellant shall file a petition for review.

SO ORDERED, this 16<sup>th</sup> day of March, 2004.

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JUDITH E. KAPLAN  
Hearing Officer

ATTACHMENT A:

**NOTICE TO ALL EMPLOYEES:**

G & G Lambert's, Inc. welcomes persons with disabilities, including those accompanied by service animals, and urges you to do all you can to make certain that they are treated with respect and courtesy. They are allowed to enter the store and restrooms while accompanied by their service dogs, and are not to be restricted in any way from doing so. Service dogs assist persons with disabilities in a variety of ways, including alerting persons with hearing impairments to sounds, alerting persons with impaired vision to obstructions and dangers, alerting persons with epilepsy to seizures, assisting persons with mobility impairments with balance and picking things up, and assisting persons with emotional or mental disabilities. Such dogs come in all shapes and sizes, and are sometimes, but not always, identifiable by special collars and harnesses. If you are uncertain that the animal is a service dog, ask the person it is accompanying. If the person says that it is a service dog and produces written evidence that the animal is a dog guide, allow them to enter.

ATTACHMENT B:

**NOTICE TO CUSTOMERS:**

**LAMBERT'S WELCOMES**

**PERSONS ACCOMPANIED BY**

**SERVICE ANIMALS. PLEASE**

**INFORM OUR STAFF OF HOW**

**WE MAY BEST ASSIST YOU.**