

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
CHRISTINE GALATIS,

Complainants

v.

DOCKET NO. 14-BPA-01671

90's NAILS,

Respondent

Appearances: Stephen M. Born, Esq. for Complainant

DECISION OF THE HEARING OFFICER

I. INTRODUCTION

On June 20, 2014, Complainant, Christine Galatis, filed a complaint of discrimination alleging that she was denied service in a place of public accommodation, a nail salon, on account of her disability. Complainant alleged that she was denied the service of a pedicure by the owner of "90's Nails" because she is unable to walk and confined to a wheelchair. The Investigating Commissioner issued a finding of Probable Cause crediting the allegations of the Complaint. Efforts at conciliation were unsuccessful and the matter was certified for a public hearing. The Commission served a Notice of Hearing on Respondent at its last known address by both certified and regular mail. The Notice of Hearing was returned as "Undeliverable" and "Unable to Forward." Respondent did not appear in person or through counsel at the hearing scheduled for January 10, 2018, and was defaulted. Pursuant to the Commission's regulations at 804 CMR

1.21 (8)(a) Respondent was served at its last known address with an Order of Entry of Default and a Notice of Entry of Default setting forth the consequences of the default and the right to petition for its removal within 10 days for good cause shown. The Notice was returned.

A Default Hearing was conducted on January 10, 2018, pursuant to 804 CMR 1.21 at which Complainant testified and offered an exhibit. Complainant's counsel represented that Respondent had previously been represented by counsel but both Respondent's owner and its counsel had ceased to communicate with Complainant's counsel and did not respond to his written communications proposing settlement of the matter or to discovery requests.

Based on the testimony and other evidence proffered by Complainant, I make the following Findings of Fact and Conclusions of Law.

## II. FINDINGS OF FACT

1. Complainant Christine Galatis is a disabled female who resides in Somerville, MA. As a result of undergoing spinal cord surgery some eight years ago, Complainant is unable to walk or to use her left arm. Complainant relies on a wheelchair for mobility and is not able to transfer herself from her wheelchair to another chair.

2. Respondent was a retail establishment doing business in 2014 as a nail salon under the name "90's Nails." The salon was located in the Meadow Glen Mall in Medford, MA.<sup>1</sup> Complainant referred to Respondent's owner as "Tony" and her counsel represented that the owner of "90's Nails" was Tony Sinh Le. Counsel offered into evidence a letter regarding

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<sup>1</sup> Complainant represented that the Meadow Glen Mall is no longer in existence.

this matter that he sent to Mr. Sinh Le in August of 2016 when they were discussing resolution of the matter.<sup>2</sup>

3. On June 20, 2014, Complainant planned to get a pedicure at “90’s Nails.” She called for The Ride to transport her to the Mall and hoped to secure an early morning appointment before the salon became too crowded. She had been an occasional customer of the salon and prior to becoming disabled had used the salon’s pedicure chairs with built in foot-baths.

4. Upon arriving at the salon Complainant encountered the owner Tony Sinh Le in the reception area and requested a pedicure. Complainant testified that Mr. Sinh Le asked to her to sit in one of the salon’s pedicure chairs but she told him she could not do so because of her disability. She asked that she be allowed to remain in her wheelchair and forego the foot-bath because she was seeking only a nail polish change. Mr. Sinh Le refused Complainant the service she requested and according to Complainant gave no reason for the denial. This was despite her repeated requests that she just wanted a nail polish change.

5. Complainant testified that at first she thought Sinh Le was confused and did not understand that she did not want a full-service pedicure. When she realized that Sinh Le merely refused to provide a modified pedicure with Complainant seated in her wheelchair, she felt very hurt and upset and left the salon. She stated that she was incredulous that Sinh Le was denying her service for no good reason. After leaving “90’s Nails,” she proceeded to another nail salon in the Mall called Red Persimmon where she was able to secure a pedicure.

6. Complainant testified that negative feelings surrounding the incident with Respondent

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<sup>2</sup> At that time, Mr. Le was presumably participating in the Commission proceedings and represented by counsel. His attorney was copied on the letter.

persisted for a long time. She stated that being the victim of discrimination because of her disability made her feel like less of a person. The incident also left her with fears that her disability might subject her to similar incidents at other establishments. She described the event as creating such a “big road block” for her that she was prompted to take action by filing a complaint. Complainant felt strongly that Respondent had no legitimate reason for denying her service and hoped that her taking action would prevent Sinh Le from treating others so unfairly.

7. Complainant testified that she became so nervous at the prospect of confronting Mr. Sinh Le at a scheduled MCAD proceeding, that she sought the assistance of a mental health counselor. She submitted evidence of notes from her mental health care provider dated 7/26/16 and 8/3/16 referencing her ongoing intense anxiety surrounding the incident of discrimination and the upcoming MCAD proceeding. Complainant is involved in organizations that assist the disabled, including as a motivational speaker. She testified that she tries to maintain a positive attitude and to focus on the things she is able to do. Complainant volunteers at the Spaulding Rehabilitation Hospital for the United Spinal Cord Association and speaks to newly injured patients to help them adjust to being disabled.

### III. CONCLUSIONS OF LAW

Massachusetts General Laws, c. 272, s. 98 makes it an unlawful practice to make any “distinction, discrimination, or restriction” in admission to, or treatment in, a place of public accommodation on the basis of any physical disability. The law further provides that, “All persons shall have the right to the full and equal accommodations, advantages, facilities and privileges in any place of public accommodation...”

In order to establish a prima facie case of discrimination in a place of public accommodation, a Complainant must establish that: (1) she is a member of a protected category under the statute; (2) that she was denied access to or restricted in the use of (3) a place of public accommodation. Lombardo v. The Rendezvous Restaurant and Lounge, Inc., 24 MDLR 250, 251 (2002); Bachner v. MBTA, 22 MDLR 183, 185 (2000). Based on the following, Complainant has established a prima facie case of discrimination in a place of public accommodation.

Complainant is disabled within the meaning of the statute in that she is impaired in a major life activity. As a result of spinal cord surgery, Complainant has been unable to walk or to use her left arm for some eight years and she relies on a wheelchair.

Respondent nail salon was a place of public accommodation within the meaning of M.G.L. c. 272, s. 92A in that it was a place of business that was open to, accepted, or solicited the patronage of the general public.

Complainant sought pedicure services from Respondent informing its owner, Mr. Sinh Le, that due to her disability, she was unable to transfer herself from her wheel chair to one of the salon's pedicure chairs. She further advised Sinh Le that since she sought only a nail polish change, the procedure could be performed with her remaining seated in her wheelchair. Complainant testified credibly that Mr. Sinh Le repeatedly denied her request and offered no reason why Respondent could not provide the service. The direct evidence strongly suggests that Complainant was denied a pedicure solely because of her disability and her inability to ascend Respondent's pedicure chair. Moreover, since Respondent did not appear at the public hearing and offered no rebuttal to Complainant's prima facie case, Complainant is entitled to a favorable judgment on her claim of disparate treatment.

Complainant's allegation that Respondent refused to modify its pedicure procedures to permit her to enjoy a more limited service seated in her wheelchair, may also be viewed as a failure to reasonably accommodate her disability. Complainant was not seeking a full-service pedicure and a nail polish change did not require her to use a salon chair with a built in foot-bath. In fact, she was able to secure such a modified pedicure at another establishment. In essence, Respondent's refusal to provide modified service, absent any reason, constitutes a denial of Complainant's statutory right to enjoyment of the full and equal accommodations, advantages, facilities and privileges of the facility. The Commission has held that an unreasonable refusal to accommodate an individual's physical or mental disability in a place of public accommodation may constitute discrimination under G. L. c. 272, section 98, even in the absence of reasonable accommodation language in the statute. Bachner v. Charltons's Lounge and Restaurant, 9 MDLR 1274, 1288-1291 (1984). Bachner reasoned that this is because "some degree of accommodation must reasonably be implied in [M.G.L. c. 272, §98]..." Id. at 1291.

Thus, in addition to establishing a claim of disparate treatment discrimination based on direct evidence, i.e., that her disability was the reason for the denial of service, Complainant has also demonstrated that Respondent refused to reasonably accommodate her disability by offering a modified procedure. See Bachner v. MBTA, 22 MDLR at 185-186 (although complainant satisfied disparate treatment analysis, duty to reasonably accommodate also recognized and applied); Harrison v. Roller World, Inc., 30 MDLR 66, 67 (2008) (accepting reasoning in Bachner cases in the context of reasonable accommodation of religion in places of public accommodation).

Based on the above, Complainant has established by credible testimony that Respondent treated her adversely in a place of public accommodation on account of her disability and refused to reasonably accommodate her disability in violation of M.G.L. c. 298 s. 98.

#### IV. REMEDY

Upon a finding of unlawful discrimination, the Commission is authorized to award damages for emotional distress suffered by Complainant as a direct result of Respondent's unlawful conduct. Stonehill College v. MCAD, 441 Mass 549 (2004). Awards for emotional distress must be fair and reasonable and proportionate to the harm suffered. Factors to consider are the nature, character and severity of the harm, the duration of the suffering and any steps taken to mitigate the harm. Id. at 576. Complainant was very upset and hurt by the incident with Respondent. It made her feel diminished as a person and frightened that she might face similar discriminatory encounters in the future. She continued to suffer periodic bouts of anxiety related to the incident as the proceedings at the Commission progressed. She testified that the extremely unsettling incident prompted her to take action to vindicate her rights and to prevent other disabled individuals seeking Respondent's services from being treated in a similarly adverse fashion. Complainant testified that she has dealt with the challenges of her disability by serving as a volunteer to motivate other newly disabled individuals to confront their limitations with a positive attitude, demonstrating her resiliency. I conclude that she is entitled to damages in the amount of \$5000.00 for the distress she suffered as a result of Respondent's unlawful conduct.


V. ORDER

Consistent with the forgoing Findings of Fact and Conclusions of Law, Respondent is hereby Ordered to:

- 1) Cease and desist from discriminatory practices related to treatment of disabled individuals in any business it operates.
- 2) Pay to Complainant Christine Galatis the sum of \$5000.00 in damages for emotional distress with interest thereon from the date the complaint was filed until such time as payment is made or this Order is reduced to a court judgment and post-judgment interest begins to accrue.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission pursuant to 804 CMR 1.23. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So Ordered this <sup>7<sup>th</sup></sup> day of February, 2018.

  
Eugenia M. Guastaferrri  
Hearing Officer