



Governor John Kasich

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Tri-County Independent Living Center

Complainant,

Complaint No. 15-PUB-AKR-37480

v.

Betty A. Thomas dba Tomaso's Italian Villa

Respondent.

**OHIO
CIVIL RIGHTS
COMMISSION**

G. Michael Payton
Executive Director

ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS

Commissioners

Leonard Hubert, Chairman

Lori Barreras

Juan Cespedes

William W. Patmon, III

Madhu Singh

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Respondent

Tr-County Independent Living Center
c/o Rose Juriga
680 East Market Street, Suite 205
Akron, Ohio 44304
Complainant

ALJ'S REPORT

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Ohio Civil Rights Commission

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John R. Kasich

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May 12, 2016

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**Re: Tri-County Independent Living Center v. Betty A. Thomas dba Tomaso's Italian Villa
Complaint No. 15-PUB-AKR-37480**

Attached is a copy of the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation(s) ALJ's Report). You may submit a Statement of Objections to the ALJ's Report within twenty three (23) days from the mailing date of this report. A request to appear before the Commission must also be submitted by this date.

Pursuant to Ohio Administrative Code §4112-1-02, your Statement of Objections must be **received** by the Commission no later than June 6, 2016. *No extension of time will be granted.*

Any objections received after this date will be untimely filed and cannot be considered by the Ohio Civil Rights Commission.

*Please send the original Statement of Objections to: **Desmon Martin, Director of Enforcement and Compliance, Ohio Civil Rights Commission, State Office Tower, 5th Floor, 30 East Broad Street, Columbus, OH 43215-3414.** All parties and the Administrative Law Judge should receive copies of your Statement of Objections.*

FOR THE COMMISSION:

DESMON MARTIN / EKS

Desmon Martin
Director of Enforcement and Compliance

Attachments

cc: Lori A. Anthony, Section Chief – Civil Rights Section / Kari Stilwell, Administrative Secretary / G. Michael Payton, Executive Director / Keith McNeil, Director of Operations and Regional Counsel / Stephanie Bostos-Demers, Chief Legal Counsel

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INTRODUCTION AND PROCEDURAL HISTORY

Tri-County Independent Living Center (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on June 5, 2014.

The Commission investigated the charge and found probable cause that Betty A. Thomas doing business as Tomaso's Italian Villa (Respondent) engaged in discriminatory practices in maintaining a place of public accommodation.

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on March 12, 2015.

The Complaint alleged that Respondent violated R.C. 4112.02(G) and Ohio Administrative Code 4112-5-06 when it maintained a place of public accommodation that is not accessible to the disabled because they do not provide parking spaces that meet accessibility requirements.

Respondent did not file an Answer. On October 26, 2015, the Commission filed a Motion for Default Judgment on the grounds

that Respondent failed to answer or otherwise defend the Commission's Complaint.

A public hearing was held via teleconference on December 15, 2015. The teleconference was initiated by the Administrative Law Judge (ALJ) in Columbus, Ohio at 30 East Broad Street, Columbus, Ohio. In attendance was Principal Assistant Attorney Wayne Williams and Complainant's Executive Director, Rose Juriga, in the Commission's Akron Regional Office at the Ocasek State Office Building, located at 161 High Street, Akron, Ohio.¹

The record consists of the previously described pleadings, a transcript of the hearing consisting of 24 pages, exhibits admitted into evidence during the hearing, and a post-hearing brief filed by the Commission on March 4, 2016.

¹ O.A.C. 4112-3-06(F) states: [a] respondent who has not filed an answer as provided in paragraphs (A) to (E) of this rule shall be deemed in default and the allegations of the complaint shall be deemed admitted." The ALJ granted the Commission's motion at the hearing. (Tr. 5)

FINDINGS OF FACT

The following Findings of Fact are based, in part, upon the ALJ's credibility assessment of the witnesses who testified before her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered the opportunity each witness had to observe and know the things discussed, each witness's strength of memory, frankness or lack of frankness, and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Tri-County Independent Living Center (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on June 5, 2014.
2. In a letter dated January 29, 2015, Respondent was notified of the Commission's probable cause finding that Respondent had engaged in unlawful discriminatory practices in violation of R.C. 4112.02(G) and Ohio Admin. Code 41112-5-06.

3. The Commission attempted to resolve this matter by informal methods of conciliation. The Commission issued the Complaint after conciliation failed.
4. Respondent owns, maintains, and operates a restaurant located at 3271 Barber Road, Norton, Ohio. (Comm. Exh. 2)
5. Respondent also owns a parking area that is associated with and serves the restaurant. (Comm. Exh. 2)
6. Complainant is a non-profit organization that serves individuals with disabilities who reside in the Summit, Stark, and Portage counties area. (Comm. Exh. 1)
7. Complainant's mission is to empower citizens with disabilities to be in charge of their lives and participate as members of their communities.
8. Complainant advocates for the elimination of societal barriers and strives to achieve community accessibility and acceptance.²
9. Kenneth Purdy (Purdy) is employed by Complainant as an Independent Living Advocate. (Tr. 10, Comm. Exh. 1)
10. Purdy works with individuals and investigates accessibility issues in the community. (Tr. 10)

² Findings of Facts 7-8 are from Complainant's web site, www.tcilc.org.

11. Purdy has experience and knowledge of the types of accessibility required by the Americans with Disabilities Act guidelines. (Tr. 12)
12. Purdy went to Respondent's restaurant on a basic evening out to dine. (Tr. 11)
13. Purdy noticed that the only designation identifying an accessible parking space at Respondent's parking lot was a painted universal symbol of accessibility with no standing sign. (Tr. 12)
14. There was not an access aisle next to the parking spot, which would double the space for the person using that parking spot. (Tr. 12, 19)
15. The ramp to get access from the parking space to the main entrance of the restaurant was a make-shift asphalt ramp. (Tr. 12)
16. Purdy sent Respondent a letter dated March 26, 2014, which identified the accessibility issues he identified with the parking lot and access ramp. (Comm. Exh. 1)
17. After Complainant filed a charge of discrimination, the case was assigned to Ricky Boggs (Boggs), an investigator with the Commission. (Tr. 15-16)

18. Boggs conducted an onsite visit of Respondent's parking lot on January 20, 2015. (Tr. 18)
19. Boggs took a measurement of the only disability parking space and reviewed the accessible route into the building. (Tr. 18, Comm. Exh. 3, 4, 5)
20. In addition to the missing signage and access aisle, the accessible route into the building has several cracks along the sidewalk, making wheelchair maneuvering difficult. (Tr. 19)
21. Boggs made numerous attempts to contact Respondent's owner, Betty Thomas, but was unsuccessful. (Tr. 17)

CONCLUSIONS OF LAW

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected.

1. The Commission alleged in the complaint that Respondent violated R.C. 4112.02 (G) and Ohio Admin. Code 4112-5-06 when Respondent maintained a place of public accommodation that is not accessible to the disabled.
2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that it shall be an unlawful discriminatory practice:

(G) For any proprietor or any employee, keeper, or manager of a place of public accommodation to deny to any person, except for reasons applicable alike to all persons regardless of . . . disability, . . . the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.

3. When parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces shall be provided for the disabled in each such parking area

according to the number of parking spaces in the parking lot.
O.A.C. 4112-5-06(J).

4. Parking lots with between 26 to 50 parking spaces are to have a minimum of two accessible spaces. O.A.C. 4112-5-06(J)(1).
5. Respondent's parking lot had 29 parking spaces but only one designated accessible space with a symbol painted on the asphalt. (Tr. 21, Comm. Exh. 4)
6. The Americans with Disabilities Act Accessibility Guideline (ADAAG) 4.6.4 requires each accessible space to have a sign with the symbol of accessibility located high enough that it cannot be obscured by a vehicle parking in the space. 42 U.S.C. 12181-12189 (1990) (amended 2009).
7. The parking lot must have at least one van accessible space with enough adjacent space to deploy a lift that is used in vans and this access aisle must be a minimum of 96 inches wide. O.A.C. 4112-5-06(J)(2).
8. There must be a sign by the space indicating it is van accessible, as required by ADAAG 4.6.4. O.A.C. 4112-5-06(J)(2).

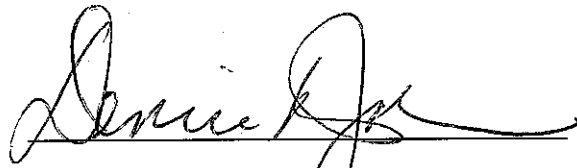
9. Respondent did not have a standing sign for the accessible space, a sign indicating the space was van accessible, or an access aisle. (Tr. 18-19, Comm. Exh. 3, 4, 5)
10. ADAAG 4.5.1 states that the accessibility route should be stable and firm. 42 U.S.C. 12181-12189.
11. Under 4.5.2, the route should have a slope if the change in level is greater than a quarter of an inch up to half an inch and a ramp if the change in level is greater than one half inch. 42 U.S.C. 12181-12189.
12. The accessibility ramp from the parking lot onto the sidewalk should be flush and free of abrupt changes per ADAAG 4.7.2. 42 U.S.C. 12181-12189.
13. Respondent has a ramp made out of asphalt in the corner of the accessible parking space. (Tr. 20, Comm. Exh. 4)
14. The change in level for Respondent's parking lot to sidewalk was about a half inch and unleveled with significant cracks. (Tr. 20, Comm. Exh. 3)
15. Respondent's conduct in failing to provide the aforementioned alterations to its parking lot denies individuals with disabilities the full enjoyment of the accommodations, advantages, facilities, or privileges of a place of public accommodation.

16. Respondent has engaged in illegal discriminatory conduct in violation of R.C. 4112.02(G) and Complainant is entitled to relief as a matter of law.

RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint No. 15-PUB-AKR-37480 that:

1. Respondent Cease and Desist from engaging in discriminatory conduct in violation of R.C. 4112.02(G).
2. That Respondent, within one hundred and twenty (120) days after receipt of the Commission's Final Order, send the Commission's Compliance Unit a letter from an Accessibility Consultant³ confirming that Respondent's parking lot is in compliance with O.A.C. 4112-5-06(J) and Accessibility Guidelines 4.5-4.8 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12181-12189, as amended 2009.



DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW
JUDGE

Date mailed: May 12, 2016

³ <http://www.naaonline.org>