



State of Connecticut
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

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Promoting Equality and Justice for all People

May 3, 2022

CHRO ex rel. Aaron Saunders v. Mad Murphy's Ventures, LLC CHRO No. 1830097.

FINAL DECISION

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent via email to the commission, complainant, respondent and/or counsel.

Very Truly yours,


Kimberly D. Morris
Secretary II

cc.

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**STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and Opportunities
ex rel. Aaron Saunders, Complainant

CHRO No. 1830097

v.

Mad Murphy's Ventures, LLC, Respondent

May 3, 2022

FINAL DECISION

I
PRELIMINARY STATEMENT

OFFICE OF
PUBLIC HEARINGS -CHRO
DATE 5/3/22
TIME 9:10 AM
RECEIVED BY [Signature]

Aaron Saunders, the complainant, filed his affidavit of illegal discriminatory practice (affidavit) with the Commission on Human Rights and Opportunities (commission) on August 25, 2017. In his affidavit, he alleged that the respondent, Mad Murphy's Ventures LLC dba Mad Murphy's Café (Mad Murphy's) violated General Statutes § 46a-64 (a) and the federal Americans with Disabilities Act of 1973 as enforced through General Statutes § 46a-58 by denying him equal services and reasonable accommodation on the basis of his actual and/or perceived physical disability. Mad Murphy's filed its answer on June 12, 2018 denying the allegations of illegal discrimination.

The public hearing was held on February 9, 2022, at which the commission and Mr. Saunders appeared but Mad Murphy's did not. The commission submitted one exhibit. Post-hearing briefs were due on April 29, 2022, at which time the record closed.

For the reasons stated herein, Mad Murphy's is found to have illegally discriminated against Mr. Saunders. Relief is ordered as set forth herein.

II PARTIES

The parties to this action are the Commission on Human Rights and Opportunities, 450 Columbus Boulevard, Hartford, Connecticut; Aaron Saunders, whose address at the time of the hearing was Cromwell, Connecticut, and Mad Murphy's Ventures, LLC, doing business as Mad Murphy's Café, Middletown, Connecticut.

III FINDINGS OF FACT

Based upon a review of the pleadings, exhibit and transcript and an assessment of the credibility of the witnesses, the following facts relevant to this decision are found (FF). References to the transcript are designated as "Tr." followed by the page number. Reference to the commission's exhibit is designated as CHRO-A.

1. Mad Murphy's is a restaurant and bar that is open to the public. Affidavit and Answer, numbered paragraph 3.
2. Mad Murphy's is a place of public accommodation. Affidavit and Answer, numbered paragraph 3.
3. Mr. Saunders is an individual who has achondroplasia. Affidavit and Answer, numbered paragraph 4. Achondroplasia is a genetic disorder that stunts a person's growth. Tr. 16.
4. In general, Mr. Saunders' achondroplasia does not impair how he lives his life. Tr. 17.
5. Mr. Saunders and two of his friends were regular patrons of Mad Murphy's, going there on an average of every three weeks. Tr. 12.

6. On Saturday, August 12, 2017, at approximately 11:30 PM, Mr. Saunders and his friends arrived at Mad Murphy's. Affidavit and Answer, numbered paragraph 5; Tr. 13.
7. An employee at the entrance served as a bouncer and checked identification. The employee admitted Mr. Saunders and his friends. Tr. 14, 29, 38.
8. Upon entering, Mr. Saunders sat at a table while his friends went to the bar to get drinks. Tr. 15, 29.
9. Within minutes of arriving, Mr. Saunders was approached by the employee. The employee told Mr. Saunders that he and his friends had to leave. Affidavit and Answer, numbered paragraph 7; Tr. 15, 30.
10. Mr. Saunders asked for an explanation as to why he had to leave. The employee told him that it was because the bartender had "a phobia of little people." Affidavit and Answer, numbered paragraph 10; Tr. 15-16, 19, 39-40; CHRO-A.
11. Mr. Saunders complied with the request and he and his friends left without incident. Affidavit and Answer, numbered paragraph 8; Tr. 18.
12. After exiting the building, Mr. Saunders and his friends returned to discuss with the employee the reason why they had to leave. They left when it was clear that they would not be allowed back into the bar. Tr. 18-20, 31 41.
13. Approximately three other patrons were in Mad Murphy's at the time. They did not appear to be disabled, they were being served, and they were not asked to leave. Tr. 20.

14. This bartender had never been on duty on any of the previous times Mr. Saunders had been to Mad Murphy's. Tr. 24.
15. At the time, the experience of being told to leave because of his disability made Mr. Saunders feel angry, embarrassed, shocked, depressed and obviously upset. He had never before been asked to leave a place. He was disengaged from conversation with his friends. Tr. 17, 21, 23, 31, 33, 41, 42.
16. Upon arriving home, Mr. Saunders' friends posted on their Facebook pages what had happened, and how and why they had been told to leave. Tr. 21 – 22, 33, 41.
17. In response to the posting by Mr. Saunders' friends, on the following day, August 13, 2017, Mad Murphy's posted its own statement on its Facebook page regarding the incident. Affidavit and Answer, numbered paragraph 15; Tr. 22-23; CHRO-A.
18. In its Facebook posting, Mad Murphy's admitted that it told Mr. Saunders and his friends to leave because Mr. Saunders "was a little person". CHRO-A
19. According to Mad Murphy's Facebook posting, the bartender on duty, who had worked at Mad Murphy's for ten years, suffers from achondroplasiaphobia, also known as nanosophobia, "which is a fear of dwarfs/little people". According to the posting, this phobia causes the bartender to experience severe panic attacks, hyperventilate and pass out. CHRO-A.
20. Mad Murphy's provided no medical records substantiating the claim of the bartender's condition.
21. Mr. Saunders continues to be embarrassed by the incident. He has become more aware of his surroundings and more self-conscious about entering different

establishments. He worries about people acting on their fears toward him and that he might again be asked to leave an establishment. Tr. 23.

22. Mr. Saunders and his friends have not returned to Mad Murphy's since this incident occurred. Tr. 12, 27, 37.

IV APPLICABLE STATUTES

§ 46a-51

General Statutes § 46a-51 provides in relevant part that:

As used in section 4a-60a and this chapter:

* * *

(15) "Physically disabled" refers to any individual who has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness, including, but not limited to, epilepsy, deafness or being hard of hearing or reliance on a wheelchair or other remedial appliance or device; . . .

§ 46a-63

General Statute § 46a-63 provides in relevant part that:

(1) "Place of public accommodation, resort or amusement" means any establishment which caters or offers its services or facilities or goods to the general public, including, but not limited to, any commercial property or building lot, on which it is intended that a commercial building will be constructed or offered for sale or rent;

§ 46a-64 (a)

General Statute § 46a-64 provides in relevant part that:

(a) It shall be a discriminatory practice in violation of this section: (1) To deny any person within the jurisdiction of this state full and equal accommodations in any place of public accommodation, resort or amusement because of race, creed, color, national origin, ancestry, sex, gender identity or expression, marital status, age, lawful source of income,

intellectual disability, mental disability, physical disability, including, but not limited to, blindness or deafness, or status as a veteran, of the applicant, subject only to the conditions and limitations established by law and applicable alike to all persons; (2) to discriminate, segregate or separate on account of race, creed, color, national origin, ancestry, sex, gender identity or expression, marital status, age, lawful source of income, intellectual disability, mental disability, learning disability, physical disability, including, but not limited to, blindness or deafness, or status as a veteran

§ 46a-58

General Statutes § 46a-58 provides in relevant part that:

- (a) It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness, mental disability, physical disability or status as a veteran.

The federal Americans with Disabilities Act provides in relevant parts that:

42 U.S.C. § 12182:

- (a) General rule No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12181

As used in this subchapter:

- 1) Commerce The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

- (A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

* * *

(7) Public accommodation The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce—

* * *

(B) a restaurant, bar, or other establishment serving food or drink . .

Section 42 U.S.C. § 12102:

1) Disability The term “disability” means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive,

bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment. For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

§ 46a-86

General Statute § 46a-86 provides in relevant part that:

(a) If, upon all the evidence presented at the hearing conducted pursuant to section 46a-84, the presiding officer finds that a respondent has engaged in any discriminatory practice, the presiding officer shall make written findings of fact and file with the commission and serve on the complainant and respondent an order requiring the respondent to cease and desist from the discriminatory practice and to take such affirmative action as is necessary to achieve the purpose of this chapter.

* * *

(c) In addition to any other action taken under this section, upon a finding of a discriminatory practice prohibited by section 46a-58, 46a-59, 46a-64, 46a-64c, 46a-81b, 46a-81d or 46a-81e, the presiding officer shall determine the damage suffered by the complainant, which damage shall include, but not be limited to, the expense incurred by the complainant for obtaining alternate housing or space, storage of goods and effects, moving costs and other costs actually incurred by the complainant as a result of such discriminatory practice and shall allow reasonable attorney's fees and costs. The amount of attorney's fees allowed shall not be contingent upon the amount of damages requested by or awarded to the complainant.

V
RELEVANT CASE LAW

A

Mr. Saunders alleged that Mad Murphy's violated § 46a-64 (a). In order to state a prima facie case of discrimination under § 46a-64 (a), Mr. Saunders "must establish that he was deprived of services, while similarly situated persons outside the protected class were not deprived of those services, and/or that he received services in a markedly hostile manner or in a manner which a reasonable person would find objectively unreasonable, so as to give rise to an inference of unlawful discrimination." *Dingle v Fleet Bank*, Superior Court, judicial district of New Haven at New Haven, Docket No. NNH-CV CV00-0443028-s (May 20, 2002) (2002 WL 1370678, *2).

B

Mr. Saunders also alleged that Mad Murphy's violated General Statutes §46a-58 (a) when it denied him any rights, privileges or immunities, secured or protected by the United States. The specific federal rights that Mr. Saunders alleged Mad Murphy's violated were those protected under the Americans with Disabilities Act (ADA). To establish a prima facie case of discrimination under the ADA, a plaintiff must demonstrate that "(1) he or she is disabled within the meaning of the ADA; (2) that the defendants own, lease, or operate a place of public accommodation; and (3) that the defendants discriminated against the plaintiff within the meaning of the ADA." *Roberts v. Royal Atl. Corp.*, 542 F.3d 363, 368 (2d Cir. 2008).

C

Section 46a-86 (c) authorizes the presiding officer to award compensatory, or emotional distress, damages for violations of statutes including §§46a-58 and 46a-64. *Commission on Human Rights & Opportunities v. Board of Education*, 270 Conn. 665, 694 855 A.2d 212 (2004). “Damages that may be awarded under § 46a–86 (c) include damages for emotional distress.” *Commission on Human Rights & Opportunities v. Sullivan Associates*, Superior Court, judicial district of New Haven, Docket Nos. CV-94-4031061s, CV-95-4031060s (April 28, 2011) (2011 WL 1992014, *2). “Punitive damages are not authorized. The CHRO's authority for awarding damages differs from the authority of courts.” *Commission on Human Rights & Opportunities v Cantillon*, Superior Court, Judicial District of New Britain, Administrative Appeals Session, Docket HHB-CV-17-6039406, FN 9 (October 2, 2019) (2019 WL 5549576, *5) *aff'd*, 207 Conn 668 (2021), *cert. granted*, 340 Conn 909 (2021); *Chestnut Realty, Inc. v. Commission on Human Rights & Opportunities*, 201 Conn. 350, 366 (1986). “Awarding of compensatory damages for emotional distress is not a science.” *Commission on Human Rights & Opportunities v Cantillon*, *supra*, 2019 WL 5549576, *5.

A complainant need not present expert medical testimony to establish his or her internal, emotional response to the harassment; his or her own testimony, or that of friends or family members, may suffice. *Busche v. Burke*, 649 F.2d 509, 519 n. 12 (7th Cir.1981); see also, *Marable v. Walker*, *supra*. However, medical testimony may strengthen a case. *Id.* As the Supreme Court stated in *Carey v. Phipus*, “[a]lthough essentially subjective, genuine injury in this respect [mental suffering or emotional anguish] may be evidenced by one's conduct and observed by others.” *Carey v. Phipus*, 435 U.S. 247, 264 n. 20, 98 S.Ct. 1042 (1978).

In assessing damages for emotional distress the CHRO referees use a three-factor analysis which was enunciated in the case of *Commission on Human Rights and Opportunities ex rel. Harrison v. Greco*, CHRO No. 7930433 (1985), and which is sometimes referred to as the "Harrison factors." This analysis of emotional distress damages also has superior court support. *Commission on Human Rights and Opportunities ex rel Peoples v. Belinsky*, Superior Court, judicial district of Stamford–Norwalk at Norwalk, Docket No. 88061209 (November 8, 1988, Riefberg, J.). Under the *Harrison* analysis, the most important factor of such damages is the subjective internal emotional reaction of the complainants to the discriminatory experience which they have undergone and whether the reaction was intense, prolonged and understandable. *Harrison, supra*. Second, is whether the discrimination occurred in front of other people. *Id.* For this, the court must consider if the discriminatory act was in public and in view or earshot of other persons which would cause a more intense feeling of humiliation and embarrassment. *Id.* The third and final factor is the degree of the offensiveness of the discrimination and the impact on the complainant. *Id.* In other words, was the act egregious and was it done with the intention and effect of producing the maximum pain, embarrassment and humiliation.

Commission on Human Rights & Opportunities v Sullivan Associates, supra, 2011 WL 3211150, *4.

VI

ANALYSIS

A

Mad Murphy's violated § 46a-64 (a). Mr. Saunders has a physical disability known as achondroplasia which stunted his growth. (FF 3). Because of his disability, Mad Murphy's denied him services and told him to leave the premises. (FF 9, 10, 18). The non-disabled customers in the restaurant were not told to leave and were not denied services. (FF 13). Mad Murphy's sole defense was that the bartender had a medical or psychological condition of her own regarding "little people". (FF 19). Even presuming, without finding, that this could be an acceptable defense to the claim of discrimination,

Mad Murphy's explanation is not credible. It provided no medical documentation that the bartender's condition is an actual medical disorder rather than a label for bigotry and prejudice. (FF 20).

B.

Mad Murphy's violated §46a-58 (a). It committed a discriminatory practice in violation of § 46a-58 (a) when it deprived Mr. Saunders of rights protected by the laws of the United States, specifically, the ADA, because of his physical disability.

Mr. Saunders has a physical disability or impairment known as achondroplasia which stunted his growth. (FF 3). In its answer, Mad Murphy's admitted to being a bar and restaurant open to the public. (Affidavit, answer numbered paragraph 3; FF 1). It admitted to being a place of public accommodation. (Affidavit, answer numbered paragraph 3; FF 2). It also admitted to refusing to serve Mr. Saunders and to telling him to leave the premises because of his disability. (Affidavit, answer numbered paragraph 10; FF 10, 18, 19). Mad Murphy's clearly regarded Mr. Saunders as having a disability or impairment when it denied him services because of this actual or perceived impairment. (FF 10, 18, 19). In so doing, Mad Murphy's violated 42 U.S.C. § 12182, and therefore § 46a-58 (a), when it refused to serve Mr. Saunders and told him to leave the premises because of his achondroplasia.

C

Three factors are considered in determining the amount of compensatory emotional distress damages to be awarded pursuant to § 46a-86. The most important of these three is the subjective internal reaction experienced by a complainant and whether

that reaction was intense, prolonged and understandable. In this case, Mr. Saunders initially experienced anger, embarrassment, shock and depression that was visible to his friends. (FF 15). He became disengaged from conversation with them. (FF 15). Nearly five years later, Mr. Saunders continues to be embarrassed by the incident and has become acutely more aware and self-conscious when entering new places. (FF 21).

The second factor to consider is whether the discriminatory conduct occurred in public. The conversation between Mr. Saunders and the employee when he told to leave does not appear to have been overheard by anyone else in the bar. The reason Mr. Saunders was leaving, however, was certainly public to his friends who left with him. In addition, the departure of Mr. Saunders and his friends was clearly visible to the three other patrons. The discriminatory conduct certainly became public when Mr. Saunders' friends posted the incident on their Facebook pages and Mad Murphy's responded on its Facebook page. (FF 16, 18, 19).

The third factor to consider is whether the discriminatory act was done with the intention of causing Mr. Saunders pain, embarrassment and humiliation. While Mr. Saunders clearly experienced embarrassment and humiliation, that was not the employee's intention in asking Mr. Saunders to leave. The reason given by the employee for telling Mr. Saunders to leave was the alleged phobia of the bartender. (FF 19). Also, he and his friends had had no difficulty in entering the premises. (FF 7). In addition, Mr. Saunders and his friends had been frequent patrons of Mad Murphy's and Mad Murphy's had never denied them services or asked them to leave. (FF 5).

VII
CONCLUSIONS OF LAW

1. The commission and Mr. Saunders established by a preponderance of the evidence that Mad Murphy's violated § 46a-64 (a) when it refused to serve him and told him to vacate the premises because of his disability.
2. The commission and Mr. Saunders established by a preponderance of the evidence that Mad Murphy's violated § 46a-58 (a) when it violated the federal Americans with Disabilities Act by refusing to serve him and telling him to vacate the premises because of his physical disability.
3. The commission and Mr. Saunders presented sufficient evidence for the awarding of compensatory emotional distress damages.

VIII
ORDER

1. The respondent Mad Murphy's is ordered to pay the complainant Aaron Saunders \$30,000 in compensatory emotional distress damages. Mad Murphy's shall make payment on or before June 30, 2022.
2. Post-judgment interest shall accrue at the annually compounded rate of 10% on any balance outstanding on or after July 1, 2022.
3. Mad Murphy's is ordered to cease and desist from refusing to provide service to customers because of their actual or perceived physical disabilities.

It is so ordered this 3rd day of May 2022.

/s/ Jon P. Fitzgerald
Hon. Jon P. Fitzgerald
Presiding Human Rights Referee

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