

STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

CHRO No. 1330398 - Commission on Human Rights and Opportunities ex rel. Peter Roff,
Complainant, v. State of CT, Department of Correction, Respondent, and University of
Connecticut Health Center, Correctional Managed Health Care System, Respondent

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Ruling on the Department of Correction Motion to Strike

For the reasons set forth in the motion to strike filed by the Respondent Connecticut Department of Correction, on July 6, 2015, and after consideration of the CHRO's memorandum of law in opposition, filed August 28, 2015, the undersigned grants the motion to strike as to the claims based on section 46a-60(a)(4), section 46a-64(a), and section 46a-74, as well as any and all allegations of facts describing conduct occurring before September 26, 2012.

Section 46a-60(a)(4) only protects individuals that have either "opposed any discriminatory employment practice or ... filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84."

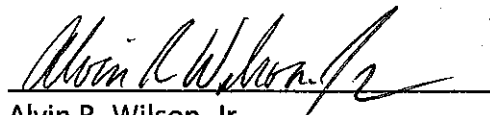
Regarding the section 46a-64(a) and 46a-74 claims, the undersigned endorses and adopts only the reasoning of the respondent that the Department of Correction is not a public accommodation under Connecticut law. This includes the reference to Judge Eliot D. Prescott's reasoning that numerous cases and "basic common sense, dictate the conclusion that a prison facility is not an establishment that caters or offers it services, facilities or goods to the general public," CHRO ex rel Vargas v. State Dep't of Correction, No. HHBCV136019521S, 2014 WL 564478, at *4 (Conn. Super. Ct. Jan. 10, 2014); and, therefore, is not a public accommodation.

The motion to strike the section 46a-77 claim is denied; however, section 46a-86(c) does not authorize a presiding human rights referee to award damages for a violation of section 46a-77. A violation of section 46a-77 is defined to be a "discriminatory practice" pursuant to section 46a-51, and cannot be enforced pursuant to section 46a-58. A presiding office may only award damages for a violation of section 46a-77 pursuant to section 46a-86(a). No monetary damages are available pursuant to section 46a-86(a).

The motion to strike the section 46a-71 claim is denied; however, section 46a-86(c) does not authorize a presiding human rights referee to award damages for a violation of section 46a-71. A violation of section 46a-71 is defined to be a "discriminatory practice" pursuant to section 46a-51, and cannot be enforced pursuant to section 46a-58. A presiding office may only award damages for a violation of section 46a-71 pursuant to section 46a-86(a). No monetary damages are available pursuant to section 46a-86(a).

To the extent that a complainant can prove a claim asserting a violation of a specific substantive provision of any federal or state constitutional or statutory provision "on account of" any of the protected classes listed in section 46a-58(a), a presiding officer may award damages for any such violation pursuant to subsections (a) and (c) of section 46a-86. Here, the complainant seeks to prove that the substantive provisions of one or more of the following have been violated – (1) Title II of the Americans with Disabilities Act, (2) the Eighth Amendment of the United States Constitution, (3) the Fourteenth Amendment of the United States Constitution, (4) Article First Section 9 of the Constitution of the State of Connecticut, and (5) Article First Section 20 of the Constitution of the State of Connecticut.

So ordered this 7th day of December 2015.


Alvin R. Wilson, Jr.
Presiding Human Rights Referee