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## **INVESTIGATIVE REPORT**

Complainant: Jeff Nolan - Vermont HRC Case PA17-0002  
Respondents: Wesco Inc. d/b/a Champlain Farms – “Capital Deli”  
Charge: Discrimination based on disability – Service Animal

### **BACKGROUND AND SUMMARY OF COMPLAINT**

On April 21, 2016, Jeff Nolan, a person with a disability, entered Capital Deli, a convenience store in Montpelier, Vermont. He was accompanied by his service dog, Snoopy. Upon entry, he was told that dogs were not allowed and asked to leave.

### **SUMMARY OF RESPONSE**

Respondent alleged that Mr. Nolan became upset and was asked to leave the store because he was agitated and causing a disturbance in the store, not because he had a service animal.

### **PRELIMINARY RECOMMENDATION**

This investigation makes a preliminary recommendation to the Human Rights Commission to find there are **reasonable grounds** to believe that Wesco

Inc. d/b/a Champlain Farms – “Capital Deli” discriminated against Jeff Nolan based on his disability in violation of 9 V.S.A. §4502 et seq.

### **DOCUMENTS**

- Complaint of Discrimination – 8/9/16
- Respondent’s Preliminary Response – 8/22/16
- Jeff Nolan’s Response to Complainant’s Response – 9/16/16
- Respondent’s Supplemental response to complaint – 11/8/16
- Montpelier Police Dept. Affidavit – Unnotarized – Christie Hamel – 4/21/16
- Montpelier Police Dept. Police Report – 4/21/16
- Video of store from 4/21/16
- Undated witness statement from 3d party bystander
- Wesco Inc. policy on Service Animals

### **INTERVIEWS**

- Jeff Nolan – 3/1/17, 3/8/17
- Christie Hamel – 2/8/17
- Mark Hamel – 2/8/17

### **BASIC FACTS**

On April 21, 2016, Mr. Nolan and his service dog, Snoopy, entered the Capital Deli. There he had an encounter with the manager, Christie Hamel. The encounter was almost exactly three minutes long. The most neutral evidence of people’s movement is on the footage from the on-site surveillance camera. There are four different perspectives, however, the footage is grainy and pixelated and there is no sound so its overall utility is limited.

The footage starts out showing the manager, Christie Hamel, behind the counter checking out customers and customers entering and leaving the store. At 12:04:32 p.m. Mr. Nolan enters the store with a dog. He is holding a yellow bag which he places on the floor next to the door.

The video shows he and Ms. Hamel speaking. He has a leash in his hand. Customer #1 steps in front of Mr. Nolan to check out. At approximately 12:05, Customer #2 walks in the store and stands behind Mr. Nolan while Ms. Hamel continues to check Customer #1 out. Mr. Nolan is standing facing the counter behind Customer #1. He is holding his service dog on a leash.

At almost 12:05:55, Mr. Nolan turns away from the counter with his dog still leashed and walks away towards the back of the store. Customer #1 is turned slightly toward Mr. Nolan and appears to be looking at him. Ms. Hamel is standing at the register with one hand on a keyboard and one hand resting on the counter.

Two seconds later, at 12:05:57, Mr. Nolan turns around and walks back to the counter. Three seconds later, at 12:06:00, he appears to reach for something on the counter. Ms. Hamel does not move, and Customer #1 is still at the counter. Mr. Nolan then shifts his stance to the right and Customer #1 also moves to the right of the front counter. Ms. Hamel's position is unchanged. Mr. Nolan and Customer #1 appear to look at each other. Mr. Nolan's service dog continues to be leashed and appears to be under control.

At 12:06:21, Customer #1 leaves and the camera shows Mr. Nolan at another counter and he appears to be writing something. Ms. Hamel has not moved – she is still standing behind the counter. She looks out the window and then back in the store and puts her hands behind her back and bends her elbows up so her hands are next to each other in the middle of her back. Seven seconds later, at 12:06:28, two other customers enter the store. Mr. Nolan is still bent over as if he is writing something and Ms. Hamel has still not moved. The new customers appear to lean down, look at and pet the dog. Ms. Hamel looks outside.

Seven seconds later, at 12:06:35, Ms. Hamel moves to her left to what looks to be another computer screen. Mr. Nolan is still leaned over a counter, presumably writing. At 12:06:39, Mr. Nolan shortens the dog's leash and the two customers who were trying to pet the dog walk past him and the dog towards the back of the store. Ms. Hamel has moved back to her original spot and can be seen holding a cell phone camera out in front of her while Mr. Nolan continues to write.

Sixteen seconds later, at 12:06:55, Customer #3 walks from behind the store, past Mr. Nolan, up to the counter, turns sideways to look in his direction and steps aside as Ms. Hamel takes the picture with her cell phone. Mr. Nolan has stopped writing and appears to adjust his leash. He does not walk back towards the counter. He exits the store at 12:07:30. One minute and twenty-five seconds later, at

12:08:55, Ms. Hamel picks up her cell phone again, presumably to call the police. She switches places with Mark Hamel, who is the Deli Manager as well as Ms. Hamel's husband and supervisee.

Mr. Hamel is present during the entire period. He can be seen in the deli area behind a counter, which is to Ms. Hamel's right. He is there when Mr. Nolan enters the store. At 12:05:11 he steps out of view but re-enters view eight seconds later at 12:05:19. He does not move from that position while Mr. Nolan is in the store. At 12:08:55 he switches places with Ms. Hamel while she uses her cell phone. Police records show that both Mr. Nolan and Ms. Hamel placed calls over the incident.

There is nothing remarkable about the exchange that can be gleaned from the video. There are no wild gesticulations. Ms. Hamel does not appear to be yelling. Mr. Nolan does not appear to be yelling. Ms. Hamel does not move from behind the counter. Her husband barely moves during the three-minute period. The dog does not roam around the store or jump on anyone. He is leashed. It is clear that the store space is cramped. When Mr. Nolan stops what he was doing (presumably writing), he does not go back up to Ms. Hamel, he simply leaves the store.

Supplemental information from written statements and interviews make the exchange sound considerably more heated than the video suggests. However there is one incontrovertible fact that comes from Ms. Hamel, from a bystander witness, from the police reports and from Mr. Nolan.<sup>1</sup> That fact is that Ms. Hamel told Mr. Nolan upon entry that he could not have his service dog in the store and questioned whether it was a service dog because it did not have a vest or some type of "uniform." Her actions are impermissible under state and federal law and the implementing regulations and it is this fact that forms the basis of the reasonable grounds recommendation.

## **I. Introduction: Elements of a *prima facie* case**

This case involves the ouster of Mr. Nolan and his service animal - "Snoopy" - by Christy Hamel, the manager of Capital Deli, from the premises of

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<sup>1</sup> This investigation interviewed Mark Hamel, Ms. Hamel's husband and her supervisee. His statement about what she said completely contradicted everyone else's statement, including Ms. Hamel's, and employed some legalese that a lay person would not be familiar with. This investigation therefore did not find him credible with respect to "who said what." The best evidence of Mr. Hamel's involvement thus comes from the video, which does not really reveal much since he barely moved during the three minute period.

Capital Deli.<sup>2</sup> Under the Vermont Fair Housing and Public Accommodations Act (VFHPAA)<sup>3</sup> and Title III of the American with Disabilities Act (ADA)<sup>4</sup>, an “owner or operator” of a place of public accommodation “shall not prohibit” a person with a disability from entering the public accommodation.<sup>5</sup> The legislature intended that the VFHPAA be construed to be consistent with the ADA and the “rules adopted thereunder.”<sup>6</sup> Vermont has not promulgated implementing rules with respect to service animals, which requires that this investigation review the federal regulations implementing Title III.

Pursuant to the rules interpreting the ADA’s service animal provision, an owner or operator of a place of public accommodation can make only two inquiries when someone accesses the business accompanied by a purported service animal. They may ask:<sup>7</sup>

- 1) whether “the animal is required because of a disability,” and
- 2) “what work or task the animal has been trained to perform.”<sup>8</sup>

The owner/operator is not allowed to make any inquiries into the “nature or extent” of the person’s disability, or to request documentation or proof of training. The regulations also make it clear that lack of a vest, badge or other equipment is not a permissible basis for assuming that the animal is not a service animal.<sup>9</sup> An owner or operator can ask an owner to remove the service dog if the dog is not housebroken or is ill-behaved.<sup>10</sup>

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<sup>2</sup> 9 V.S.A. § 4501(1): “Place of public accommodation” means any school, restaurant, store, establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public.

<sup>3</sup> 9 V.S.A. §4500 et seq.

<sup>4</sup> 42 USC § 12181 et seq.

<sup>5</sup> 9 V.S.A. §4502(b)(1).

<sup>6</sup> 9 V.S.A. §4500(a).

<sup>7</sup> 28 C.F.R. § 36.302(c)(9). Miniature horses may also be service animals but the reasonable modification issues are different from that of a canine.

<sup>8</sup> 28 C.F.R. § 36.302(c)(6).

<sup>9</sup> *Id.* The regulations also make it clear that in the case of an “obvious” service animal – say a seeing eye dog or a dog accompanying someone in a wheelchair – owners and operators should not even make those two inquiries: “Generally, a public accommodation may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person’s wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

<sup>10</sup> 28 C.F.R. § 36.302(c): Service animals - (1) General. Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability. (2) Exceptions. A public accommodation may ask an individual with a disability to remove a service animal from the premises if: (i) The animal is out of control and the animal’s handler does not take effective action to control it; or (ii) The animal is not housebroken.

Mr. Nolan does not have to prove that Ms. Hamel had the “intent” to discriminate against him, i.e. Mr. Nolan does not have to show an animus towards him or his service animal to establish a *prima facie* of discrimination. “It is undisputed that a plaintiff need not show intentional discrimination in order to make out a violation of the ADA.”<sup>11</sup> However he must establish a factual nexus between the request to leave the store and the reason for the request.

Thus, in order for Mr. Nolan to prove that Capital Deli violated the VFHPAA, he must prove the following by a preponderance of the evidence<sup>12</sup>:

- 1) That he is a person with a disability who uses a trained service animal to ameliorate some aspect of his disability;
- 2) Capital Deli is a private entity that owns, leases, or operates a place of public accommodation; and
- 3) Capital Deli via Ms. Hamel denied Mr. Nolan access to a place of public accommodations because of his disability.

## **II. First Element of *prima facie* case: Is Mr. Nolan a person with a disability?**

To prove that he is a person with a disability, VFHPAA requires that Mr. Nolan show that he has “a physical or mental impairment which limits one or more major life activities.”<sup>13</sup> A “physical or mental impairment” includes a variety of organic and/or acquired illnesses and disorders.<sup>14</sup> In 1996, Mr. Nolan was assaulted with a 36-inch metal curtain rod which resulted in a traumatic brain injury (TBI). His TBI affects his ability to orient himself and process thoughts in a logical way. He suffers from an impaired sleeping pattern and wears a Bi-pap machine. He has occasional blackouts and has been diagnosed with post-traumatic stress disorder (PTSD). He is unable to work and receives SSDI.

“Major life activities” are not defined in Vermont’s statute, but are defined

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<sup>11</sup> *Lentini v. California Center for the Arts, Escondido*, 370 F.3d 837, 846–847 (9th Cir. 2004) (citations omitted). The *Lentini* court also cited to the language of the ADA itself to make the point that intentional discrimination exists alongside non-intentional discrimination which takes shape through architectural, transportation, communication barriers, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, etc. *Id.*

<sup>12</sup> *Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1997).

<sup>13</sup> 9 V.S.A. §4501(2)(A).

<sup>14</sup> See 9 V.S.A. §4501(3)(B)-(C).

by federal law and regulation.<sup>15</sup> A “major life activity” includes working, sleeping normally, being able to stay oriented in time and place, and being able to manage anxiety. Mr. Nolan’s TBI and PTSD affect these major life activities. The statute requires that one’s major life activities be “substantially limited” by the impairment.<sup>16</sup> Clearly, the inability to work, the impairment in concentration and orientation, the inability to sleep normally and control extreme anxiety, are evidence of substantial limitations on major life activities.

The federal regulations implementing the ADA define a service animal as being “individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.”<sup>17</sup> Mr. Nolan’s service dog “Snoopy” allows him to safely navigate public areas, such as libraries, restaurants, stores and buses. Snoopy was trained initially by a third party, and then in concert with Mr. Nolan, to provide services to Mr. Nolan specific to his disability.<sup>18</sup> He is trained to rouse Mr. Nolan if he blacks out, to help calm and orient him if he becomes disoriented, and to calm and redirect him when he experiences episodes of anxiety related to PTSD.<sup>19</sup>

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<sup>15</sup> 29 C.F.R. § 1630.2(i): Major life activities— (1) In general. Major life activities include, but are not limited to: (i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and (ii) The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system. (2) In determining other examples of major life activities, the term “major” *shall not be interpreted strictly to create a demanding standard for disability*. ADA section 2(b)(4) (Findings and Purposes). Whether an activity is a “major life activity” is not determined by reference to whether it is of “central importance to daily life.” (Emphasis added).

<sup>16</sup> Vermont’s statute does not include the word “substantial” or “substantially” with respect to the limitation of major life activities. See 9 V.S.A. §4501(2)(A). However the preamble to the VFHPAA states the Act shall be interpreted to be in accord with and not more liberally than the ADA. The 2008 amendments to the ADA and the implementing regulations made it clear how the statute was to be read. 29 C.F.R. §1630.2(j): “Substantially limits— (1) Rules of construction. The following rules of construction apply when determining whether an impairment substantially limits an individual in a major life activity: (i) The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. ‘Substantially limits’ is not meant to be a demanding standard.”

<sup>17</sup> 28 C.F.R. § 36.104.

<sup>18</sup> Mr. Nolan has stated that he also trained dogs while in the U.S. Army for tasks such as explosives detection, drug detection, as well as training dogs to attack with deadly force and/or to subdue only.

<sup>19</sup> “Whether an animal qualifies as a service animal depends not only on her abilities but on the disabilities of the person relying upon her. Accordingly, the legal status of the animal vitally turns on the legal status of a human being as possessing a qualifying disability. Thus, a seeing-eye dog may have received superlative training for sight-impaired individuals, but if she enters a department store without a blind handler whom she is actively guiding,

**FINDING:** Mr. Nolan has both physical and mental impairments which substantially limit one or more of his major life activities. He is thus a person with a disability. His trained service animal ameliorates aspects of his disability and thus he meets element one.

## II. **Second Element of *prima facie* case**

Respondent Capital Deli is a convenience store in Montpelier, Vermont that serves the public. It qualifies as a place of public accommodation under the VFHPAA. It has never challenged this element of the *prima facie* case.

**FINDING:** Mr. Nolan can establish the second element of the *prima facie* case – Capital Deli is a place of public accommodation.

## III. **Third Element of *prima facie* case**

In order to prove the third element, Mr. Nolan must demonstrate that he was excluded from Capital Deli by Ms. Hamel because of his disability. Since this is an accommodation case, Mr. Nolan does not have to prove that Ms. Hamel intentionally discriminated against him because he is disabled. The standard is essentially one of strict liability. Respondent has offered several arguments to counter Mr. Nolan's effort to establish this element, including:

1. Mr. Nolan indicated he had been in the store at least 50 times prior to April 21, 2016 with his service dog Snoopy while Ms. Hamel was present. Respondent argues this undermines his complaint.
2. Mr. Nolan indicated that approximately two months earlier, he had challenged Ms. Hamel's decision not to sell alcohol to someone who Mr. Nolan believed to have a valid ID. Respondent suggested this could have motivated the request to leave.<sup>20</sup>

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she may be ejected and not regarded as a service animal at that place and time." Adam P. Karp, J.D., M.S., *Litigation of Assistance Animal Access Cases*, 147 Am. Jur. Trials 181, §2 (2016).

<sup>20</sup> The dispute, according to Mr. Nolan centered on Ms. Hamel's denying someone the right to purchase a wine cooler who, in Mr. Nolan's opinion, had a valid ID.



3. Mr. Nolan's behavior necessitated his removal and,
4. Ms. Hamel had received training on service animals and would not have violated the law or company policy.

Each of Respondent's arguments is problematic:

1. **Substantial compliance is not a defense.** Mr. Nolan could have been in the store 100 times without any issues. However, this does not mean that a business cannot violate a law on the occasion of the 101st visit through the actions of an employee.<sup>21</sup> This complaint is only about the events of April 21, 2016, not any other day.
2. **Ms. Hamel does not acknowledge knowing or recognizing Mr. Nolan.** This makes it difficult to evaluate the impact of Mr. Nolan's claims of past encounters with Ms. Hamel. Ms. Hamel had at least three opportunities to bring up prior encounters with Mr. Nolan, but she did not:
  - **Ms. Hamel's typed statement:** Ms. Hamel typed up a "Montpelier Police Department Affidavit" on April 21, 2016. She never had it notarized, but stated to this investigation during an interview that it was her best recollection of the events of that day. She makes no mention of ever having seen Mr. Nolan before, with or without a dog. Her typed statement is entirely based upon the events of that day with no reference to any prior contacts.
  - **Police report:** A police report was generated because both Mr. Nolan and Ms. Hamel called the police. The officer took both Ms. Hamel's statement and Mr. Nolan's statement. There is no mention in the report of Ms. Hamel that she knew who Mr. Nolan was, although there is no indication Mr. Nolan mentioned prior contacts either.

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<sup>21</sup> As a result, the business may be liable for the acts of its employee under a theory of *respondeat superior* rather than through some large problem with overall lack of training. See *Stamm v. New York City Transit Authority*, No. 04-CV-2163, 2006 WL 1027142, at \*11 (E.D.N.Y. Feb. 7, 2006).

- Interview: In an interview with this investigation, Ms. Hamel was asked if she had ever seen Mr. Nolan before. She said “Not that I can remember, but I can’t remember every face either.”
3. **All accounts of Mr. Nolan losing his temper note that it occurred after Ms. Hamel told him he was not allowed to have his service dog in the store.** Ms. Hamel’s own account contains an admission that Mr. Nolan became “heated” and “started going off” *after* she told Mr. Nolan he had to leave, not before. In addition, the third-party witness’s statement noted that it was *after* Ms. Hamel said, “the animal could not be in the store unless it was a service animal” that Mr. Nolan became “combative,” “aggressive,” and “belligerent.” Mr. Nolan denies being as upset as Ms. Hamel and the third-party witness have described. The store video is not helpful. Counsel for Respondent claimed a “right to eject” customers under common law who “are creating a disturbance and interfering with the commercial use of the property.” All the evidence points to Mr. Nolan getting upset in response to Ms. Hamel’s statement that he could not have his service animal in the store not prior to that. Per Ms. Hamel: “A man walked in with a dog. I said sorry, but your dog can’t be in here.”
  4. **Ms. Hamel had been trained in the company policy and understood her employer’s legal obligations it has towards persons with service animals.** Ms. Hamel’s actions show that she either forgot, and/or got confused about, and/or abandoned her training on April 21, 2016. In her unnotarized statement, which she said was her best recollection of the events, Ms. Hamel wrote: “I know we are not supposed to ask for paperwork [sic] but I Did [sic] not know the animal doesn’t have to be in uniform. I simply stated the dog was not in uniform so I did not know he was a service animal.” Wesco’s policy, the policy that Ms. Hamel was trained to follow, states the following:

Most of the time, people with disabilities who use service animals may be easily identified without any need for questioning. If we can tell by looking, it is our policy not to make an individual feel unwelcome by asking questions. *If we are unsure whether the animal meets the definition of a service animal, it is our policy to ask the individual only two*

*questions: (1) Is the dog a service animal required because of a disability? (2) What work or task has the animal been trained to perform?*

Since Ms. Hamel has stated that she did not recognize that Snoopy was a service animal, she was legally allowed to ask only the two questions, not to tell Mr. Nolan that he could not have his dog in the store or to question whether Snoopy was a service animal because he did not have on a “vest.”

**FINDING:** The third element of the *prima facie* case is established, and thus the *prima facie* case itself is established:

- 1) Mr. Nolan has established that he is a person with a disability – he has a traumatic brain injury and PTSD and his service dog, Snoopy, is specially trained to assist him in ameliorating aspects of his disability;
- 2) Capital Deli is a private entity that owns, leases, or operates a place of public accommodation; and
- 3) Ms. Hamel, by her own admission, asked Mr. Nolan to leave because Snoopy did not have a vest and she did not believe he was a service dog. She failed to ask the only questions allowable by law. There is ample evidence that she did so before any alleged outburst by Mr. Nolan and despite her training in the company’s service animal policy. The police report and the written statement of the bystander support this.

#### **IV. Other defenses**

Respondent’s primary challenge to Mr. Nolan’s case has been to offer facts that undermine Mr. Nolan’s ability to establish a *prima facie* case and this has been unsuccessful. There are two statutory defenses available to the Respondent in the VFHPAA, however neither is successful. The first defense is that accommodating Mr. Nolan and his service dog would result in a “fundamental alteration” of Capital Deli’s business such that the cost of compliance with the statute would cause an “undue burden.”<sup>22</sup> The Respondent has not raised this and there is no

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<sup>22</sup> “Readily achievable” means “easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, the factors considered in determining whether an action is an undue

reason to discuss this other than to note its availability. It is extremely difficult for a public accommodation to raise a successful fundamental alternation/ undue burden defense in the case of service animals.

The second defense would require the Respondent to provide evidence that Mr. Nolan did not keep Snoopy under control at all times.<sup>23</sup> In its supplemental response,<sup>24</sup> Respondent claimed that Snoopy was “allowed ... to wander to the end of its leash, at times blocking other customers access to aisles and products.” However Ms. Hamel made no complaint that Snoopy was ill-behaved to the police, nor did the third-party witness indicate in his statement that Snoopy was out of control or impeding customers’ movements in the store. Ms. Hamel wrote in her typed statement that his dog was “actually very nice.” The store video also fails to substantiate Respondent’s claim. The dog does not at all appear to be out of control. He is leashed and stays close to Mr. Nolan. At one point customers lean over to pet him and then step around the two to walk to the back of the store, but it is a cramped store with narrow aisles. There is no indication Mr. Nolan was not in control of Snoopy. Thus, neither provides the Respondent with a legitimate defense for its actions.

## **V. Conclusion**

There is more than sufficient evidence that Ms. Hamel failed to abide by the service animal statute and rules. By her own admission, she told Mr. Nolan that dogs were not allowed and she questioned whether Snoopy was a service animal because he did not have on a vest. She failed to ask either of the two questions she could legally ask.

There are many reasons for the two-question limit. Their utility becomes quite evident in cases where a person has PTSD, TBI, or mental, emotional or psychiatric “mental impairments”<sup>25</sup> or challenges navigating the world around them. The questions act as a buffering device or a delay mechanism. A person with a bona fide service animal will know the questions that are allowed and not allowed and will expect those to be the questions asked. When they are not asked

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burden pursuant to subsection (10) of this section apply. “Undue burden” means significant difficulty or expense.” The statute then sets out several factors that must be considered. 9 V.S.A. §4501(9)-(10). See 9. V.S.A. §4501(10)((A)-(E) for the factors.

<sup>23</sup> See *supra* note 9.

<sup>24</sup> Respondent’s Supplemental Response, November 18, 2016, p.2.

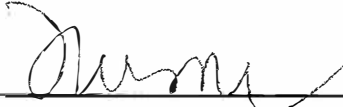
<sup>25</sup> Per the statute.

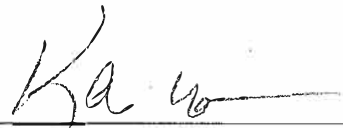
at all, or are asked inappropriately, it may make it more difficult for that person to manage their reactions.

It is impossible to know the tone taken by Ms. Hamel when she challenged Mr. Nolan. It is impossible to gauge the true degree of his reaction. Certainly, neither Ms. Hamel nor Mr. Nolan appeared upset on the video. Mr. Hamel, Ms. Hamel's husband, did not change his position during the exchange or try to intervene. Ms. Hamel did not recall any prior interactions. Had Ms. Hamel asked the permitted questions or even the first question and had Mr. Nolan interrupted and responded with anger, then the analysis might be different. However Ms. Hamel herself states that she did not ask any questions at all. She asked Mr. Nolan and Snoopy to leave because Snoopy did not have a "service uniform." Thus Respondent has not successfully undermined Mr. Nolan's *prima facie* case or provided any legal defense.

**RECOMMENDATION**

1) This investigation makes a preliminary recommendation to the Human Rights Commission to find there are **reasonable grounds** to believe that Wesco Inc., d/b/a Capital Deli discriminated against Jeff Nolan based on disability in violation of 9 V.S.A. § 4502 et seq.

 4/14/17  
\_\_\_\_\_  
Nelson M. Campbell  
Administrative Law Examiner

 4/14/17  
\_\_\_\_\_  
**APPROVED:**  
Karen L. Richards  
Executive Director & Legal Counsel

STATE OF VERMONT  
HUMAN RIGHTS COMMISSION

Jeff Nolan, )  
Complainant )  
 )  
v. ) VHRC Complaint No. PA17-0002  
 )  
Wesco, Inc. d/b/a Champlain Farms )  
"Capital Deli", )  
Respondents )

FINAL DETERMINATION

Pursuant to 9 V.S.A. 4554, the Vermont Human Rights Commission enters the following Order:

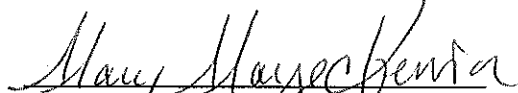
1. The following vote was taken on a motion to find that there are reasonable grounds to believe that Wesco, Inc., d/b/a Champlain Farms - "Capital Deli," the Respondents, illegally discriminated against Jeff Nolan, the Complainant, in violation of Vermont's Fair Housing and Public Accommodations Act.

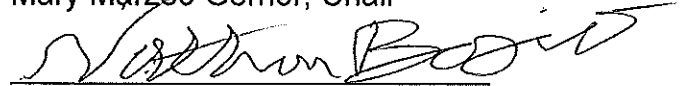
Mary Marzec-Gerrior, Chair	For ___ Against <input checked="" type="checkbox"/> Absent ___ Recused ___
Nathan Besio	For <input checked="" type="checkbox"/> Against ___ Absent ___ Recused ___
Chuck Kletecka	For <input checked="" type="checkbox"/> Against ___ Absent ___ Recused ___
Donald Vickers	For <input checked="" type="checkbox"/> Against ___ Absent ___ Recused ___
Dawn Ellis	For <input checked="" type="checkbox"/> Against ___ Absent ___ Recused ___


Entry:  Reasonable Grounds \_\_\_ Motion failed

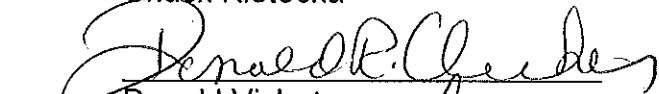
Dated at Montpelier, Vermont, this 11<sup>th</sup>, day of May 2017.

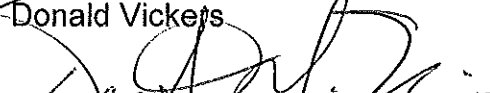
BY: VERMONT HUMAN RIGHTS COMMISSION

  
Mary Marzec-Gerrior, Chair

  
Nathan Besio

  
Chuck Kletecka

  
Donald Vickers

  
Dawn Ellis