



VT Human Rights Commission
14-16 Baldwin Street
Montpelier, VT 05633-6301
<http://hrc.vermont.gov>

[phone] 802-828-2480
[fax] 802-828-2481
[tdd] 877-294-9200
[toll free] 1-800-416-2010

INVESTIGATIVE REPORT

VHRC Case PA17-0010

Complainant: Sharon Fortin

Grey Fox Inn: Hayes Hospitality Holdings, LP / Grey Fox Inn

Charge: Public Accommodations – Disability Discrimination

Summary of Complaint:

Ms. Fortin alleges that she was discriminated against when she arrived for prepaid reservations at Grey Fox Inn, in Stowe, Vermont, and was turned away because of her service animal. Grey Fox Inn refused to accommodate Ms. Fortin without an additional fee of \$250. Ms. Fortin was forced to find different accommodations.¹

Summary of Response:

Grey Fox Inn provided no response. Grey Fox Inn's registered agent is Corporation Service Company, a company with a local mailing address in Barre, VT but with its headquarters in Wilmington, DE. Corporation Service Company was served by mail with the complaint on November 8, 2016 with a cover letter specifying a due date of November 22, 2016, for the response. After receiving no response, this investigation sent a letter to Grey Fox Inn, through its registered agent, on January 9, 2017 stating that a failure to correspond or provide a response would result in the investigation proceeding without Grey Fox Inn's evidence and input. This investigation also contacted the hotel directly in Stowe, VT and received an email address for the owner, Allen Hayes, but no other contact information. An email was sent to Mr. Hayes on

¹ Complaint.

February 10, 2017. Lastly, this investigation contacted Corporation Service Company who refused to provide any information as to their client without a subpoena. As a result of numerous futile efforts to contact Grey Fox Inn, this investigation moved forward accordingly.

Preliminary Recommendations:

This investigation makes a preliminary recommendation that The Vermont Human Rights Commission find there are **reasonable grounds** to believe that the Grey Fox Inn discriminated against Sharon Fortin on the basis of her disability under the VFHPAA, codified at 9 V.S.A. §4502 (b).

Documents:

Complaint

Stowe Police Department Incident Report No. 16ST003800

Grey Fox Inn & Resort Receipt

Priceline.Com Summary of Charges

Email Correspondence between Ms. Fortin and Priceline.Com

Hilton Garden Inn, Hartford, Connecticut Receipt

Photo taken by Ms. Fortin of Grey Fox Inn's sign, "No Pets, Service Animal Allowed."

Interviews:

Sharon Fortin

Officer Kyle Walker, Stowe Police Department

Facts:

Ms. Fortin and her husband reside in Hamburg, Pennsylvania with their dog, Max. Ms. Fortin has severe panic attacks, is Hypoglycemic, has been diagnosed with Sleep Apnea and has severe neuropathy in her knees.² As a life-saving measure, Ms. Fortin sleeps with a breathing mask,

² Interview with Sharon Fortin.

connected to a sleep machine. Ms. Fortin's dog, Max is specifically trained to alert her if the mask comes off in the evenings or the breathing machine turns off.³

Max is an 18-pound poodle mix who was originally trained to work with their daughter, a disabled veteran who lost her legs in an accident. Max received professional training every Saturday for several weeks above and beyond basic skills. Max was trained at the VA hospital as a "therapy dog" but when their daughter received prosthetics and moved away, Max remained with Ms. Fortin and her husband.⁴ Max was then trained to react to the Sleep Apnea machine. Max has a card identifying him as a service dog.⁵

Ms. Fortin made reservations through Priceline.Com for one room for one night, at Grey Fox Inn in Stowe, VT.⁶ On October 21, 2016, Ms. Fortin, her husband and Max, traveled an approximate distance of 417 miles; a seven-hour road trip, not including stops from Hamburg to Stowe. They arrived approximately at 2 p.m. but were told to return at 4 p.m. for check-in. At 4 p.m., Ms. Fortin attempted to check in at the front desk while her husband remained with Max, outside. Ms. Fortin informed the hotel desk clerk that she had her service animal with her at which time, the service clerk told Ms. Fortin, there would be a \$250 pet deposit.⁷

Ms. Fortin clarified that the dog was a service animal and not a "pet." The hotel desk clerk then went to the back room and spoke to someone over the telephone, presumably James Parrish, the hotel manager.⁸ The hotel desk clerk then returned and informed Ms. Fortin that she would still have to pay the \$250 additional fee or would have to leave. The desk clerk continued to refer to the dog as a "pet" throughout their conversation and said that "we don't accept pets."⁹ Ms. Fortin said that the hotel clerk was stoic but not rude. The hotel clerk did not ask any questions about Max and never observed Max. Ms. Fortin repeatedly requested to speak to the manager but the hotel desk clerk indicated that he was not there and that she could not speak with him.¹⁰

³ Id.

⁴ Id.

⁵ Id.

⁶ Receipt from Grey Fox Inn, Priceline.Com summary of charges.

⁷ Interview with Sharon Fortin.

⁸ Id., Complaint.

⁹ Interview with Sharon Fortin.

¹⁰ Id.

Ms. Fortin contacted Priceline.Com and spoke to Ivan, ID#1338510, who informed her that she should pay the \$250 fee for the service animal. Ms. Fortin corrected Ivan and the hotel clerk, informing them that a fee could not be charged for a service animal.¹¹

Upset that Grey Fox Inn was denying her reservations, Ms. Fortin called the Stowe Police Department.¹² Officer Kyle Walker, a senior patrol officer, received the dispatch call concerning a woman who was attempting to check into Grey Fox Inn and was refused service because of her service dog.¹³ Officer Walker reviewed the Federal ADA rules and responded to the incident, arriving at the hotel at 4:51 p.m.¹⁴ Officer Walker learned that the hotel desk clerk was ordered by her manager to charge Ms. Fortin an additional fee of \$250 for the service dog. Knowing that places of public accommodations could not charge such fees for service dogs, Officer Walker informed the desk clerk of the law and provided a copy of the ADA rules to the clerk. The hotel clerk said she was representing the wishes of management and was willing to refund the money for the room but could not allow the service dog to stay without the additional fee being paid.¹⁵ Officer Walker did not identify the hotel desk clerk or manager of the hotel.¹⁶ Being that this was not a criminal case; Officer Walker was not authorized to do more than he had. Officer Walker was apologetic to Ms. Fortin.

Ms. Fortin requested Officer Walker write an incident report and Officer Walker agreed and left at 5:07 p.m. Officer Walker said the dog remained outside the entire time he was there and he never observed the dog.¹⁷

The hotel desk clerk then told Ms. Fortin, "we're closing, you have to leave."¹⁸ The desk clerk provided a receipt for the refund.¹⁹ Frustrated and exhausted from the day and the exchange, Ms. Fortin, her husband and Max left and took a photo of a sign posted on Grey Fox Inn's door, "No Pets, Service Animals Allowed."²⁰ Ms. Fortin drove to Hartford, Connecticut and stayed at the

¹¹ Id.

¹² Incident Report.

¹³ Id., Interview with Officer Walker.

¹⁴ Id.

¹⁵ Id.

¹⁶ Interview with Officer Walker.

¹⁷ Id.

¹⁸ Interview with Sharon Fortin.

¹⁹ Receipt from Grey Fox Inn.

²⁰ Photo.

Hilton Garden Inn, 211 miles from the Grey Fox Inn. The next day, they drove home to Hamburg, Pennsylvania.²¹

Ms. Fortin's bank account was reimbursed and Priceline.Com agreed to refund 50% of the cost of the stay at the Hilton Garden Inn.²²

Legal Analysis:

The Vermont Fair Housing and Public Accommodations Act (VFHPAA), 9 V.S.A § 4502 states:

(b) An owner or operator of a place of public accommodation or his or her employee or agent shall not prohibit from entering a place of public accommodation:

(1) An individual with a disability accompanied by a service animal.

The burden is on Ms. Fortin to establish a prima facie case of public accommodations discrimination but this burden is a "relatively light" one as the Second Circuit Court of Appeals has held that the burden of establishing a prima facie case under the ADA is not onerous.²³ To establish a prima facie case of public accommodations discrimination under the VFHPAA, Ms. Fortin must show:

- 1) She is a member of a protected class;
- 2) Grey Fox Inn is a place of public accommodation;
- 3) She was prohibited from staying at the place of public accommodation; and
- 4) The prohibition was *because of* Ms. Fortin's service animal.

Ms. Fortin does not have to prove discriminatory intent or animus towards herself to establish a prima facie case of discrimination.²⁴

The legal standards, duties and requirements set forth under VFHPAA are to be construed consistently with The Americans with Disabilities Act (ADA).²⁵ Thus, in addition to looking at

²¹ Receipt from Hilton Garden Inn.

²² Email correspondence between Priceline.Com and Ms. Fortin.

²³ *Kennedy v. Dresser Rand Co.*, 193 F.3d 120, 122 (2nd Cir. 1999); see also *Dean v. Univ. at Buffalo School of Medicine, et. al.*, 804 F.3d 178, 189 (2nd Cir. 2015).

²⁴ *Lentini v. California Center for the Arts, Escondido*, 370 F.3d 837, 846-847 (9th Cir. 2004).

²⁵ 9 VSA § 4500 (a) and ADA, 42 U.S.C. §12101 et. seq.

Vermont law, we also look to federal interpretations of that statute in determining whether complainant has met her burden.²⁶ Under the principles of deference established in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*,²⁷ courts give controlling weight to agency interpretations.²⁸ Under the ADA, service animals are defined as:

Any dog that is 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... The work or tasks performed by a service animal must be directly related to the individual's disability.²⁹

Service dogs are not required to be professionally trained; they can be trained by their owners.³⁰ There are no specific breeds of dogs that are considered service dogs.³¹ Because service dogs are not “pets” under the law, places of public accommodations cannot charge a “pet” fee or any other surcharge.³²

Places of public accommodations may refuse service or ask a person to leave if 1) the animal is out of control and the animal's handler does not take effective action to control it; or 2) the animal is not housebroken.³³ If a service dog is displaying vicious behavior towards other guests or hotel guests, a hotel may ask that the dog be removed from the premises.³⁴ The law does not require that places of public accommodations allow service animals if doing so would “fundamentally alter” the goods, services and activities that they provide to the public.³⁵

²⁶ *Id.* See also, *State v. G.S. Blodgett Co.*, 163 Vt. 175, 180 (1995); *Hodgdon v. Mt. Mansfield Co.*, 160 Vt. 150, 165, (1992).

²⁷ 467 U.S. 837 (1984)

²⁸ Courts give controlling weight to agency interpretations unless they are arbitrary, capricious, or manifestly contrary to the statute. *K.M. v. Tustin Unified School District and D.H. v. Poway Unified School District*, 725 F.3d 1088 (9th Cir., 2013) citing *Armstrong v. Schwarzenegger*, 622 F.3rd. 1058, 1065 (9th Cir., 2010).

²⁹ 28 C.F.R. §36.104.

³⁰ Department of Justice's FAQ on Service Animals.

³¹ *Id.*

³² 28 C.F.R. §35.136 (h): A public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

³³ 28 C.F.R. §35.136 (b).

³⁴ Department of Justice FAQ on Service Animals.

³⁵ *Id.*

However, in most cases, the presence of a service animal will not fundamentally alter places of public accommodations.³⁶

I. Ms. Fortin is a person with a disability

A disability is a “physical or mental impairment which limits one or more major life activities.”³⁷ What qualifies as a physical or mental impairment is not limited to any list under the ADA or VFHPAA. Ms. Fortin was diagnosed with Sleep Apnea, a potentially life-threatening condition. On any given evening, Ms. Fortin’s breathing may stop 37 times. As a result, Ms. Fortin uses a sleep machine and mask that delivers oxygen during sleep. In addition, Ms. Fortin suffers from other physical ailments such as panic attacks, severe neuropathy in her knees and she is Hypoglycemic. Ms. Fortin is a person with a disability under the VFHPAA.

II. Grey Fox Inn is a Place of Public Accommodation

Grey Fox Inn is a place of public accommodations. Hotels have long been held to be places of public accommodations under the ADA and VFHPAA which defines place of public accommodation as any “...establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public.”³⁸ Grey Fox Inn is an established hotel in Stowe, VT and has been operating as an Inn since the 1900s, offering sleeping accommodations to members of the general public.³⁹ It has three buildings and 33 rooms that are available through direct booking and/or third party vendors like Priceline.Com.⁴⁰

III. Ms. Fortin was prohibited from staying at Grey Fox Inn because of her service dog.

³⁶ Id.

³⁷ 9 V.S.A. §4501 (2)(A).

³⁸ 9 V.S.A. §4501 (1).

³⁹ Grey Fox Inn website: greyfoxinn.com.

⁴⁰ Id., Priceline.com receipt.

Max is trained specifically to bark and wake Ms. Fortin up when her mask comes off or her Sleep Machine stops working in the middle of the night. Max's training is directly related to Ms. Fortin's disability and although it is not required that Max be professionally trained, he has been.⁴¹

Grey Fox Inn unlawfully asked Ms. Fortin to pay a surcharge of \$250 to allow Max, her service dog, to stay with her and unlawfully rejected her reservation because of her service dog. The statements of both Ms. Fortin and Officer Walker corroborate one another and support these last prongs of the prima facie case.

It is not necessary to show that Grey Fox Inn acted with animus. However, there is evidence to support a conclusion that Grey Fox Inn knowingly violated Ms. Fortin's rights under the ADA and VFHPAA because 1) Ms. Fortin advised the hotel desk clerk that Grey Fox Inn was acting unlawfully in denying her reservations and requesting a surcharge; 2) Officer Walker advised the hotel desk clerk of the ADA and provided a copy of the law to Grey Fox Inn; and 3) Grey Fox Inn posted a sign on its door, "NO PETS, service dogs allowed" indicating prior notice and knowledge that service dogs could not be rejected from their establishment.

IV. Grey Fox Inn cannot show "fundamental alteration."

It is rare that a hotel such as Grey Fox Inn can show that allowing Ms. Fortin's service dog to stay at the hotel would lead to a "fundamental alteration" of its policies, procedures and business. Their request for Ms. Fortin to pay a surcharge is evidence that it typically allows other guests to bring pets.

Lastly, because Max never entered the hotel lobby and the hotel desk clerk never had the opportunity to observe Max, Grey Fox Inn cannot argue that Max was not well-behaved, was not house-broken, had vicious propensities or would have posed a threat to guests or staff. Grey Fox Inn simply rejected the idea of a service animal at its hotel.

⁴¹ Interview with Sharon Fortin, 28 C.F.R. §36.104.

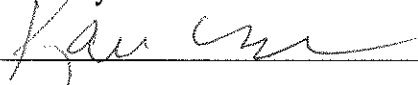
Conclusion:

This investigative report recommends that the VHRC find that there are **reasonable grounds** to believe that Grey Fox Inn discriminated against Ms. Fortin under the VFHPAA, codified at 9 V.S.A. §4502 (b).



Bor R. Yang, Administrative Law Examiner

5-1-2017
Date

Approved by:


Karen Richards, Executive Director
& Legal Counsel

5/1/17
Date

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Sharon Fortin,
Complainant)
)
)
v.) VHRC Complaint No. PA17-0010
)
)
Hayes Hospitality Holdings, LP)
d/b/a Grey Fox Inn,)
Respondents)

FINAL DETERMINATION

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

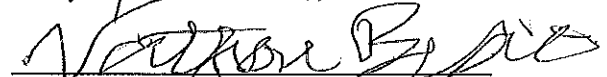
1. The following vote was taken on a motion to find that there are reasonable grounds to believe that Hayes Hospitality Holdings, LP/Grey Fox Inn, the Respondents, illegally discriminated against Sharon Fortin, the Complainant, in violation of Vermont's Fair Housing and Public Accommodations Act.

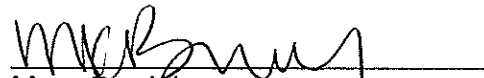
Mary Marzec-Gerrior, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Mary Brodsky	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Dawn Ellis	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Entry:	<input checked="" type="checkbox"/> Reasonable Grounds	<input type="checkbox"/> Motion failed		

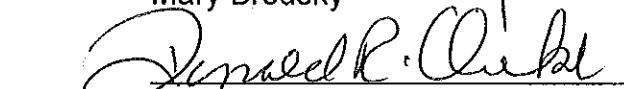
Dated at Montpelier, Vermont, this 25th, day of May 2017.


BY: VERMONT HUMAN RIGHTS COMMISSION


Mary Marzec-Gerrion, Chair


Nathan Besio


Mary Brodsky


Donald Vickers


Dawn Ellis