

In the Matter of

C. C. SLAUGHTERS, LTD.,

Case No. 19-04

Final Order of Commissioner Dan Gardner

Issued March 9, 2005

SYNOPSIS

Respondent, a nightclub that offered food, beverages, and music to the public, evicted Complainant from its premises on June 12 and June 14, 2004, because he had Parkinson's Disease, a disability. Complainant experienced substantial emotional distress as a result of Respondent's unlawful conduct and the commissioner awarded Complainant \$25,000 in damages for emotional distress. ORS 659A.100(1)(a), ORS 659A.100(2)(a), ORS 659A.100(2)(d), ORS 659A.142(3), ORS 659A.400; OAR 839-006-0205(6), OAR 839-006-0205(10).

The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Dan Gardner, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on January 11, 2005, in the 10th floor hearing room of the Bureau of Labor and Industries, located at 800 NE Oregon Street, Portland, Oregon.

The Bureau of Labor and Industries ("BOLI" or "the Agency") was represented by case presenter Jeffrey C. Burgess, an employee of the Agency. Complainant John Rivelli was present and was not represented by counsel. Respondent C. C. Slaughters, Ltd. did not file an answer or make an appearance at the hearing and was declared in default.

The Agency called the following witnesses: John Rivelli, Complainant; David Whitney, Delmar Gordy, and Tim Galtier, friends of Complainant who witnessed the

alleged unlawful discrimination; and Peter Martindale, Civil Rights Division Senior Investigator.

The forum received into evidence:

a) Administrative exhibits X-1 through X-15 (submitted or generated prior to hearing);

b) Agency exhibits A-1 through A-5 (submitted or generated prior to hearing);

Having fully considered the entire record in this matter, I, Dan Gardner, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

FINDINGS OF FACT – PROCEDURAL

1) On August 30, 2002, Complainant filed a verified complaint with the Agency's Civil Rights Division alleging that he was the victim of the unlawful practices of Respondent in public accommodation. After investigation, the Agency found substantial evidence of an unlawful employment practice and issued an Administrative Determination on August 19, 2003.

2) On November 8, 2004, the Agency issued Formal Charges alleging that Respondent discriminated against Complainant by making a distinction, discrimination or restriction in a place of public accommodation because Complainant is a disabled person, in violation of ORS 659A.142(3) and OAR 839-006-0300. The Agency sought damages in the amount of \$30,000 for emotional distress.

3) On December 7, 2004, the forum served the Formal Charges on Respondent,ⁱ accompanied by the following: a) a Notice of Hearing setting forth January 11, 2005, in Portland, Oregon, as the time and place of the hearing in this matter; b) a Summary of Contested Case Rights and Procedures containing the information required by ORS 183.413; c) a complete copy of the Agency's

administrative rules regarding the contested case process; and d) a separate copy of the specific administrative rule regarding responsive pleadings.

4) On December 30, 2004, the Agency filed a motion for an Order of Default based on Respondent's failure to file an answer to the Formal Charges after being served with the documents.

5) Respondent had not responded to the Agency's motion at the time the hearing commenced.

6) At the time set for hearing, Respondent did not appear and had not notified the forum that it would be late or would not attend the hearing. The hearing commenced at 10 a.m. on January 11, 2005, instead of 9 a.m. as stated on the Notice of Hearing. At the outset of the hearing, the ALJ granted the Agency's motion for an Order of Default based on Respondent's failure to file an answer.

7) At the outset of the hearing, the ALJ verbally advised the Agency of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

8) The ALJ issued a proposed order on January 25, 2005, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. No exceptions were filed.

FINDINGS OF FACT – THE MERITS

1) At all times material herein, Respondent C. C. Slaughters, Ltd, was an Oregon corporation doing business at 219 NW Davis Street, Portland, Oregon as a nightclub ("club") that served food and alcohol to the public.

2) In June 2002, Respondent's club enforced the following policy:

"It is our policy the (sic) if someone is visibly intoxicated to have them stay and have some French fries and water, coffee or soda, and take the time to sober up. We do not ask someone to leave unless they become belligerent and are disturbing the peace."

3) Complainant was diagnosed with Parkinson's Disease ("Parkinson's") in 1992. Complainant receives treatment for Parkinson's at the Parkinson Center of Oregon, Oregon Health Sciences University ("OHSU").

4) Parkinson's is a progressively degenerative disease that progresses at different rates for different people. Body tremors are the most noticeable symptom of Parkinson's.

5) When Complainant was first diagnosed with Parkinson's, his only symptom was a twitch in his left foot. Since then, his disease progressed to his left side, then to his right side. His balance is also impaired.

6) Complainant takes 21 pills each day to help control his Parkinson's. Without taking this medication, he can hardly move without assistance and is unable to turn over in bed without help.

7) It takes Complainant up to 30 minutes to dress in the morning because of Parkinson's. Parkinson's affects his ability to eat and swallow. Even with medication, Parkinson's causes him to walk with a noticeable shuffle most of the time, and he walks at a significantly slower pace than a person who does not have Parkinson's. If he focuses, he can walk without a shuffle for a short period of time, but then his shuffle resumes. Sometimes his body "locks up" on him while walking and he cannot walk further without the aid of something to grasp and pull himself along or someone helping him begin moving again.

8) Parkinson's also causes a noticeable tremor in Complainant's hands, neck, and head.

9) Complainant began visiting Respondent's club seven or eight years ago. He regularly visited the club on Wednesday nights, when it was country western night. Complainant visited the club primarily to socialize. He rarely drank alcohol there.

10) On June 12, 2002, Complainant planned to visit Respondent's club again to socialize with friends on Respondent's country western night. Prior to visiting Respondent's club, Complainant did not consume any alcohol or mind-altering drugs.

11) On June 12, 2002, Complainant entered Respondent's club in the evening, intending to meet his friend Delmar Gordy. There were about 30 patrons in the club at that time. Ron Williams, Respondent's bartender and night manager, stopped Complainant and told him he had to leave. Complainant asked why. Williams told him "because it looks like you've been drinking." Complainant asked "What makes you say that?" Williams answered "By the way you walk." Complainant explained that he had Parkinson's. Williams told Complainant unless Complainant had a note from his doctor stating Complainant had that condition, Complainant had to leave. During this conversation, Williams and Complainant were approximately three feet apart. Complainant's speech was not slurred, he did not have red eyes, and there was no alcohol on his breath. Complainant's friend Gordy came over at that point and explained to Williams that Complainant had Parkinson's. He also told Williams that Complainant rarely drinks, that Complainant had been coming to Respondent's club for a number of years, and that he had never seen Complainant inebriated. Williams responded that Complainant had to leave, and Complainant left Respondent's premises. In total, Complainant was at Respondent's club about 15 minutes.

12) There were about 30 patrons in Respondent's club on June 12,

13) Complainant felt embarrassed, shaken, and upset by Williams's refusal to let him stay in Respondent's club. He felt like the incident had "created a scene," that he had been on "public display," and thought other patrons might think he was a drunk. He went home after leaving Respondent's club and thought a lot that night about the way he was treated. He had trouble sleeping that night and the next couple of nights.

He talked to “quite a few people” about the incident over the next two days. Two of his friends told him that if Respondent’s club would not admit him, then “none of us are going to go in” and that “they would spread the word.”

14) In response to Williams’s request, Complainant contacted OHSU and obtained a card with his name, address, a contact person, and the name of his doctor on one side. The other side contained the following statement, along with other information relevant information concerning Parkinson’s Disease: **“MEDICAL ALERT. I have a condition called PARKINSON’S DISEASE which makes me slow and sometimes I cannot stand up or speak. I AM NOT INTOXICATED. Please call my family or physician for help.”**

15) On or about June 14, 2002, Complainant went to Respondent’s club to show the manager the medical documents he had obtained from OHSU. He met Dave Whitney, a friend, inside the club, thinking that Whitney would be able to help explain matters. He also felt that Whitney could provide him with “moral support” and help him feel “more at ease.” There were about 60 patrons in Respondent’s club at that time. Williams approached Complainant and told him he had to leave. Complainant and Whitney told Williams that Complainant had brought documentation from his doctor of his medical condition. Williams didn’t even look at the documentation. He said that didn’t make any difference, and he had talked to Respondent’s owner, who told Williams that he shouldn’t even have let Complainant into Respondent’s club. Complainant then left Respondent’s club.

16) Complainant felt “worse” after he left Respondent’s club on June 14 because this was the second time he had been told to leave and because Williams “didn’t even want to look at” his medical documentation. He was upset and felt that he

had been on “public display again.” He had trouble sleeping, as Williams’s conduct made him think more about how difficult his social life was due to Parkinson’s.

17) Between June 12 and June 21, 2002, Complainant thought about the situation a lot and talked to friends, family, and his co-workers about it. He thought a lot about being asked to leave Respondent’s club and experienced even more stress.ⁱⁱ He felt even more self conscious about his appearance to others. On June 21, his friend Tim Galtier telephoned and asked Complainant if he was going to Respondent’s club that night. Complainant said he was not because “I can’t get in” and told Galtier “I don’t want to go through that again.” Galtier had heard from other friends that Complainant had not been allowed into Respondent’s club and asked Complainant if he had his medical documentation. Galtier told Complainant that he had talked with others who frequented Respondent’s club and they had decided that if Complainant could not go into the club, then none of them would go into the club. Galtier said he would meet Complainant in front of Respondent’s club. Complainant met Galtier, but was “too nervous and shaky” to go in. Galtier took Complainant’s medical documentation inside and showed it to Williams. Williams appeared apologetic, “didn’t even really look at the card,” and told Galtier that Complainant was welcome to come inside. Galtier went outside and got Complainant and they both went inside. Williams offered to buy Complainant a drink, which Complainant politely declined. After a little while, Complainant was able to relax.

18) Subsequently, Complainant resumed his Wednesday night visits to Respondent’s club. However, he always looked to see if Williams was working, was “very self conscious” about his appearance, and “would pretty much just stay in one spot so I wouldn’t have to be moving around.”

19) Complainant never received an apology from any of Respondent's employees.

20) Respondent's refusal to let Complainant remain in its club on June 12 and June 14, 2002, has made Complainant very apprehensive about shopping in new places, and particularly about visiting new bars. He keeps thinking that he will be stopped again and accused of being intoxicated. He has to "psych [him]self up" before entering in order to build his self confidence.

21) All of the witnesses who testified were credible.

ULTIMATE FINDINGS OF FACT

1) At all times material herein, Respondent C. C. Slaughters, Ltd, was an Oregon corporation doing business at 219 NW Davis Street, Portland, Oregon as a nightclub that served food and alcohol to the public.

2) Complainant was diagnosed with Parkinson's Disease in 1992 and has been treated at OHSU for Parkinson's since that time. Parkinson's is a progressively degenerative disease that progresses at different rates for different people. Body tremors are the most noticeable symptom of Parkinson's.

3) Even with medication, Parkinson's substantially limits Complainant's ability to walk, to dress himself, and to balance. His walk is more like a shuffle. He cannot walk at the same pace as an average person and sometimes his body "locks up" and he cannot walk at all without an outside impetus to get him started again. It takes him up to 30 minutes to get dressed in the morning. He also has a noticeable tremor in his hands, neck, and head. Without medication, Complainant can hardly move without assistance and is unable to turn over in bed without help.

4) On June 12, 2002, Complainant entered Respondent's club in the evening, intending to meet his friend Delmar Gordy, and walked to the bar. Ron Williams, Respondent's bartender and night manager, stopped Complainant and told

him because he thought Complainant had been drinking, based on the way he walked. Complainant explained that he had Parkinson's. Williams told Complainant unless Complainant had a note from his doctor stating Complainant had that condition, Complainant had to leave. Gordy then explained to Williams that Complainant had Parkinson's. Williams insisted that Complainant had to leave, and Complainant left Respondent's club.

5) In response to Williams' request, Complainant contacted OHSU and obtained medical documentation of his Parkinson's.

6) On or about June 14, 2002, Complainant went to Respondent's club with the intent of showing the manager the medical documents he had obtained from OHSU. Complainant and Whitney told Williams that he had medical documentation of his Parkinson's, but Williams said that didn't make any difference, and that Respondent's owner told him that he shouldn't have let Complainant into Respondent's club. Complainant then left Respondent's club.

7) On June 21, 2002, at the urging of his friend Tim Galtier, Complainant reluctantly went to Respondent's club again with his medical documentation. While Complainant waited outside, Galtier took Complainant's medical documentation into Respondent's club and showed it to Williams. This time, Williams allowed Complainant to come in and stay.

8) Complainant experienced substantial emotional distress as a result of being told to leave Respondent's club on June 12 and June 14, 2004.

CONCLUSIONS OF LAW

1) At all times material herein, Respondent was a place that offered a physical facility, food, beverages, and music to the public and a place of public accommodation as defined in ORS 659A.400.

2) The actions and statements of Ron Williams, Respondent's manager and bartender, are properly imputed to Respondent.

3) Complainant has Parkinson's Disease, a physical impairment that substantially limits his major life activity of walking, and is a "disabled person" as defined in ORS 659A.100(1)(a).

4) Williams ejected Complainant from Respondent's club on June 12 and June 14, 2002, because Complainant is a disabled person, thereby violating ORS 659A.142(3) and OAR 839-006-0300(1).

5) The Commissioner of the Bureau of Labor and Industries has jurisdiction of the persons and subject matter herein and the authority to eliminate the effects of any unlawful practice found. ORS 659A.820 through ORS 659A.850.

6) Pursuant to ORS 659A.850, the Commissioner of the Bureau of Labor and Industries has the authority under the facts and circumstances of this case to award Complainant damages for emotional distress resulting from Respondent's unlawful practice and to protect the rights of Complainant and others similarly situated. The sum of money awarded and the other actions required of Respondent in the Order below are an appropriate exercise of that authority.

OPINION

PRIMA FACIE CASE

Respondent C. C. Slaughters, Ltd was found in default under OAR 839-050-0330 for failing to timely file an answer within the time specified in the Formal Charges. In a default situation, the Agency is required to present a prima facie case on the record to support the allegations in its charging document and to establish damages. ORS 183.415(6); *In the Matter of Magno-Humphries, Inc.*, 25 BOLI 175, 192 (2004). In this case, the Agency met that burden through credible witness testimony and documentary evidence.

To establish a prima facie case, the Agency must present credible evidence of the following: (1) Respondent was a place of public accommodation as defined in ORS 659A.400; (2) Complainant is a disabled person; (3) Respondent made a distinction, discrimination or restriction against Complainant because he is a disabled person; and (4) Complainant was harmed by Respondent's conduct.

A. Respondent was a place of public accommodation as defined in ORS 659A.400.

ORS 659A.400(1) defines a place of public accommodation as "any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements or otherwise." Undisputed testimony by Complainant and other Agency witnesses established that Respondent is a nightclub that is open to the public and provides food, beverages, and music to its patrons. This satisfies the first element of the Agency's prima facie case.

B. Complainant is a disabled person.

ORS 659A.100(1)(a) defines "disabled person" as "an individual who has a physical or mental impairment that substantially limits one or more major life activities *

* * ."

OAR 839-006-0205(10) defines "physical or mental impairment" as:

"any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."

Complainant's credible testimony established that he has Parkinson's Disease, a physiological disorder or condition that affects his neurological system.

"Major life activity" includes "self-care and ambulation." ORS 659A.100(2)(a); OAR 839-006-0205(6). "Ambulation" includes "the act or actions of moving about or

walking.” *Webster’s Third New Int’l Dictionary* 67 (unabridged ed 1993). “Walking” is the specific major life activity in which the Agency alleged and proved that Complainant is limited.

Under ORS 659A.100(2)(d), a physical impairment “substantially limits a major life activity when:

“(A) The impairment renders the individual unable to perform a major life activity that the average person in the general population can perform; or

“(B) The impairment significantly restricts the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.”

Complainant credibly testified and the ALJ observed that Parkinson’s restricts the condition and manner in which Complainant is able to walk. Complainant walks with a shuffle and cannot keep the same pace as an average person. Sometimes, his body “locks up” and he cannot walk at all without the aid of an outside impetus, either an assist from another person or something he can grasp to pull himself along. These facts establish that Parkinson’s “substantially limits” one of Complainant’s “major life activit[ies].”

Based on the above, the forum concludes that the Agency has met its burden of showing that Complainant is a “disabled person.”

C. Respondent made a distinction, discrimination or restriction against Complainant because he is a disabled person.

Complainant was told to leave Respondent’s premises by Respondent’s manager on June 12 and 14, 2002. The issue before the forum is why Complainant was asked to leave.

On June 12, Respondent’s manager accused Complainant of being drunk and told him to leave because of the way Complainant walked. Complainant’s walk, which

is more like a shuffle, is the most noticeable symptom of his disability. The manager refused to let Complainant stay, despite Complainant's statement that he had Parkinson's, that he had not been drinking, and the absence of any other physical signs that Complainant had been drinking. If the manager thought Complainant was drunk, it stands to reason that he would have followed Respondent's policy of having intoxicated persons "stay and have some French fries and water, coffee or soda, and take the time to sober up." The same policy states that people are not asked to leave "unless they become belligerent and are disturbing the peace." Complainant was not belligerent and was not asked to stay and have refreshments until he sobered up. Instead, he was asked to bring in a note from his doctor stating that he had Parkinson's and told to leave, which he did. The forum concludes from this evidence that Complainant was not drunk, that Respondent's manager knew he was not drunk, and that he was asked to leave because of his Parkinson's.

Two days later, on June 14, 2002, Complainant returned to Respondent's club with the intent of showing the manager the medical documents he had obtained from OHSU. He met Dave Whitney, a friend, inside the club, thinking that Whitney might be able to help explain matters. Respondent's manager approached Complainant and told him to leave, even though Complainant and Whitney told him that Complainant had brought documentation from his doctor of his medical condition. Respondent's manager refused to look at the documentation, saying it made no difference because he had talked to Respondent's owner, who said Complainant should not have been allowed into Respondent's club. The forum infers from these circumstances that the only reason Complainant was asked to leave was because of his Parkinson's.

Complainant's readmission into Respondent's club on June 21, 2002, is not evidence that Respondent had another possible motive for denying Complainant access

to its club. Instead, testimony by Agency witnesses indicated that Respondent granted Complainant readmission because Complainant's friends were threatening to boycott Respondent's club unless Complainant was allowed in.

D. Complainant was harmed by Respondent's conduct.

Complainant visited Respondent's club on June 12 and 14, 2002, to listen to music and socialize with his friends. He was denied the ability to do either when Respondent's manager refused to let him remain in Respondent's club. Respondent's conduct harmed Complainant and satisfies the fourth element of the Agency's prima facie case.

DAMAGES

The Agency sought \$30,000 in emotional distress damages in its Formal Charges. The commissioner considers a number of things in determining damages for emotional distress, including the type of the discriminatory conduct, and the duration, frequency, and pervasiveness of that conduct. The amount awarded depends on the facts presented by each complainant. *In the Matter of Barrett Business Services, Inc.*, 22 BOLI 77, 96 (2001). A complainant's testimony about the effects of a respondent's conduct, if believed, is sufficient to support a claim for emotional distress damages. *Id.* at 96. In this case, the Agency relied primarily on Complainant's credible testimony to show the extent of his emotional distress. That testimony is summarized in the following three paragraphs.

Complainant felt embarrassed, shaken, and upset by Respondent's refusal to let him stay in Respondent's club on June 12, 2002. He felt like the incident had created a scene, that he had been on public display in front of 30 patrons, and thought other patrons might think he was a drunk. After he went home, he thought a lot that night about the way he was treated. He had trouble sleeping that night and the next couple of

nights. It upset him enough that he talked to a number of people about the incident over the next two days.

Complainant felt even worse after he left Respondent's club on June 14 because this was the second time he had been told to leave and because Respondent's manager refused to look at the medical documentation he had instructed Complainant to obtain. He was upset and stressed and felt that he had been on public display again, this time in front of 60 patrons. He had trouble sleeping, began to think more about how Parkinson's had negatively impacted his social life, and felt even more self conscious about his appearance.

After Complainant resumed his Wednesday night visits to Respondent's club, he always looked to see if the same manager was working, felt very self conscious about his appearance, and tended to stay in one spot so he wouldn't be seen moving around. In addition, Respondent's refusal to let Complainant remain in its club on June 12 and June 14, 2002, has made Complainant very apprehensive about shopping in new places, and particularly about visiting new bars, in that he is afraid he will be stopped again and accused of being intoxicated because of his Parkinson's.

This is the first case before the forum alleging discrimination in public accommodation because of an individual's disability. In a 1998 case, the commissioner awarded \$15,000 in damages for mental suffering to a complainant who was denied service at a fast food restaurant because of her race. *In the Matter of The Westwind Group of Oregon, Inc.*, 17 BOLI 46 (1998). In *Westwind*, the discriminatory incident lasted only a couple of minutes, but the complainant's upset lasted "during the episode, the remaining evening, and for a long time thereafter." In this case, there were two incidents of longer duration, both in front of numerous persons, that caused

Complainant to experience significant emotional distress both during and after the incidents and up to the time of the hearing.

The Oregon legislature has declared that “the public policy of Oregon [is] to guarantee disabled persons the fullest possible participation in the social and economic life of the state [and] * * * to use and enjoy places of public accommodation * * * without discrimination.” An award of \$25,000 for emotional distress is justified by the facts in this case and furthers public policy.

ORDER

NOW, THEREFORE, as authorized by ORS 659A.850, and to eliminate the effects of Respondent’s violation of ORS 659A.142(3) and in payment of the damages awarded, the Commissioner of the Bureau of Labor and Industries hereby orders

Respondent C. C. Slaughters, Ltd to:

- 1) Deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 1045 State Office Building, 800 NE Oregon Street, Portland, Oregon 97232-2180, a certified check payable to the Bureau of Labor and Industries in trust for Complainant John Rivelli in the amount of:
 - a) TWENTY-FIVE THOUSAND DOLLARS (\$25,000), plus interest on that sum at the legal rate from the date of the Final Order until paid.
 - 2) Cease and desist from making any distinction, discrimination, or restriction against any customer or patron because the individual is a disabled person.

ⁱ After the Agency was unsuccessful in attempting to serve Respondent and Respondent’s registered agent at his registered office, the Agency accomplished service by serving the Oregon Secretary of State by certified mail on December 7, 2004, as provided in ORS 60.121.

ⁱⁱ Complainant’s most compelling testimony on this subject was “the disease is bad enough * * * dealing with it and that that happened made it just that much worse.”