

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

ROBERT FREEL,
Charging Party,

-v-

GRIZZLY DEN MOTEL,
Respondent

HRB CASE NO. 0121015695

FINAL AGENCY DECISION

Charging Party, Robert Freel (Freel), filed a complaint with the Department of Labor and Industry (Department) alleging unlawful discrimination in public accommodation on the basis of disability. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Freel's allegations that Respondent, Grizzly Den Motel, unlawfully discriminated against Freel. The Department issued a Notice of Dismissal. Freel filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on June 14, 2013. No oral argument was requested for this hearing.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Section 49-2-511(2), MCA*. The Commission determines the evidence in the record clearly supports a finding that the owners of the Grizzly Den Motel undertook a substantial renovation of this public accommodation within recent years. Montana law states that it is an unlawful discriminatory practice for the owner of a public accommodation to deny a person any of its services, facilities or privileges because of a person's disability. *Section 49-2-304(1)(a), MCA*. Montana Administrative Rule 24.9.609(3) clarifies that:

Unlawful discrimination against a person with a disability in a public accommodation may include:

- (a) failing to make reasonable modifications in policies, practices or procedures when the modifications are necessary to afford the goods, services, facilities,

advantages or privileges to persons with disabilities unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of its goods, services, facilities, advantages or privileges;

(b) failing to take necessary action to ensure that a person with a disability is not excluded, denied services, segregated or otherwise denied equal access because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, advantages or privileges being offered or would result in an unreasonable expense or undue burden after considering the circumstances of the public accommodation;

(c) failing to remove architectural barriers and communication barriers in existing facilities that are structural in nature and deny equal access to persons with disabilities when the removal is readily achievable; or

(d) failing to make goods, services, facilities, advantages and privileges available through alternative methods if removal of barriers that deny equal access to persons with disabilities is not readily achievable.

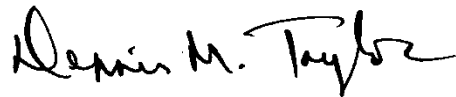
The Montana Human Rights Commission also looks to federal law and regulation for guidance on issues of accessibility for disabled persons, such as the Americans with Disabilities Act, as amended, and the implementing regulations.

The Commission determines that the investigator cited the correct law in the investigative report, but failed to correctly apply the law to the facts and circumstances of this case. After careful consideration, the Commission concludes the Department's determination to dismiss the complaint in this case is an abuse of discretion. Therefore, the Commission sustains the objection and the remands this case for hearing to the Hearings Bureau, pursuant to § 49-2-505, MCA.

Nothing in this order precludes the parties from engaging in the mediation or other settlement negotiations that would normally occur if the Department's investigative report had found cause. See § 49-2-504(2)(b), MCA.

IT IS HEREBY ORDERED, that Robert Freel's objection is **sustained**. The Commission reopens and remands the case to the Hearings Bureau for hearing.

DATED this 14th day of June, 2013.

A handwritten signature in black ink that reads "Dennis M. Taylor". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

Dennis M. Taylor, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 17th day of June, 2013.

ROBERT FREEL
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Annah Smith, Legal Secretary
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