

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

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RICHARD EMEL,  
Charging Party,

HRB CASE NO.0141017055.

-v-

FINAL AGENCY DECISION

ANMOL INC., d/b/a DAYS INN & SUITES &  
VIBHUTI PATEL,  
Respondent.

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Charging Party, Richard Emel, filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination in public accommodation on the basis of disability. Following an informal investigation, the Department determined that a preponderance of the evidence supported Emel's allegations. The case went before the Office of Administrative Hearings of the Department of Labor and Industry, which held a contested case hearing, pursuant to § 49-2-505, MCA. The hearings officer issued a Decision on January 15, 2016. The hearings officer determined that Respondents violated the rights of Emel pursuant to Mont. Code Ann. § 49-2-304, and that various affirmative relief and damages must be paid. Hearing Officer Decision and Notice of Issuance of Administrative Decision at 15-16.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on May 16, 2016. Tim Kelly, attorney, appeared and presented oral argument on behalf of Emel. Mark Parker, attorney, appeared and presented oral argument on behalf of Anmol, Inc. d/b/a Days Inn & Suites & Vibhuti Patel.

**STANDARD OF REVIEW**

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the

order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *Admin. Rules of Mont.* 24.9.123(4). A factual finding is clearly erroneous if it is not supported by substantial evidence in the record, if the fact-finder misapprehended the effect of the evidence, or if a review of the record leaves the Commission with a definite and firm conviction that a mistake has been made. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3<sup>rd</sup> 284, ¶ 39. The Commission reviews conclusions of law to determine whether the hearing officer's interpretation and application of the law is correct. *See, Denke*, 39.

### **DISCUSSION**

After careful consideration of the complete record and the argument presented by the parties, the Commission affirms the hearing officer's decision in its entirety. The decision was supported by competent substantial evidence in the record, and it does not appear that the hearing officer incorrectly interpreted the law or misapplied the facts of the case to the law.

Separately, it must be noted that Emel raised various challenges to the proceedings below, including arranging for a hearing location, deficiency of the audio recording, and lack of a jury trial. Charging Party's Initial Brief in Support of Appeal (Corrected) at 3-7. In his Reply Brief, however, Emel noted that these were raised as "notice that if this case is remanded, then the Commission should require the Department to correct the deficiencies in those procedures." Charging Party's Reply Brief in Support of Appeal at 2-3. The question was also raised whether these issues were properly preserved for consideration by the Commission. Respondent's Appellate Brief at 2. Based on concessions by Emel that these issues were raised solely for remand, these issues need not be considered by the Commission at this time.

### **ORDER**

IT IS HEREBY ORDERED, that the appeal of Charging Party is overruled and that the Hearing Officer Decision is affirmed in its entirety.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA.* This review must be requested within 30 days of the date of this order. A party must promptly serve copies of a petition for judicial review upon the Human Rights Commission and all parties of record. *Section 2-4-702(2), MCA.*

DATED this 6<sup>th</sup> day of June, 2016.

                  /s/ Ronda Howlett/                    
Ronda Howlett, Commissioner  
Montana 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 6<sup>th</sup> day of June, 2016.

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Annah Howard, Legal Secretary  
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