

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0141017055:

RICHARD EMEL,)	Case No. 1594-2015
)	
Charging Party,)	
)	
vs.)	HEARING OFFICER DECISION
)	AND NOTICE OF ISSUANCE
)	OF ADMINISTRATIVE
)	DECISION
ANMOL, INC., DBA DAYS INN AND)	
SUITES AND VIBHUTI PATEL,)	
)	
Respondents.)	
)	

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I. Procedure and Preliminary Matters

The contested case hearing in the above manner was held and completed on August 5, 2015, at the Missoula Job Service Offices Conference Room, Missoula, Montana. Charging Party Richard Emel filed a complaint alleging that Days Inn & Suites discriminated against him in a public accommodation because of his disability by demanding that he pay a fee/deposit for his service animal, demanding that he furnish documentation proving that his dog was a service animal, and refusing to assign him a handicap accessible room without payment of the pet deposit and/or documentary proof of his service animal. Charging party amended his complaint only to substitute the real party in interest, Anmol, Inc., dba Days Inn & Suites, and to add Vibhuti Patel, its individual owner and desk manager at the time of the incident.

David Scrimm presided as hearing officer. Charging Party Richard Emel, accompanied by his service animal (Sig), appeared with his attorney, Timothy Kelly, Kelly Law Office, of Emigrant, Montana. Respondents Anmol, Inc., and Vibhuti Patel appeared with their attorney, Thomas Orr, Thomas C. Orr Law Offices.

Prior to the hearing, the parties stipulated that Richard Emel had an interaction with Vibhuti Patel at the Days Inn & Suites of Lolo (Days Inn) on July 3, 2014; that Richard Emel is a person with a disability under the law; and that the charging party's dog (Sig) is a "service animal." Final Prehearing Order, August 4, 2015.

At the hearing, Vibhuti Patel, Ashish Patel, Jody Gray and Richard Emel were called as witnesses and testified. The hearing officer admitted Exhibits 1, 2, 3, 4, 6 (but not the last 5 pages, Bates Nos. City 016-018, 021-022 which were excluded), the first page of Exhibit 7 (Bates Confidential-007), Exhibit 8 (without highlights added), Exhibit 10, Exhibit 11, Exhibit 12 (without highlights added), and Exhibit 14 as offered by the Charging Party. The hearing officer denied the Charging Party's motion to take judicial notice of Exhibit 9 and Exhibit 9 was withdrawn. The hearing officer admitted Exhibit A offered by Respondents. By post-hearing submissions, the parties stipulated to admission of Exhibit 15 (photograph of V. Patel) offered by the Charging Party, and Exhibits B-1 to B-4 (photographs of Rooms 109 and 102 at the Days Inn) offered by Respondents. The parties stipulated post-hearing that Room 109 at the Days Inn was not a "handicap accessible" room and that Room 102 appeared to be a "handicap accessible" room based on the photographs provided.

The hearing officer reserved ruling on whether or not to take judicial notice of the content on the website of Days Inn and asked the parties to brief the issue. Charging Party submitted his Motion on October 7, 2015. Respondent submitted its Response on October 19, 2015 and Charging Party submitted his reply brief on October 19, 2015. After consideration of the parties Motion and briefs, Charging Party's Motion to take judicial notice of information contained on the Days Inn website is DENIED.

II. Formality of Proceedings and Jurisdiction

Pursuant to §49-2-505, MCA, the Department of Labor & Industry (DLI) has jurisdiction over this matter. Applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of Evidence governed the contested case hearing. §49-2-204(2), MCA. The hearing officer audio recorded the hearing.

III. Issue

Did Respondents violate the rights of Richard Emel under Mont. Code Ann. §49-2-304? If Respondents violated the rights of Richard Emel under Title 49, what remedy is warranted pursuant to Mont. Code Ann. §49-2-506?

IV. Findings of Fact

1. Charging party, Richard Emel, is a person with a disability and a resident of Idaho Falls, Idaho. Mr. Emel is a U.S. Army veteran and served in Vietnam. As a result of his combat-related service, Mr. Emel became afflicted by Post Traumatic Stress Disorder. By 2007, the Veterans Administration classified him as having a 100% service related disability due to the PTSD, as well as a substantial hearing loss. The Social Security Administration also classifies Mr. Emel as 100% disabled as a result of mobility impairments caused by injuries to his knees and back sustained in a vehicle accident and a work related accident. Emel is disabled within the meaning of the Montana Human Rights Act. Recounting the events of July 3, 2014 and those at the Brooks Street Motor Inn caused Emel to be stressed.

2. Respondent, Anmol, Inc., dba Days Inn and Suites, is a Montana corporation. The principal officer of Anmol, Inc., is Vibhuti Patel, its president, who previously did business under the assumed business name of Days Inn & Suites. Days Inn is a public accommodation as defined by Mont. Code Ann. § 49-2-101(2)(a).

3. Patel is married to Ashish Patel who is the owner and manager of the Howard Johnson's motel in Missoula. Patel and her husband are originally from India. English is not their first language. Patel is not fluent in English and has difficulty in reading, speaking and understanding the language. She regularly relies on her husband to translate for her. Her husband has less difficulty, but is also not completely fluent in English. Patel assists with all duties and responsibilities throughout the hotel. These duties include, but are not limited to, front desk clerk, and housekeeper.

4. Emel relies upon a service animal (his dog named "Sig") to assist him with his disabilities.

5. On July 3, 2014, Emel traveled from his home in Idaho Falls to Montana. He stopped at the Days Inn wanting to rent a room for the night. Sig was with Emel. Emel parked in the space in front of Room 109. On the wall outside Room 109 is an

approximately 12 by 18 inch sign which says: “Handicap Parking.” Ex. B-1. Vibhuti Patel was serving as the desk manager at the motel when Emel arrived on July 3. Emel asked to rent a room, specifically asking for Room 109, which he mistakenly believed to be “handicap accessible” based on the handicapped parking sign on the wall outside the room. Room 109 was not in fact a handicap accessible room. Patel also advised Emel that the room rate would be \$119.00. Emel expressed his frustrations about Room 109 not being handicapped accessible.

6. Emel told Patel the quoted rate of \$119.00 was too high. Patel asked him what rate he was looking for and Emel asked for half price. Patel agreed to that rate.

7. Pursuant to hotel policy, Patel then asked whether Emel had any pets. Emel told Patel that yes, he did have a dog. Sig was not with Emel while he was attempting to register. Patel then reassigned Emel to Room 102 which was handicap accessible and which had a small sign on the door of the room indicating that status. Ex. B-3. Room 102 also had a second peephole at the eye level of a person seated in a wheelchair. Id. Room 109 had neither the sign indicating it was handicap accessible nor a peephole at eye level for a person in a wheelchair. Ex. B-1. Emel did not believe that Room 109 was not handicap accessible and became increasingly distressed and angry.

8. Patel also informed Emel that he would have to pay the nonrefundable pet deposit of \$10 for the night unless Emel could provide a form of certification of Sig’s status as a service animal. Emel told Patel that under the Americans with Disabilities Act (ADA) service animals, such as Sig, are not required to be registered, nor can businesses require proof of such registration. Patel continued to insist that Emel provide documentation that Sig was a service animal. Emel became more angry and was shouting at Patel at this point. Before Emel left Patel had placed a keycard and envelope on the check-in counter. Emel picked up the envelope and removed the key and set it back down on the counter. He kept the envelope with 102 written on it as evidence for some litigation he was already planning to bring. Emel did not produce the envelope at hearing. Room 102 fulfilled all of Emel’s requirements, it was a handicap accessible room, with one bed and was pet-friendly. Before Emel left the Days Inn, he shouted that he would see Patel in court.

9. Emel had a copy of ADA that discusses service animals in his van that he did not retrieve to show Patel what the law stated. It is more likely than not that showing the law to Patel, given her limited understanding of the English language, would not have changed her mind.

10. Patel wrongly believed that Emel was required to produce documentation to show that service animals were properly registered even though such a showing is neither required nor allowed by law.

11. Emel felt Patel's rigidity and demands regarding the room belittled him somehow. Emel could not explain how or why she made him feel belittled or humiliated.

12. As a result of the disagreement with Patel, Emel left the Days Inn. Approximately one hour later Emel returned to the Days Inn, prepared his camera, entered the motel office and took photos of Patel and the accessible parking space in front of Room 109. Patel was frightened by Emel's actions.

13. After the initial encounter between Emel and Patel at the Days Inn, Emel returned to Missoula to find a place to stay. He stopped at the Brooks Street Motor Inn. There, he again requested a "handicap accessible" room and advised he had a service animal. The desk manager on duty at the Brooks Street Motor Inn stated he had to pay a deposit for the dog. Emel again explained that a fee could not be charged for a service animal. He and the desk manager, a man named Bill, discussed the matter. It reached a point where Emel went out to his truck and brought in a copy of the law stating that a fee could not be charged for a service animal. The desk manager relented. Emel rented a room as requested and was not required to pay any charge for Sig.

14. Two weeks later, Emel returned to Missoula and again returned to the Brooks Street Motor Inn to rent a room for the night. A different desk manager was on duty who demanded to see certification of Sig's status as a service animal unless Emel wanted to pay the pet deposit. Emel again explained that the law prohibits such a charge. He again provided a copy of the law to show the desk manager. The desk manager then called a supervisor to inquire further about the motel's policy. On this occasion, the desk manager came back and reported that he had to follow the policy. Emel decided to give in. He paid the deposit fee for Sig. Emel was tired of having to push the issue and was worn down doing so.

15. He later filed a human rights complaint against the Brooks Street Motor Inn alleging discrimination in public accommodation. Shortly after the filing of that complaint, the matter was resolved through a voluntary resolution agreement, with Brooks Street Motor Inn agreeing to change its policy regarding service animals, provide training to employees and reimburse Emel for his total room charges (\$68.64).

16. Emel considered both interactions at Brooks Street as demonstrating a good faith effort to listen to his concerns and a degree of respect. In contrast, Emel viewed the interactions at the Days Inn as a rigid refusal to consider his objections.

17. The Days Inn has a sign in the lobby that states that there is a \$10.00 pet fee. However, there are no references to service animals, with the exception of a statement on the hotel website stating that “ADA defined service animals are welcome at this hotel.” Emel did not use Days Inn’s web page to book his room. Neither of the Patels added the content “ADA defined” language to the web page. All content on the webpage was posted by Wyndham Hotels Director of Operations Support.

18. Patel and her husband have little or no understanding of any duties they have under the Americans with Disabilities Act or the Montana Human Rights Act. Neither Patel has received any training on how to deal with service animal issues at their hotels. The Patels have no written policies or procedures relating to requests for a service animal accommodation by or for a person with a disability. The only policy was to ask for documentation if it was unclear whether or not the animal in question was a service animal.

19. Subsequent to the event with Emel, the Respondents changed their practice of asking for or requiring customers to show documentary proof that they had a service animal.

20. Emel suffered some short-term emotional distress as a result of the incident. Some of Emel’s emotional distress can be attributed to his firm mistaken belief that Room 109 was a handicap-accessible room. His initial request for that room was denied by Patel and Emel believed Patel was lying about it. Emel’s PTSD was triggered because he believed Patel was lying about the room. At hearing, Emel still did not believe Patel was being truthful about the amenities in Room 109.

21. Emel testified that he felt belittled and humiliated by the interaction with Patel but could not describe what she did to make him feel that way other than her repeated demands. Patel’s demand for Sig’s certification would certainly be maddening, especially to someone who had been subject to a documentation demand the law did not require and actually did not allow a public accommodation to request.

22. Jody Gray is a friend of Emel’s and has worked for him in the four months prior to the hearing. During that period she had frequent opportunities to visit with

him and observe his behavior, including the interactions between Emel and Sig which she described as closely bonded and dependent on one another. Gray testified that she personally observed the adverse effect on Emel produced by his discussions and recollections of the incident at the Days Inn. However, while Gray's testimony was credible, it was of little weight. Gray could not testify to any specific instances of how Emel was actually affected by the actions of Days Inn and Patel on July 3, 2014.

23. Days Inn's failure to provide Emel with an accommodation caused him emotional distress that is compensable. An award of \$2,500.00 is reasonable and necessary to make Emel whole for the emotional distress he suffered as a result of the discrimination he suffered from Respondents' conduct.

24. Imposition of affirmative relief against Respondents to lessen the likelihood of any future violation of the Montana Human Rights Act is also necessary.

V. Discussion¹

A. Whether Respondents Discriminated Against Emel

Mont. Code Ann. §49-1-102 provides:

The right to be free from discrimination because of . . . physical . . . disability . . . is recognized as and declared to be a civil right. This right must include but not be limited to:

* * *

(b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.”

The Montana Public Accommodation statute provides:

it is an unlawful discriminatory practice for the owner . . . of a public accommodation: (a) to refuse, withhold from, or deny any of its services, goods, facilities, advantages, or privileges because of . . . physical . . . disability
Mont. Code Ann. § 49-2-304(1), .

¹ Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. Hoffman v. Niece (1940), 110 Mont. 541, 105 P.2d 661.

Discrimination based on physical disability includes failure to make reasonable accommodations required for an otherwise qualified person who has a disability. Mont. Code Ann. §49-1-101(19)(b); *McDonald v. Dept. of Environmental Quality*, 2009 MT 209, ¶40, 351 Mont. 243, 214 P.3d 749.

The parties stipulated that Sig is a service animal as defined in Mont. Code Ann. §49-4-203(2) (“Service animal” means a dog or other animal individually trained to provide assistance to an individual with a disability”).

Under Mont. Code Ann. §49-2-304, public accommodations have an affirmative duty to allow a person with a disability who has a service animal to rent a room and keep the service animal in the room with that person.

The Montana Supreme Court has approved the practice of looking to federal law for guidance in determining the extent of Montana law in areas of discrimination based upon physical disability. *McDonald*, supra.

Federal law prohibits public accommodations from asking about the extent or nature of a person’s disability or requiring the person to produce documentation of the service animal’s status. 28 CFR 36.302(c)(6).

Under certain circumstances, a public accommodation may ask whether a service animal is required because of a disability and may inquire about what service the animal has been trained to perform. *Id.*

28 CFR 36.302(c)(7) requires public accommodations to permit disabled persons to be accompanied by their service animals in all areas of the accommodation where members of the public are permitted to go.

Under the provisions cited above, Respondents did discriminate against Emel on the basis of his physical disability by requiring him to produce documentation to prove that Sig was a service animal.

Emel informed Patel he had a service animal that he needed to have with him in his room. He wanted an accommodation that included both keeping Sig with him and having a “handicap access” room. There is no evidence that Patel belittled Emel for his disability, but her adherence to the policy of needing documentation for a service animal clearly denied Emel reasonable accommodation.

In an effort to counter Emel's case, Respondents suggest that Emel's combative confrontation scared Patel and escalated the situation. Emel's error in assuming Room 109 was a handicap accessible room certainly raised his stress level. Those facts may have an impact on the amount of damages necessary to compensate Emel. They do not change the ultimate fact that Patel was adamant that Emel had to show documentation that Sig was a service dog or pay the pet fee.

B. Whether the Days Inn website is compliant with the Montana Human Rights Act

Emel did not amend his complaint to add a charge of discrimination on this basis. The web site had no impact upon him since he did not look at it – he had no standing to raise the issue. The web site issue is not relevant to Emel's complaint which was about events occurring on July 3, 2014, and will not be adjudicated in this proceeding.

Emel's attorney argued strenuously that in resolving Emel's complaint, the hearing officer should find that certain language on the Days Inn website is in violation of the MHRA ("ADA defined service animals are welcome."). Emel gave "notice of allegations of continuing violations" in his request to amend his complaint to add Anmol, Inc., and Vibhuti Patel. See Charging Party's April 16, 2015 Motion for Leave to Amend Complaint and to add an Additional Hearing Day. Giving notice and filing a claim upon which relief can be awarded are two very separate things.

In his post-hearing filings Emel asserts that he should be awarded damages and affirmative relief based on these allegations. Since he has filed no complaint on this issue he cannot be awarded damages related to it.

In order to bring a claim under the MHRA a person must be an "aggrieved party" defined as follows:

"Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.

Mont. Code Ann. § 49-2-101(2). Baxter Homeowners Ass'n v. Angel, 2013 MT 83, 369 Mont. 398; 298 P.3d 1145.

In his draft pre-hearing order, Emel included Contention 11 which states:

As of April 15, 2015,

(A) Respondent publishes an internet advertisement which indicates to Mr. Emel and to other reasonable persons that a service animal is not welcome on the premises unless a customer is able to furnish proof the service animal is ADA defined; and

(b) Respondent publishes an internet advertisement which indicates to Mr. Emel and to other reasonable persons that a customer may be charged extra for having a service animal. (Emphasis added)

Emel never amended his complaint to allege that he was discriminated against as a result of the advertisement. Had he attempted to do so, he would lack standing to go forward on that issue.

49-2-304. Discrimination in public accommodations. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, marital status, race, age, physical or mental disability, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, age, physical or mental disability, color, or national origin.

Emel provided no evidence that he had ever visited the site. He provided no evidence that any person was denied accommodations at the Days Inn because of the advertisement, or that any person did not seek accommodations at the Days Inn because of the advertisement. Emel failed to show that he has a specific personal and legal interest in this claim. He also failed to show that he has been or is likely to be specially and injuriously affected by the advertisement. Accordingly, under the facts of this case Emel would not have had standing to file a complaint on this issue.

Emel's original and amended complaint was limited to events that occurred between Emel and Patel at the Days Inn on July 3, 2014. While counsel for Emel included one reference to the website in its amended complaint, the hearing officer

only granted the Motion to Amend with regard to adding Anmol, Inc and Vibhuti Patel as Party Respondents. See Order Granting Charging Party's Motion to Amend Complaint June 29, 2015.

The website and its contents were first referred to as of April 15, 2015 and are in no way related to the events of July 3, 2014. The hearing officer finds that any evidence or allegations regarding the Days Inn website are irrelevant to this matter.

To the extent that the hearing officer overruled any objections to the admission of such evidence those objections are upheld.

Even if Emel could prove he had standing regarding the website language and he could prove that the rather vague language would lead a person with a service animal to be dissuaded from seeking a room at Days Inn, such a conclusion would only affect the affirmative relief awarded and not affect any award of emotional distress damages because there would still be no connection to Emel's damages.

This issue will not be resolved in this decision. Emel's Motion to Take Administrative Notice of the Days Inn web page is DENIED.

C. Damages.

The department may order any reasonable measure to rectify the harm Emel suffered as a result of illegal discrimination. Mont. Code Ann. § 49-2-506(1)(b). The purpose of awarding such damages is to make whole the victim of illegal discrimination. E.g., *P. W. Berry v. Freese*, 239 Mont. 183, 779 P.2d 521, 523, (1989). See also, *Dolan v. School District No. 10*, 195 Mont. 340, 636 P.2d 825, 830 (1981); accord, *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975).

Damage awards must include compensation for emotional distress suffered as a result of the illegal discrimination when the facts show that the charging party has suffered from emotional distress. The value of this distress can be established by testimony or inferred from the circumstances. *Vortex Fishing Sys. v. Foss*, 2001 MT 312, 308 Mont8, 38 P.3d 836, ¶ 33 (Mont. 2001). Given the broad remedial nature of Mont. Code Ann. § 49-2-506(1)(b) the tort standard for proof of independent actions for emotional distress does not apply to civil rights cases brought pursuant to the Montana Human Rights Act. *Id.* The relief the department may award to a charging party subjected to illegal discrimination includes any reasonable measure to rectify any resulting harm he suffered. Mont. Code Ann. § 49-2-506(1)(b). *Barnett v. CK One, LLC*, DLI Case No. 1210-2006 (March 15, 2007), *aff'd* on judicial review

in *Barnett v. Hum. Rights Comm.*, 2010 Mont. Dist. LEXIS 28 (1st Jud. Dist., Lewis & Clark Cty., Jan. 2010).

The question presented here is how much emotional distress did Emel actually suffer due to Patel's requirement that he produce documentary evidence that Sig was a service animal and what award if any, is reasonable.

The interaction between Emel and Patel was brief and measured in mere minutes. There is no question a disagreement between the parties ensued once Emel was initially denied access to what he believed to be the handicap accessible room, Room 109. Emel's assumption that Room 109 was handicap accessible was incorrect. He became frustrated when he was told by Patel that another room would have to be assigned to meet his needs of one bed and handicap accessibility. Then as the subject of the service animal arose the situation soon escalated.

Emel testified that he felt belittled and humiliated due to the actions of Patel. However, to demonstrate how Patel belittled and humiliated him, he could only point to Patel's tone and rigidity. There is no evidence that Patel even recognized Emel's disability, or that she belittled him for it. Instead, it was her ignorance of the law and insistence on seeing documentation that contributed to the uncomfortable encounter.

Emel's claim of rigidity is somewhat defeated by the actual evidence of the encounter. Patel was willing to negotiate the price of the room. She accommodated his request for a handicap accessible room with one bed. Emel became frustrated when Patel told him he could not have Room 109. He believed, even on the day of hearing, that it was not a handicap accessible room, but the evidence supports the finding that it was not. There was no evidence that Patel raised her voice to Emel – Emel, however, did shout at her.

Emel's error in believing that Room 109 was handicap accessible and that Patel was unjustly denying it to him contributed to the heightened tensions during his interaction with Patel. That does not change the fact that Patel later in the interaction violated the law by demanding documentation for Emel's service animal, but it does impact the amount of damages that should be awarded for emotional distress. Respondents should not be liable for emotional distress that was caused by Emel himself.

Emel's actions at the Brooks Street Motor Inn soon after the encounter at Days Inn on that same day, July 3, 2014, and then approximately two weeks later,

are also instructive. In both instances, Sig was initially denied access because Emel did not have proper documentation that Sig was a service animal. On July 3, the clerk at Brooks Street initially demanded documentation for Sig but relented after Emel went to his vehicle and brought back a copy of the law that showed that the hotel could not ask for documentation. In that situation Emel was not initially involved in escalating tensions and he helped his case by getting the law to show to the clerk. It was also likely that communication was better because the clerk had better comprehension of and fluency with the English language and the law.

In the second instance, Emel relented, paid a fee, and then filed a complaint with the Human Rights Bureau and settled for a refund of the nightly room rate and the hotel undertaking affirmative relief. Emel rightly felt that hotel had denied his rights under the ADA or the MHRA, even though he felt he was shown some respect.

It was only the encounter at the Days Inn in which claims he was subjected to the humiliation, stress and degradation of being denied the use of a public accommodation because of his disability. But other than saying he felt humiliated and belittled, Emel can point to no specific evidence of how he was damaged from the encounter at Days Inn. This distressing encounter causing humiliation, belittlement and hurt feelings was short and his distress was caused in part by Emel's own actions.

Emel's second encounter at Brooks Street resulted in the same violation of the law, and had to be humiliating because he gave in and paid the pet fee rather than stand on his rights as he did at Days Inn. But Emel assigns a much greater value to his emotional distress damages at Days Inn with only minimal differences in circumstances. Patel was demanding and made him feel belittled and Emel left; Brooks Street was demanding in a nicer way but Emel stayed despite the humiliation of having to pay the pet fee for his service animal.

The factors limiting an award of emotional distress damages here is similar to those in *Johnson v. Hale* (9th Cir.1991), 940 F.2d 1192; cited in *Vortex* at ¶33. In *Johnson*, the plaintiffs (African-Americans) suffered emotional distress resulting from the refusal of a landlord to rent living quarters to them due to their race. The plaintiffs suffered no economic loss because they were able immediately to find other housing. The incident upon which they based their claim lasted only a fleeting time on a single day. The landlord's refusal to rent to them because of their race occurred with no one else present to witness their humiliation. There was no evidence of any recourse to professional treatment or lasting impact upon their psyches as a result of the discriminatory act. Nevertheless, the Court of Appeals increased their awards

from \$125.00 to \$3,500.00 each for the overt racial discrimination, noting that the “sum would appear to be the minimum that finds support in recent cases . . .” Id. at 1354.

Emel’s denial of a hotel room because of a lack of certification of his service animal, Sig, cannot reasonably be found to have caused emotional distress equivalent to that inflicted on the young men in Johnson, who because of the color of their skin were denied housing. What happened to the men in Johnson was a continuation of centuries of discrimination, slavery, murder and more. In contrast, Sig’s status as a service animal is a very new concept in treatment of a wide variety of medical conditions. Differentiating between someone’s service animal and someone’s pet is a grey area for most people. Patel violated Emel’s right to be free from discrimination because her hotel used a certification to help them make the distinction between a pet and a service animal. That is candlelight compared to the painful and explosive glare of racism denying every basic human right, for virtually all of recorded history.

In light of the evidence adduced at hearing, Emel is entitled to an award of \$2,500.00 to compensate him for the emotional distress he suffered as a result of the illegal discrimination.

C. Affirmative Relief

Affirmative relief must be imposed where there is a finding of discriminatory conduct on the part of an employer. Mont. Code Ann. §§ 49-2-506(1)(a). Affirmative relief in the form of both injunctive relief and training to ensure that the conduct does not reoccur in the future is necessary to rectify the harm in this case.

VI. Conclusions of Law

1. The Department of Labor and Industry has jurisdiction over this case. Mont. Code Ann. § 49-2-509(7).

2. Respondents violated the Montana Human Rights Act when it refused Emel’s request for a reasonable accommodation by not permitting him to stay in the premises without paying a fee for his service dog, Sig.

3. Emel is entitled to be compensated for the emotional distress he incurred as result of the illegal discrimination in the amount of \$2,500.00.

4. The circumstances of the discrimination in this case mandate imposition of particularized affirmative relief to eliminate the risk of continued violations of the Human Rights Act. Mont. Code Ann. § 49-2-506(1).

VII. Order

1. The Department renders judgment in favor of Charging Party Richard Emel and against Respondents Anmol, Inc., dba Days Inn & Suites, and Vibhuti Patel on the claim that Respondents violated the rights of Richard Emel under Section 49-2-304.

2. Respondents are hereby enjoined from engaging in any further acts of illegal discrimination against persons with disabilities in violation of Section 49-2-304.

3. Respondents are ordered to have all desk managers, including but not limited to V. Patel and A. Patel, undergo appropriate training of not less than six (6) hours during the next nine months concerning the duties and obligations of a place of public accommodation not to discriminate against persons with disabilities in any of the services, goods, facilities, advantages, or privileges available at the Days Inn, including but not limited to the duty to make reasonable accommodations and to modify in the policies, procedures or practices at the Days Inn to enable persons with disabilities to have equal opportunities there. Respondents are ordered to engage the services of a person fluent in English and in the native language of the Patels to accompany them to the training, to spend the necessary time to assure that they have a grasp of the information provided at the training and to report to the Human Rights Bureau that the Patels have attended and have a demonstrated understanding of their duties and responsibilities under Title 49 in operating the Days Inn.

4. Prior to undergoing training, Respondents will provide in writing to the Human Rights Bureau for preliminary approval (with a copy to charging party's counsel) a description of the training program to be used, the qualifications of the persons conducting the training, the qualifications of the person who will accompany the Patels, and the method to measure whether the training has effectively communicated to the Patels their duties and obligations under Title 49.

5. The Respondents must have a licensed Montana attorney with experience in discrimination law review its policies, procedures and internet advertisements for the Days Inn and elsewhere in Montana to ensure compliance with the Montana Human Rights Act and the ADA. The policies and procedures must include a requirement that any new desk managers employed at the Days Inn must undergo at

least 2 hours of training in the Respondents' nondiscrimination policies within 1 month of being hired and must include a written policy governing service animals. A copy of the policies and procedures and a copy of the attorney's letter certifying compliance must be furnished to the Human Rights Bureau.

6. Respondents must bear the costs and expenses of the above affirmative steps to be taken to minimize the likelihood of further acts in violation of Section 49-2-304.

7. Respondents are ordered to pay the sum of \$2,500.00 to the charging party as compensatory damages, with interest at the statutory to accrue on that amount from the date of this Final Agency Decision.

8. Judgment is found in favor of Richard Emel and against Respondents, Anmol Inc., dba Days Inn and Suites, and Vibhuti Patel for discriminating against Emel based upon his disability in violation of the Montana Human Rights Act.

DATED this 15th day of January, 2016.

DAVID A. SCRIMM
David A. Scrimm, Hearing Officer
Office of Administrative Hearings

* * * * *

NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Richard Emel, Charging Party, and his attorney, Timothy C. Kelly; and Anmol, Inc., dba Days Inn and Suites, and Vibhuti Patel, and their attorney, Thomas Orr:

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court.

Mont. Code Ann. § 49-2-505(3)©.

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

Human Rights Commission
c/o Marieke Beck
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505(4), precludes extending the appeal time for post decision motions seeking relief from the Office of Administrative Hearings, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

IF YOU WANT THE COMMISSION TO REVIEW THE HEARING TRANSCRIPT, include that request in your notice of appeal. The appealing party or parties must then arrange for the preparation of the transcript of the hearing at their expense. Contact Annah Howard, (406) 444-4356 immediately to arrange for transcription of the record.

Emel.HOD.dsp