

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

\*\*\*\*\*

LORI FAHLSING,  
Charging Party

HRB CASE NO. 0180073

-v-

FINAL AGENCY DECISION

BHCC II, INC., d/b/a RED LION HOTEL AND  
CONVENTION CENTER,  
Respondent

\*\*\*\*\*

Charging Party, Lori Fahlsing (Fahlsing), filed a complaint with the Department of Labor and Industry (Department) alleging 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 Fahlsing's allegations that Respondent, BHCC II, Inc., d/b/a Red Lion Hotel and Convention Center, discriminated against Fahlsing. The Department issued a Notice of Dismissal. Fahlsing filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 20, 2018. Philip A. Hohenlohe appeared and argued on behalf of Fahlsing. Joe Siefert appeared and argued on behalf of BHCC II, Inc., d/b/a Red Lion Hotel and Convention Center. All members of the Commission present stated they had each reviewed the entire record submitted to the Commission.

This case involves a claim of discrimination arising from Fahlsing's use of service animals. Fahlsing argued that the law requires the broadest feasible access to public accommodations for persons who use a service dog; that mere inconvenience to others is not a justification for discrimination; and that unless a service dog is out of control or creates a substantial disturbance, service animals must be allowed in a public accommodation. One of the tasks Fahlsing dogs were trained to do was to bark when a person approached the door.

Red Lion Hotel argued that the issue before the Commission was whether the investigator committed an abuse of discrimination. Red Lion Hotel argued that its actions, both before the dogs were identified as service dogs and after they were identified as service animals, were reasonable. Red Lion Hotel asserted that it responded appropriately to four reports of barking dogs in Fahlsing's hotel room, and that it offered an appropriate solution (to move the Fahlsing family to a room in a quieter part of the hotel with less hall traffic) once it was made aware that the dogs were service animals. Red Lion Hotel argued that a dog (otherwise qualified as a service animal) that is left alone in a room is not under the control of the owner is no longer acting as a service animal, and thus loses its status under the law.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Section 49-2-511(2), MCA*. Fahlsing has the burden of demonstrating that the investigator engaged in an abuse of discretion in order for the objection to be sustained. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is not an abuse of discretion.

If a charging party chooses to commence a civil action in district court, the charging party has 90 days after the date this order is issued to file a complaint in district court, in the district where the alleged violation occurred, and seek appropriate relief. *Section 49-2-511(3)(a), MCA*. If a charging party fails to commence a civil action within 90 days, the claims are time barred. *Id.*

Alternatively, a party may ask a district court to review the decision of the Commission to affirm the dismissal of a complaint. *Sections 2-4-702 and 49-2-511(3)(b), 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*.

IT IS HEREBY ORDERED, that Lori Fahlsing's objection is **overruled**. The Commission affirms the determination of the Human Rights Bureau to dismiss the complaint against BHCC, Inc., d/b/a Red Lion Hotel and Convention Center.

DATED this 16<sup>th</sup> day of August, 2018.



---

Sheri K. Sprigg, 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 16<sup>th</sup> day of August, 2018.

PHILIP HOHENLOHE  
LAW OFFICE OF PHILIP HOHENLOH, PLLC  
P.O. BOX 1959  
HELENA, MT 59624

JOE SIEFERT  
KELLER LAW FIRM, P.C.  
P.O. BOX 598  
HELENA, MT 59624



---

Annah Howard, Legal Secretary  
Montana Human Rights Bureau