

STATE OF MAINE
ANDROSCOGGIN, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.: CV-2009-00199

BRIANNA FREEMAN,)
)
 Plaintiff)
)
 v.)
)
 REALTY RESOURCES)
 HOSPITALITY, LLC d/b/a)
 DENNY'S OF AUBURN,)
)
 Defendant)
)

AMENDED COMPLAINT

Plaintiff Brianna Freeman brings this action against Defendant Realty Resources Hospitality d/b/a Denny's of Auburn ("Denny's") for unlawful public accommodation discrimination in violation of 5 M.R.S.A. § 4592.

Jurisdiction

1. On April 17, 2008, Plaintiff filed a complaint of public accommodation discrimination against Defendant at the Maine Human Rights Commission ("MHRC").
2. On May 18, 2009, the MHRC concluded its investigation and found that there were reasonable grounds to believe that Defendant discriminated against Plaintiff on the basis of sexual orientation. The MHRC also found that there was not reasonable ground to believe that Defendants discriminated against Plaintiff on the basis of disability.
3. This Court has jurisdiction pursuant to 5 M.R.S.A. § 4621.

Parties

4. Plaintiff Brianna Freeman is forty-four years old and has been a resident of Lewiston, Maine for seven years.

5. Defendant is a limited liability company and franchise operated autonomously from the corporation commonly known as Denny's. Defendant owns the Denny's restaurant located at 211 Court Street in Auburn, Maine, as well as numerous other Denny's restaurants throughout New England.

Facts

6. Ms. Freeman was born in Presque Isle, Maine, and has lived in Lewiston for seven years.

7. Ms. Freeman has been a regular customer at the Denny's restaurant located at 211 Court Street in Auburn, Maine for many years, where she often meets friends for meals three to four times a week.

8. In June or July 2007, Ms. Freeman met with a manager, Ginger Smith, who is or was an employee and/or agent of Defendant, regarding her use of the women's restroom.

9. As part of their conversation, Ms. Freeman confirmed that she was transitioning from male to female as part of her medically recommended gender transition process and that she was using the women's restroom in accordance with her gender identity of female.

10. As part of their conversation, Ms. Smith affirmed that Ms. Freeman would be able to continue using the women's restroom.

11. Ms. Freeman is a male-to-female transgender individual.

12. She has a female gender identity and expresses herself as female, meaning that she wears women's clothing, make-up, jewelry, and perfume.

13. Ms. Freeman was diagnosed with Gender Identity Disorder ("GID") in 2007, a rare but serious medical condition listed in the Statistical Manual of Mental Disorders (DSM-IV), published by the American Psychiatric Association.

14. GID is characterized by a persistent and often intense discomfort with one's assigned sex and with one's primary and secondary sex characteristics. This conflict can create intense emotional pain and suffering that is intractable, severe, and often incapacitating. If left medically untreated, this condition can result in dysfunction, debilitating depression and, for some people, incidents of self-harm, including suicide.

15. As part of her treatment for GID, Brianna Freeman has undergone a medically recommended process of gender transition from male to female.

16. After her conversation with Ms. Smith regarding her transition and use of the women's restroom, Brianna Freeman continued using the women's restroom at Denny's three to four times a week without incident.

17. On October 25, 2007, a new manager at Denny's, Darren Douin, who was or is an employee and/or agent of Denny's, informed Brianna Freeman that she would no longer be able to use the women's restroom.

18. Ms. Freeman asked to use the women's restroom. Mr. Douin said she could not.

19. Mr. Douin stated that the reason for prohibiting her from using the women's restroom was because Denny's perceived Brianna as biologically male.

20. Denny's has prohibited Brianna Freeman from using the women's restroom because of her transgender identity, including but not limited to Denny's perception of her as a man.

21. Denny's has prohibited Brianna Freeman from using the women's restroom because of her medical condition.

22. Ms. Freeman continues to visit Denny's, but is forced to reduce the amount of time she spends at Denny's because she is not allowed to use the women's restroom.

23. Forcing Ms. Freeman to use the men's restroom poses a health and safety risk to her.

24. Ms. Freeman has suffered significant emotional distress, anxiety, and stress related to her inability to use the restroom at Denny's that is consistent with her gender identity.

Claims for Relief

Count 1: Unlawful Public Accommodation Discrimination Based Upon Sexual Orientation

25. Plaintiff Brianna Freeman realleges paragraphs 1-24 and incorporates them herein.

26. Defendant has discriminated against Plaintiff Brianna Freeman in the use of a public accommodation by refusing to allow her to use the women's restroom in its restaurant.

27. Defendant's actions violate 5 M.R.S.A. § 4592 by discriminating on the prohibited basis of sexual orientation.

28. As a direct result of Defendant's actions, Plaintiff Brianna Freeman has been denied the full and equal enjoyment of the accommodations, advantages, facilities, goods, services, and privileges of Denny's restaurant.

29. As a direct result of Defendant's actions, Plaintiff Brianna Freeman has suffered and will continue to suffer emotional pain and mental anguish.

Count 2: Unlawful Public Accommodation Discrimination Based Upon Disability

30. Plaintiff Brianna Freeman realleges paragraphs 1-24 and incorporates them herein.

31. Defendant has discriminated against Plaintiff Brianna Freeman in the use of a public accommodation by refusing to allow her to use the women's restroom in its restaurant.

32. Defendant's actions violate 5 M.R.S.A. § 4592 by discriminating on the prohibited basis of disability.

33. As a direct result of Defendant's actions, Plaintiff Brianna Freeman has been denied the full and equal enjoyment of the accommodations, advantages, facilities, goods, services, and privileges of Denny's restaurant

34. As a direct result of Defendant's actions, Plaintiff Brianna Freeman has suffered and will continue to suffer emotional pain and mental anguish.

Count 3: Unlawful Public Accommodation Discrimination Based Upon Sex

35. Plaintiff Brianna Freeman realleges paragraphs 1-24 and incorporates them herein.

36. Defendant has discriminated against Plaintiff Brianna Freeman in the use of a public accommodation by refusing to allow her to use the women's restroom in its restaurant.

37. Defendant's actions violate 5 M.R.S.A. § 4592 by discriminating on the prohibited basis of sex.

38. As a direct result of Defendant's actions, Plaintiff Brianna Freeman has been denied the full and equal enjoyment of the accommodations, advantages, facilities, goods, services and privileges of Denny's restaurant.

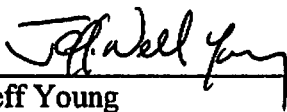
39. As a direct result of Defendant's actions, Plaintiff Brianna Freeman has suffered and will continue to suffer emotional pain and mental anguish.

Prayers for Relief

Wherefore, Plaintiff Brianna Freeman requests that this Court;

1. Declare that Defendant has engaged in unlawful public accommodation discrimination under 5 M.R.S.A. § 4592;
2. Enjoin Defendant and its agents, officers and employees from engaging in all discriminatory practices found by this Court to be in violation of 5 M.R.S.A. § 4592, including an order that Defendant be prohibited from barring Plaintiff from using the female restroom, which accords with her gender identity;
3. Award Plaintiff civil penal, compensatory and punitive damages, including damages for mental anguish and emotional distress;
4. Order that Defendant pay Plaintiff's attorneys' fees and costs; and
5. Order any other relief as the Court deems equitable and proper.

Dated:



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