

8/8/18

Before the
STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 17 RPD 004

Complainants

v.

DECISION ON MOTION
TO DISMISS

Respondent

INTRODUCTION

On June 14, 2016, [redacted] (“Complainants”) filed a charge of discrimination with the Rhode Island Commission for Human Rights (“Commission”) against [redacted] (“Respondent”). The charge alleged that the Respondent discriminated against the Complainants with respect to denial of reasonable accommodation/reasonable modification for the Complainants’ disabilities. The Complainants alleged public accommodations discrimination in violation of the Rhode Island Hotels and Public Places Act (“HPPA”), Title 11, Chapter 24 of the General Laws of Rhode Island, the Civil Rights of People with Disabilities Act (“CRPDA”), Title 42, Chapter 87 of the General Laws of Rhode Island, and the Equal Rights of Deaf and Blind Persons to Public Facilities Act (“ERA”), Title 40, Chapter 9.1 of the General Laws of Rhode Island.

On October 24, 2016, the Respondent filed a Motion to Dismiss (“Motion”) arguing that the Commission did not have jurisdiction. On December 7, 2016, the Complainants filed a response objecting to the Motion.

STANDARD OF REVIEW

In ruling on a Motion to Dismiss, the Commission will view the complainant’s allegations in a light most favorable to the complainant. *See, e.g., DiMase v. Fleet Nat’l Bank*, 723 A.2d 765, 768 (R.I. 1999). “We thus are confined to the four corners of the complaint and must assume all allegations are true, resolving any doubts in [complainant’s] favor.” *DiLibero v. Mortg. Elec. Registration Sys., Inc.*, 108 A.3d 1013, 1015 (R.I. 2015) (citing *Laurence v. Sollitto*, 788 A.2d 455, 456 (R.I. 2002)). “A motion to dismiss may be granted only ‘if it appears beyond a reasonable doubt that a [complainant] would not be entitled to relief under any conceivable set of facts [.]’” *Id.* (citing *Estate of Sherman v. Almeida*, 747 A.2d 470, 473 (R.I. 2000)). [Internal quotations omitted]. *Id.*

DISCUSSION

THE AUTHORITY OF THE PUBLIC UTILITIES COMMISSION DOES NOT PRECLUDE COMMISSION INVESTIGATION

The essence of the Complainants' charge is that the Respondent needs to change the type of water meters it uses near their home, in order to accommodate their disabilities. The essence of the Respondent's Motion is that the Commission's jurisdiction over the matter is pre-empted by the exclusive authority of the Public Utilities Commission/Division of Public Utilities ("PUC/Division") to regulate utilities. In support of its argument, the Respondent cites R.I. Gen. Laws §39-1-1(c) which provides that:

§ 39-1-1. Declaration of policy – Purposes.

...

(c) To this end, there is hereby vested in the public utilities commission and the division of public utilities and carriers the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce energy, communication, and transportation services and water supplies for the purpose of increasing and maintaining the efficiency of the companies, according desirable safeguards and convenience to their employees and to the public, and protecting them and the public against improper and unreasonable rates, tolls and charges by providing full, fair, and adequate administrative procedures and remedies, and by securing a judicial review to any party aggrieved by such an administrative proceeding or ruling.

While this section does refer to the PUC's/Division's "exclusive power and authority", the Rhode Island Supreme Court has recognized the principle, with respect to this chapter, that two statutes should be harmonized in order to give both statutes effect. *See In re Kent County Water Authority Change Rate Schedules*, 996 A.2d 123, 130 (R.I. 2010) in which the Court discussed Chapter 39-1 and the Comprehensive Clean Water Infrastructure Act, R.I. Gen. Laws § 46-15.6-2 as follows:

The language in these two statutes is not in conflict and, indeed, can be read harmoniously as consistent with the Legislature's design that the PUC perform its statutory authority to review rate cases and protect the public from unreasonable charges. *See Horn v. Southern Union Co.*, 927 A.2d 292, 295 (R.I. 2007) ("It is an especially well-settled principle of statutory construction that when, as here, 'we are faced with statutory provisions that are in pari materia, we construe them in a manner that attempts to harmonize them and that is consistent with their general objective scope.'") (quoting *State v. Dearmas*, 841 A.2d 659, 666 (R.I. 2004)); *Providence & Worcester Railroad Co. v. Pine*, 729 A.2d 202, 208 (R.I. 1999) (stating that statutes should be considered "as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section

were independent of all other sections"); State v. Timms, 505 A.2d 1132, 1135 (R.I. 1986) ("We assume the Legislature intended statutes relating to the same subject be construed together to be consistent and to effectuate the policy of the law. * * * Statutes in pari materia are to be considered harmoniously by this [C]ourt.").

In addition, the Rhode Island Supreme Court has held that the PUC has no authority to dictate the type of water meters used by a water utility. See In re Kent County Water Authority Change Rate Schedules, 996 A.2d 123, 130 (R.I. 2010):

In Providence Water Supply Board, this Court held that the PUC exceeded its authority by interfering with management functions concerning the selection of the technology employed by the water utility and that the PUC could not prohibit the utility from using IFR funds to purchase and install new water meters. *Id.* at 543, 547. Notably, this Court has declared:

"This Court repeatedly has held that the broad regulatory powers of the PUC ordinarily do not include the authority to dictate managerial policy. See, e.g., Blackstone Valley Electric Co. v. Public Utilities Commission, 543 A.2d 253, 255 (R.I. 1988) ('It is the function of the PUC to regulate a utility in order to determine that its rates are fair and reasonable. It is not the function of the PUC to manage the utility or to exercise the prerogatives of ownership')." Providence Water Supply Board, 708 A.2d at 543.

Given the recognition that the PUC does not have authority to interfere with managerial functions of a water utility and that the statutes relating to the PUC/Division should be interpreted so that the policy relating to the PUC/Division and the policy relating to the anti-discrimination laws should both be given effect, the Commission will proceed with the investigation of the charge. This does not preclude the Respondent from arguing that PUC/Division edicts are a factor that should be considered in the evaluation of the evidence.

THE HPPA AND THE ERA DO NOT EXTEND TO THE ALLEGATIONS OF THIS CHARGE

The Respondent argues that this case is not jurisdictional under the statutes in question. The Complainants' charge concerns whether the Respondent failed to provide a reasonable accommodation/reasonable modification. This is an issue which can be considered under the CRPDA, which applies to "any entity doing business in the state" (R.I. Gen. Laws §42-87-2), prohibits discrimination in public accommodations and commercial facilities covered by the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"), and provides that the applications and standards be in accordance with the ADA (R.I. Gen. Laws §42-87-3 (5 and 6).) The ADA requires reasonable modifications for disabilities with respect to public accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii), 28 CFR § 36.302. However, the HPPA and the ERA do not require reasonable accommodation/reasonable modification.

HPPA contains an explicit rejection of accommodation. See R.I. Gen. Laws §11-24-2.1(g) which provides that: "(g) Nothing in this section shall require any person providing a place of public accommodation to, in any way, incur any greater liability or obligation, or provide a higher degree of care for a person with a disability than for a person who is not disabled."

The ERA requires only equal access, except for specifically delineated protections such as for personal assistance animals. See R.I. Gen. Laws §40-9.1-1(a) and (b):

(a) Persons who are blind, visually impaired, deaf, hard-of-hearing and otherwise disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities and other public places.

(b) Persons who are blind, visually impaired, deaf, hard-of-hearing and otherwise disabled are entitled to full and equal accommodations, advantages, facilities and privileges on any public conveyance operated on land or water or in the air, or any stations and terminals thereof, not limited to taxis, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats and in any educational institution, not limited to any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, and in places of public resort, accommodation, assemblage or amusement, not limited to hotels, lodging places, restaurants, theater and in all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

Therefore, the investigation will continue with respect to the allegations under the CRPDA only.

OTHER ISSUES

The other issues raised in the Respondent's position paper and the Complainants' response, which involve questions of fact, will be considered during the investigation.

ORDER

The Respondent's Motion to Dismiss the charge under the CRPDA is denied and the case will continue in investigation.

The allegations of the charge with respect to the HPPA and the ERA are hereby dismissed.

Entered this 8th day of August, 2018

Cynthia M. Hiatt

Cynthia M. Hiatt
Preliminary Investigating Commissioner