STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 12 PRE 160

In the matter of

Freedom from Religion Foundation
Complainant

v. DECISION AND ORDER

Raymond Santilli and Raymond Santilli, Jr.
d/b/a Flowers by Santilli
Respondents

## INTRODUCTION

On February 6, 2012, Freedom from Religion Foundation (hereafter referred to as the Complainant) filed a charge with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission) against Flowers by Santilli. On April 26, 2012, the charge was amended to reflect the correct business name of the Respondents, Raymond Santilli and Raymond Santilli, Jr. d/b/a Flowers by Santilli (hereafter referred to as the Respondents). The Complainant alleged that the Respondents discriminated against it with respect to attempts to secure equal access/services of the Respondents on account of religion in violation of the Hotels and Public Places Act, Title 11, Chapter 24 of the General Laws of Rhode Island (hereafter referred to as the HPPA). The amended charge was investigated. On September 28, 2012, Preliminary Investigating Commissioner Nancy Kolman Ventrone assessed the information gathered by a staff investigator and ruled that there was probable cause to believe that the Respondents violated Section 11-24-2 of the General Laws of Rhode Island. On December 5, 2012, the Commission issued a Complaint and Notice of Hearing. The Complaint alleged that the Respondents violated Section 11-24-2 of the General Laws of Rhode Island.

A hearing was held on the Complaint on March 21, 2013, before Commissioner Camille Vella-Wilkinson. The parties were in attendance at the hearing and were represented by counsel. The parties made oral closing arguments at the conclusion of the hearing and the Complainant filed Proposed Findings of Fact and Conclusions of Law on May 13, 2013.

## JURISDICTION

Raymond Santilli and Raymond Santilli, Jr. are in a partnership that owns and operates Flowers by Santilli, a retail store or establishment. Therefore, the Respondents own and operate a public accommodation under R.I.G.L. Section 11-24-3 and are subject to the jurisdiction of the Commission.

## FINDINGS OF FACT

1. The Complainant is an educational charity whose members are generally atheists, agnostics and/or skeptics. The Complainant works to educate the public about non-theism and to separate religion and government. The Complainant takes action to resolve First Amendment violations through education and litigation.

2. Flowers by Santilli, a florist shop, is a retail store or establishment owned and operated by a partnership consisting of Raymond Santilli and Raymond Santilli, Jr. Flowers by Santilli operates from a store in Cranston, Rhode Island. The Respondents own and operate a public accommodation.

3. Jessica Ahlquist was sixteen years old at the time of the events in question. A federal lawsuit against the City of Cranston for displaying a prayer banner at a public high school, Cranston West, was filed on her behalf. Ms. Ahlquist, who identified herself as an atheist at that time, was objecting on First Amendment grounds to the banner being displayed. Ms. Ahlquist won her lawsuit on January 11, 2012. The lawsuit was widely reported in the media.

4. Annie Laurie Gaylor was the Co-President and Executive Director of the Complainant at the time of the events in question. The Complainant had given Ms. Ahlquist an award for her actions in the federal case. The Complainant learned that Ms. Ahlquist had won her federal court case in January 2012. Ms. Gaylor decided that the Complainant would send Ms. Ahlquist flowers to congratulate her.

5. On or around January 18, 2012, Ms. Gaylor contacted Felly's Flowers, a florist in Wisconsin which was generally used by the Complainant. Ms. Gaylor asked to have roses sent to Ms. Ahlquist. Ms. Gaylor told the customer service representative at Felly's Flowers that Ms. Ahlquist was a high school student and that the delivery should be in the afternoon so that the flowers would not be frozen. Ms. Gaylor also said that the florist who would fill the order should call before the delivery and clearly identify themselves as being with the florist shop because Ms. Ahlquist was getting harassment and threats because she had just won a major court decision relating to her high school. Ms. Gaylor added that Ms. Ahlquist had been going to school with a police escort.

6. The customer service representative at Felly's Flowers attempted to find a Rhode Island florist that would fill the Complainant's order. She called Respondent Santilli, Jr. and told him that she had a Teleflora order and that several florists had already refused it. She did not identify the Complainant as the sender. She told Respondent Santilli, Jr. that the delivery was for Jessica Ahlquist, a high school student who had recently been involved in a court case involving her school. She told Respondent Santilli, Jr. that Ms. Ahlquist had been receiving threats and so the delivery person should call before making the delivery and present identification. Respondent Santilli, Jr. refused the order.

7. Respondent Santilli, Jr. testified that the representative from Felly's Flowers did not identify the recipient as Ms. Ahlquist. Trans. p. 88. When asked whether he knew at that time who Jessica Ahlquist was, he testified: "Well, I did and I didn't. It wasn't a story that I was following". Trans. pp. 88-89. He later testified that he was concerned about how Ms. Ahlquist's enemies might "come back" at him if he delivered flowers. Trans. p. 99. When asked why he thought she had enemies, he replied: "It's pretty obvious that she has enemies. She has police escorts for the last several years." Trans. p. 99.

8. Respondent Santilli, Jr. testified that he refused the order because: "It's a safety issue, okay, to us. We don't know – I don't know, or whoever I'm sending which is going to be a family member …, what we're getting into. I don't know what's going to happen here. When you're giving me all these stipulations, all these hoops to jump through, I really don't know what I'm going to get on the other side." Trans. pp. 91-92.

9. Respondent Santilli, Jr. testified that he has never refused to deliver flowers on the basis of religion or non-religion and that: "I'm in the business to make money, I'm in the business to fill orders, I'm not in business to decline orders". Trans. p. 90, 91. He also testified that with respect to Teleflora orders, when he was participating in the Teleflora system, the Respondents would fill only 45 to 50% of the Teleflora orders, with refusal often being due to issues related to the product requested or the timing requested. Trans. pp. 84-85. On January 18, 2012, the Respondents were not participating in the Teleflora system.

10. When the Complainant learned that Felly's Flowers had not been able to find a Rhode Island florist to deliver its order, the Complainant issued a press release relating to the denial of services. A number of news organizations reported about the denial of services.

11. A reporter from Channel 10 news interviewed Respondent Santilli, Jr. on or around January 20, 2012 about the denial of services. In the interview, Respondent Santilli, Jr. made the following statements:

> We refused the order because we really don't want to cross lines.

> If I send flowers there, someone might get a little upset with us and retaliate to us.
>
> We don't refuse orders – okay.
> [Reporter: But this time you did.]
> Yes, we did.

Complainant's Exhibit 5.

12. Channel 12 news wanted to send a reporter to the Respondents to tape a statement. Respondent Santilli, Jr. needed to be out of the shop to make deliveries and get supplies. He asked his wife, Claudia Santilli, to come to the shop to support his father, Respondent Raymond Santilli, and to talk to the Channel 12 reporter. Claudia Santilli did not have an ownership interest in Flowers by Santilli and she was not an employee of Flowers by Santilli. Ms. Santilli made a statement to the Channel 12 reporter as follows:

> We chose not to make the delivery because – first of all, most important, it's our belief system. So we try to overlook things mostly, to be tolerant for others' beliefs, but we just felt that that has gone too far.

Complainant's Exhibit 8.

## CONCLUSIONS OF LAW

The Complainant failed to prove by a preponderance of the evidence that the Respondents violated R.I.G.L. Section 11-24-2 by denying services on account of religion as alleged in the Complaint.

## DISCUSSION

### THE RESPONDENTS OWN AND OPERATE A PUBLIC ACCOMMODATION

The HPPA defines a public accommodation in R.I.G.L. Section 11-24-3 as follows, in relevant part:

> A "Place of public accommodation, resort, or amusement" within the meaning of §§ 11-24-1 – 11-24-3 includes, but is not limited to: … (5) retail stores and establishments …. Nothing in this section shall be construed to include any place of accommodation, resort, or amusement which is in its nature distinctly private.

The Respondents do not contest that they own and operate a public accommodation and it is clear that Flowers by Santilli is a retail establishment and thus covered by the HPAA as a public accommodation. *See* Marques v. Harvard Pilgrim Healthcare of New England,

Inc., 883 A.2d 742 (R.I. 2005) (under the federal Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (ADA), denial of services by an insurance company was a denial of the services of a public accommodation even though the Plaintiff did not visit a physical office); Turner v. Wong, 363 N.J. Super. 186, 832 A.2d 340 (App. Div. 2003) (when the plaintiff alleged that she was subjected to racial epithets in a donut shop, the question of whether this was a violation of the New Jersey law prohibiting discrimination in public accommodations should have been decided by a jury). The Respondents own and operate a public accommodation.

## THE COMPLAINANT ESTABLISHED A *PRIMA FACIE* CASE OF DISCRIMINATION

Section 11-24-2 of the HPPA provides as follows, in relevant part:

> No person, being the owner, …, proprietor, manager, … agent, or employee of any place of public accommodation, resort, or amusement shall directly or indirectly refuse, withhold from, or deny to any person on account of race or color, religion, … any of the accommodations, advantages, facilities, or privileges of that public place.…

The Commission utilizes the Commission's prior decisions, decisions of the R.I. Supreme Court, and decisions of the federal courts in establishing its standards for evaluating evidence of discrimination. *See* Center for Behavioral Health, Rhode Island, Inc. v. Barros, 710 A.2d 680, 685 (R.I. 1998) (federal decisions interpreting federal anti-discrimination laws serve as a guideline in interpreting the Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island). The Commission often uses the standards set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981) to analyze claims of discrimination. In Marques, the Rhode Island Supreme Court used the McDonnell Douglas framework to evaluate a case of public accommodation discrimination under the ADA. Under this framework, if a complainant makes a *prima facie* case of discrimination, the respondent must then present a legitimate, non-discriminatory reason for its actions if it is to avoid liability for its actions. Once the respondent has presented its reason, the complainant, in order to prevail, must prove that the respondent was motivated by discrimination.

In Marques, the Rhode Island Supreme Court set forth the *prima facie* case as follows:

> "1) that he or she is an individual with a disability; 2) that defendant is a place of public accommodation; and 3) that defendant denied him or her full and equal enjoyment of the goods, services, facilities or privileges offered by defendant on the basis of his or her disability." Larsen v. Carnival Corp., 242 F.Supp.2d 1333, 1342 (S.D.Fla. 2003); *see also* Schiavo ex. rel. Schindler v. Schiavo, 358 F.Supp.2d 1161, 1165 (M.D.Fla.), *affd,* 403 F.3d 1289 (11th Cir. 2005).

883 A.2d at 748.

The federal Sixth Circuit Court of Appeals has given a more detailed explication of the *prima facie* case for allegations of discrimination in commercial establishments:

> (1) plaintiff is a member of a protected class;
> (2) plaintiff sought to make or enforce a contract for services ordinarily provided by the defendant; and
> (3) plaintiff was denied the right to enter into or enjoy the benefits or privileges of the contractual relationship in that (a) plaintiff was deprived of services while similarly situated persons outside the protected class were not and/or (b) plaintiff received services in a markedly hostile manner and in a manner which a reasonable person would find objectively discriminatory.

Christian v. Wal-Mart Stores, Inc., 252 F.3d 862, 872, *opinion supplemented on denial of reh'g*, 266 F.3d 407 (6th Cir. 2001).

The Commission finds that the Complainant established a *prima facie* case of discrimination in a public accommodation. The Complainant established that it and the intended recipient of the flowers were within a protected class. The HPPA prohibits discrimination against "… any person … on account of … religion …." It is clear that refusal of service to the Complainant because of the religion of the recipient would be discrimination on account of religion.[1] *See, e.g.*, Fraser v. Robin Dee Day Camp, 44 N.J. 480, 210 A.2d 208 (1965) (it was a violation of the New Jersey anti-discrimination laws to deny services of a public accommodation to the plaintiff's children because of their race); Shumate v. Twin Tier Hospitality, LLC, 655 F. Supp.2d 521 (M.D. Pa. 2009) (motion to dismiss denied with respect to plaintiffs child and fiancé of plaintiff who sought to rent a hotel room for the three of them; the three plaintiffs could proceed with their claim that the hotel violated Title II of the Civil Rights Act of 1964 by denying them a public accommodation because of their race); Hobson v. York Studios, 208 Misc. 888, 145 N.Y.S.2d 162 (N.Y. Mun. Ct. 1955) (white woman could claim race discrimination when her rental agreement was rescinded once the hotel learned that she planned to stay there with her black husband).

[1] The language in the HPPA is different statutory language than that interpreted in Buffi v. Ferri, 106 R.I. 349, 259 A.2d 847 (1969). In Buffi, the Court held that discrimination based on the race of those with whom the tenant associated was not race discrimination because the language of the fair housing act at that time was clear that discrimination was unlawful only if the discrimination was based on the race of the tenant. It provided that discrimination was unlawful if it was "because of the race or color, religion or country of ancestral origin of such individual". R.I.G.L. Section 34-37-4, as it was in effect in 1969. As noted above, the HPPA prohibits discrimination "on account … of religion". R.I.G.L. Section 11-24-2.

The Complainant is an organization that, among other things, educates the public about non-theism. Its members are primarily atheists, agnostics and skeptics. The intended recipient of the flowers had publicly identified herself as an atheist. *See* Noyes v. Kelly Servs., 488 F.3d 1163 (9th Cir. 2007) (protection against discrimination on the basis of religion extends to those who do not have a religious belief); Fischer v. Forestwood Co., Inc., 525 F.3d 972 (10th Cir. 2008) (a plaintiff may prove a *prima facie* case of discrimination on the basis of religion if he presents evidence that the adverse employment actions were taken because of the plaintiff's failure to follow the employer's religious beliefs).

The Complainant sought to order flowers from the Respondents, which falls within the services provided by the Respondents. The Respondents refused to fill the order. Respondent Santilli, Jr. testified that: "I'm in the business to make money, I'm in the business to fill orders, I'm not in business to decline orders". Trans. p. 91. He testified that he had never refused to deliver flowers on the basis of religion (Trans. p. 90), leading to the reasonable inference that he had delivered flowers to those who had religious beliefs.[2] The Complainant proved a *prima facie* case of discrimination on the basis of religion.

THE RESPONDENTS PRESENTED A LEGITIMATE, NON-DISCRIMINATORY REASON FOR THEIR ACTIONS AND THE COMPLAINANT DID NOT PERSUADE THE COMMISSION THAT THE RESPONDENTS WERE MOTIVATED BY RELIGION

Since the Complainant established a *prima facie* case, the burden of proof shifts to the Respondents under the McDonnell-Douglas burden-shifting framework and they must present a legitimate, non-discriminatory reason for their actions, if they are to avoid liability for their actions. The Respondents met their burden through testimony by Respondent Santilli, Jr. that the denial was based on safety issues. Trans. pp. 91-92.

Once a respondent has presented a legitimate non-discriminatory business reason for its actions, the burden of proof shifts back to the complainant to establish discrimination by proving that the reasons given are a pretext for discrimination or that discrimination was one of the motivating factors for its actions. The complainant bears the burden of persuasion. Burdine, 450 U.S. at 256, 101 S. Ct. 1089 at 1095. "It is not enough to *dis*believe the employer; the factfinder must *believe* plaintiff's explanation of intentional discrimination." St. Mary's Honor Center v. Hicks, 509 U.S. 502, 519, 113 S. Ct. 2742, 2754, 125 L.Ed.2d 407 (1993). [Emphases in original.] The "rejection of the defendant's proffered reasons, will *permit* the trier of fact to infer the ultimate fact of intentional discrimination" but it does not compel such a finding. Hicks, 509 U.S. at 511, 113 S. Ct. at 2749. [Emphasis in original.]

The Commission has concluded that Respondent Santilli, Jr. knew that the flowers were ordered for Jessica Ahlquist. When asked about whether he knew about Jessica Ahlquist, he

[2] Respondent Santilli, Jr. discussed providing flowers for weddings and funerals (Trans. p.p. 118, 120, 121), so it is also a reasonable inference that he knew the religious beliefs of some of the recipients of his orders.

testified that he "did and [he] didn't". Trans. p. 89. He may not have followed every detail of her court case, but he was aware of her situation. His later testimony demonstrates that he was concerned about delivering flowers to Jessica Ahlquist, not an unknown person. When he was testifying about his safety concern with respect to the recipient of the flowers and asked why he thought she had enemies, he replied: "It's pretty obvious that she has enemies. She has police escorts **for the last several years**." Trans. p. 99. [Emphasis added.] His testimony had been that the representative from Felly's Flowers told him that there was "a police presence at the residence". Trans. p. 87. Further, Paragraph 9 of the affidavit of the customer service representative from Felly's Flowers, which was admitted in full, states that the customer service representative informed the person who spoke for the Respondents that the flowers were for Ms. Ahlquist. Complainant's Exhibit 2, p. 2.

If the Commission were basing its decision on Ms. Santilli's statements, it would find discrimination. Despite her dogged attempts to explain away her statement to a Channel 12 news reporter, her statement can only be reasonably interpreted as a statement about denial due to Ms. Ahlquist's religious beliefs. It is also clear that Ms. Santilli was an agent of the Respondents.

> "'Agency' has been defined as 'the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.' " Lawrence v. Anheuser-Busch, Inc., 523 A.2d 864, 867 (R.I.1987) (quoting Restatement (Second) *Agency* § 1(1) (1958)). "[T]he three elements required to show the existence of an agency relationship include (1) a manifestation by the principal that the agent will act for him, (2) acceptance by the agent of the undertaking, and (3) an agreement between the parties that the principal will be in control of the undertaking." Lawrence, 523 A.2d at 867. "Consideration is not necessary to create the relation of principal and agent * * *." Restatement (Second) *Agency,* § 225 cmt. *a* at 497.

Norton v. Boyle, 767 A.2d 668, 671-72 (R.I. 2001). Respondent Santilli, Jr. testified that he "had my wife come down and talk to another news station because I had to leave the store". Trans. p. 95. However, the crucial question is not whether Ms. Santilli was an agent of the Respondents in her dealing with reporters, but, rather, what motivated Respondent Santilli, Jr. at the time that he refused the order. Ms. Santilli was not the person who made the decision to deny the order.

The Commission finds that the Complainant did not prove that the Respondents were motivated by religion.[3] It was clear that the Respondents attempt to fill all the orders that they are able to fill. The Commission credited testimony that the Respondents are in

[3] While the Commissioners agree that the Complainant did not prove discrimination on the basis of religion, each of the three Commissioners has a different rationale. The rationale given in this section of the decision is based on the rationale of the Hearing Officer, Camille Vella-Wilkinson.

business to fill orders and that they do not refuse orders because of a particular religion or lack of belief. Trans. p. 90, 91. The Commission finds it probable that Respondent Santilli, Jr.'s true motivation was revealed by his statements to the Channel 10 reporter, the day after the refusal of the order, that they "really don't want to cross lines" and that if the flowers were sent "someone might get a little upset with us and retaliate to us". Complainant's Exhibit 5. The Complainant did not persuade the Commission that Respondent Santilli, Jr. was deterred by the recipient's religious belief or non-belief. The Commission finds that it is more likely that Respondent Santilli, Jr. was afraid of entering into a controversy that would cost him business.[4] *See*, *e. g.* Summers v. McNairy Cnty. Bd. of Educ., 08-1268, 2010 WL 596446 (W.D. Tenn. 2010) (summary judgment entered for employer; there was insufficient evidence of age discrimination when the employer school board presented evidence that it decided not to hire the plaintiff because he had a reputation as a controversial teacher). While the Commission does not endorse the faint-hearted decision of the Respondents, it finds that the Complainant did not prove that the decision was based on the religion/non-belief of the Complainant or the recipient in violation of the HPPA.

[4] It is evident that a plaintiff need not be an atheist to bring a First Amendment lawsuit. *See e.g.* Inouye v. Kemna, 504 F.3d 705 (9th Cir. 2007) (The plaintiff, a Buddhist, established that the First Amendment was violated by the requirement that he attend AA as a condition of his parole); Johnson v. Nevada ex rel. Bd. of Prison Comm'rs, 2013 WL 5428441 (D. Nev. July 10, 2013) report and recommendation adopted, 2013 WL 5428423 (D. Nev. Sept. 26, 2013) (Orthodox Christian prisoner challenged prison refusal to provide opportunity for frequent services); Chalifoux v. New Caney Indep. Sch. Dist., 976 F. Supp. 659 (S.D. Tex. 1997) (Catholic students could challenge a school's refusal to allow them to wear rosaries as necklaces in school). The Commission further emphasizes that a public accommodation cannot refuse services because of discriminatory customer preference. An owner of a restaurant cannot refuse to admit black patrons based on fear that whites will not come to a restaurant where blacks are being served. Daniel v. Paul, 395 U.S. 298, 89 S. Ct. 1697, 23 L. Ed. 2d 318 (1969) (lower court found racial discrimination based on owner's refusal to admit black individuals to his recreational facility due to his fear that integration would cause white individuals to stop patronizing his facility; Supreme Court held that the facility was a public accommodation). In the instant case, the Commission finds that the Respondents were fearful of the potential adverse impact on their business caused by reactions to the lawsuit and were not concerned about adverse reactions to the Complainant's or recipient's religion/lack of belief.

**ORDER**

Having reviewed the evidence presented on March 21, 2013, the Commission, with the authority granted it under R.I.G.L. Section 11-24-4, finds that the Complainant has failed to prove the allegations of the Complaint by the preponderance of the evidence and hereby dismisses the Complaint.

Entered this day of , 2013.

_____
Camille Vella-Wilkinson
Hearing Officer

CONCURRENCE OF COMMISSIONER ALBERTO APONTE CARDONA, ESQ.

I have read the record and concur in the judgment of the Commission. However, my rationale for finding that discrimination was not proved differs from that of the Hearing Officer, Commissioner Vella-Wilkinson. I find it credible that the Respondents refused the order for flowers to be delivered to Ms. Ahlquist because Respondent Santilli, Jr. was concerned about safety issues. Given that he was informed that the recipient has been subjected to threats and that he was told to call ahead and identify himself as a florist before he made the delivery, it was reasonable of him to believe there were potential dangers involved in the delivery. I find that, when he refused the order, he was motivated by concerns about the situation being dangerous, rather than by bias against those who do not have a religious belief.

_____ _____

Alberto Aponte Cardona, Esq. Date
Commissioner

CONCURRENCE OF COMMISSIONER JOHN B. SUSA

I have read the record and concur in the judgment of the Commission. However, my rationale for finding that discrimination was not proved differs from that of the Hearing Officer, Commissioner Vella-Wilkinson, and from that of Commissioner Aponte Cardona. There is no evidence that the Respondents were informed that the order came from the Complainant. There is no credible, first-hand evidence that the Respondents were given

sufficient information to understand that the flowers were to be delivered to Jessica Ahlquist. Since I believe that the Respondents did not know who ordered the flowers or to whom the flowers were to be delivered, they could not know the religion/non-belief of the customer or recipient. Therefore, I find that the Complainant failed to make a *prima facie* case of discrimination as it did not prove that the Respondents had knowledge of the religion/non-belief of those involved.

_____ _____

John B. Susa
Commissioner

Date