



**BEFORE THE  
MISSOURI COMMISSION ON HUMAN RIGHTS  
STATE OF MISSOURI**

**STATE OF MISSOURI ex rel.** )  
**DANIEL HUHNS,** )  
) )  
**Petitioner,** )  
) )  
**v.** )  
) )  
**CHINA BUFFET FENTON, INC.** )  
) )  
**Respondent.** )

**MCHR Case Number: P-05/09-03046  
AHC Case Number: 12-0003 HRC**

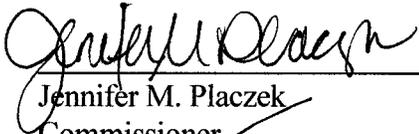
**DECISION AND ORDER**

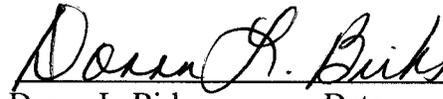
After reviewing the record in the above-styled case the Commission Panel adopts the Hearing Examiner's Findings of Fact and Conclusions of Law and issues the following Decision and Order.

**IT IS HEREBY ORDERED:**

- 1. Respondent violated §213.065 RSMo. by discriminating against Complainant because of his disability by refusing to allow Complainant and his service dog in Respondent's place of public accommodation.**
- 2. Respondent shall pay to Complainant the sum of \$24,000 in actual damages for humiliation and emotional distress and \$8,000 in actual damages for violation of his civil rights.**
- 3. Respondent shall adopt a written non-discrimination policy regarding people with service animals and submit a copy to MCHR within 90 days of this order.**

4. Respondent shall cease and desist from further discriminatory practices that involve disability or other prohibited factors in its place of public accommodation and shall submit a report of their manner of compliance within 90 days of the date of this order.

 8-19-13  
\_\_\_\_\_  
Jennifer M. Placzek Date  
Commissioner  
Agree  \_\_\_\_\_  
Disagree \_\_\_\_\_

 8-26-13  
\_\_\_\_\_  
Donna L. Birks Date  
Commissioner  
Agree  \_\_\_\_\_  
Disagree \_\_\_\_\_

 8/30/13  
\_\_\_\_\_  
Roger L. Worthington Date  
Presiding Commissioner  
Agree  \_\_\_\_\_  
Disagree \_\_\_\_\_

Before the  
 Commission on Human Rights  
 State of Missouri



STATE OF MISSOURI, ex rel.	)	
DANIEL HUHNS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 12-0003 HRC
	)	
CHINA BUFFET FENTON, INC.,	)	
	)	
Respondent.	)	

**RECOMMENDED DECISION**

The Administrative Hearing Commission (“the Hearing Examiner”) recommends that the Missouri Commission on Human Rights (“the MCHR”) grant the claim of Daniel Huhn (“Huhn”) against China Buffet Fenton, Inc. (“China Buffet”) and award Huhn \$32,000 in actual damages.

**Procedure**

Huhn filed a complaint of discrimination on the basis of disability with the MCHR on May 5, 2009, within 180 days of the alleged acts of discrimination. On October 30, 2009, the MCHR found probable cause to believe that discrimination occurred. On April 21, 2010, the MCHR received an affidavit of failure of conciliation efforts. On February 1, 2012 the MCHR approved the appointment of the Administrative Hearing Commission as Hearing Examiner. On February 3, 2012, the MCHR transmitted its record to the Hearing Examiner. On May 4, 2012,

the Attorney General, on behalf of the State, filed a first amended complaint in Huhn's name. China Buffet did not file an Answer. On January 10, 2013, the Hearing Examiner convened a pre-hearing conference. Assistant Attorney General Vanessa Howard Ellis represented the MCHR and Qun Han Sun ("Sun"), the owner of China Buffet appeared *pro se* at the pre-hearing conference. On January 25, 2013, the Hearing Examiner convened a hearing on the amended complaint. Assistant Attorneys General Vanessa Howard Ellis and Nicole Colbert-Botchway represented the MCHR, and Sun appeared *pro se*. The transcript was filed on February 13, 2013. This matter became ready for our recommended decision on May 9, 2013, when the final written argument was filed.

### **Findings of Fact**

1. The MCHR is an agency of the State of Missouri, established and existing pursuant to § 213.020.1<sup>1</sup> for the purpose of administering and enforcing Chapter 213 and the regulations promulgated and adopted under 8 CSR 60.<sup>2</sup>
2. Huhn is a natural person with Retinitis Pigmentosa, which caused the vision in both eyes to deteriorate.
3. At all relevant times, China Buffet Fenton, Inc., was a restaurant in Fenton, Missouri, open to the general public, and was owned and operated by Sun for more than nine years.
4. In 2000 Huhn became totally blind, unable to even perceive light.
5. In November 2000 Huhn obtained a service animal – a guide dog – to assist him in everyday activities, including walking around obstacles, crossing the street, and avoiding dangerous circumstances.

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<sup>1</sup> Statutory references are to RSMo 2000 unless otherwise indicated.

<sup>2</sup> All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

6. Huhn and his guide dog received training and certification at a guide dog school in California.

7. After the training and certification, Huhn received an identification card that he carried with him at all times, including on November 7, 2008. The front of the card stated that his guide dog was a service animal, in full compliance with the laws of the State of California and that Huhn was fully qualified to use a service animal under all conditions. The back of the card had citations to Missouri statutes and the following statement:

Missouri statutory law guarantees a blind person the legal right to be accompanied by a specially trained dog guide in all public accommodations and on all public transportation. No extra charge can be levied because of the dog's presence. All violations will be prosecuted as a misdemeanor and punishable under Missouri law.

(Exhibit 1 at 42)

8. When performing his service duties, including on November 7, 2008, the guide dog wore a harness that clearly identified him as a service animal and not a pet.

9. Huhn took his guide dog everywhere with him and never had problems with his guide dog's behavior. Before November 7, 2008, they were always able to enter restaurants together.

10. On November 7, 2008, Huhn and his son, Daniel Huhn, Jr., went to China Buffet to eat lunch.

11. Sun refused entry to Huhn and his son with his guide dog, saying "no dogs" and "no pets."

12. Huhn showed Sun the identification card, but Sun continued to refuse entry. Huhn, his son, and several patrons of China Buffet tried to explain to Sun that his guide dog was a service animal, not a pet, and must be allowed to enter China Buffet.

13. One of the customers also told Sun that she would not be upset by having the guide dog in China Buffet.

14. Huhn's son called St. Louis County police, and an officer was sent to China Buffet. The officer informed Sun that he was violating the law by refusing to permit a disabled individual to enter China Buffet with his service animal and denying Huhn service and that the dog was well trained.

15. Sun continued to refuse to allow Huhn to enter China Buffet with his guide dog even after speaking with the police officer.

16. During this event, Huhn and his son were upset and at a loss for words at being denied entry into China Buffet. Huhn and his son left China Buffet and returned to their car in the parking lot, where they continued to speak to the police officer.

17. After Huhn and his son returned to their car, Sun called an attorney whose name he found in the Yellow Pages, who advised him that he should allow Huhn to enter China Buffet with his guide dog.

18. Approximately an hour after Huhn and his son had initially attempted to enter China Buffet, and as Huhn and his son were in their car, leaving the parking lot, Sun came out of China Buffet and yelled to them that they could come into China Buffet with his guide dog without apologizing.

19. By this point, Huhn was shaking, very upset, shocked, embarrassed, and declined to patronize China Buffet.

20. When Huhn told Sun it was too late and he would not eat at China Buffet, Sun threw up his hands, said he did not care, and walked back inside.

21. Huhn continues to think of this incident and feels embarrassment and stress.

## Conclusions of Law

The MCHR has jurisdiction to hear and determine this complaint.<sup>3</sup> The burden is on MCHR to prove, by a preponderance of the credible evidence, that Sun and China Buffet committed a violation of MHRA.<sup>4</sup>

The Hearing Examiner determines the credibility of witnesses and exercises discretion in believing all, part, or none of the testimony.<sup>5</sup> Any facts or circumstances shedding light on the accuracy, truthfulness, and sincerity of a witness are properly considered.<sup>6</sup> At the hearing, Huhn's exhibits and witness testimony were admitted without objection. Although Sun testified, his answers were non-responsive and evasive.

Missouri courts rely on federal decisions in cases involving civil rights because of the similarities between the applicable state and federal statutes.<sup>7</sup> The provisions of the Missouri Human Rights Act ("the MHRA") cited below are substantially similar to provisions of Title III of the Americans with Disabilities Act ("the ADA")<sup>8</sup> and may be analyzed in the same manner as ADA claims.<sup>9</sup>

### Denial of Services Made Available in Places of Public Accommodation/Disability Discrimination

In order to prevail on his claim of discrimination, Huhn must demonstrate that: (1) he is a person with a disability as defined by statute; (2) China Buffet is a place of public accommodation; (3) China Buffet discriminated against him on the basis of his disability; and (4)

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<sup>3</sup> Sections 213.030 and 213.075.

<sup>4</sup> *Missouri Comm'n on Human Rights v. Sikeston*, 769 S.W.2d 798, 800 (Mo.App. S.D. 1989).

<sup>5</sup> *Clark v. Reeves*, 854 S.W.2d 28, 30 (Mo.App. W.D. 1993).

<sup>6</sup> *Roberts v. Emerson Elec. Mfg. Co.*, 362 S.W.2d 579, 584 (Mo. 1962).

<sup>7</sup> *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814, 818 (Mo. banc 2007).

<sup>8</sup> 42 U.S.C. 126 secs. 12181 *et seq.*

<sup>9</sup> *Missouri Comm'n on Human Rights v. Red Dragon Rest., Inc.*, 991 S.W.2d 161, 168 (Mo.App. W.D. 1999), *Amir v. St. Louis Univ.*, 184 F.3d 1017, 1027 (8<sup>th</sup> Cir. 1999).

China Buffet failed to make reasonable accommodations that would not fundamentally alter the nature of the public accommodation.<sup>10</sup>

Section 213.010 provides:

As used in this chapter, the following terms shall mean:

\* ... \* ... \*

(4) "Disability", a physical ... impairment which substantially limits one or more of a person's major life activities, being regarded as having such an impairment, or a record of having such an impairment, which with ... reasonable accommodation does not interfere with ... utilizing the place of public accommodation...;

(5) "Discrimination", any unfair treatment based on ... disability...;

\* ... \* ... \*

(15) "Places of public accommodation", all places or businesses offering or holding out to the general public, goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare and safety of the general public or such public places providing food, shelter, recreation and amusement, including, but not limited to:

\* ... \* ... \*

(b) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment;

\* ... \* ... \*

(18) "Unlawful discriminatory practice", any act that is unlawful under this chapter.

Section 213.065 provides:

1. All persons within the jurisdiction of the state of Missouri are free and equal and shall be entitled to the full and equal use and enjoyment within this state of any place of public accommodation,

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<sup>10</sup> *Amir*, 184 F.3d at 1027.

as hereinafter defined, without discrimination or segregation on the grounds of ... disability.

2. It is an unlawful discriminatory practice for any person, directly or indirectly, to refuse, withhold from or deny any other person, or to attempt to refuse, withhold from or deny any other person, any of the accommodations, advantages, facilities, services, or privileges made available in any place of public accommodation, as defined in section 213.010 and this section, or to segregate or discriminate against any such person in the use thereof on the grounds of ... disability.

#### *Person with a Disability*

Huhn is totally blind as a result of his Retinitis Pigmentosa and has been totally blind since 2000. Huhn cannot perceive light, see potential obstacles in his path or his destination, and relies on a service animal to go from place to place. Huhn's guide dog assists him in everyday activities such as walking around obstacles, crossing the street, and avoiding dangerous circumstances.

As a result of his physical impairment, Huhn is substantially limited in his major life activities. With reasonable accommodation – the use of a guide dog – Huhn's blindness does not interfere with his use of places of public accommodation. Huhn's total blindness, related limitations, and use of the guide dog meet the definition of "disability" in § 213.010(4).

#### *Place of Public Accommodation*

Sun has owned and operated China Buffet for more than nine years. China Buffet is a business that offers goods and services and provides food to the general public.

China Buffet meets the definition of a "place of public accommodation" in § 213.010(15).

#### *Discrimination on the Basis of Disability*

Sun refused to allow Huhn to enter China Buffet with his guide dog. Huhn was treated unfairly because his disability required him to use a service animal. Even after Huhn, his son, other customers in China Buffet, and a St. Louis County police officer explained to Sun that his

guide dog was a fully trained service animal rather than a pet, Sun continued to deny Huhn and his guide dog entry into China Buffet. For almost an hour, Sun refused to allow Huhn and his guide dog to enter China Buffet despite being told repeatedly that he was violating the law by not admitting them. As noted above, when Sun eventually told Huhn he could enter China Buffet with his guide dog, Huhn was already in his car preparing to leave. He was embarrassed and badly shaken and understandably wanted nothing further to do with Sun or China Buffet.

The treatment Huhn was subjected to at China Buffet was unfair and based on his disability. Accordingly, it meets the definition of “discrimination” in § 213.010(5).

#### *Failure to Make Reasonable Accommodations*

Federal regulations require a public accommodation to modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.<sup>11</sup> Sun should not have extended his “no pets” policy to prohibit the entry of a trained guide dog. Allowing Huhn to enter with his guide dog would have been a reasonable accommodation. Huhn was unable to navigate China Buffet because of his blindness, and his guide dog was well trained, well behaved, and would not have disrupted China Buffet. When Sun eventually told Huhn he could enter China Buffet with his guide dog, Huhn was already in his car preparing to leave.

Sun failed to make reasonable accommodations to allow Huhn full and equal use of China Buffet.

#### Conclusion

Having found that Huhn meets the definition of disability, China Buffet meets the definition of a place of public accommodation, Sun’s actions meet the definition of discrimination, and Sun failed to make reasonable accommodations, we find that China Buffet is in violation of § 213.065.

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<sup>11</sup> 28 C.F.R. § 36.302(c)(1).

## **Damages**

Section 213.075.11 provides in part:

The panel shall state its findings of fact and conclusions of law, and if, upon all the evidence at the hearing, the panel finds:

(1) That a respondent has engaged in an unlawful discriminatory practice as defined in this chapter, the commission shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice. The order shall require the respondent to take such affirmative action, as in the panel's judgment will implement the purposes of this chapter, including, but not limited to ... payment of actual damages; and the submission of a report of the manner of compliance[.]

### Actual Damages

“A damage award is designed to fulfill the remedial purposes of the civil rights laws and compensate a wronged person for the loss or injury suffered.”<sup>12</sup> Actual damages may be awarded for humiliation, emotional distress, and deprivation of civil rights.<sup>13</sup> We conclude Sun’s actions deprived Huhn of civil rights guaranteed to him by law. Huhn’s testimony established that he suffered the type of mental anguish that a discrimination claim is designed to address. Huhn is entitled to actual damages for humiliation, emotional distress, and deprivation of civil rights.

### *Humiliation and Emotional Distress*

Actual damages in a civil rights case under the MHRA may include damages for humiliation and emotional distress.<sup>14</sup> Damages can be awarded even where a medical diagnosis is not indicated and where the claim is “for emotional distress ... that an ordinary person would feel in such circumstances.”<sup>15</sup> Because such damages need not be proven with mathematical

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<sup>12</sup> *Van Den Berk v. Comm’n on Human Rights*, 26 S.W.3d 406, 413 (Mo.App. 2000).

<sup>13</sup> *Id.* (Internal citations omitted.)

<sup>14</sup> *Conway v. Missouri Comm’n on Human Rights*, 7 S.W.3d 571, 574-75 (Mo.App. E.D. 1999).

<sup>15</sup> *State ex rel. Dean v. Cunningham*, 182 S.W.3d 561, 568 (Mo. banc 2006).

precision, we establish a dollar figure for emotional distress by comparing awards for emotional distress suffered by similarly situated persons.

At the time of the incident, Huhn was shaking, very upset, and shocked at being refused entry into China Buffet with his guide dog. Huhn was very embarrassed at being told to leave a public place as customers walked in and out of China Buffet. Huhn continues to think of the incident and feels embarrassment and stress. Huhn's credible testimony demonstrates that Sun's actions in refusing to allow Huhn entry into China Buffet with his guide dog caused Huhn significant humiliation and emotional distress. An award of damages for humiliation and emotional distress is justified in this case. Huhn is entitled to an award of damages for humiliation and emotional distress in the amount of \$24,000.<sup>16</sup>

#### *Deprivation of Civil Rights*

The amount of damages recoverable for a deprivation of civil rights depends on the severity of the harm suffered by the person whose rights have been affected.<sup>17</sup> Sun's refusal to allow Huhn and his guide dog into the restaurant after being told by the Huhns, customers, and a police officer that he was violating the law, along with Sun's indifference to Huhn's distress, demonstrates a persistent disregard for Huhn's civil rights. In *Conway*<sup>18</sup> the court awarded actual damages for violation of civil rights in the amount of one third of the amount of the damages for humiliation and emotional distress. This is sufficient to compensate Huhn for the violation of his civil rights. Huhn is entitled to an award of damages for deprivation of his civil rights in the amount of \$8,000.

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<sup>16</sup> See *State ex rel. Sir v. Gateway Taxi Management Co.*, \_\_\_ S.W.3d \_\_\_, 2013 WL 1624825, Mo.App. E.D., April 16, 2013 (NO. ED98703, ED98715) (Gateway refused to hire Sir because of his disability. The MCHR awarded Sir \$50,000 for humiliation and emotional distress. The Court found that Sir's feelings of rejection and embarrassment were "the essence of a humiliating experience" and "ample evidence of deep emotional distress.")

<sup>17</sup> *Red Dragon Rest., Inc.*, 991 S.W.2d at 171.

<sup>18</sup> *Conway*, 7 S.W.3d at 574.

### Cease and Desist

In this case, Huhn understandably does not want to return to China Buffet; a cease and desist order would have no practical benefit for him. However, a cease and desist order would protect future disabled patrons of China Buffet from such unlawful discriminatory practices. China Buffet should also adopt a written nondiscrimination policy and submit a copy of the policy to the MCHR within 90 days of the MCHR's order.

### Conclusion

Sufficient evidence exists to establish discrimination due to disability under the MHRA for refusing to allow Huhn entry into China Buffet with his guide dog. The evidence demonstrates that Huhn suffered significant humiliation, emotional distress, and deprivation of his civil rights. Accordingly, Huhn is entitled to damages in the amount of \$32,000.

### **Summary**

The Hearing Examiner recommends that the MCHR take the following actions:

- (1) find that Sun and China Buffet Fenton, Inc., committed unlawful and discriminatory acts in violation of § 213.065, RSMo;
- (2) assess damages against Sun and China Buffet Fenton, Inc., including emotional distress, humiliation, deprivation of civil rights, and any other damages deemed reasonable by the MCHR in the amount of \$32,000; and
- (3) order Sun and China Buffet Fenton, Inc., to cease and desist any ongoing unlawful and discriminatory practices that violate the prohibition on discrimination against persons with disabilities in § 213.065 and to submit a report of the manner of compliance.

Pursuant to the MCHR's Regulation 8 CSR 60-2.200(1), the parties may file exceptions within ten days of the date of this recommended decision.

SO RECOMMENDED on June 3, 2013.

  
SREENIVASA RAO DANDAMUDI  
Hearing Examiner