



Maine Human Rights Commission  
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Amy M. Sneirson  
*Executive Director*

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*Commission Counsel*

# Memo

Date: July 23, 2013

To: Amy M. Sneirson, Executive Director

From: John P. Gause, Commission Counsel 

Re: PA13-0044, Kevin M. Smith v. Portland French Congregation of Jehovah's Witnesses

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Respondent, Portland French Congregation of Jehovah's Witnesses, asserts that the Maine Human Rights Act, 5 M.R.S. §§ 4551-4634 ("MHRA"), does not apply to its worship services. The Chief Investigator has requested administrative dismissal based on lack of jurisdiction. The Executive Director may administratively dismiss a complaint for that reason. *See* 94-348 C.M.R. ch. 2, § 2.02(H)(1). For the following reasons, I recommend that the complaint should be administratively dismissed.

The complaint alleges MHRA public accommodation disability discrimination, in that Complainant was denied the use of a service dog at Respondent's public meetings. Respondent asserts that its public gatherings are religious services at a "Kingdom Hall," which is a house of worship used by Jehovah's Witnesses. These gatherings "focus primarily on the teachings of the Bible and its central message about 'the Kingdom of God,' the theme of Jesus' ministry." Respondent asserts that, like the federal Americans with Disabilities Act of 1990 ("ADA"), the MHRA does not apply to religious organizations or entities, including places of worship.

The ADA public accommodations provisions specifically exempt “religious organizations or entities controlled by religious organizations, including places of worship.” 42 U.S.C. 12187. There is not a corresponding exemption in the MHRA.

The MHRA makes it “unlawful public accommodations discrimination . . . [f]or any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to refuse to permit the use of a service animal or otherwise discriminate against an individual with a physical or mental disability who uses a service animal at the public accommodation . . . .” 5 M.R.S. § 4592(8). A “public accommodation” is defined as “a public or private entity that owns, leases, leases to or operates a place of public accommodation.” 5 M.R.S. § 4553(8-B).

The MHRA definition of “place of public accommodation” does not specifically include a church or other type of religious building in one of its listed categories. *See* 5 M.R.S. § 4553(8). The closest categories to a Kingdom Hall are “[a]n auditorium, convention center, lecture hall or other place of public gathering,” 5 M.R.S. § 4553(8)(D), and an “establishment that in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public.” 5 M.R.S. § 4553(8)(N). Our accessibility regulations exempt religious entities unless “the building or facility is open to the public for any reason.” 94-348 C.M.R. ch. 7, § 7.00(E).

Complainant asserts that Respondent’s worship services are open to the public. In fact, he submits documents that appear to be from Respondent’s website that describe its meetings as being “open to the public.” The website materials state that “[y]ou don’t have to be one of Jehovah’s Witnesses to attend our meetings. We invite everyone to come along.”

There are no Maine cases and surprisingly few cases from other jurisdictions addressing whether places of religious worship are “places of public accommodation” for purposes of state or federal antidiscrimination laws. Most courts to address the issue have held that they are not covered. *See Vargas-Santana v. Boy Scouts of America*, 2007 WL 995002, \*6 (D.Puerto Rico 2007) (Title II of the Civil Rights Act of 1964); *Donaldson v. Farrakhan*, 762 N.E.2d 835, 839 (Mass. 2002) (Massachusetts public accommodations law); *Wazeerud-Din v. Goodwill Home and Missions, Inc.*, 737 A.2d 683, 687 (N.J.Super. Ct. App. Div. 1999), *cert. denied*, 746 A.2d 458 (Table) (N.J. 2000) (New Jersey Law Against Discrimination).

In *Donaldson v. Farrakhan*, a woman who was denied entry to a speech by Louis Farrakhan brought a complaint alleging sex discrimination against a mosque that sponsored the event. The event was held in a theatre owned by the City of Boston. The mosque characterized the speech by Farrakhan as an expanded section of the mosque's weekly religious men's meeting to which women were excluded. The complaint alleged a violation of the Massachusetts public accommodation law, which prohibited sex discrimination. A covered “place of public accommodation” was defined as “any place, whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public, and includes an auditorium, theatre, music hall, meeting place or hall, including common halls of buildings.” *Donaldson v. Farrakhan*, 762 N.E.2d 835, 838 (Mass. 2002) (quoting General Laws c. 272, § 92A). In upholding a directed verdict for the mosque, the Massachusetts Supreme Court found insufficient evidence that the event was a “public, secular function.” *Id.* at 839. The court noted that “[t]he mosque was the only party signatory to the lease with the theatre; the mosque provided the

speakers at the event; the keynote speaker was the head of the religion; and the mosque organized, funded, and provided all of the security for the event.” *Id.*

In *Wazeerud-Din v. Goodwill Home and Missions, Inc.*, plaintiff alleged religious discrimination after he was denied entry to defendant’s nine-month residential program that provided participants with intensive religious instruction designed to free them from addictive life patterns. In finding that the program was not a “public accommodation” under the New Jersey Law Against Discrimination, a panel of the New Jersey Superior Court found it significant that “a church or other religious institution does not ordinarily solicit the general public’s participation, which is a principal characteristic of public accommodations. Instead, a religious institution’s solicitation of participation in its religious activities is generally limited to persons who are adherents of the faith or at least receptive to its beliefs.” *Wazeerud-Din v. Goodwill Home and Missions, Inc.*, 737 A.2d at 687.

In an earlier memo, I determined that a rehabilitation program that had a purpose of religious indoctrination of its clients was not a “place of public accommodation” under the MHRA because religious indoctrination is dissimilar from the types of services offered in the listed categories of “places of public accommodation.” *See* July 11, 2011, Commission Counsel Memo, available online at [http://www.maine.gov/mhrc/guidance/memo/20070611\\_G.pdf](http://www.maine.gov/mhrc/guidance/memo/20070611_G.pdf). Since that Memo, I did find one case in which a court held that a holistic health program operated by a religious organization was a “public accommodation” under the California nondiscrimination law, the Disabled Persons Act. *See Stevens v. Optimum Health Institute--San Diego*, 810 F.Supp.2d 1074, 1089 (S.D.Cal. 2011). The California law prohibited discrimination by “private schools, hotels, lodging places, places of public accommodation, amusement, or

resort, and other places to which the general public is invited.” *Id.* at 1085 (citing Cal. Civ.Code § 54.1(a)(1)). In finding sufficient evidence that the program was covered, the court noted that it was offered to “nonmembers, nonadherents and nonbelievers.” *Id.* at 1088.

Here, although the Kingdom Hall services are described as being “open to the public,” the meetings are clearly religious in nature. The same document that describes the meetings as being open states, “[a]t these meetings, which are open to the public, we examine what the Bible says and how we can apply its teachings in our life.” Because they are religious in nature, the meetings are not “a public, secular function.” *Donaldson v. Farrakhan*, 762 N.E.2d at 839. They are dissimilar from the above-listed categories of public accommodations, none of which expressly offer religious services. *See* 5 M.R.S. § 4553(8)(D, N). Rather, the Kingdom Hall services are apparently intended for “persons who are adherents of the faith or at least receptive to its beliefs.” *Wazeerud-Din v. Goodwill Home and Missions, Inc.*, 737 A.2d at 687. As such, they are not “open to the public” within the contemplated meaning of the Commission’s regulation, § 7.00(E), and are not covered by the MHRA public accommodations provisions.

Because the Kingdom Hall services are not covered by the MHRA public accommodations provisions, the complaint should be administratively dismissed for lack of jurisdiction.