

**BEFORE THE HUMAN RELATIONS COMMISSION
FOR THE STATE OF DELAWARE**

CHERYL KING)	
)	
Complainant,)	
)	
v.)	Case No. K-EA-1874-19
)	
DELAWARE STATE UNIVERSITY et al.)	
)	
Respondents.)	

MEMORANDUM DECISION AND ORDER

Pursuant to due notice of time and place of meeting served on all parties in interest, the above-stated cause came before a Panel of the Delaware State Human Relations Commission on Tuesday, December 17, 2019 in the Cannon Building, 861 Silver Lake Boulevard, Suite 145 Dover, Delaware to determine whether a violation of the Delaware Equal Accommodations Law, 6 *Del. C.* Ch. 45, had occurred.

PRESENT:

Rose Marie Williams, *Commissioner and Panel Chair*,
Nancy Maihoff, *Commissioner and Panel Member*,
Earnest Gulab, *Commissioner and Panel Member*,
Daniel C. Mulveny and Kemba S. Lydia-Moore, *Deputy Attorneys
General, Counsel for the Commission and the Panel.*

APPEARANCES:

Cheryl King, *Complainant, pro se*,
Robert L. Duston, Esq. (admitted *pro hac vice*), James Taylor, Jr.,
Esq., and Randall S. MacTough, Esq., SAUL EWING ARSTEIN &
LEHR LLP, and LaKresha Roberts Moultrie, Esq., *Counsel for
Respondents.*

A meeting of a Panel of the Delaware State Human Relations Commission (the "SHRC" or "Commission") convened on December 17, 2019 in order to determine whether a violation of Delaware's Equal Accommodation Law (the "DEAL"), 6 *Del. C.* § 4504, occurred. Ms. Cheryl King ("Complainant" or "Ms. King") brought a complaint alleging that Respondents Delaware State University ("DSU"), Officer Isaiah Church, Officer Michael Bowman, and Officer Christian Walton (collectively "Respondents") discriminated against her on the basis of her disability. Immediately after the hearing, the panel conducted its deliberations.

SUMMARY OF THE COMPLAINT

Ms. King alleged in her complaint that she was refused, withheld, or denied accommodations, facilities, advantages, or privileges of a place of public accommodation because of her physical and mental disability. According to her allegations in the complaint, Ms. King was denied access to DSU's campus on several occasions when she was arriving with her service animal.

Specifically, Ms. King alleges that on April 14, 2019 at approximately 8:00 PM she arrived at DSU's campus in Dover with her service animal, a dog. She intended to visit her son who is a DSU student. She was met by Officer Church who told her that no pets were allowed on campus. Ms. King informed Officer Church that her dog was a service animal. He responded that no service animals were allowed on campus. He instructed Ms. King to park her car and call her son

who came to her car without incident.

Ms. King further alleges on April 18, 2019, she called DSU police seeking clarification of DSU's rules on service animals. She spoke with Officer Bowman who told her that she could pick up and drop off her son in by the flag poles at the DSU entrance as long as she remained in her car. She alleges that she was told by DSU police that she was not allowed out of her car with her service dog.

Lastly, Ms. King alleges that on April 24, 2019, she was denied access to DSU's campus by Officer Walton.

By these alleged actions, Ms. King claims that Respondents illegally denied her access to DSU's campus because of her disability—her support animal.

PRE-HEARING MATTERS

DSU, through its counsel, submitted a December 6, 2019 letter containing six motions *in limine* seeking to exclude certain evidence from the hearing. In brief summary, DSU sought to exclude (1) evidence of Ms. King's emotional distress and economic damages; (2) evidence of Ms. King's psychological treatment unless a psychologist appears; (3) any documents not previously identified and produced in response to DSU's subpoena; (4) DSU witnesses identified by Ms. King; (5) the testimony of Ms. Sharon Champion and Andrew King; and (6) evidence and testimony regarding a February 2016 incident with PSI/Lasergrade (collectively, "DSU's motions").

Prior to the hearing, the Panel and its counsel considered DSU's motions. At the hearing, Ms. King was invited to address the motions. She declined to respond. The Panel then deliberated. The Panel denied DSU's motions finding that DSU's objections went to the weight, if any, the Panel would give to the evidence and not to the admissibility of the evidence.

Both parties made opening statements. Ms. King had her dog with her at the hearing.

SUMMARY OF THE EVIDENCE

A. Complainant's Case

1. Mr. Andrew King

Mr. King, duly sworn, testified in response to questions from Ms. King. He is Ms. King's son.

On April 14, 2019, Ms. King texted Mr. King about being denied access to DSU. He said that Officer Bowman told Ms. King that she could come onto campus but that she could not exit her car. This made him angry and upset. He expressed his anger to his mother.

He said that on April 30, Officer Church denied Ms. King access to DSU's campus.

Mr. King repeated that he was upset and frustrated from these incidents where his mother was not being let in despite her informing DSU that her dog was

a service animal for her disability. He expressed his anger to his mother. He said that he had seen other service dogs on campus; he saw someone with a service animal that was wearing a vest that was very similar to his mother's dog.

Mr. King said that the events made him very frustrated and upset. He was frustrated because it was unfair for his mother to be denied access.

On cross-examination by Mr. Duston, Mr. King explained that he was a DSU student; he started school in 2018; he was not attending now; he plans to return; his last courses were in Spring 2019.

Mr. King lives at home with Ms. King. His transportation to school is his mother or another driver or DART. He plays music for a church in Milford and a Sunday Driver takes him to the church.

He said that his mother would occasionally pick him up at school, about one-to-two times per week. She would drop him off usually in the mornings and sometimes in the evenings or afternoon; she did not come to DSU very often after 8:00 PM. On the day that his mother was denied access to DSU, she had her dog "Pepe" with her. He said that his mother never got out of her car when she came to get him; she would send a text message when she arrived and he would meet her.

Mr. King explained that prior to April 14, 2019, he would ride with his mother to school. She would have Pepe with her. He recalled an incident prior to April 14 where Ms. King was questioned at the gate and then let through. It was

not Officer Church who questioned her. In this incident, Mr. King said that the guard asked if Pepe was a service animal. When Ms. King explained that Pepe was a service animal, they were allowed to enter—it was no problem.

Mr. King said there were no denials of access from August 2018 through April 2019. He said that his mother was never really denied access prior to April 14, 2019.

On April 14, Mr. King said that he was not in the car when Ms. King arrived at the DSU security gate; his mother spoke to Officer Church alone and later told him about the incident. He recalled that the incident was in the afternoon. She had to turn around at the front gate. His mother had a blue BMW convertible.

Mr. King said he was at home with his mother when she called DSU on April 18. The conversation was on a speaker phone. He did not recall everything that happened during the call. He recalled that the April 14 incident with Officer Church came up and was discussed on the telephone. His mother told the person on the telephone that her dog was a service animal.

On April 24, Mr. King said he was in the car when he and his mother were trying to drive onto DSU's campus. He said his mother spoke to Officer Walton. It was in the morning. His mother was giving him a ride to school for his finals. They came to the security gate, it was open. The security officer was checking IDs. Mr. King did not get a good look at the security officer, he was looking at his phone.

He was focused on getting on campus and was stressed about his exams. Mr. King recalled his mother talking to the security officer; she said her dog was a service animal. He recalled his mother telling the security officer that she had previously called the school about her service animal. Mr. King did not understand why his mother was not being let in because of her service animal. Mr. King recognized the security officer in the hearing room.¹

2. Ms. Sharon Champion²

Ms. King submitted a November 4, 2019 hand-written statement by Ms. Sharon Champion. Ms. King did not read the statement at the hearing. In brief summary, Ms. Champion's written statement says that she has known Ms. King for 26 years. On one night in April 2019, Ms. Champion and Ms. King were talking on the telephone. Ms. King had her service dog with her. Ms. King was trying to get onto DSU's campus to pick up Mr. King. The security officer was "very rude" to Ms. King. He told Ms. King that the service animal was not allowed inside. Ms. Champion says that she heard the whole conversation between Ms. King and the security officer on the telephone.

¹ Mr. King then identified Officer Walton.

² Respondents' counsel objected to this hearsay statement being admitted into evidence. The objection was overruled because the Panel does not strictly follow formal rules of evidence and, therefore, the Panel is able to consider hearsay evidence and give it the appropriate weight. See Commission Rule 8.16.1, 1 *Del. Admin. C.* at Ch. 601.

3. Ms. Claudia Sosa-Ducoté³

Ms. Sosa-Ducoté, duly sworn, testified in response to questioning from Ms. King. Ms. Sosa-Ducoté said that she went to DSU. She was not met by security. She drove through the gate. She was not stopped on her way onto DSU's campus.

On cross-exam by Mr. Duston, Ms. Sosa-Ducoté said that she visited DSU at about 3:30 PM. She had visited DSU during daytime hours and the gates were not closed.

4. Complainant's Other Evidence

Ms. King submitted several documents to the Panel. These included: a June 4, 2019 email from Ms. Sosa-Ducoté to Ms. King; a November 4, 2019 email from Ms. King to Ms. Sosa-Ducoté; an October 16, 2018 letter from Dr. Claire Graser, Psy.D. regarding Ms. King's treatment history; and a certificate showing that her dog is a registered service animal.

Ms. King then rested her case-in-chief.⁴

5. Panel Questions to Ms. King

The panel asked what services her dog provided. Ms. King responded that her dog reminds her to take medications—topical ointments and medications. Ms. King explained that she trained her dog herself. She did not recall the certification

³ Ms. Sosa-Ducoté is an investigator with the Delaware Division of Human Relations. The Panel notes that Ms. Sosa-Ducoté investigated Ms. King's complaint.

⁴ At this point, DSU moved to dismiss Ms. King's complaint. The Panel denied the motion.

process to certify her dog as a service animal; it was on the internet; she trained her dog to go to the location of where she keeps her medications.

B. Respondent's Case

1. Ms. Ann S. Knettlar, M.A.

Ms. Knettlar, duly sworn, testified in response to questions from Mr. Duston. She works at DSU. As part of her duties, she works with students regarding reasonable accommodation matters. She has experience reviewing medication documentation and determining reasonable accommodations. She is a resource for DSU on disability issues; she provides education and training and has written policies for DSU.

Ms. Knettlar discussed DSU's policies.⁵ She explained that service animals are permitted on campus.

She also said that she works in a consulting role for DSU; she is available to consult with students, guests, and employees regarding DSU's policies. She also would provide training on accommodating students with disabilities. Ms. Knettlar explained that she has extensive experience with consulting and training other colleges and universities on accommodating students with disabilities. She is a member of the Association for Higher Education and Disability (AHEAD) and currently serves on the Standing Committee for Professional Development. Mr.

⁵ A copy of the pertinent policies was submitted as Respondents' Exhibit 5.

Duston tendered Ms. Knettler as an expert on the subject of accommodating students with disabilities.⁶

She said that DSU's public safety staff were trained sometime around the end of 2016/beginning of 2017. She said there was a second training session. She discussed a PowerPoint presentation at this training session.⁷ The second training session included information about service animals.

On the topic of service animals, Ms. Knettler explained that prior to April 2019, DSU students could have service animals; registration was not required. Ms. Knettler recalled at least three students with service animals. Ms. Knettler also said there were visitors to DSU with service animals. Previous to April 2019, Ms. Knettler did not receive any questions about service animals. She was unaware of any complaints about people being denied access because of a service animal.

Ms. Knettler explained what a "service animal" is. Typically, service animals are dogs, sometimes miniature horses, that are trained to actively perform a service. An "emotional support animal" can be any type of animal that provides comfort to the owner; an emotional support animal does not perform a service for the owner. Service animals do not require formal training and there's no requirement for certification. There is a United States Service Dog Registry; it does

⁶ Ms. King did not object to Ms. Knettler being deemed an expert in this field.

⁷ A copy of the PowerPoint presentation was submitted as Respondent's Exhibit 4.

not require medical documentation and the registration cost is about \$25 to \$50.

Ms. Knettler reviewed Dr. Graser's letter that was submitted by Ms. King. She said that she has seen letters of this type before—it was a form letter that a medical professional would revise as needed. Ms. Knettler disagreed with the last sentence in Dr. Graser's letter that states that the presence of Ms. King's service animal was necessary for the health and well-being of Ms. King. If Ms. Knettler had received a similar letter, she would have questioned whether the animal was a "service animal" or an "emotional support animal"; she also would have questioned what services the animal provided and how the services were provided.

Ms. Knettler explained that she trained all DSU police and public safety staff After April 2019. She said the training materials included information on service animals.⁸ The training lasted about one-hour.

Ms. King did not cross-examine Ms. Knettler.

In response to Panel questions, Ms. Knettler explained that the training materials included information on visitors to DSU who have service animals.

2. Witness Chief Henry Downes Jr.

Chief Downes, duly sworn, testified that he is the Director of Public Safety and Chief of Police at DSU. He has 26-years' experience as a Delaware State Trooper. He is trained in security. He explained that there are Public Safety

⁸ The training materials were submitted as Respondent's Exhibits 1 and 3(a).

officers and Police officers at DSU. Police officers are certified by the State and investigate complaints. Public Safety officers are trained in security and secure buildings and attend the gates.

Chief Downes explained that there are four gates on DSU's main campus. These gates are secured in the evening from 8:00 PM to 6:00 AM Monday through Sunday. After 8:00 PM there is only one gate in use to access DSU's campus. During daytime hours there are no mandatory security checks at the gates unless there is a security event. There were no security events in April of 2019. Chief Downes said there would have been no reason for Mr. King to have his ID checked in April 2019.

Regarding training, Chief Downes said that security officers are trained on security issues; they are instructed to call senior officers if they have any questions. The training lasts six weeks.

Chief Downes confirmed that DSU has a service animal policy; service animals are allowed on campus. Students are not allowed to have pets that are not service animals in dorms. Chief Downes was not aware of any complaints about people with service animals not having access to DSU. He did not recall seeing service animals on campus.

He was unaware of Ms. King's complaint. When he became aware of it, he sought more information. He wanted to do the right thing. He said there was a

complaint process at DSU; Ms. King did not go through the complaint process.

Chief Downes explained that Officer Church is no longer employed by DSU; he was terminated for cause—poor performance. Officer Church worked for about one-year at DSU. Chief Downes explained that Officer Church’s instruction that service animals were not allowed on campus was contrary to DSU’s policy.

Chief Downes said that Officer Bowman was not a regular dispatch officer; she was pregnant and was placed in the dispatch center while expecting. Chief Downes said that Officer Bowman’s statement that service animals must stay in the car was not consistent with DSU’s policy.

Chief Downes said that Officer Walton was a good officer.

Regarding Ms. King’s complaint, Chief Downes said that he wished that she would have contacted him directly regarding the matter; he would have addressed her concerns. He apologized on behalf of DSU and DSU’s Police Department for the incident; he is passionate about the students and he would have liked to have Ms. King’s complaint go through the DSU complaint system and to provide training to any staff.

Ms. King did not cross-examine Chief Downes.

In response to a Panel question, Chief Downes said that Officer Church went through the six-week training. Officer Church failed to inform his supervisor about the incident with Ms. King.

3. Witness Chandra Roberson

Ms. Roberson, duly sworn, testified that she worked as DSU's Central Control Coordinator. She supervises the dispatch center. Usually there are two people staffing the center during the week and one person on weekends.

Ms. Roberson explained that Officer Bowman was working in dispatch but she did not get the same training as other staff; she was filling in for others.

Ms. Roberson recalled Ms. King's telephone call received by Officer Bowman. There were two other dispatch staff working that day. Ms. Roberson recalled hearing Ms. Bowman say that that service dogs were not allowed on campus and believed that to be incorrect. Ms. Roberson tried to confirm what the correct service animal policy was with a supervisor but Officer Bowman completed the call with Ms. King before Ms. Roberson could provide the correct service animal policy. Officer Bowman did not have a telephone number for Ms. King. Ms. Roberson said that dispatchers are supposed to ask people calling with complaints to file a formal complaint with DSU; Officer Bowman did not follow this policy. Ms. Roberson denied that Officer Bowman told Ms. King that service animals had to stay in the car while on campus; that was not the policy.

Ms. King did not cross-examine Ms. Roberson.

4. Witness Officer Christian Walton

Officer Walton, duly sworn, testified that he has been a security officer with DSU since October 2018. He said that he had experience with service animals in his prior work experience. His understanding of DSU's service animal policy was that service animals had to be under control and trained. He said that he had been trained on DSU's service animal policy.

Officer Walton explained that in April 2019 he was working the 4:00 PM to 2:00 AM shift. It was a rotating schedule. He was working at the main gate. The gates to DSU's campus come down at 8:00 PM and there is a 100 percent ID check in place. At 6:00 AM, the gates open each day, except Sunday. On Sunday the gates are closed all day until Monday morning.

Officer Walton said that prior to Ms. King, he had encountered visitors with dogs; the practice was to ask if the dog was a service animal—was the dog helping the person. Officer Walton said dogs as pets were not allowed on campus.

Officer Walton did not specifically recall Ms. King. He did recall, however, the incident with her. He explained that he was not sure if Ms. King's dog was a service animal. He said the gates were open and there were no ID checks. He was in the booth at the gate. When Ms. King drove up and stopped, he approached her. She had a question about service animals. Officer Walton asked Ms. King to move her car to the temporary parking spot so she would not impede other traffic; the

spot was about five feet away. Officer Walton said that Ms. King continued asking him about whether service animals were allowed on campus; he became uncomfortable. He responded that service animals were allowed on campus but he was not sure if they could be allowed near students. Ms. King repeated her question about service animals and he repeated his answer. He gave Ms. King a telephone number to call for more information; she did not seem to want that. He noticed that Ms. King's dog was not under control—it was moving around inside the car. Officer Walton denied telling Ms. King that service animals were not allowed. He gave her the telephone number and she drove off. He did not report the incident.

Ms. King did not cross-examine Officer Walton.

5. Complainant Ms. King

Complainant Ms. King, duly sworn, testified in response to questions from Mr. Duston. She explained that she has PTSD; chronic back pain; anxiety; depression; elevated blood pressure; and problems with her knees. She was diagnosed with PTSD in 2016 after an incident. She was diagnosed by Dr. Graser. Claimant takes several medications for her blood pressure, knees, and she takes over-the-counter supplements for her anxiety. She also uses ointments. She takes Imitrex for migraine headaches. She explained that she obtained the October 2018 letter from Dr. Graser in response to a request from Vincent Petroff.

Ms. King has had her dog since 2014. He became a service dog in 2015 and she has since had several equal accommodations incidents. She did not have any information about how many prior equal accommodation matters she was involved in. She explained that her dog is trained to remind her to take her medicines and apply her ointments. She said her medications have to be applied at the same time every night. When asked specifically when, she said it depends, usually around 7:00 PM to 8:00 PM. She takes her medicines for anxiety and depression as needed. She said that there is no particular command given to her dog; when it is time for her to take her medications her dog would scratch the rug.

Ms. King was asked about incidents where she was denied accommodations because of her dog. In 2016 she said that she went on DSU's campus with her dog. She went to take a test. She waited for about one-and-one-half hours and then the test was cancelled. She said the vendor was the U.S. Postal Service and they cancelled because of her dog; the U.S. Postal Service denied her accommodations because of her dog. She was told to call in about getting accommodations. She further explained that she had been on DSU's campus numerous times with her dog prior to April 2019.

Ms. King described the incidents where she was denied accommodations by DSU because of her dog. On April 14, 2010, it was the evening. She did not recall the time. She was dropping off Mr. King. She did not recall if the gates were up.

She did not recall if she was stopped. The second instance was with Officer Bowman on the telephone. She was again denied accommodations on April 24 because of the prior incidents. She was not sure what time it was. She recalled Officer Walton asking for Mr. King's ID. She recalled Officer Walton saying service animals were allowed and to call for more information.

Mr. Duston showed Ms. King a copy of an Office for Civil Rights Discrimination Complaint form.⁹ She said this was filled out the same day that she filed her complaint with the Commission. Her Office of Civil Rights Discrimination Complaint stated three instances where she was denied accommodation by DSU. Ms. King explained that these were the April 14, April 18, and April 24 incidents.

Ms. King was next shown a complaint filed with the EEOC.¹⁰ Ms. King explained that she called DSU on April 18 because she wanted to know DSU's service animal policy. She was looking to apply for work and would need access. She said the EEOC complaint was dismissed.

Next, Ms. King was shown a Delaware Department of Labor charge.¹¹ She signed the charge. The charge says that she went to DSU with her dog on April 18. She explained that she called DSU that day.

⁹ Submitted as Respondents' Exhibit 6.

¹⁰ Submitted as Respondents' Exhibit 7.

¹¹ Submitted as Respondents' Exhibit 8.

C. Panel Questions to Complainant Ms. King

In response to Panel questioning, Ms. King explained that she trained her dog using dog treats; she would repeat the training over and over. It took about a year.

She said that she had gone to DSU to drop off her son, Mr. King. She was instructed by security to park by the gate. When asked why she believed she was denied access, she was not sure. Prior to April she had been allowed, after April she was not. She called on April 18 because she wanted clarity to avoid any problems with DSU public safety. She spoke to Officer Bowman.

Ms. King explained her dog's service animal training. Her medications are kept in the bathroom in her bedroom. The dog would go to the vanity in the bathroom as a reminder for Ms. King to take her medications. This would vary between 9:00 PM and 10:00 PM each day. She needs to take her medications between 9:00 PM and 11:00 PM.

D. Closing Arguments

In closing, Ms. King asked the Panel to find discrimination.

In response, Mr. Duston argued that Ms. King did not submit any documentation supporting her claim that she suffered a disability. Her dog was trained to remind her to take her medications. Her testimony about taking her medications was inconsistent; she alternatively said she had to take her

medications between 7:00 PM and 8:00 PM but then later said she had to take them between 9:00 PM and 11:00 PM. Mr. Duston said there is some reasonable doubt that her dog is a service animal.

Regarding the specific instances, Mr. Duston said that on April 14 Officer Church did not follow DSU's service animal policy. On April 18, Officer Bowman gave information that was contrary to DSU's service animal policy and the telephone call ended before this could be corrected. DSU has service animal training and the incidents could have been handled better. But when an employee fails to follow a policy, this does not impose strict liability on DSU.

Mr. Duston argued that if there was a violation, there is no evidence of damages; there are no economic damages; there are vague statements of emotional distress. The only person who was emotionally distressed was Mr. King.

Ms. King did not provide a rebuttal argument.

The Panel questioned Ms. King on what relief she wanted. She said that she was a student at Drexel University at the time and she had to put her education on hold to pursue this case. She developed high blood pressure. She has emotional distress. In sum, she requested \$45,000 in damages for her school tuition, emotional distress, and her bills. She said that Respondents had made a \$10,000 settlement offer that she rejected. In response, Mr. Duston argued that Ms. King did not submit any evidence supporting her demand for \$45,000 in damages.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. King alleges that Respondents violated the DEAL because of her physical and mental disabilities. Section 4504(a)(1) of the DEAL provides that “no person being the owner...manager...agent or employee of any place of public accommodation, shall directly or indirectly refuse, withhold from or deny to any person, on account of race, age, marital status, creed, color, sex, disability, sexual orientation, gender identity, or national origin, any of the accommodations, facilities, advantages, or privileges thereof.” Section 4504(a)(3) requires a place of public accommodation to permit individuals with a disability to be accompanied by a service animal.

The provisions of the DEAL are to be “liberally construed” to safeguard the rights set forth therein.¹² “The ultimate purpose [of the DEAL] is to eliminate the inconvenience, unfairness, and humiliation of...discrimination.”¹³

Under Delaware law, claims alleging a direct or indirect refusal or denial of public accommodations based upon unlawful discrimination are decided using the guidance of the U.S. Supreme Court’s three-part analysis in *McDonnell Douglas Corp. v. Green*.^{14,15} This analysis requires the following steps:

¹² 6 Del. C. §4501.

¹³ *Uncle Willie's Deli v. Whittington*, 1998 WL 960709 at *4 (Del. Super. Dec. 31, 1998) (citations and internal quotations omitted).

¹⁴ 411 U.S. 792 (1973).

¹⁵ See, e.g., *DP, Inc. v. Harris*, 2000 WL 1211151 at *6 (Del. Super. July 31, 2000) (“Delaware Courts have applied the standard articulated in *McDonnell Douglas Corporation v. Green* for

- (1) The complainant must establish a *prima facie* case of discrimination.
- (2) Once a *prima facie* case is established, the burden shifts to the respondent to present evidence of a legitimate, non-discriminatory reason for denying plaintiff access.
- (3) After this production of evidence, the complainant retains the burden of persuading by a preponderance of the evidence that the respondent's proffered reason was a pretext for discrimination.¹⁶

Here, to meet the initial burden of going forward and establishing a *prima facie* case of discrimination, Ms. King must show: (a) that she is a member of a protected class, in this case, that she has a disability and that her dog is a service animal; (b) that she was denied access to the public accommodations at DSU because of her dog; and (c) that non-members of the protected class were treated more favorably. Further, because Equal Accommodations hearings before the SHRC are subject to the provisions of Delaware's Administrative Procedures Act (APA),¹⁷ "the burden of proof shall always be upon the applicant or proponent."¹⁸

The first question for the Panel to decide is whether or not Ms. King is a member of a protected class. Here, the question becomes whether or not Ms. King's dog was a service animal. The DEAL defines a "service animal" to be "a dog individually trained to do work or perform tasks for the benefit of a person

cases alleging unlawful discrimination.") (citations omitted); *Uncle Willie's*, 1998 WL 960709, at *4 (applying the *McDonnell Douglas* analysis to a case brought under the DEAL).

¹⁶ *Salty Sam's Pier 13 v. Washam*, 2000 WL 1211227, at *2 (Del. Super. Aug. 3, 2000) (citations omitted).

¹⁷ 29 Del. C. Ch. 101.

¹⁸ 29 Del. C. § 10125(c).

with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.”¹⁹ The DEAL, however, does not provide much further guidance on how to determine if an animal is a “support animal”. In such circumstances, the Delaware courts look to interpretation of analogous federal law that is “substantially the same” as the Delaware law.²⁰ The Supreme Court of Delaware has held that the Federal ADA²¹ is substantially similar to the DEAL and that Delaware courts may rely upon interpretations of the ADA to interpret the comparable provisions of the DEAL.²²

Here, the Panel finds that Federal ADA regulations further define a “service animal” to require that “[t]he work or tasks performed by a service animal must be directly related to the individual's disability.”²³ Further, Federal ADA regulations exclude from the ADA’s protections service animals that are “out of control” or “not housebroken.”²⁴ With the guidance of these Federal ADA regulations, the Panel interprets “service animal” under the DEAL to mean a dog who is trained to work or perform tasks for the benefit of a person with a disability, such work being

¹⁹ 6 *Del. C.* § 4502(16).

²⁰ *Thompson v. Dover Downs, Inc.*, 887 A.2d 458, 464 (Del. 2005) (citation omitted).

²¹ Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 *et seq.*

²² *Thompson*, 887 A.2d at 465 (“Nothing in the language of Section 4504(a) alters the conclusion that Section 4504(a) and Section 12182 of the ADA are substantially similar for purposes of permitting reliance upon the interpretation of the analogous federal law to guide the interpretation of the DEAL.”)

²³ 28 CFR § 35.104 “Service animal”.

²⁴ 28 CFR § 35.136(b).

directly related to the person's disability, and that the dog must be kept under control while in public places.

For the three reasons below, the Panel concludes that Ms. King has failed to show by a preponderance of the evidence that her dog was a service animal under the DEAL.

First. Ms. King argues that her dog was a "service dog" because her dog is trained to remind her to take her medications at a specific time each day. The Panel finds that Ms. King's only evidence showing that her dog was trained to perform this service comes from her own testimony. The problem here is that the Panel found Ms. King's testimony to be incredible, conclusory, evasive, and ultimately insufficient to show by a preponderance of the evidence that her dog meets the definition of a "service animal" under the DEAL.

The Panel finds that Ms. King provided insufficient detail showing what exactly her dog would do as a service for her. She briefly explained that her dog would scratch at the rug and go to the bathroom vanity each night as a reminder to take her medications. A key problem here is that Ms. King did not connect her dog's actions in nightly reminding her to take her medications to her alleged disability.²⁵ While Ms. King said that she suffered PTSD, stress, and anxiety—

²⁵ The Panel notes that Ms. King's evidence of her disability, primarily came from her own testimony. And on this point, the Panel found Ms. King's testimony to be conclusory, non-specific, and lacking credibility.

which have been recognized as qualified mental disabilities—she did not explain how her dog’s nightly reminders to take her “medications” were benefiting or related to these disabilities. Indeed, Ms. King said that she treats her anxiety with over-the-counter supplements on an as needed basis; she did not explain how her dog would assist her with taking these supplements as needed. The Panel concludes that Ms. King failed to show that her dog’s service—the nightly reminders to take medications—is connected to assisting with her PTSD, stress, and anxiety.²⁶

Second. The dog’s conduct at the hearing reinforces the Panel’s conclusion that it is not a service animal under the DEAL. Throughout the proceeding the dog was poorly controlled. The dog was whimpering, whining, and moving about under Ms. King’s desk. Ms. King required several breaks to take her dog out of the hearing room. The dog disrupted the proceedings. Even if the dog’s service was somehow connected to Ms. King’s disabilities—which Ms. King did not show—the Panel concludes that the dog’s actions were inconsistent with those of a service dog under the DEAL.²⁷

Third. Ms. King’s general conduct at the hearing undermined her credibility

²⁶ The Panel notes, as Mr. Duston pointed out, Ms. King’s testimony was inconsistent regarding exactly when her dog would perform the acts to remind her to take her medications. This substantially undermined her credibility.

²⁷ See 28 CFR § 35.136(b)(1).

with the Panel. Ms. King seemed disinterested in the hearing itself. After she presented her case in chief, she generally spent the remainder of the hearing looking at her smartphone rather than paying attention to Respondents' case. She would only look up from her phone when asked if she wished to cross-examine any of the Respondents' witnesses.

From the evidence presented, the Panel concludes that Ms. King failed to meet her burden to show sufficient evidence that her dog was a "service animal" under the DEAL. Because Ms. King has not shown that her dog was a service animal, she cannot prevail with her claim that Respondents violated section 4504(a)(3) of the DEAL requiring places of public accommodation to permit service animals. Accordingly, the Panel cannot find, as a matter of fact or law, that Respondents denied services or accommodations to Ms. King when she attempted to access DSU's campus with her dog. Ms. King has not established that any violation of the DEAL occurred. She cannot prevail on her complaint.

CONCLUSION

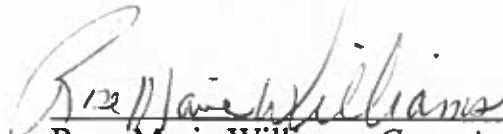
After careful consideration of the evidence presented, the Panel, by unanimous vote, concludes that Ms. King has failed to show that Respondents violated the DEAL.

ORDER

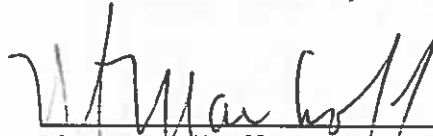
Pursuant to 6 Del. C. § 4508(g), the Complaint against Respondents is

DISMISSED.

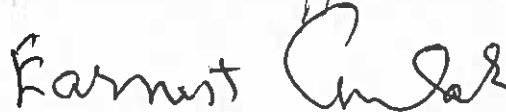
IT IS SO ORDERED this _____ day of _____, 2020.



Rose Marie Williams, *Commissioner and Panel Chair*



Nancy Maihoff, *Commissioner and Panel Member*



Earnest Gulab, *Commissioner and Panel Member*
