

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

CAPITOL HILL ACTION AND RECREATION GROUP, INC., a Colorado non-profit
corporation,
COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit corporation, and
JENNIFER MILLER,

Plaintiffs,

v.

COLUMBINE CANDY COMPANY, d/b/a STEPHANY'S CHOCOLATES, a Colorado
corporation,

Defendant.

COMPLAINT

Plaintiffs Capitol Hill Action and Recreation Group, Inc., Colorado Cross-Disability Coalition, and Jennifer Miller, by and through their attorneys, Kevin W. Williams, Legal Program Director of the CCDC, and Fox & Robertson, P.C., hereby bring this Complaint against Columbine Candy Company, d/b/a Stephany's Chocolates.

Introduction

1. Over fifteen years after the passage of the Americans with Disabilities Act ("ADA"), Defendant Columbine Candy Company, d/b/a Stephany's Chocolates ("Columbine") discriminates against people with disabilities at its chocolate factory tours. On their website, <http://www.stephanschocolates.com>, and as a practice and policy, Columbine requires the following:

“[O]xygen bottles and walking canes or walkers are not permitted in the kitchen area.”

“Individuals with special needs must be accompanied one-on-one by a care giver / provider at all times.”

Columbine also disallows individuals who use wheelchairs from taking its tour. These broad, sweeping prohibitions against people with disabilities are exactly what the ADA is designed to guard against.

2. In its Findings in the ADA, Congress determined:

[I]ndividuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

[I]ndividuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society[.]

42 U.S.C §§ 12181(a)(5) & (7).

3. In a letter from Defendant’s counsel in response to Plaintiffs’ demand that they abandon these discriminatory policies, Defendant’s position is that individuals with disabilities are a “direct threat to the health and safety of others” and themselves if they tour the chocolate factory.

4. Congress sought to eliminate the very kind of discrimination Defendant is practicing: Prohibitions and restrictions placed on groups of people with disabilities because of their disabilities. In assessing whether an individual poses a threat under the ADA and its regulations, Columbine is required to make an “individualized assessment.” 28 C.F.R. § 36.208(c). It did not do so.

5. Columbine simply assumes individuals with disabilities will be unsafe in the factory and, therefore, ban them and require them to have one-on-one supervision.

Jurisdiction and Venue

6. This Court has jurisdiction over the federal claims in this action pursuant to 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over the state claim pursuant to 28 U.S.C. § 1367.

7. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

Parties

8. Plaintiff Capitol Hill Action and Recreation Group, Inc. (“CHARG”), is a Colorado non-profit corporation whose mission it is to improve the quality of life and functioning capacity of persons with severe and persistent mental illness in the Denver metropolitan area. Its principal place of business is 709 E. 12th Avenue, Denver, CO 80203.

9. Plaintiff Colorado Cross-Disability Coalition (“CCDC”) is a Colorado non-profit corporation whose members are persons with disabilities and their nondisabled allies and whose mission it is to promote independence, self-reliance, and full participation for people with all types of disabilities, using various strategies such as organizing, advocacy, education, and

systemic change. Its principal place of business is 655 Broadway, Suite 775, Denver, Colorado 80203.

10. Plaintiff Jennifer Miller has at all times material hereto been a resident of the state of Colorado and has a mental impairment that substantially limits several major life activities. Plaintiff Miller is a CHARG member and CCDC member.

11. Defendant Columbine is a Colorado corporation, with its principal place of business located at 6770 West 52nd Ave., Arvada, CO 80002.

General Allegations

12. Plaintiff CHARG is a member of CCDC.

13. Columbine owns and operates Stephany's Chocolates ("Stephany's"), which operates a number of Colorado-based retail stores and has wholesale relationships with several national retail accounts as well as over 1500 individual local and regional resellers. Stephany's produces its chocolates from its 22,000 square foot candy kitchens in Arvada, Colorado. Stephany's offers free tours to the general public of its corporate headquarters and candy kitchens at 6770 W. 52nd Avenue, Arvada, CO 8000 at the following times: September thru April: Monday-Friday at 9:30, 10:30, 11:30 a.m. and 1:00 p.m.; May thru August: Monday-Thursday at 9:30, 10:30 and 11:30 a.m. These tours of its chocolate factory require advance notice for reservations.

14. In approximately late April, 2005, a CHARG staff member contacted Stephany's Chocolates to schedule a tour of the facility at Stephany's Chocolates' corporate headquarters.

15. One day before the scheduled tour, May 2, 2005, the CHARG staff member received a call from a woman identified as Peggy Webster, Stephany's store manager. Ms. Webster asked what kind of group CHARG was.

16. The CHARG staff person notified Ms. Webster that the group was composed of individuals with mental illnesses. Ms. Webster replied that, as a matter of policy, Columbine would need one attendant for each disabled person.

17. The CHARG staff person told Ms. Webster that they had gone on tours at Stephany's in the past and never encountered any such requirements or restrictions. Ms. Webster said that the CHARG group could come to the factory, but they would have to remain in the sales office and could watch a video. They would not be permitted to take the tour without one-on-one supervision.

18. The CHARG staff person informed those CHARG members who planned to go on this tour, and the decision was made for them to still go. The group wanted to meet with Stephany's employees and educate them that there is no reason why the CHARG members need one-on-one supervision.

19. On or about May 3, 2005, the group went to Stephany's corporate headquarters hoping to take the tour.

20. When the group arrived, the CHARG staff person asked if Ms. Webster was available. The woman at the counter said she was not. She put in a videotape for the group to watch and locked the door leading into the factory. It was a five to ten minute video about Stephany's Chocolates. The CHARG members were not permitted to take the tour.

21. On or about September 2, 2005, the CHARG staff person wrote a letter to Ms. Webster in an attempt to resolve the discriminatory treatment at the tour facility. A few days later, Ms. Webster called and said that the group would be permitted to come back, and she would try to get the master chef to speak with the group, but they still couldn't go on the tour unless each had an attendant. The CHARG group discussed going back out, and decided against it because of the condition placed on taking the tour.

22. Under the "Free Tours" section of Stephany's web site at <http://www.stephanschocolates>, the following conditions appear:

- "[O]xygen bottles and walking canes or walkers are not permitted in the kitchen area;"
- "Individuals with special needs must be accompanied one-on-one by a care giver / provider at all times."

23. On or about January 23, 2006, a CCDC representative called Stephany's to schedule a tour of the facility. The Stephany's employee who answered the phone informed him that canes, walkers, oxygen and wheelchairs are not permitted on the tour.

24. On or about June 9, 2006, a CCDC representative sent a letter to Hal Strottman, one of the owners of Columbine, requesting that Columbine enter into a settlement agreement permanently revoke the policies recited above.

25. On or about June 19, 2006, CCDC received a letter from Columbine's attorney stating that Columbine refused to revoke the policies "for safety reasons" and because

Columbine viewed these policies as necessary to avoid a “direct threat to the health and safety of others” as contemplated by 42 U.S.C. § 12182(b)(3).

26. On information and belief, Defendant has not conducted, and does not conduct, any individualized inquiry into the safety and/or direct threat that may or may not be posed by oxygen bottles, walking canes, walkers and/or wheelchairs, and/or any less discriminatory methods of ensuring safety while permitting people with disabilities to participate in their tours.

27. The individual members of CHARG who wanted to take the tour do not require one-on-one caregiver / provider in order to safely take the tour.

28. On information and belief, CCDC has members who use oxygen, canes, wheelchairs and/or walkers who can safely take the tour.

29. Plaintiff Miller was one of the CHARG members who was denied access to the tour because of her disability because she would not bring a one-to-one caregiver / provider.

30. Plaintiff Miller has been harmed and continues to be harmed by Columbine’s actions.

31. Plaintiff CCDC has members who have physical and mental disabilities who are excluded from taking the Stephany’s tour because of its policies.

32. CHARG’s and CCDC’s purposes are to work for systemic change that promotes independence, self-reliance, and full inclusion for people with disabilities in the entire community. As part of that purpose, CHARG and CCDC seek to ensure that persons with disabilities have access to -- and do not encounter discrimination in -- the goods, services,

facilities, privileges, advantages, or accommodations provided by public accommodations like Stephany's.

33. CHARG and CCDC engage in extensive outreach as well as advocacy and educational efforts to promote access for and combat discrimination against people with disabilities. These efforts and this purpose have been and continue to be adversely affected by Columbine's violations of the ADA.

34. Columbine's actions have caused and continue to cause distinct, palpable, and perceptible injury to CHARG and CCDC.

35. CHARG and CCDC have devoted resources, which could have been devoted to their other outreach, advocacy, and educational efforts, to communicating with Columbine in an attempt to end the discriminatory policies that exclude people with disabilities from Stephany's tours.

36. CHARG and CCDC have devoted resources, which could have been devoted to their other outreach, advocacy, and educational efforts, to counseling members and others who have been injured by Columbine's discrimination.

37. Columbine's discrimination has been and continues to be a barrier to the full participation of persons with disabilities and, therefore, frustrates CHARG's and CCDC's abilities to achieve full inclusion for persons with disabilities. For example:

- a. Columbine's discrimination, in and of itself, makes the Stephany's tour unavailable to many persons with disabilities;

- b. Columbine's published policies and verbal policies discourage people with disabilities from attempting to take the tour;
- c. Columbine's discrimination sends a clear message to persons with disabilities that they are unwanted on Stephany's tour and that Columbine thinks their very presence will be unsafe for themselves and others;
- d. Columbine's discrimination devalues the individual abilities of people with disabilities; and
- e. Columbine's discrimination perpetuates the segregation of people with disabilities and sends the messages that such discrimination continues to be acceptable at this time.

38. Columbine's discrimination has required and continues to require CHARG and CCDC to make greater efforts -- and to allocate significant resources -- to educate the public that such discrimination is wrong and otherwise to counteract the adverse impact of such discrimination. This perceptibly impairs CHARG's and CCDC's counseling, advocacy, educational, and training missions.

39. CHARG and CCDC also have devoted and continue to devote resources -- including but not limited to those devoted to the present lawsuit -- to identifying and counteracting the sources of discrimination in the community, including that of Columbine.

40. CHARG's and CCDC's injuries -- including, without limitation, those described herein -- are traceable to Columbine's discriminatory conduct alleged in this Complaint and will be redressed by the relief requested in it.

41. CHARG's and CCDC's members and their spouses, friends, relatives, and associates have been injured and will continue to be injured by Columbine's discrimination.

42. The elimination of discrimination, such as that of Columbine, and the integration of persons with disabilities into all aspects of community life are at the core of CHARG's and CCDC's organizational purposes.

43. The participation of individual CHARG and CCDC members in the lawsuit is not required either to resolve the claims at issue or to formulate relief.

FIRST CLAIM FOR RELIEF

(Violations of the Americans with Disabilities Act)

44. Plaintiffs reallege and incorporate by reference the remainder of the allegations set forth in this Complaint as if fully set forth herein.

45. Columbine owns, operates, leases or leases to others Stephany's Chocolates, a business that affects commerce and has facilities and a tour available to the general public and is therefore a place of public accommodation as defined in 42 U.S.C. § 12181(7).

46. Defendant has discriminated against Plaintiffs on the basis of disability.

Defendant's discriminatory conduct includes but is not limited to:

- a. Discriminatory exclusion from and/or denial of goods, services, facilities, privileges, advantages, accommodations, and/or opportunities; and
- b. Provision of goods, services, facilities, privileges, advantages, and/or accommodations that are not equal to those afforded non-disabled individuals.

47. As such, Defendant discriminates and, in the absence of the injunction requested herein, will continue in the future to discriminate against Plaintiffs on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, accommodations and/or opportunities of the Stephany's in violation of Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, *et seq.*, and/or its implementing regulations.

48. Plaintiffs have been injured and will continue to be injured by this discrimination.

SECOND CLAIM FOR RELIEF

(Violations of the Colorado Anti-discrimination Act)

49. Plaintiffs reallege and incorporates by reference the allegations set forth in this Complaint as if fully set forth herein.

50. Stephany's is a place of public accommodation as that term is defined in C.R.S. § 24-34-601(1).

51. The Colorado Anti-discrimination Act ("CADA") is to be construed consistently with the ADA and other federal civil rights statutes. 3 Colo. Code. Reg. 708.60.1(C).

52. Defendant has, directly or indirectly, refused, withheld from, and/or denied Plaintiffs, because of disability, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of Stephany's.

53. Plaintiffs have been injured by and will continue to be injured by Defendants' discrimination.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

1. That this Court assume jurisdiction;
2. That this Court issue an order declaring the Defendant to be in violation of the ADA;
3. That this Court issue an injunction ordering the Defendant to bring Columbine's policies, practices and procedures into compliance with, and to operate Stephany's in compliance with the ADA and CADA;
4. That this Court award Plaintiff its reasonable attorneys' fees and costs under the ADA;
5. That this Court award Plaintiffs damages under the CADA;
6. That this Court award such additional or alternative relief as may be just, proper and equitable.

Respectfully submitted,

/s/ Kevin W. Williams

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