

CIVIL RIGHTS COMMISSION

STATE OF HAWAI'I

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In the Matter of)
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 TD FOOD GROUP, INC.,)
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 Petitioner.)
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DR No. 14-018 CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

ORDER REFUSING CONSIDERATION
OF THE PETITION

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On August 27, 2014 TD Food Group, Inc. (“TD”), which operates several restaurants in Hawai‘i, filed a petition seeking a declaratory ruling that if TD complies with the state Food Safety Code (“Code”) by limiting individuals with disabilities to the use of “service animals” under the conditions permitted by the Code, TD would not violate HRS Chapter 489.

The state Food Safety Code prohibits live animals on the premises of food establishments, but provides an exception for individuals with disabilities to use service animals in dining and sales areas. See HAR §§ 11-50-74(o)(2)(C), 11-50-2. The definition of “service animal” in the Food Safety Code incorporates the federal AmericansWith Disabilities Act (“ADA”) definition of “service animal” to mean a dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability. See 28 CFR § 36.104.

HRS Chapter 489 prohibits discriminatory practices that deny, or attempt to deny, a person with a disability the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a place of public accommodation. In the past, this Commission has expressed that HRS Chapter 489 may require a public accommodation to allow

a person with a disability to bring an “assistance animal” onto its premises. In HAR § 12-46-302, an “assistance animal” is defined more broadly than a “service animal” as:

. . . an animal needed to perform disability-related work, services or tasks for the benefit of a person with a disability, or is need to provide emotional support that alleviates one or more identified symptoms or effects of a person’s disability. Assistance animal may include, but are not limited to, service animals, therapy animals, comfort animals or emotional support animals. Assistance animals may have formal training or may be untrained, and may include species other than dogs.

By letter dated September 17, 2014 the Executive Director informed the Commission that the HCRC Enforcement Section takes the position that a food establishment that complies with the Food Safety Code by limiting persons with disabilities to the use of service animals does not violate of HRS Chapter 489. The Executive Director states that the HCRC Enforcement Section defers to the health and safety jurisdiction and expertise of the Department of Health in promulgating and enforcing the Food Safety Code, and recognizes that food establishments are legally bound to comply with the specific prohibitions of the Code. According to the Executive Director, a person with a disability therefore cannot, under HRS Chapter 489, reasonably request the use of a non-service assistance animal as an accommodation in a food establishment since this would violate the Food Safety Code.

Thus, at present there is no case or controversy as to whether a food establishment’s compliance with the state Food Safety Code in limiting individuals with disabilities to the use of “service animals” violates HRS Chapter 489. A petition for declaratory relief is similar to a declaratory judgment under HRS § 632-1. That statute empowers a court to make a declaratory judgment in a civil case where an actual controversy exists between contending parties, or where the court is satisfied that antagonistic claims are present between the parties that indicate imminent and inevitable litigation. Conversely, a court should deny a request for declaratory relief where an actual controversy does not exist between the parties. Kau v. City and County of

Honolulu, 104 Hawai'i 468, 474-475, 92 P.3d 477, 483-484 (2004) (circuit court correctly denied fee owners' request for declaratory judgment regarding the effect of the future expiration of a lease on a condominium property regime, because the HRS § 632-1 statutory requirement of an actual controversy did not exist between the parties).

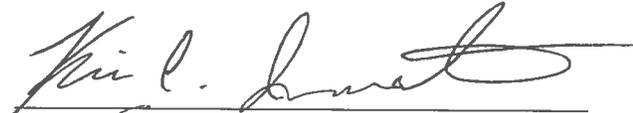
Similarly, there is no case or controversy present in this Petition. Therefore, without ruling on the legal issue presented by the Petition or the Executive Director's interpretation of Chapter 489 as stated in his September 17, 2014 letter, pursuant to HAR § 12-46-63(a)

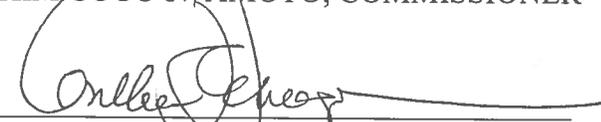
IT IS HEREBY ORDERED that the Commission refuses to consider the Petition and hereby dismisses the Petition without Prejudice.

Dated: Honolulu, Hawai'i October 28, 2014.


LINDA HAMILTON KRIEGER, CHAIR

- excused -
RAYMUND LIONGSON, COMMISSIONER


KIM COCO IWAMOTO, COMMISSIONER


WALLACE FUKUNAGA, COMMISSIONER


ARTEMIO BAXA, COMMISSIONER