



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS
on the Complaint of

MELISA McCARTHY and JENNIFER
McCARTHY,

Complainant,

v.

LIBERTY RIDGE FARM, LLC, CYNTHIA
GIFFORD, ROBERT GIFFORD,

Respondents.

NOTICE AND
FINAL ORDER

Case Nos. 10157952
10157963

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order ("Recommended Order"), issued on July 2, 2014, by Migdalia Pares, an Administrative Law Judge of the New York State Division of Human Rights ("Division"). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE HELEN DIANE FOSTER, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER") WITH THE FOLLOWING AMENDMENTS:

- Interest at a rate of nine percent per annum on both the mental anguish award and the civil fine and penalty shall accrue from the date of the Commissioner's Final Order until the date payment is made (not "from sixty days after the date of the Commissioner's Final Order or until the date payment is made," as stated in the Recommended Order).
- A civil fine and penalty of greater than \$50,000 for cases in which a respondent's actions were wilful, wanton and malicious is permissible by statute, not required, as stated in the Recommended Order. *See Human Rights Law § 297.4(c).*

In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: **AUG 08 2014**
Bronx, New York

A handwritten signature in black ink, appearing to read "Helen Diane Foster", written over a horizontal line.

HELEN DIANE FOSTER
COMMISSIONER

TO:

Complainant

Melisa McCarthy
515 Mt. Prospect Ave., Apt. 15D
Newark, NJ 07104

Complainant

Jennifer McCarthy
515 Mt. Prospect Ave., Apt. 15D
Newark, NJ 07104

Complainant Attorney

Mariko Hirose, Esq.
New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor
New York, NY 10004

Complainant Attorney

Arthur Eisenberg, Esq.
New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor
New York, NY 10004

Respondent

Liberty Ridge Farm, LLC
Attn: Cynthia Gifford
29 Bevis Road
Schaghticoke, NY 12154

Respondent

Cynthia Gifford
29 Bevis Road
Schaghticoke, NY 12154

Respondent

Robert Gifford
29 Bevis Road
Schaghticoke, NY 12154

Respondent Attorney

James P. Trainor, Esq.
Cutler, Trainor & Cutler, LLP
2 Hemphill Place, Suite 153
Malta, NY 12020

Hon. Eric T. Schneiderman, Attorney General
Attn: Civil Rights Bureau
120 Broadway
New York, New York 10271

State Division of Human Rights

Robert Goldstein, Director of Prosecutions
Lilliana Estrella-Castillo, Chief Administrative Law Judge
Migdalia Pares, Administrative Law Judge
Michael Swirsky, Litigation and Appeals
Caroline J. Downey, General Counsel
Melissa Franco, Deputy Commissioner for Enforcement
Peter G. Buchenholz, Adjudication Counsel
Matthew Menes, Adjudication Counsel



NEW YORK STATE
DIVISION OF HUMAN RIGHTS
ONE FORDHAM PLAZA
FOURTH FLOOR
BRONX, NEW YORK 10458

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www.dhr.ny.gov

ANDREW M. CUOMO
GOVERNOR

HELEN DIANE FOSTER
COMMISSIONER

July 2, 2014

Re: Jennifer McCarthy v. Liberty Ridge Farm, LLC, Cynthia Gifford, Robert Gifford
Case No. 10157963

To the Parties Listed Below:

Enclosed please find a copy of my proposed Recommended Findings of Fact, Opinion and Decision, and Order. Please be advised that you have twenty-one (21) days from the date of this letter to file Objections.

Your Objections may be in letter form, should not reargue material in the Record, and should be as concise as possible. Objections provide the parties with an opportunity to be heard on the issues in the case before the issuance of a final Order of the Commissioner. *See* Rules of Practice of the Division of Human Rights, 9 NYCRR § 465.17(c).

Please address your Objections to Peter G. Buchenholz, Adjudication Counsel, at the address below. Mail copies to all parties and their attorneys, including all of the following where applicable: complainant(s), complainant counsel, respondent(s), respondent counsel, and Division counsel, at the addresses in the list below. A copy must also be mailed to Robert Goldstein, Director of Prosecutions, Division of Human Rights, who is also listed below. Any documents not copied to the aforementioned individuals may not be considered. The Objections must be filed by July 23, 2014, at the following address.

NYS Division of Human Rights
Order Preparation Unit
Attn: Peter G. Buchenholz, Adjudication Counsel
One Fordham Plaza, 4th Floor
Bronx, New York 10458

No extensions of time to file Objections will be granted, except for good cause shown, by written request to the Order Preparation Unit. If the Objections are not received by the Order Preparation Unit by the deadline noted above, the Division will assume that you do not object to the proposed Order and will proceed to issue the final Order under that assumption.

Please contact Peter G. Buchenholz, Adjudication Counsel, at (718) 741-8342 if you have any questions regarding the filing of Objections.

Very truly yours,



Migdalia Parés
Administrative Law Judge

TO:

Complainant

Jennifer McCarthy
515 Mt. Prospect Ave., Apt. 15D
Newark, NJ 07104

Complainant Attorney

Mariko Hirose, Esq.
New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor
New York, NY 10004

Complainant Attorney

Arthur Eisenberg, Esq.
New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor
New York, NY 10004

Respondent

Liberty Ridge Farm, LLC
Attn: Cynthia Gifford
29 Bevis Road
Schaghticoke, NY 12154

Respondent

Cynthia Gifford
29 Bevis Road
Schaghticoke, NY 12154

Respondent

Robert Gifford
29 Bevis Road
Schaghticoke, NY 12154



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ANDREW M. CUOMO
GOVERNOR

HELEN DIANE FOSTER
COMMISSIONER

July 2, 2014

Re: Melisa Erwin v. Liberty Ridge Farm, LLC, Cynthia Gifford, Robert Gifford
Case No. 10157952

To the Parties Listed Below:

Enclosed please find a copy of my proposed Recommended Findings of Fact, Opinion and Decision, and Order. Please be advised that you have twenty-one (21) days from the date of this letter to file Objections.

Your Objections may be in letter form, should not reargue material in the Record, and should be as concise as possible. Objections provide the parties with an opportunity to be heard on the issues in the case before the issuance of a final Order of the Commissioner. *See* Rules of Practice of the Division of Human Rights, 9 NYCRR § 465.17(c).

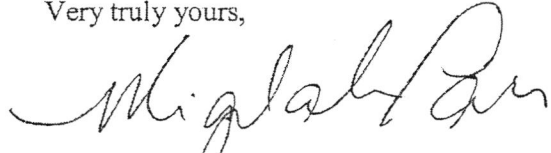
Please address your Objections to Peter G. Buchenholz, Adjudication Counsel, at the address below. Mail copies to all parties and their attorneys, including all of the following where applicable: complainant(s), complainant counsel, respondent(s), respondent counsel, and Division counsel, at the addresses in the list below. A copy must also be mailed to Robert Goldstein, Director of Prosecutions, Division of Human Rights, who is also listed below. Any documents not copied to the aforementioned individuals may not be considered. The Objections must be filed by July 23, 2014, at the following address.

NYS Division of Human Rights
Order Preparation Unit
Attn: Peter G. Buchenholz, Adjudication Counsel
One Fordham Plaza, 4th Floor
Bronx, New York 10458

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Please contact Peter G. Buchenholz, Adjudication Counsel, at (718) 741-8342 if you have any questions regarding the filing of Objections.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Migdalia Paris".

Migdalia Paris
Administrative Law Judge

TO:

Complainant

Melisa Erwin
515 Mt. Prospect Ave., Apt. 15D
Newark, NJ 07104

Complainant Attorney

Arthur Eisenberg, Esq.
New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor
New York, NY 10004

Complainant Attorney

Mariko Hirose, Esq.
New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor
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Respondent

Liberty Ridge Farm, LLC
29 Bevis Road
Schaghticoke, NY 12154

Respondent

Cynthia Gifford
29 Bevis Road
Schaghticoke, NY 12154

Respondent

Robert Gifford
29 Bevis Road
Schaghticoke, NY 12154

Respondent Attorney

James P. Trainor, Esq.
Cutler, Trainor & Cutler, LLP
2 Hemphill Place, Suite 153
Malta, NY 12020

State Division of Human Rights

Robert Goldstein, Director of Prosecutions
One Fordham Plaza, 4th Floor
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Lilliana Estrella-Castillo, Chief Administrative Law Judge
Migdalia Pares, Administrative Law Judge
Michael Swirsky, Litigation and Appeals
Caroline J. Downey, General Counsel
Elaine A. Smith, Associate Attorney, Legal Advisory
Peter G. Buchenholz, Adjudication Counsel
Matthew Menes, Adjudication Counsel



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION OF
HUMAN RIGHTS**

on the Complaint of

**MELISA McCARTHY AND JENNIFER
McCARTHY,**

Complainants,

v.

**LIBERTY RIDGE FARM, LLC, CYNTHIA
GIFFORD, ROBERT GIFFORD,**

Respondents.

**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case Nos. 10157952; 10157963

SUMMARY

Complainants, a same sex couple, alleged that they were unlawfully discriminated against when Respondents refused to allow them to use their place of public accommodation to be married. Complainants have proven their case and are awarded emotional distress damages. Additionally, a civil fine is assessed against Respondents and made payable to the State of New York.

PROCEEDINGS IN THE CASE

On October 11, 2012, Complainants filed verified complaints with the New York State Division of Human Rights ("Division"), charging Respondent Liberty Farm Ridge, LLC with unlawful discriminatory practices relating to a public accommodation, in violation of N.Y. Exec.

Law, art. 15 ("Human Rights Law"). The Division amended the Complainants to include Cynthia Gifford and Robert Gifford as Respondents.

After investigation, the Division found that it had jurisdiction over the complaints and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the cases to public hearing.

After due notice, the case came on for hearing before Migdalia Parés, an Administrative Law Judge ("ALJ") of the Division. A public hearing session was held on November 6, 2013.

Complainants and Respondents appeared at the hearing. Complainants were represented by the New York Civil Liberties Union Foundation ("NYCLU"), by Arthur Eisenberg and Mariko Hirose, Esqs. Respondents were represented by the law firm of Cutler, Trainor & Cutler, LLP, by James P. Trainor, Esq.

During the Public Hearing, ALJ Parés made a request for the Respondents to produce a copy of the lease between Liberty Ridge Farm, LLC and Robert and Cynthia Gifford (the "Lease"). On November 18, 2013, Respondents submitted a copy of the Lease. The Lease is hereby received in evidence as ALJ Exhibit 6.

Permission to file post-hearing briefs was granted. (Tr. 178)

On January 8, 2014, parties submitted their respective post-hearing submissions.

After filing the complaint with the Division, Melisa Erwin, changed her name to Melisa McCarthy after her marriage to Jennifer McCarthy. (Tr. 7, 83). The caption is hereby amended to reflect Melisa Erwin's new surname.

FINDINGS OF FACT

The Parties

1. Complainants Melisa McCarthy, f/k/a Melisa Erwin, and Jennifer McCarthy are a same-sex couple. (ALJ's Exhibit 1)
2. Complainant Melisa McCarthy identifies as bisexual. (ALJ's Exhibit 1; Tr. 44, 79, 80)
3. Complainant Jennifer McCarthy identifies as a lesbian, i.e. as a homosexual. (ALJ's Exhibit 1; Tr. 44, 79, 80)
4. Respondents Robert and Cynthia Gifford ("the Giffords") own and operate a working farm of approximately 100 acres located at 29 Bevis Road in Schaghticoke, New York. (ALJ's Exhibits 1, 4, 5; Complainants' Exhibits 3, 7; Joint Exhibits 1, 2, 3; Respondents' Exhibit 1; Tr. 93, 96, 127)
5. The Giffords have operated the property as a farm and business for most of the 25 years they have lived there. (Tr. 130)
6. A portion of the farm is adjacent to the banks of the Hoosic River and is located on a cliff about fifty feet from the water level. (Tr. 102, 132)
7. In May 2011, the Giffords registered Respondent Liberty Ridge Farm, LLC as a New York State Limited Liability Corporation. (Respondents' Exhibit 1)
8. The Giffords leased their real property located at 29 Bevis Road, Schaghticoke, New York 12154 to Respondent Liberty Ridge Farm, LLC for \$12,000.00 a year. (ALJ's Exhibit 6; Tr. 164)
9. On January 1, 2012, a fifteen-year lease (the "Lease") commenced between the Giffords and Respondent Liberty Ridge Farm, LLC. (ALJ's Exhibit 6)

10. The Leased property is to be used for Liberty Ridge Farm, LLC purposes only. (ALJ's Exhibit 6).

11. The Giffords are the only signatories to the Lease. (ALJ's Exhibit 6)

12. The Giffords annually sign Respondent Liberty Ridge Farm, LLC's financial records. (Tr. 164)

Liberty Ridge Farm, LLC as a Business Open to the Public

13. Liberty Ridge Farm, LLC ("LRF") is open to the public in the fall during its "Fall Festival" for farm-related activities and games including "pick-your-own" blueberries and raspberries during harvest seasons, the sale of pumpkins during the fall. LRF also has a building where members of the public are invited to purchase produce harvested from the farm. (Tr. 103, 111, 136)

14. During its Fall Festival, LRF conducts a number of barnyard activities open to the public, including such things as pig races and pumpkin cannon shows. (Tr. 103)

15. Members of the public can enjoy LRF's corn maze, the entrance of which is a building the Giffords call "The Junction." (Tr. 99, 136)

16. When visiting or attending events at LRF, members of the public park their cars in a parking lot, which can accommodate up to 200 cars. (Tr. 161)

17. LRF is open to the public to host wedding ceremonies, wedding receptions, corporate parties, holiday parties, contracted lunches, dinners, corporate events, and team building events. (Complainants' Exhibit 7B; Tr. 135-36)

18. The Giffords built a 10,000 square foot, three-story structure, in LRF known as Gifford Barn. (Tr. 112, 132-34)

19. Gifford Barn is fenced in and gated. (Tr. 101, 132)

20. Gifford Barn is one of several barns on the LRF property. (Tr. 136)
21. Another barn on the property, which the Giffords call "Farm Market," is located adjacent to the parking lot. The Farm Market is where members of the public purchase produce from the farm. (Tr. 136)
22. Gifford Barn is a mixed-used building with both residential and commercial space. The first floor of Gifford Barn is 2,400 square feet of open space that has banquet tables and can hold contracted events, including wedding-related services. (Complainants' Exhibit 7C; Tr. 133, 136)
23. A room on the second floor of the Gifford Barn is utilized as a bridal suite for wedding receptions. (Tr. 134)
24. The Giffords reside on the third floor and a portion of the second floor of Gifford Barn. (Tr. 134)
25. Wedding ceremonies are held on a cliff overlooking the Hoosic River. Wedding receptions are held in the outdoor venue, which the Giffords call the "Event Tent," or in Gifford Barn. (Complainants' Exhibit 7A, 7D; Tr. 101-02)
26. The Event Tent is rented to members of the public in the fall for school field trips and company parties. (Tr. 137)
27. The Event Tent is fenced in. (Tr. 137)
28. In addition to holding wedding ceremonies and receptions, Respondents offer a variety of wedding-related services including a trolley ride from the parking lot to the venue, the greeting of guests, providing a light beverage station to patrons and decorating and setting up services, floral options and event coordination. (Complainants' Exhibits 7A-7G; Tr. 114-15, 140, 142-44, 146)

29. LRF advertises its venue space, wedding-related services and Fall Festival on its website, Facebook page and Twitter pages. The Giffords have also participated in a bridal show. (Complainants' Exhibits 3, 7A-7G; Tr. 116, 118-19, 139, 161)

30. LRF advertises Gifford Barn as being open "year-round for parties, business meetings, holiday gatherings, retreats and weddings." (Complainants' Exhibit 7C)

31. The Bridal Suite is also advertised on LRF's website. (Complainants' Exhibit 7F)

32. Respondent hopes that, through the various advertisement methods used, couples will come to LRF to celebrate their weddings. (Tr. 119)

33. Respondent Cynthia Gifford works as LRF's event coordinator for wedding-related services. (Tr. 143)

34. Through a catering contract, LRF also offers catering services for wedding receptions. (Joint Exhibits 1, 3; Tr. 142)

35. Respondents have employees that work as catering, wait and kitchen staff. (Tr. 144)

36. Individuals and couples interested in the venue spaces can call, send an e-mail for information through the website or visit LRF. (Tr. 140)

37. After an initial e-mail request, Cynthia Gifford typically sends a standardized letter referring the interested party to LRF's website for its catering package and facility and price lists. (Tr. 140-41).

38. After the standardized letter is sent, "the next step is to make an appointment to come see the farm" and talk about pricing and other LRF offerings. (Tr. 141)

39. Cynthia Gifford will then e-mail a contract to the interested parties. This secures the requested date and venue once a signed contract is returned and a deposit is sent. (Tr. 141-42)