

#157367-PA33 Harry W. Wright
vs. Michigan Athletic and Rehabilitation Center, Inc.

Order
Nanette L. Reynolds, Director



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STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION
State of Michigan Plaza Building
1200 Sixth Street
Detroit, Michigan 48226

MICHIGAN DEPARTMENT OF CIVIL RIGHTS,
ex rel HARRY W. WRIGHT,

Claimant,

v

Case No. 157367-PA33

MICHIGAN ATHLETIC AND REHABILITATION
CENTER, INC.,

Respondent.

ORDER

At a meeting of the Michigan Civil Rights Commission
held in Detroit, Michigan on the 26th day of March, 2001.

In accordance with the Rules of the Michigan Civil Rights Commission, a Hearing Referee heard proofs and arguments and made proposed Findings of Fact and Recommendations regarding the issues involved in this case. The parties had an opportunity to make presentations in support of and in opposition to the Referee's proposals at a public meeting of the Commission. Commissioner Brown has issued an Opinion, adopted by a unanimous vote of the Commission, accepting these proposals in part and rejecting them in part. That Opinion shall be made part of this order. The Commission therefore makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

The Parties to the above entitled charge stipulated to the following facts, which are uncontroverted:

1. The Michigan Department of Civil Rights has jurisdiction to make a determination on the above-styled charge of discrimination against this respondent.
2. The facility currently known as "Michigan Athletic and Rehabilitation Center, Inc." was formerly known as the Premier Athletic Club and was under different ownership.
3. In 1996 the Premier Athletic Club was purchased by Hills & Dales General Hospital, which assumed full control and operation of the club facilities and policies and renamed it the Michigan Athletic and Rehabilitation Center, Inc. ("M.A.R.C"). M.A.R.C is the proper respondent to this charge.
4. At all times pertinent to this charge, the facilities of the Michigan Athletic and Rehabilitation Center, Inc. ("M.A.R.C") were and are a place of public accommodation as defined by the Elliott-Larsen Civil Rights Act, M.C.L. §37.2301(a).
5. Payment of the appropriate monthly fee entitles a member to full use of M.A.R.C's facilities.
6. If a member does not pay the appropriate M.A.R.C membership fee, he/she may not use the facility.
7. The membership fees required by M.A.R.C are available in a variety of options, some of which are set forth in Joint Exhibit 1, which is attached to these stipulations. Other membership options are offered as "specials".
8. Specials M.A.R.C has offered include \$99.00 for 99 days and \$30.00 for two months.
9. Specials are available to all members and there are no specials offered to married persons that are not offered to single persons and vice versa.
10. As indicated in joint exhibit 1, M.A.R.C charges a standard fee of \$45.00 per month for an "Individual" membership, and a fee of \$65.00 per month for a "Married Couple" membership. Individuals who take advantage of specials or use an age-related discount do not pay the standard fee.

11. In May, 1997, M.A.R.C discontinued the "Couple" membership option that had been available under the prior ownership of the "Premier Athletic Club". That option had allowed two married or unmarried individuals to join together and pay the "Couple" fee. At the same time, M.A.R.C began offering the "Married Couple" membership option.
12. At M.A.R.C the "Married Couple" membership option is only available to a husband and wife who are currently married to each other, fill out the appropriate membership paperwork, and pay the membership fee of \$65.00 per month. Under this option, both spouses become "members".
13. Since he is not married, claimant Wright and a companion may not join M.A.R.C together and take advantage of M.A.R.C's "Married Couple" membership option.
14. Claimant has not suffered any monetary damages to date as a result of M.A.R.C's membership policies.
15. If Harry Wright was married and sought to join the M.A.R.C under the Center's pricing plan implemented in May, 1997 and attached as joint exhibit #1, and existing to this date, and if his wife did not join with him via the married couple option, then Harry Wright would not be able to join under the "Married Couple" membership option.
16. If a single man and a married man both wanted to join the M.A.R.C under the Center's pricing plan implemented in May, 1997 and attached as joint exhibit #1, and existing to this date, they would pay the exact same price if they wanted an individual membership. The only way the married man would be charged differently from the single man is if the married man's wife also joined the Center and the two of them chose to join using the "Married Couple" membership option.

CONCLUSIONS OF LAW

1. The Michigan Civil Rights Commission has jurisdiction over this matter.
2. Claimant, Harry W. Wright, an unmarried male, is a member of the class of persons entitled to be free from discrimination based on marital status by virtue of the Elliot-Larsen Civil Rights Act ("ELCRA") at the M.A.R.C, a place of public accommodation.
3. The parties stipulated in Paragraph 4 of the Stipulated Facts that M.A.R.C is a place of public accommodation as defined in M.C.L §37.2301(a). There was no evidence that respondent M.A.R.C is a private club and no need for an evidentiary hearing to take testimony relative to this claim which was made in the eleventh hour by Respondent. The Hearing Referee's recommendation regarding the holding of a hearing concerning this issue was inappropriate. Therefore, Section 302, and not Section 302a is the ELCRA section applicable to this case.

Section 302 states: Except where permitted by law, a person shall not:

(a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status.

4. Claimant failed to state a claim under the ELCRA for discrimination based on marital status. Unlawful marital discrimination relates to prejudice, bias, stereotypes, exclusions, etc., that traditionally underlie whether a person is married or single. It does not include the giving of an option to a spouse to join a club for a discounted rate, based on the fact that their spouse is already a member. Any other construction of this statute would create an absurd result.
5. There is no legal precedent to suggest that the prohibition against discrimination based on marital status was intended to address the narrow issue presented by this case, that is the pricing advantage of a membership rate discount given to married couples who join a health club together, as opposed to individually (see Findings of Fact above).
6. For purposes of this case the Commission takes judicial notice of the definition of marriage set forth in Black's Law Dictionary.
7. Mr. Wright was not economically disadvantaged by the change in policy instituted by the new owners, ending the companion discount. Nor is a finding of economic disadvantage a requirement for a petition for relief under the ELCRA.
8. The business practices, policies and procedures of the prior owner of the facility and their establishment of a "couple's discount" have no bearing on this case because the transfer of ownership together with the expiration of existing memberships extinguished the rights of club users to any rights or privileges related to the previous owner.
9. The denial of the opportunity to take advantage of a discounted membership rate for youth, senior citizens, veterans, married persons, etc., does not constitute a denial of the full and equal enjoyment of a public accommodation, so long as the person has full and unfettered use of all aspects of the facility.

WHEREFORE, IT IS HEREBY ORDERED That:

- A. Claimant's complaint under the Elliot-Larsen Civil Rights Act is dismissed.
- B. No costs or fees are awarded either party.

MICHIGAN CIVIL RIGHTS COMMISSION

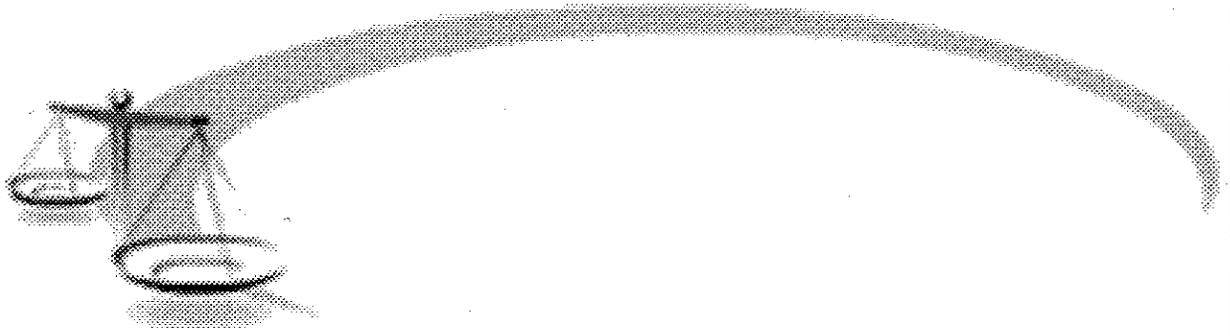
Dated: 3.26.01



Nanette Lee Reynolds, Ed.D., Director

NOTICE OF APPEAL

You are hereby notified of your right to appeal within
thirty (30) days to the Circuit Court of the State of Michigan
having jurisdiction provided by law. M.C.LA 37.2606



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Opinion
George E. Brown, Commissioner



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OPINION

George E. Brown, Commissioner

The present action alleges discrimination based on marital status by the Michigan Athletic And Rehabilitation Center, Inc. ("M.A.R.C"). Claimant, Harry W. Wright, originally joined the Premier Athletic Club in 1994 through a "companion membership" option. This option allowed two individuals to join together and pay a single membership fee that was discounted from the fee normally charged for two individual memberships. When the Respondent, Michigan Athletic And Rehabilitation Center ("M.A.R.C") acquired the facility, it discontinued the "companion membership" and instead offered a "married couple" membership. The married couple membership allowed two individuals who were married to each other to join together and pay a membership fee that was discounted from the fee normally charged for two individual membership.

After the M.A.R.C eliminated the companion membership rate, Claimant no longer had access to the discounted rate formally given to companion members. By eliminating the companion membership option and replacing it with a married couple option, Claimant alleged that he was denied the full and equal enjoyment of M.A.R.C's services, privileges and advantages – i.e., membership at a discounted rate based on the Claimant's marital status, in violation of the ELCRA. Claimant, however, did avail himself of the Senior Citizen discount offered by M.A.R.C and therefore had no monetary damages as a result of the alleged discrimination.

Respondent alleges that Claimant was not discriminated against based on his marital status and that M.A.R.C has not engaged in illegal marital discrimination in violation of ELCRA. Respondent argued that the discount for married couples only applies if each individual in the marriage sought to join the facility. If a married person sought to join the club as an individual and their spouse did not seek a membership, they paid the single person rate. In other words, the only way a married person would receive a married couple's discount is if that person's spouse also sought to join M.A.R.C.

The Hearing Officer ruled that M.A.R.C did not engage in prohibited marital status discrimination and the Commission concurs although for slightly different reasons.

M.A.R.C's policy is one which fosters inclusion (of spouses) rather than exclusion. Additionally, you only get the married couples discount if the spouse of the member seeks to join. If a married person seeks to join and their spouse does not, they pay the single rate.

A pricing advantage based on a familial relationship (i.e. a marriage or children of a marriage) was specifically addressed in dicta in the case of Bommarito v Detroit Golf Club, 210 Mich App 287; 532 NW2d 923 (1995). Although the Bommarito case was decided based on Section 302a of the Act governing private clubs, the unequivocal language of the court at page

293 of the opinion is equally applicable in the general public accommodation context (Section 302), and is dispositive of the issue presented regarding discounts (or in that instance, “freebies”) for a spouse of a member, to wit:

In addition, plaintiffs did not allege any facts establishing that they were treated differently on the basis of marital status. Defendant’s policy treats members differently only to the extent that a member’s spouse or adult children may desire to use the facilities or golf courses. However, the policy does not discriminate on the basis of whether a member is married or treat members differently on the basis of a stereotypical view of the characteristics of married or single persons.

Whirlpool Corp v Civil Rights Comm, 425 Mich 527, 531; 390 NW2d 625 (1986); Miller v C.A. Muer Corp, 420 Mich 355, 363; 362 NW2d 650 (1984). Defendant’s policy is also one of inclusion, rather than the exclusion of certain persons from its facilities that the Civil Rights Act was designed to eliminate. Certainly, the act was not intended to ensure economic fairness for all members belonging to a private club.

Counsel for the Claimant is correct in stating that “one cannot have a spouse unless one is married, and therefore the access to that benefit in membership, that privilege of membership, is <based on>(sic) one’s marital status” (p.9 of Transcript of the Oral Argument held on August 29, 2000 before the Commission). But the fact that one has to be married to take advantage of the discount and apply for membership as a spouse does not constitute discrimination in violation of ELCRA. One has no access to a senior citizen discount unless one is over 55. One has no access to a children’s discount unless they are under 12. One has no access to minority or female set asides or preferences in business unless one meets that criteria based on race, ethnicity or gender. In other words, there are numerous price preferences given persons who fall in various categories which do not amount to illegal discrimination. This case, however, is directly analogous to those involving senior citizen discounts.

Counsel for Claimant attempts to distinguish senior citizen discounts by stating that the legislature has acknowledged their validity by discounting the price of hunting licenses, etc., and that “senior citizen” discounts are “approved” by government as non-discriminatory. Counsel for the Respondent is correct in stating that there is not an institution in American jurisprudence more approved by state government than marriage. Even according to Claimant’s counsel, “married couples have a higher status in society than unmarried couples”. (p.24 of the Commission Oral Argument Transcript)

The legitimacy of this statement was clearly demonstrated in a recent article by Thomas F. Coleman for the American Association for Single People. According to Mr. Coleman marriage is recognized as a “most favored” status in numerous ways, including:

- (1) In an employment context, employers subsidize all, or a large portion, of health, dental, vision and other benefits for spouses of married employees without giving similar compensation to unmarried workers in some other form.
- (2) Despite the media’s recent focus on the so called “marriage penalty” in income tax laws, recent Office of Management and Budget studies indicate that when all the tax laws are taken into account, married persons are actually given a preference. Additionally, transactions including automobile transactions to a spouse are exempt from taxation.
- (3) Marital status may be used as a rating criteria when it comes to setting premiums for automobile insurance or renter’s insurance.
- (4) Consumer discounts for persons who purchase goods or services are common. Family discounts for spouses who join auto clubs, country clubs and health clubs are common.

Finally, the case of McCready v Hoffius, 459 Mich 131; 586 NW2d 723 (1998) involving discrimination in a real estate transaction is readily distinguishable from the instant case in that it relies upon an express provision of the ELCRA (M.C.L. §37.2502(1)(a) which specifically prohibits an individual from “refusing to engage in a real estate transaction with a person on the basis of familial status or marital status of a person or persons residing with that person.”

In conclusion, the instant case does not set forth a cause of action for discrimination in violation of the ELCRA.

Dated: 3/26/01


George E. Brown