ALASKA STATE COMMISSION FOR HUMAN RIGHTS
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BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

ALASKA STATE COMMISSION FOR HUMAN RIGHTS, MARTI BUSCAGLIA, EXECUTIVE DIRECTOR, *ex rel.* FRANCIS ROACH,

Complainant,

v.

FRIENDSHIP MISSION

Respondent.

ASCHR No. J-14-004

OAH No. 16-0933-HRC

FINAL ORDER DISMISSING COMPLAINT

In accordance with AS 18.80.130 and 6 AAC 30.480, the Hearing Commissioners, having reviewed the administrative record, are in agreement with and adopt the Revised Recommended Decision of Administrative Law Judge Cheryl Mandala dated August 29, 2017, and dismiss the complaint. The Commissioners note, however, that this decision is limited to the particular facts of this case and does not establish a broad rule regarding the application of the public accommodation provisions of the Alaska Human Rights Act to homeless shelters. On this point, the Hearing Commissioners specifically adopt footnote 79 of the Revised Recommended Decision.

Judicial review is available to the parties pursuant to AS 18.80.135 and AS 44.62.560-570. An appeal must be filed with the superior court within 30 days from the date this Final Order is mailed or otherwise distributed to the parties.

Hearing Unit
Calendared —
Scanned 10/30/17

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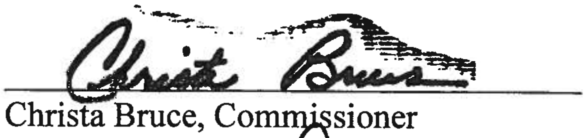
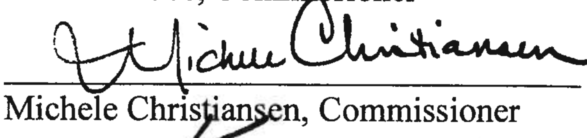
IT IS SO ORDERED.

DATED: October 30, 2017



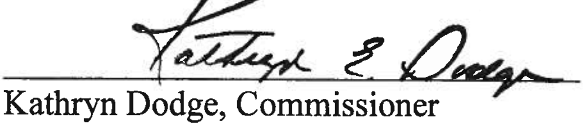
Christa Bruce, Commissioner

DATED: October 30, 2017



Michele Christiansen, Commissioner

DATED: October 30, 2017



Kathryn Dodge, Commissioner

ALASKA STATE COMMISSION FOR HUMAN RIGHTS
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CERTIFICATE OF SERVICE

I certify that on October 30, 2017, a true and correct copy of the **FINAL ORDER DISMISSING COMPLAINT** was mailed or delivered to the following parties:

✓Stephen Koteff, Human Rights Advocate
Alaska State Commission for Human Rights
800 A Street, Suite 204
Anchorage, AK 99501 (hand delivery)

Respondent or Respondent's Representative
Sonja Redmond
Law Office of Sonja Redmond
35865 Sunset Park Street
Soldotna, AK 99669

and a courtesy copy to:

Cheryl Mandala, Administrative Law Judge
State of Alaska
Office of Administrative Hearings
550 W. 7th Avenue, Suite 1940
Anchorage, AK 99501

Shari Ketchum
Commission Secretary

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON APPOINTMENT BY THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS

Marti Buscaglia, Executive Director, Alaska State Commission for Human Rights, *ex rel.* FRANCIS ROACH, Complainant, v. FRIENDSHIP MISSION, Respondent.	OAH No. 16-0933-HRC ASCHR No. J-14-004

REVISED RECOMMENDED DECISION

I. Introduction

Alaska law prohibits places of public accommodation from engaging in disability-based discrimination. Friendship Mission, a volunteer-run, non-profit homeless shelter in Kenai, Alaska, has a policy barring all animals from its facility. Under this policy, the Friendship Mission will not allow any disabled patrons' service animals to accompany them at the Mission. On behalf of Francis Roach, a potential patron of Friendship Mission, the Executive Director of the Alaska State Commission for Human Rights filed an Accusation asserting that the enforcement of the "no pets" policy against service animals violates the Human Rights Act's prohibition on disability-based discrimination, and seeking declaratory and injunctive relief. Friendship Mission admits that it refuses to make exceptions to its "no pets" policy, but contends that it is not a place of public accommodation within the scope of the Act. The parties have filed cross-motions for summary decision.

Because the evidence in the record does not support the Executive Director's position that Friendship Mission is a place of public accommodation for purposes of the Act, this decision recommends that the Accusation be dismissed.

II. Legal background

Both state and federal laws prohibit employers, public entities, and places of public accommodation from engaging in disability-based discrimination. The Alaska legislature has:

> [D]etermined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of . . . physical or mental disability . . . is a matter of public concern and that this discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and

threatens peace, order, health, safety, and general welfare of the state and its inhabitants.[1]

In furtherance of this policy, Alaska's Human Rights Act, AS 18.80, prohibits disability-based discrimination in employment, financing, housing rental and sales, the activities of public entities, and in places of public accommodation. It is this final prohibition which is at issue in this case. Alaska Statute 18.80.230(a)(1) makes it unlawful for a place of public accommodation "to refuse, withhold from, or deny a person any of its services, goods, facilities, advantages or privileges, because of . . . physical or mental disability[.]"[2]

The specific discriminatory act alleged in this case is the refusal to modify a "no pets" policy to allow a service animal to accompany a disabled individual to a place of public accommodation. Although the Alaska Supreme Court has never addressed the application of AS 18.80 to issues involving service animals, the Court and the Commission generally follow the analytical framework of analogous federal laws in interpreting the scope of the Human Rights Act. The Americans with Disabilities Act, its regulations, and cases construing it clearly provide that a place of public accommodation cannot rest on a generic "no pets" policy to exclude service animals. The legislative history of the ADA contains strong support for the premise that exclusion of service animals under the guise of blanket "no pets" policies is discriminatory.[3]

Federal regulations provide that "[g]enerally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability."[4] Applying them, federal courts have observed that "service dogs are a common example of a reasonable accommodation for people with disabilities."[5] "In most circumstances, waiving a no-pet rule to allow a disabled resident the assistance of a service animal is a

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1 AS 18.80.200.

2 AS 18.80.230(a)(1); *see also* AS 18.80.210 ("The opportunity to obtain . . . public accommodations . . . without discrimination because of . . . physical or mental disability . . . is a civil right.").

3 *See* H.R. Rep. No. 485(III), 101st Cong., 2d Sess. 59 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 482 ("It is discriminatory to fail to make reasonable modifications in policies and practices when such modifications are necessary to provide goods or services, unless it can be demonstrated that the modifications would fundamentally alter the nature of the goods or services provided. For example, it is discriminatory to refuse to alter a "no pets" rule for a person with a disability who uses a guide or service dog."); 135 Cong. Rec. S10,800 (1989) (Sen. Simon: "One form of discrimination faced by thousands of people with disabilities in public accommodations is prohibiting entry by an assistive animal. Part of the problem lies in ignorance . . . . Regretfully, many people still don't understand that these animals are well-trained and certified, and don't create public disturbances nor pose any public health risk whatsoever. Generally speaking, any facility where it is safe for a person to go, it is safe for a trained assistive animal to go, including restaurants and other public accommodations . . . . It should be further understood that a person with a disability using a guide, signal or service dog should not be separated from the dog . . . . A person with a disability and his or her assistive animal function as a unit and should never be involuntarily separated. Nor is there any need for this separation. To require it would be discriminatory under the Americans with Disabilities Act.").

4 28 C.F.R. § 36.302(c)(1).

5 *Petty v. Portofino Council of Coowners, Inc.*, 702 F. Supp. 2d 721, 731 n.8 (S.D.Tex. 2010).

reasonable accommodation."[6] Federal regulations further provide that a place of public accommodation may exclude a service animal if (1) making such modifications would fundamentally alter the nature of the entity's goods, services, facilities, privileges, advantages, or accommodations; (2) the safe operation of the entity would be jeopardized; or (3) such modifications would result in an undue financial or administrative burden.[7] Such determinations, however, "must be based on actual risks rather than on mere speculation, stereotypes, or generalizations about individuals with disabilities."[8]

The same principles apply under the Human Rights Act. A place of public accommodation may not refuse to consider making an exception to a "no pets" policy. Instead, a determination as to the reasonableness of the accommodation sought must be made on a case-by-case basis, based upon actual risks and not upon mere speculation or generalizations.[9] A public accommodation's blanket refusal to accommodate a service animal violates the Alaska Human Rights Act.

III. Relevant facts

Friendship Mission is an Alaska non-profit corporation that operates a small homeless shelter for men on the Kenai Peninsula.[10] The shelter, which houses between four and ten men at a time, is open to "any man who applies and agrees to obey the rules."[11]

Friendship Mission was founded and is operated by Graydon and MaryAnn Cowgill. Its bylaws describe it as "an Independent, Non-Denominational, Evangelical organization," and identify its "purpose" as follows:

> We are a Christian organization and our purpose is to show God's love through example and in a practical manner by providing for the needs of the homeless, poor, needy and dysfunctional men on the Kenai Peninsula, to the best of our ability. Our goal is to rescue and rehabilitate. Our aim is to return the men that come to us for help to being useful citizens in society.[12]

At oral argument, counsel argued that Friendship Mission carries out that purpose "by ministering to homeless men."[13]

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6 *Prindable v. Ass'n of Apartment Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1257 (D. Haw. 2003).

7 *See* 28 C.F.R. §§ 36.301(b), 36.302(c)(1), 36.303(a), 35.130(b)(7), 35.136, 35.150(a)(3), 35.164.

8 28 C.F.R. §§ 36.301(b), 35.130(h).

9 *See Anderson v. Anchorage School District*, OAH Case No. 09-0233-HRC; *affirmed*, Anchorage Superior Court Case No. 3AN-10-10122CI (October 2011).

10 Resp. Ex. 1.

11 Cowgill Affidavit, ¶ 14; statement of counsel at oral argument.

12 Resp. Ex. 2, p. 1.

13 Statement of counsel at oral argument.

The Cowgills receive no salary, and Friendship Mission has no paid staff.[14] The Mission receives no government funding, and is "supported entirely by donations from individuals and churches."[15] Residents who have jobs are encouraged, but not required, to donate $10 per day to the Mission "as an act of obedience to God and to practice [the] traditional Christian biblical teachings [of] tithing and caring for those less fortunate."[16] In practice, relatively few residents do so.[17] No one has ever been turned away for not donating.[18]

Men at the shelter share common eating and sleeping facilities.[19] Prospective residents sign an admittance statement that provides, in part, as follows:

> [I] recognize my need for assistance and hereby apply for admittance to Friendship Mission. I understand that this is a religious and charitable organization. The Mission is dedicated primarily to the social and physical rehabilitation and the spiritual regeneration of those persons who are in need of such assistance.[20]

There is no religious test for admission (i.e. no inquiry into a prospective resident's religion or lack of religion).[21] However, residents must attend daily Bible study as well as twice-weekly church services.[22] Residents must also follow rules about profanity, drug and alcohol use, grooming, and personal hygiene.[23] Friendship Mission dictates residents' schedules, including what time they wake up, when they may be in their rooms, how often they must shower and for how long, chore obligations, meal times, and other restrictions.[24]

It is undisputed that Friendship Mission maintains a policy prohibiting animals at its facility, and that it publicizes this policy on its website.[25] It is also undisputed that the Mission makes no exceptions to this policy, including making no exception for service animals for persons with disabilities. The Mission justifies this policy by claiming there is nowhere for animals to stay, that animals could pose sanitation problems, and that other residents could have allergies.[26]

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14 Cowgill Aff., ¶¶ 3-4. In an affidavit, Mr. Cowgill explained that he views "serving the poor and needy and providing for them" to be "an act of religious worship to God." Cowgill Aff., ¶ 29.

15 Cowgill Aff., ¶¶ 7, 29; statement of counsel at oral argument.

16 Cowgill Aff., ¶¶ 11-17.

17 Cowgill Aff., ¶¶ 15-16 ("Typically none of the residents have jobs or contribute to the Mission. Currently there are 6 residents and 2 have jobs. One is contributing to the Mission, the other is not.").

18 Cowgill Aff., ¶ 12; statement of counsel at oral argument.

19 Cowgill Aff., ¶ 22.

20 Ex. 6.

21 Statement of counsel at oral argument.

22 Cowgill Aff., ¶¶ 9-10.

23 Ex. 4.

24 Ex. 4, p. 2.

25 Ex. 4, p. 1.

26 Cowgill Aff., ¶¶ 23-27.

Contending there is no way it could accommodate animals, the Mission claims that, if required to accommodate service animals, "we'd have to shut down."[27]

Francis Roach alleges that he is legally blind and has a service dog that assists him.[28] Mr. Roach alleges that he wanted to stay at Friendship Mission, but was told that his service dog could not stay there with him.[29] The Mission denies any specific knowledge of Mr. Roach's claims, but admits that a service dog would not be allowed to stay at the facility.[30]

IV. Procedural history

The Executive Director referred this matter for hearing in August 2016. The Amended Accusation alleges that Mr. Roach uses a service dog because of "a sight impairment that substantially limits his ability to see."[31] It alleges that twice in 2013, Mr. Roach called Friendship Mission to ask about staying there, and was told "that he was welcome to stay at the shelter but that his service dog would not be allowed to accompany him" because Friendship Mission does not allow animals, including service animals.[32] The Amended Accusation also asserts that Friendship Mission's website lists among the shelter's rules a blanket "no pets" policy.[33] Based on these allegations, the Executive Director contends that Friendship Mission has violated AS 18.80.230(a)(1) (denying services and facilities based on disability) and AS 18.80.230(a)(2) (publishing communications implying services will be denied because of a disability).[34]

In the course of these proceedings, Friendship Mission has never denied that it has a blanket "no pets" policy to which it refuses to make exceptions. But Friendship Mission has contended that it is outside the scope of Alaska's Human Rights Act because it is not within any class of activities or entities regulated by the Act. In particular, it contends that, contrary to the jurisdictional allegations in the Accusation, it is not a place of public accommodation. It reasons that, if it is not within the Act's coverage, it is not required to modify its policies to accommodate disabled residents.[35]

At a case planning conference held in September 2016, both counsel agreed that this matter did not involve disputed facts, but instead boiled down to a legal dispute about whether

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27 Cowgill Aff., ¶ 28; statement of counsel at oral argument.
28 Roach Aff., ¶¶ 1, 2, 3.
29 Roach Aff., ¶¶ 4, 5. These allegations are accepted as true for purposes of this motion.
30 Cowgill Aff., ¶ 18-28.
31 Amended Acc., ¶¶ 2-3.
32 Amended Acc., ¶¶ 4-7.
33 Amended Acc., ¶ 11.
34 Amended Acc., ¶¶ 13-27.
35 *See* Answer; comments of counsel at September 2016 case planning conference.

Friendship Mission fell within the statute's reach. The parties thus agreed to present the matter for decision based on briefing.

On December 5, 2016, the Executive Director filed a Motion for Summary Decision. On December 28, 2016, Friendship Mission filed an Opposition to the Executive Director's Motion. A procedural order issued January 6, 2017, converted that Opposition into an Opposition and Cross-Motion for Summary Decision. The Executive Director filed her Reply on February 22, 2017, and on March 6, 2017 submitted a request for oral argument. That request was granted and argument was scheduled for May 16, 2017.[36]

On May 4, 2017, counsel for Friendship Mission notified the Executive Director of her intent to "call witnesses" to testify at the upcoming oral argument. The Executive Director filed a motion to strike; Friendship Mission opposed the motion and also submitted an affidavit of Graydon Cowgill. At a status conference held May 8, it was agreed that Mr. Cowgill's affidavit would be accepted to belatedly support Friendship Mission's December 2016 Opposition and Cross-Motion. To cure any prejudice associated with this late filing, the Executive Director was permitted an opportunity to file supplemental briefing, and oral argument was rescheduled.

Oral argument was held on May 23, 2017. Following the oral argument, both counsel requested the opportunity to file post-hearing briefing. The parties submitted post-hearing briefs on June 9, 2017, and the Mission filed a notice of supplemental authority on June 27, 2017.

V. Discussion

A. Preliminary procedural and evidentiary issues

Alaska Statute 18.80.120(e) provides that, "at any time after the issuance of an accusation, the executive director or the person charged in the accusation may petition for a summary decision on the accusation."[37] Summary decision is appropriately granted where, after the parties have had a reasonable opportunity for discovery, "the record shows that there is no genuine issue of material fact and the petitioner is entitled to an order under AS 18.80.130 as a matter of law."[38]

The disposition of this case was made more complicated by the sparse factual record presented by the parties. Although both counsel initially agreed that this matter should be decided on briefing and without need for an evidentiary hearing, neither party's briefing attempted to make a strong factual record as to the Mission's day-to-day operations. At oral argument, however, both counsel endorsed relying on the affidavit of Mr. Cowgill, printouts from the

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36 The lengthy delay was due to planned medical leave by respondent's counsel.
37 AS 18.80.120(e).
38 AS 18.80.120(e).

Mission's website and bylaws, and the representations of respondent's counsel as a sufficient basis from which to determine the nature of respondent's organization. These tacit stipulations have been accepted.

Both parties having cross-moved for summary decision on the same issue of law, and both parties insisting at oral argument that the record was complete for purposes of deciding that issue, this decision concludes that it is not necessary to further develop the factual record in this matter. The Executive Director ultimately bears the burden of showing that Friendship Mission is a place of public accommodation and has violated the Human Rights Act. The Executive Director did not meet that burden because she did not show that Friendship Mission is a place of public accommodation. Rather, on the record as presented by the parties, Friendship Mission has shown that it is entitled to summary decision on this issue of law.

B. Principles of interpretation of Alaska's Human Rights Act

The Alaska Supreme Court has held that the Human Rights Act is to be broadly construed.[39] When interpreting the Act, the Court has looked to analogous federal cases for guidance,[40] but has also held "that AS 18.80 'is intended to be more broadly interpreted than federal law to further the goal of eradication of discrimination.'"[41] Thus, even as it looks to federal case law, the Court remains "mindful of 'the strong statement of purpose in enacting AS 18.80 and our legislature's intent to put as many teeth into the statute as possible.'"[42] The Commission likewise looks to federal law as a guide in construing AS 18.80.[43] The Commission's regulations also acknowledge its "obligation to construe AS 18.80 liberally."[44] On the specific topic of disability-based claims, the Commission looks to the Americans with Disabilities Act and "relevant federal case law as a guideline," but favors AS 18.80 over these federal laws "when state law is more liberal than federal law."[45]

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[39] *Smith v. Anchorage School District*, 240 P.3d 834, 842 (Alaska 2010); *Moody-Herrera v. State, Dep't of Natural Resources*, 976 P.2d 79, 86 (Alaska 1998).

[40] *See, e.g.*, *Peterson v. State*, 236 P.3d 355, 363-364 (Alaska 2010) (following federal case law to evaluate hostile work environment claim); *State v. Meyer*, 906 P.2d 1365, 1374 (Alaska 1995) (citing *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253–56 (1981). *See also*, *Villaflores v. Alaska State Comm'n for Human Rights*, 175 P.3d 1275, 1277 (Alaska 2008); *Villaflores v. Alaska State Comm'n for Human Rights*, 170 P.3d 663, 665 (Alaska 2007); *Mahan v. Arctic Catering, Inc.*, 133 P.3d 655, 660 (Alaska 2006); *Alaska State Comm'n for Human Rights v. Yellow Cab*, 611 P.2d 487, 490 (Alaska 1980).

[41] *VECO, Inc. v. Rosebrock*, 970 P.2d 906, 912-13 (Alaska 1999) (quoting *Wondzell v. Alaska Wood Prods., Inc.*, 601 P.2d 584, 585 (Alaska 1979)).

[42] *Miller v. Safeway, Inc.*, 102 P.3d 282, 290 (Alaska 2004) (quoting *Wondzell v. Alaska Wood Prods., Inc.*, 601 P.2d 854, 585 (Alaska 1979)).

[43] 6 AAC 30.910(b).

[44] 6 AAC 30.910(b).

[45] 6 AAC 30.910(b).

Although the Supreme Court has acknowledged the intended broad scope of the Human Rights Act, it has also declined attempts to broaden the scope of AS 18.80's coverage beyond the statute's terms. In *U.S. Jaycees v. Richardet*, for example, the Court rejected the argument that a nonprofit club without a fixed physical location was a "place of public accommodation" under the statute.[46]

Jaycees is not the only case in which the Court has declined an expansive reading of the Human Rights Act. In *Miller v. Safeway*, the Court rejected a claim that AS 18.80's prohibition against gender discrimination bars employers from enforcing gender-based grooming policies. On this issue, the Court expressly declined to construe Alaska law more broadly than the analogous federal cases.[47] Similarly, in *Muller v. BP Exploration (Alaska) Inc.*, the Court rejected a claim that the requirement to "broadly" interpret AS 18.80.220 allowed a claim for marital status discrimination based on the identity of the plaintiff's spouse.[48] This "broad reading," the Court found, went too far, and would apply the law beyond its intended goals and protections.[49]

The Court has also declined to interpret AS 18.80 according to principles of federal law where obvious distinctions exist between Alaska's statute and its federal counterpart. Thus, in *Cole v. State Farm Ins. Co.*, the Court rejected an attempt to read terms into AS 18.80 based on a federal statute that post-dated the enactment of Alaska's law.[50] The Court has likewise declined to follow federal case law that relies on federal statutory language not found in AS 18.80.[51]

C. Friendship Mission is not a place of public accommodation for purposes of AS 18.80.230(a)(1)'s prohibition on disability-based discrimination

As noted at the outset, places of public accommodation may not rely on a blanket "no pets" policy to exclude service animals of disabled patrons. But the Mission denies that its shelter is a "place of public accommodation," and therefore contends that it is not within the statute's scope. The legislature has defined "public accommodation" as:

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46 *U.S. Jaycees v. Richardet*, 666 P.2d 1008, 1011-1012 (Alaska 1983).

47 *Miller v. Safeway*, 102 P.3d 282, 293 (Alaska 2004) ("agree[ing] with the reasoning of the numerous federal cases addressing this issue and conclud[ing] that Alaska law should not be more broadly construed in this particular respect").

48 *Muller v. BP Exploration (Alaska) Inc.*, 923 P.2d 783, 790-791 (Alaska 1996).

49 *Id.* at 790-791 ("The purpose of the AHRA is to prevent prejudices and biases borne against persons who are members of certain protected classes; it seeks to eliminate the effects of offensive or demeaning stereotypes, prejudices, and biases against the members of those classes. The more expansive interpretation of the term 'marital status' does not protect the members of the class, but instead effectively enlarges it to include all persons wishing to work with their spouses[.]").

50 *Cole v. State Farm Ins. Co.,* 128 P.3d 171, 177 (Alaska 2006) (declining to incorporate ADA identification of insurance office as public accommodation where AS 18.80 was enacted "well before the ADA" and lacks similar term).

51 *See Smith v. Anchorage School District*, 240 P.3d 834, 840-841 (Alaska 2010).

> A place that caters or offers its services, goods, or facilities to the general public and includes a public inn, restaurant, eating house, hotel, motel, soft drink parlor, tavern, night club, roadhouse, place where food or spirituous or malt liquors are sold for consumption, trailer park, resort, campground, barber shop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, café, ice cream parlor, transportation company, and all other public amusement and business establishments, subject only to conditions and limitations established by law and applicable alike to all persons.[52]

In construing the meaning of Alaska statutes, Alaska courts "look to the meaning of the language, the legislative history, and the purpose of the statute in question."[53] Here, inquiry into the meaning of the language of the statute begins with the definition's direction that place of public accommodation "includes" twenty-four specific types of entities. It is well-established by statute in Alaska that use of the phrase "includes" denotes a non-exhaustive list.[54] While the word "includes" indicates a non-exhaustive list, it is also generally construed to group items that are categorically similar. This principle appears in the legal doctrine of *ejusdem generis* ("of the same kind"), which tells us that, "where general words follow an enumeration of persons or things, . . . such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned."[55]

Applying these principles, the Alaska Supreme Court explained in *Jaycees* that the list of public accommodations is not considered exhaustive, and that other establishments are considered public accommodations if "similar in nature to those enumerated."[56] The question here is whether respondent's homeless shelter is similar in nature to the enumerated list. The Executive Director argues that a homeless shelter is similar to a hotel, motel, or inn, because all of these offer a place to stay. But hotels, motels, and inns all offer a place to stay as part of a commercial transaction. Respondent's homeless shelter, on the other hand, offers a place to stay, without charge but with considerable rules and restrictions, as part of a volunteer-led, not-for-profit religious ministry. These are not similar entities for *ejusdem generis* purposes.

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52 AS 18.80.300(16).

53 *Muller v. BP Expl. (Alaska) Inc.*, 923 P.2d 783, 787 (Alaska 1996).

54 AS 01.10.040(b).

55 Black's Law Dict. (5th ed. 1979) at 464. An example of an application of *ejusdem generis* would be the interpretation of the phrase "horses, cattle, sheep, goats, or any other farm animal"; in the absence of contrary factors, the doctrine would suggest that "any other farm animal" would encompass only similarly large mammals, and would exclude chickens. *West v. Municipality of Anchorage*, 174 P.3d 224, 228 (Alaska 2007).

56 *U.S. Jaycees v. Richardet*, 666 P.2d 1008, 1012 (Alaska 1983).

Complicating the analysis is that, although Alaska looks to related federal laws for guidance in interpreting the Human Rights Act, the ADA *expressly* includes homeless shelters in its enumerated list of entities that constitute "public accommodations."[57] As the Alaska Supreme Court observed in *Cole*, however, the ADA was enacted after AS 18.80, and is therefore not the source of AS 18.80's definition of this term. Further, in the ADA, homeless shelters appear in the enumerated list of "social service center establishments," not the section on "places of lodging." While the ADA lists numerous types of entities beyond traditional commercial enterprises, Alaska's law does not. And the ADA's location of homeless shelters within the category of social service establishments – and not in the category of "places of lodging" – further undermines the Executive Director's suggestion that homeless shelters are appropriately categorized, for *ejusdem generis* purposes, with hotels and motels.

At least one other court has construed another jurisdiction's Human Rights Act as including homeless shelters within the broad category of "place of public accommodation."[58] In *Hunter v. District of Columbia*, the U.S. District Court for the District of Columbia concluded that the mandate to broadly read the D.C. Human Rights Act, and the inclusion of "homeless shelter" in the ADA's list of public accommodations, supported treating the respondent as a place of public accommodation.[59] But in that case, the homeless shelter in question was receiving substantial governmental funds from federal and local sources, and was operating an apartment

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[57] 42 USC § 12181(7)(K); 18 C.F.R. 36.104(11). The ADA's complete definition is as follows:
(7) Public accommodation. The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce –

> (A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
> (B) a restaurant, bar, or other establishment serving food or drink;
> (C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
> (D) an auditorium, convention center, lecture hall, or other place of public gathering;
> (E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
> (F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
> (G) a terminal, depot, or other station used for specified public transportation;
> (H) a museum, library, gallery, or other place of public display or collection;
> (I) a park, zoo, amusement park, or other place of recreation;
> (J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
> (K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
> (L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

[58] *See Hunter on behalf of A.H. v. District of Columbia*, 64 F. Supp. 3d 158 (D.D.C. 2014).

[59] *Hunter,* 64 F. Supp. 3d at 180.

building through a governmental contract.[60] Moreover, that case was decided under the D.C. Human Rights Act, whose definition of "place of public accommodation" differs from Alaska's in at least one key respect: the D.C. statute does not refer to "business establishments."

As discussed further below, the question whether a homeless shelter – in particular, respondent's homeless shelter – is a place of public accommodation necessarily must address the significance of the phrase "business establishments" in the definition of that term. Friendship Mission urges that, like the list of identified establishments, this phrase, too, signals that a "place of public accommodation" under AS 18.80 does not encompass lodging provided as part of a gratuitous charitable ministry with no commercial purpose.

In assessing statutory language, the Alaska Supreme Court has noted that "unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage."[61] Friendship Mission points to the Webster's New Collegiate definition of business as "a commercial or industrial establishment." But even courts that have broadly construed the phrase "business establishment" in public accommodation laws have recognized that the phrase is necessarily narrower than "all" establishments.[62]

The inquiry into the meaning of the phrase "business establishment" brings us to the related issue of legislative history. The definition of "place of public accommodation" in AS 18.80 appears to have emerged largely from a pre-statehood public accommodation law.[63] The Territory of Alaska first enacted its own public accommodation law in 1945. The Alaska Anti-

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60 *Id.*, at 163-165, 172.

61 *See Muller*, at 788. At the same time, "[t]o seek the meaning of a statute is not simply to look up dictionary definitions and then stitch together the results. Rather, it is to discern the sense of the statute, and therefore its words, in the legal and broader culture." *Curran v. Mt. Diablo Council of the Boy Scouts*, 952 P.2d 218, 240 (Cal. 1998) (Mosk, J., conc.).

62 *See, e.g., Burks v. Poppy Constr. Co.*, 370 P.2d 313, 315-16 (California 1962) ("The legislature used the words 'all' and 'of every kind whatsoever' in referring to business establishments covered by the Unruh Act (Civ. Code § 51), and the inclusion of these words without any exception and without specification of particular kinds of enterprises, leaves no doubt that the term 'business establishments' was used in the broadest sense reasonably possible. The word 'business' embraces everything about which one can be employed, and it is often synonymous with 'calling, occupation, or trade, engaged in for the purpose of obtaining a livelihood or gain.'"); *Warfield v. Peninsula Golf & Country Club,* 896 P.2d 776 (California 1995) ("the reach of [the public accommodation law] cannot be determined invariably by reference to the 'plain meaning' of the term 'business establishment'"); *Curran v. Mt. Diablo Council of the Boy Scouts*, 952 P.2d 218, 239 (California 1998) (even lack of other available remedies against organization's "invidious discrimination . . . cannot justify extending the scope of the [public accommodation law] further than its language reasonably will bear").

63 Many states had their own public accommodation laws prior to the passage of the federal Civil Rights Act in 1964. *See Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 259 (1964) (noting that 32 states, including Alaska, have enacted public accommodation laws); Lisa G. Lerman & Annette K. Sanderson, *Comment, Discrimination in Access to Public Places: A Survey of State and Federal Public Accommodations Laws*, 7 N.Y.U. REV. L. & SOC. CHANGE 215 (1978).

Discrimination Act, enacted "to provide for full and equal accommodations, facilities and privileges to all citizens in all places of public accommodation within the jurisdiction of the Territory of Alaska," provided:

> All citizens within the jurisdiction of the Territory of Alaska shall be entitled to the full and equal enjoyment of accommodations, facilities and privileges of public inns, restaurants, eating houses, hotels, soda fountains, soft drink parlors, taverns, road houses, barber shops, beauty parlors, bathrooms, resthouses, theaters, skating rinks, cafés, ice cream parlors, transportation companies, and all other conveyances and amusements, subject only to the conditions and limitations established by law and applicable alike to all citizens.[64]

This list of establishments was nearly identical to the list now defining places of public accommodation under AS 18.80, although the concluding phrase referred to "all other conveyances and amusements."

When Alaska was admitted into the Union as a state in 1959, then-existing Territorial laws remained in full force and effect as state laws.[65] Three years later – and still before the passage of the federal Civil Rights Act – the legislature reenacted the public accommodation statute as AS 11.60.230-240.[66] The list of places of public accommodation was slightly modified, and the end phrase in the definition was changed from "and all other conveyances and amusements" to "and all other public amusements and business establishments." The new law provided:

> A person is entitled to the full and equal enjoyment of accommodations, advantages, facilities and privileges of public inns, restaurants, eating houses, hotels, motels, soda fountains, soft drink parlors, taverns, roadhouses, trailer parks, bathrooms, resorts, campgrounds, barbershops, beauty parlors, resthouses, theatres, swimming pools, skating rinks, golf courses, cafes, ice cream parlors, transportation companies, and all conveyances, housing accommodations, and all other public amusement and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons.[67]

This newly-added reference to "business establishments" mirrored language in California's 1959 public accommodations statute. Prior to 1959, California's statute had – similarly to Alaska's Territorial law – prohibited discrimination in a number of specified establishments and, more generally, in "all other places of public accommodation or

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64 S.L. 1945, HB 14.

65 Alaska Statehood Law, Pub. L. 85-508, Sec. 8(d), July 7, 1958, 72 Stat. 399.

66 SLA 1962, Ch. 49 (HB 8).

67 AS 11.60.230-240 added "motels," "trailer parks," "resorts," "campgrounds," "swimming pools," and "golf courses" to the itemized list of places of public accommodation.

amusement."[68] In 1959, California's legislature revised and expanded that statute to prohibit discrimination "in all business establishments of every kind whatsoever."[69] Alaska's 1962 law prohibited discrimination in a number of specified establishments and then, broadly, in "all other public amusement and business establishments."

Three years after the Alaska legislature re-codified the public accommodation law through AS 11.60.230-.240, it enacted the Alaska Human Rights Act.[70] The Alaska Human Rights Act, enacted the year after passage of the federal Civil Rights Act, repealed existing anti-discrimination provisions and reenacted them under AS 18.80. Although the federal law did not contain the "business establishments" language, nor do the vast majority of state public accommodation laws, the legislature retained that language in the Alaska law.[71]

Because both states' legislatures chose to situate public accommodation laws within the context of "business establishments," cases interpreting the California law – while obviously not controlling here – provide a useful analytical framework for interpreting the scope of public accommodations under Alaska's law. The California Supreme Court has analyzed the scope of the "business establishment" language in a variety of contexts. In a case heavily relied on by the Executive Director, that Court held that a recreational facility operated by a nonprofit club (and which excluded girls) was a business establishment under California's law.[72] But in a later case, the Court refused to find the Boy Scouts to be a business establishment at least for purposes of membership policies and decisions.[73]

In *Ibister v. Boys Club of Santa Cruz*, the Court concluded that a charitable non-profit organization's recreational facility – which included a pool, a gym, a snack bar, and craft rooms all available for use for a fee on a drop-in basis to any boy in the community – was a "business

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68 Cal.Stats. 1923, ch. 245, § 1, p. 485 ("All citizens with the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of inns, restaurants, hotels, eating-houses, places where ice cream or soft drinks of any kind are sold for consumption on the premises, barber shops, bath houses, theaters, skating rinks, public conveyances and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens.").

69 Cal. Civ. Code § 51 ("All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.").

70 Alaska Statute 18.80.010, creating the State Commission for Human Rights, was enacted in 1963. SLA 1963, ch. 15, § 1. In 1965, the legislature passed the Human Rights Act, which revised and strengthened existing anti-discrimination laws and reenacted them under AS 18.80. *See generally*, 1965 Annual Report of the State Commission on Human Rights. http://humanrights.alaska.gov/files//Public%20Notices/1965%20Annual%20Report.pdf

71 AS 18.80 removed "soda fountains" from the itemized list of places of public accommodation, and added "night clubs" and "places where food or spirituous or malt liquors are sold for consumption."

72 *Ibister v. Boys Club of Santa Cruz*, 707 P.2d 212 (California 1985).

73 *Curran v. Mt. Diablo Council of the Boy Scouts*, 952 P.2d 218, 220 (California 1998).

establishment" under the public accommodations law. The Court based its conclusion both on the Club's "public nature" in offering access to its facilities to a "broad segment of the population," and its "functional similarity to a commercial business."[74] Similarly, the Court had previously found that a non-profit homeowners association was a business establishment because its activities were comparable to those of a landlord and were carried out for a commercial and economic purpose – enhancing members' property values.[75] And the Court later held that a private golf club that excluded women came within the reach of the statute because of the business transaction conducted on its premises. Because the golf club through these commercial activities operated as the "functional equivalent of a commercial enterprise," it was subject to the public accommodations law.[76]

But in the later *Curran* case, by way of contrast, the Court found that the Boy Scouts – at least for purposes of its membership decisions and policies – did not fall within the reach of the term "all business establishments whatsoever." Although the organization is open to any boy ages 11-18 willing to take the Boy Scout oath, the Court found that its activities and objectives were primarily educational, it lacked a significant business purpose, and its primary function was the inculcation of a specific set of values.[77]

Here, likewise, the evidence does not support the conclusion that the Mission is a business establishment and place of public accommodation under AS 18.80. While the purpose of the Alaska Human Rights Act no doubt supports extending a broad reach to eliminate invidious discrimination, just as in *Curran*, that purpose "cannot justify extending the scope of the [Human Rights Act] further than its language reasonably will bear."[78] As discussed above, application of *ejusdem generis* does not support inclusion of the Mission within the categories of places of public accommodation specifically identified in the statute. Nor is the Mission – a volunteer-run non-profit organization receiving no governmental funds and operating no commercial activities or facilities – either a business establishment or "functional equivalent" of one. Accordingly, its refusal to allow service animals, however contrary to the underlying purposes of the Alaska Human Rights Act, is not actionable in this forum.[79]

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74 *Ibister,* 707 P.2d at 218-220.

75 *O'Connor v. Village Green Owners Association*, 662 P.2d 427 (California 1983).

76 *Warfield v. Peninsula Golf & Country Club*, 996 P.2d 776 (California 1995).

77 *Curran*, 952 P.2d at 223, 236.

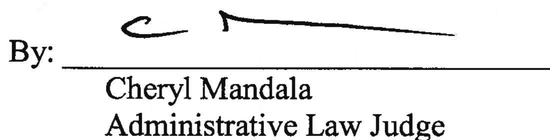
78 *Curran*, 952 P.2d at 239.

79 The determination that Friendship Mission is not a place of public accommodation under the Human Rights Act was reached based on the particular facts presented in this case, and should not be read to suggest or establish a broad exemption from the Act for other homeless shelters within Alaska.

VI. Conclusion

The Mission's cross-motion for summary decision established that it is not a "place of public accommodation" within the reach of AS 18.80. Accordingly, while in no way endorsing the Mission's refusal to extend reasonable accommodations with regard to service animals, this decision recommends dismissal of the Amended Accusation in this matter.

DATED: August 29, 2017.



By: ______________________________
Cheryl Mandala
Administrative Law Judge