



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO.: PN34XB-03008

Harriet Bernstein and Luisa Paster, and
J. Frank Vespa-Papaleo, Director, New
Jersey Division on Civil Rights,

Complainants,

v.

Ocean Grove Camp Meeting Association,

Respondent.

FINDING OF PROBABLE CAUSE

Pursuant to a verified complaint filed on June 19, 2007, the above-named Respondent has been charged with unlawful public accommodation discrimination based on civil union status, within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, *et seq.*) and specifically N.J.S.A. 10:5-4 and 10:5-12(f).

SUMMARY OF COMPLAINT:

Complainants alleged that, in or around March 2007, they applied to Respondent for permission to rent its Boardwalk Pavilion for their civil union ceremony, and Respondent denied their request. Complainants further alleged that, at the time of their application, Respondent routinely rented its Boardwalk Pavilion for weddings and other secular and religious events.

SUMMARY OF RESPONSE:

Respondent admitted that, although it permitted its Boardwalk Pavilion to be used for weddings in the past, it refused to permit Complainants to use its Boardwalk Pavilion for a civil union ceremony. Respondent contended that it informed Complainants that it could not permit use of the Boardwalk Pavilion for a civil union ceremony because such use would conflict with its religious beliefs. Respondent contended that the New Jersey Law Against Discrimination (LAD) does not apply to religious organizations in connection with the rental of real property, and further contended that it is not required to permit civil union ceremonies in its Boardwalk Pavilion based on its rights under the First Amendment to the

U.S. Constitution.

BACKGROUND:

Respondent Ocean Grove Camp Meeting Association is a non-profit corporation founded in 1869. Respondent describes itself as a ministry organization, rooted in Methodist heritage, with a mission “to provide opportunities for spiritual birth, growth and renewal through worship, education, cultural and recreational programs for persons of all ages in a Christian seaside setting.” Among other properties, Respondent owns the Boardwalk Pavilion in Ocean Grove, Neptune Township, New Jersey.

Complainants are a lesbian couple who reside in Ocean Grove, Neptune Township, New Jersey.

J. Frank Vespa-Papaleo is the Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

SUMMARY OF INVESTIGATION:

The investigation revealed sufficient evidence to support a reasonable suspicion that Respondent’s refusal to permit Complainants to use its Boardwalk Pavilion for a civil union ceremony violated the public accommodation provisions of the LAD, and that enforcement of the LAD against Respondent does not violate the First Amendment to the U.S. Constitution.

The investigation disclosed that Respondent is a non-profit organization governed by a Board of Trustees. As provided by Respondent’s charter, all of the Trustees must be members of the United Methodist Church; at least ten must be clergy and at least ten non-clergy. In addition, Respondent appoints Associate Trustees, who need not be members of the United Methodist Church, but may belong to any Christian denomination.

The investigation disclosed that Respondent owns all of the land, including the beach and boardwalk, in the section of Neptune Township, New Jersey known as Ocean Grove. Residential and non-residential buildings have been erected on some of the land; individuals and business entities own many of these buildings and lease the underlying land from Respondent. The investigation disclosed that Respondent owns and operates a number of facilities in Ocean Grove, including the Boardwalk Pavilion. Some of these, such as the Thornley Chapel, appear to operate as places of worship, and others such as the Great Auditorium, are used in part for secular and commercial purposes.¹ However, the

¹ For example, according to its website, in 2009 the Great Auditorium will be host to performances by the following performers: the New Jersey State Opera, Frankie Avalon, Bobby Rydell, The Oak Ridge Boys, and ABBA. Additionally, the Great Auditorium is the annual venue for the annual New Jersey Law

only facility at issue in this investigation is the Boardwalk Pavilion.

The investigation disclosed that the Boardwalk Pavilion is a rectangular open-sided structure covered by a roof. It contains fixed wooden benches facing a small raised area usable as a stage. The benches also face the beach and ocean.

The investigation disclosed that, beginning at least as early as 2002, Respondent permitted the public to reserve its Boardwalk Pavilion for exclusive use for events, mostly for weddings and occasionally for other events such as memorial services. The investigation disclose that in 2007, Respondent charged a uniform fee of \$250 for use of the Pavilion, and usually collected either full payment or a portion of that fee as a deposit at the time a reservation was made. The investigation disclosed that Respondent used a printed "Facilities Use Request Form" to take reservations for events in any of nine different facilities, including the Boardwalk Pavilion. That form required users to disclose only the following information: date and time of requested use; name, address and phone number of person in charge of the event; name, address and telephone number of person making the request; type of event; and any set-up instructions or special needs. The investigation disclosed that, in granting approvals for use of the Pavilion for weddings, Respondent did not distinguish between religious or secular weddings, or between Christian weddings and religious weddings of other faiths.

The investigation disclosed that Respondent has permitted the Pavilion to be reserved for other secular events, including musical performances, university group meetings, fundraising events for secular non-profit organizations, and a civil war re-enactment. During the investigation, Respondent stated that it is a co-sponsor of all such events held in the Pavilion.

The investigation disclosed that, beginning at least as early as 2006, Respondent has reserved the Pavilion for a weekly religious service called "Pavilion Praise" on Sunday mornings during the months of June, July, August and September. The Pavilion Praise services are conducted by St. Paul's United Methodist Church of Ocean Grove. The investigation disclosed that Respondent used the Boardwalk Pavilion for Sunday afternoon vesper services for many decades, but at some point discontinued those services, and commenced the current Sunday Pavilion Praise services during the summer months. In addition, Respondent holds a Christian youth "breakfast club" in the Pavilion for an hour each weekday morning during the summer months, which includes bible discussion.

The investigation disclosed that, except when the Boardwalk Pavilion is reserved for exclusive use through Respondent, or is used by Respondent for its own programs and events, the Boardwalk Pavilion is open for general public use. Based on visits by Division staff on three different dates, as well as witness interviews, the investigation disclosed that,

Enforcement Memorial Service, hosted by the New Jersey State Association of Chiefs of Police, at which the State Attorneys General have been the featured speaker.

at the time of the complaint and continuing to date, the Boardwalk Pavilion is used by the general public in a variety of ways, including as a place to sit, congregate, picnic, play and to seek shade and shelter from the weather. Signs posted in and on the Boardwalk Pavilion state that smoking, bicycling and skateboarding are prohibited. Other than those restrictions, there are no signs, postings or other visible indications that public use of the structure is prohibited in any way. Based on witness interviews and direct observation, the investigation concludes that, when Respondent was not using the Boardwalk Pavilion for scheduled programs, the casual passerby or user of the Ocean Grove beach or boardwalk would have no reason to conclude that the Boardwalk Pavilion is not open for the same general public use as the boardwalk itself or the uncovered benches situated along that boardwalk.

In addition, the investigation disclosed that Respondent affirmatively represented to the public and to State government that the Boardwalk Pavilion was open to the public. The investigation disclosed that in July 1989, Respondent applied to the New Jersey Department of Environmental Protection (NJDEP) for a Green Acres real property tax exemption for a number of its properties, including Lot 1, Block 1.01, on which the Boardwalk Pavilion is located. Its initial application stated that the Pavilion was “used for religious services and band concerts.”

The investigation disclosed that, at a September 7, 1989 public hearing, Neptune Township opposed Respondent’s application for a Green Acres tax exemption. The Township argued that the property would not benefit the general public, but instead would benefit only Respondent because its uses were restricted. In response, Respondent’s representative argued that the Pavilion was generally open and accessible to the public through numerous boardwalk entrances, was used regularly for musical events, band practices and performances and other events including weddings, baptisms and memorial services, as well as religious services. He noted that 9000 people recently attended a radio station event in the Pavilion.

When asked whether the Pavilion is used by groups other than Respondent, Respondent’s representative replied in the affirmative, giving examples such as the Ocean Grove Band, the Greek Orthodox Church, and parties holding weddings and memorial services. When asked whether they were all religious services, Respondent’s representative replied that they probably were, but that was only because those were the types of people who sought to use it. He affirmatively stated that the Pavilion was not restricted to religious uses.

On September 15, 1989, NJDEP issued a determination approving Respondent’s application for a Green Acres property tax exemption. NJDEP found, in pertinent part, “The lands in question will be open to the public on an equal basis,” and that “The restrictions placed upon the public use of the property are found to be necessary for the proper maintenance and improvement of the land or because significant natural features may be adversely affected by unrestricted access.”

The investigation disclosed that, every three years after the initial tax exemption, and most recently on or about March 2, 2007, Respondent applied to NJDEP for renewal of Green Acres tax exemptions it had previously received, including the exemption for the Boardwalk Pavilion. In completing NJDEP's recertification forms, Respondent wrote that, regarding the properties last designated as Green Acres tax exempt, "all segments [are] open to all public."

The investigation disclosed that on or about March 5, 2007, Harriet Bernstein and Luisa Paster (Complainants) applied to Respondent for permission to reserve the Boardwalk Pavilion for their civil union ceremony, to be held on September 30, 2007. The investigation disclosed that Respondent's president, Scott Rassmussen, decided to deny Complainants' request to use the Boardwalk Pavilion for their civil union ceremony, and Respondent informed Complainants of that decision on March 5, 2007. In a March 6, 2007 response to an email from Complainant Bernstein, Rassmussen explained that Respondent does not permit its facilities to be used for purposes that conflict with the clearly established policies of the United Methodist Church. He further explained that United Methodist Church policy "recognizes marriage only in terms of a covenant relationship between one man and one woman," and provides that civil union ceremonies "shall not be conducted by our ministers and shall not be conducted in our churches."

The investigation disclosed that on April 1, 2007, Rassmussen decided that Respondent would cease permitting the public to reserve use of the Boardwalk Pavilion for weddings and other events. On that day, Rassmussen directed Respondent's staff, including Respondent's volunteer wedding coordinator and newly hired Chief Administrative Officer, Scott Hoffman, to discontinue any future rentals of the Boardwalk Pavilion to the public for any purposes. The investigation further disclosed that, after Rassmussen made his decision, the question of whether Respondent would permit use of the Boardwalk Pavilion for weddings and other events in the future was presented to Respondent's governing body, its Board of Trustees. The investigation disclosed that the question was presented at the Board of Trustees' quarterly meeting in April 2007, but was tabled, and the Board of Trustees addressed it in a special meeting in June, 2007, at which time a majority of the Board voted to affirm Rassmussen's decision. The investigation disclosed that the Board of Trustees discussed the issue again in July, 2007, and at a special meeting in August 2007, the Board of Trustees re-affirmed, by majority vote, the decision to cease permitting use of the Boardwalk Pavilion for weddings and other events. One Trustee interviewed during the Division's investigation noted that the Trustees decided to cease permitting use of the Boardwalk Pavilion for weddings "until the issue is resolved." In a September 13, 2007 letter to the Commissioner of the New Jersey Department of Environmental Protection, Respondent's counsel similarly described the decision to cease permitting use of the Pavilion for weddings as "an interim policy."

During the investigation, Complainants presented evidence that Respondent continued to permit weddings to take place in the Pavilion after April 1, 2007. The investigation disclosed that Respondent permitted the Boardwalk Pavilion to be used for weddings that had been reserved prior its decision to cease permitting it to be used for

weddings. The investigation confirmed that, after April 1, 2007, Respondent granted no additional approvals for the Boardwalk Pavilion to be used for weddings, but several weddings took place in the Pavilion after Complainants' application was denied.² The investigation disclosed no evidence that Respondent made any public announcement explaining that weddings would no longer be permitted in the Pavilion. Thus, Complainants and others who observed weddings taking place might reasonably, but mistakenly, conclude that Respondent was continuing to accept new reservations for weddings to be held in the Pavilion.

The investigation disclosed that, after it decided to cease permitting the Boardwalk Pavilion to be used for weddings and other events, Respondent revised its Facilities Use Request Form to designate only the Bishop James Tabernacle, Thornley Chapel and the Youth Temple as facilities that could be reserved for wedding and event use. These facilities all appear to be churches. The investigation disclosed that, if and when applicants inquired about use of the Boardwalk Pavilion, Respondent's staff advised them that Respondent was no longer permitting it to be reserved for weddings.

In the fall of 2007, the New Jersey Department of Environmental Protection reviewed Respondent's application for renewal of its Green Acres tax exemptions, and by letter dated September 15, 2007, rejected that portion of Respondent's application that pertained to its Green Acres exemption for the Boardwalk Pavilion. The Green Acres decision was based on its conclusion that "the Pavilion is not open to all persons on an equal basis." That decision noted that the Green Acres statute and regulations establish equal access as a prerequisite to granting real property tax exemptions for privately owned land.

Although NJDEP revoked the Green Acres tax exemption for the Boardwalk Pavilion, NJDEP did not base this decision on Respondent's status as a religious organization, or the religious functions for which Respondent used the Pavilion. Instead, the ruling was based on the NJDEP's conclusion that, because Respondent denied use of the Pavilion for civil union ceremonies, the Pavilion "is not open to all persons on an equal basis."

ANALYSIS

At the conclusion of an investigation, the Division is required to make a determination as to whether "probable cause" exists to credit a complainant's allegations of discrimination. Probable cause has been described under the New Jersey Law Against

²Although Respondent is not currently permitting the Boardwalk Pavilion to be reserved for weddings or similar events, and thus, arguably, is no longer discriminating based on civil union status, the investigation disclosed that Respondent's suspension of Pavilion weddings is an "interim policy." As it is anticipated that Respondent would resume use of the Pavilion for weddings in the future, the import of this investigation is not limited to the brief period between Complainants' application and Respondent's decision to suspend use of the Pavilion for weddings.

Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert., den., 111 S. Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an "Initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978); see also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

Here, the initial question to be addressed is whether Respondent's Boardwalk Pavilion is a public accommodation subject to the LAD.³ The investigation disclosed sufficient evidence to support the conclusion that the Pavilion meets the LAD's definition of a public accommodation.

The LAD's definition of "public accommodation" is extremely broad. Thomas v. County of Camden, 386 N.J. Super. 582, 590 (App. Div. 2006). The examples delineated in the statute are illustrative of the types of places or accommodations covered, rather than an exhaustive list. See, e.g., Fraser v. Robin Dee Day Camp, 44 N.J. 480, 486 (1965) (Fact that day camps are not listed in the public accommodations enumerated in the statute is not evidence that the Legislature intended to exclude them from the scope of the LAD.) The LAD specifically lists boardwalks, seashore accommodations and meeting places as examples of public accommodations. N.J.S.A. 10:5-5(l). Aside from the illustrative examples, the LAD defines public accommodation by its exceptions--exempting places of accommodation that are distinctly private, as well as educational facilities operated or maintained by religious organizations. Ibid. Notably, there is no blanket exemption covering all types of facilities operated by religious organizations.

In Wazeerud-Din v. Goodwill Home and Missions, Inc., (App. Div. 1999), the Appellate Division addressed the question of whether a specific program operated by a religious society was a place of public accommodation subject to the LAD. In its analysis, the court evaluated the individual program (an addiction therapy program), rather than the religious organization that operated the program. Based on its finding that Goodwill Mission's addiction therapy employed Christian religious teaching and worship, the court concluded that the therapy program was not a public accommodation subject to the LAD. The court explicitly noted that it did not need to reach the question of whether other programs operated by that religious society were secular in nature, and for that reason might be considered public accommodations.

³Although Respondent asserted defenses in its Answer based on the real property provisions of the LAD, in a January 7, 2008 decision on Respondent's motion to dismiss, the DCR Director concluded that the public accommodation provisions, rather than the real property rental provisions, are applicable in this matter.

Following this guidance, the Division's investigation has evaluated the uses and functions of the Boardwalk Pavilion, rather than the nature of Respondent's organization, to determine whether the Boardwalk Pavilion is a public accommodation subject to the LAD. First, the investigation disclosed no evidence that the Boardwalk Pavilion limits its use to members or is otherwise "distinctly private."

Next, although Respondent at times uses the Boardwalk Pavilion for youth events that may include bible instruction, this is insufficient to define the Pavilion as an educational facility. Finally, although weekly religious services are held in the Pavilion during the summer months, the evidence and Respondent's own representations preclude defining the Pavilion as a church or place dedicated to worship.⁴

Instead, the observations of the Division's staff and witness interviews demonstrate that, except when an event is being held in the Pavilion, the Pavilion has functioned like the benches and boardwalk, and has been used by the general public for a variety of purposes consistent with its form and consistent with the general absence of any notices restricting its use. In addition, Respondent's own representations in connection with its applications for Green Acres tax exemptions, constitute a broad invitation to the public and demonstrate that Respondent's Boardwalk Pavilion is a public accommodation subject to the LAD.

As noted above, although Respondent disclosed to NJDEP in 1989 that the Pavilion was used for some religious purposes, Respondent affirmatively stated at that time that the Pavilion would be open to all persons on an equal basis. Respondent specifically stated that the reason it was used for religious events was because those were the types of people who requested to use it, and that the Pavilion was not restricted to religious uses. When Neptune Township objected to its tax exemption, arguing in part that the Pavilion was essentially restricted to Respondent's organizational uses, Respondent affirmatively argued to the contrary, explaining how the public would have use of the Pavilion.

The investigation disclosed that, by letter dated September 13, 2007, Respondent supplemented its March 2, 2007 Green Acres tax exemption renewal application. In that letter, Respondent addressed news articles suggesting that its refusal to permit use of the Boardwalk Pavilion for a civil union ceremony constituted a violation of Green Acres standards. Respondent argued that while the Pavilion continued to be open to the public for recreation and conservation purposes, Respondent had a right to prohibit uses that conflict with its religious principles. Respondent argued that the original Green Acres tax exemption was granted based on an understanding that Respondent "maintains and controls the use of the pavilion," and that Respondent's maintenance and control has always been in accordance with the religious objectives in its bylaws. Respondent went on to state,

⁴The fact that Respondent sought property tax exemption for the Boardwalk Pavilion pursuant to the open space protections of the Green Acres program, rather than as a building used for religious purposes pursuant to N.J.S.A. 54:4-3.6 or similar statutes, is additional evidence that the Pavilion is not a place of worship.

The public has continuously enjoyed the...pavilion for “conservation and recreation purposes.” At the same time, the Camp Meeting Association has maintained the right to insure that the pavilion is not used for purposes inconsistent with its religious principles.

Thus, even after the complaint was filed in this matter, Respondent continued to affirmatively represent that the Boardwalk Pavilion was open to the public for conservation and recreational uses consistent with its form and function as a sheltered seating area along a seaside boardwalk. Respondent noted that, because it maintains and controls a structure open to the public, its nature as a religious organization does not conflict with purposes of the Green Acres program.

Similarly, the fact that Respondent is a religious organization does not conflict with a finding that the Boardwalk Pavilion is a public accommodation as defined by the LAD. Although, as discussed below, the specific principles of Respondent’s religion may be relevant in determining whether enforcement of the LAD in this case is prohibited by the First Amendment to the U.S. Constitution, neither Respondent’s character as a religious organization nor the specific principles of Respondent’s religion conflict with the conclusion that the Boardwalk Pavilion is a public accommodation.

Under the LAD, a public accommodation may not discriminate based on civil union status. In general, a public accommodation proprietor’s admitted refusal to permit use of its facility for civil union ceremonies, while permitting it to be used for heterosexual weddings, would violate the LAD. However, Respondent argues that enforcing the LAD to prohibit it from discriminating based on civil union status would violate its rights under the First Amendment to the United States Constitution. The U.S. Supreme Court has held that First Amendment rights may in some cases prohibit enforcement of State laws prohibiting discrimination in public accommodations. See, e.g., Boy Scouts of America v. Dale, 530 U.S. 640, 656-657 (2000). Accordingly, the Division has considered Respondent’s arguments on these issues.

A. Freedom of Expressive Association

The first of Respondent’s constitutional arguments is that the Division’s application of the LAD to the use of the Boardwalk Pavilion violates its First Amendment right to expressive association. Specifically, Respondent argues that if the law requires it to permit couples to use this facility for civil union ceremonies, it is unconstitutionally forcing Respondent to convey the false impression that it endorses such unions. Respondent relies on Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 515 U.S. 557 (1995), to support its position that it has “a fundamental right to use its facilities to convey a message consistent with its ministry objectives.” (District Court brief, p. 16). It maintains that its purpose is:

... to use its property to communicate messages consistent

with its sincerely held religious beliefs – one of which is that marriage is a sacred institution ordained by God and exclusive to one man and one woman. If the Association were compelled to use its places of worship to embrace “civil union” celebrations, it would be forced to associate with and endorse a message in support of these unions. (Id. at 17).

Fundamental to the Association’s argument is its presumption that the Pavilion is a “place of worship,” an argument that has expressly been rejected above. The question, then, is whether the principles enunciated in Hurley upon which Respondent relies apply to the owner of a place of public accommodation.

At issue in Hurley was whether a group of gay, lesbian and bisexual Irish-Americans had the right to march with an identifying banner in Boston’s annual St. Patrick’s Day parade. Years earlier the City of Boston had delegated the authority to operate the parade to the South Boston Allied War Veterans Council, an unincorporated association of individuals elected from various South Boston veterans groups. 515 U.S. at 560. Although the Veterans Council ran the parade with the imprimatur of the City, it was not a government entity. It refused to permit the Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc. (“GLIB”) to participate in the parade, and GLIB sued the Council under the Massachusetts public accommodations law, which prohibits “any distinction, discrimination or restriction on account of...sexual orientation...relative to the admission of any person to, or treatment in any place of public accommodation, resort or amusement.” [Ibid.]

Considering the First Amendment rights of the parade organizer, the Supreme Court found that a parade can be distinguished from an ordinary walk by the expressive essence of its nature. “[W]e use the word ‘parade’ to indicate marchers who are making some sort of collective point, not just to each other but to bystanders along the way.” Id. at 568. This communication was protected by the First Amendment from interference by undue application of the Massachusetts civil rights law. Although GLIB also had a message to convey, and GLIB’s message was also entitled to constitutional consideration, it was at odds with the message of the private organizers of the parade. “Since every participating unit affects the message conveyed by the private organizers, the state courts’ application of the statute [mandating that GLIB be included] produced an order essentially requiring petitioners to alter the expressive content of their parade.” Id. at 572-573. Moreover, because the parade was not the only forum in which GLIB could get its message across – it also could have applied for a permit to hold its own parade, for example – its own constitutional right was not compromised by the group’s exclusion from the Veterans Council’s parade. Id. at 578.

The present situation is quite different. The Boardwalk Pavilion is not primarily used to convey a message. As described above, the Pavilion is put to a variety of uses, and they are not bound by the underlying conveyance of a united message. All members of the public are invited to travel through the pavilion, whether to rest, eat ice cream, engage in

private conversation or to pray. Until it stopped allowing couples to have wedding ceremonies performed there, the Pavilion was leased to couples of all faiths – or of no religious faith – and no regard was given to whether the person performing the ceremony did so by religious or secular authority. Based on its “open door” policy toward public use of the Pavilion, there is insufficient evidence to support the conclusion that Respondent was using the Pavilion to convey any message at all. Moreover, a civil union ceremony before invited guests, unlike the conduct of the GLIB marchers in Hurley, supra, itself conveys no message and is not expressive association. Accordingly, the application to conduct a legally authorized ceremony to memorialize the union of two people – regardless of their genders – cannot be seen as compromising the Association’s right of expressive association.

B. Free Exercise of Religion

The Association has also argued that DCR’s application of the LAD to its Boardwalk Pavilion violates its constitutionally protected right to free exercise of religion. In light of the many varied uses to which the Association permits the Pavilion to be used, this argument must also fail.

As discussed above, the Boardwalk Pavilion is not a place that is inherently dedicated to religious worship. Nowhere is the Association’s acknowledgment of this fact more clear than in its applications – extending over a number of years – to receive Green Acres funding for the Pavilion. During its investigation, DCR has interviewed and obtained documents from staff at the Green Acres program, which is part of the New Jersey Department of Environmental Protection Green Acres program, the purpose of which is to encourage the dedication of privately-owned open space for public use. N.J.S.A. 54:4-3.63. Between 1989 and 2006 the Association renewed its application and was given Green Acres status, and attendant tax benefits, in large part because of its assertion that the Pavilion (and other designated Boardwalk property) was available to the general public.

The Boardwalk Pavilion, being admittedly available to the general public, may on occasion be used for religious practice, but at the time that the Complainants’ application was made, that was not its exclusive purpose.

In its argument before the District Court in support of its petition for injunctive relief, the Association relied on Wazeerud-Din v. Goodwill Home and Missions, Inc., 325 N.J. Super. 3, 10 (App. Div. 1999), certif. den. 163 N.J. 13 (2000). At issue in Wazeerud-Din was a drug treatment facility and whether it was a place of public accommodation for the purposes of the LAD. The court held that the program in question was not, finding that it “is basically a program of religious teaching and worship and thus not a public accommodation. It is not a conventional drug treatment program because it does not provide medical treatment or secular psychological counseling. Rather, its essential premise is that drug addiction, alcoholism, compulsive gambling and sexual addictions are ‘outward manifestations of inward sin’ [as described by the clergyman running the program].” 325 N.J. Super. at 11. Thus, the facility was being used as a place of religious

worship and teaching for the purpose of assisting people with drug dependencies and other addictions to find spiritual help for their problems.

Being utilized for diverse reasons, the Pavilion, by contrast to the facility in Wazeerud-Din, is a place of public accommodation, and is not a religious facility. As such, when it invites the public at large to use it, the Association is subject to the Law Against Discrimination, and enforcement of that law in this context does not affect the Association's constitutionally protected right to free exercise of religion.

The LAD is a neutral, generally applicable law--it was not enacted with the goal of impacting religion. As such, the LAD can be enforced in a neutral manner as to all public accommodations, so long as its enforcement is rationally related to a legitimate governmental interest. United States v. Hardman, 297 F.3d 1116, 1126 (10th Cir. 2002). Here, it goes without saying that the LAD's fundamental goal of eradicating discrimination is a legitimate governmental interest. See, Fuchilla v. Layman, 109 N.J. 319, 334 (1988). Thus, any incidental burden on a particular religious belief or practice does not raise free exercise concerns.

Moreover, even if the facts of this case were to warrant a strict scrutiny analysis, the State's interest in protecting people from discrimination based on civil union status would justify the minimal impact of the LAD on Respondent.

Accordingly, given the strong evidence that the Association intentionally makes the Pavilion available for public use and does not dedicate it solely to the practice of religion, the LAD, a neutral law of general application, does not unconstitutionally impair the Association's right to the free exercise of religion.

FINDING OF PROBABLE CAUSE

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.



December 29, 2008

Date

J. Frank Vespa-Papaleo, Esq., *Director*
New Jersey Division on Civil Rights