

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. Paha04090471

JOE A. and GLADYCE BARTOK,

Complainants,

vs.

KERASOTES THEATRES; and KERASOTES
SHOWPLACE THEATRES, LLC;

Respondents.

FILE DATED

MAY 18 2007

Indiana State Civil Rights Commission

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER**

On April 27, 2007, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision").

No objections have been filed to the ICRC's adoption of the proposed decision.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

INDIANA CIVIL RIGHTS COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

Dated: 18 May 2007

To be served by first class mail on the following parties and attorneys of record:

Joe A. and Gladyce Bartok
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Highland, IN 46322

Kerasotes Theatres
c/o Chief Executive Officer
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Kerasotes ShowPlace Theatres
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and to be personally served on the following attorney of record:

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APR 27 2007

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**KERASOTES THEATRES; and KERASOTES
SHOWPLACE THEATRES, LLC;**
Respondents.

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER**

On March 23, 2007, Respondents - Kerasotes Theatres and Kerasotes ShowPlace Theatres, LLC (collectively "Kerasotes") – filed their [Suggested Proposed] Findings Of Fact And Conclusions Of Law and Respondent Kerasotes Theatres' Brief In Support Of Motion For Summary Judgment. On March 28, 2007, Kerasotes filed Respondent Kerasotes Theatres' Motion For Summary Judgment. On March 28, 2007, Kerasotes and Complainants, Joe A. Bartok ("Joe") and Gladyce Bartok ("Gladyce") (collectively "the Bartoks"), filed their Stipulation Of Facts. The Bartoks have not responded to Kerasotes' Motion or Brief.

Having carefully considered the foregoing and being duly advised in the premises, the undersigned Administrative Law Judge for the Indiana Civil Rights Commission ("ICRC") proposes that the ICRC enter the following findings of fact, conclusions of law, and order

FINDINGS OF FACT.

1. The Bartoks are individuals who have, at all material times, resided in the state of Indiana. Gladyce utilizes a wheelchair.
2. Kerasotes is a motion picture exhibition company with theatres located primarily in the Midwestern and upper Midwestern regions of the United States, including Indiana. STIPULATION OF FACTS 1 ("STIP. 1").
3. The Kerasotes Schererville, Indiana ShowPlace 12 theatre ("the theatre") is located at 1400 Eagle Ridge Road in Schererville. STIP. 2.
4. Kerasotes offers goods, services, and facilities to the general public within the state of Indiana.
5. The Bartoks are patrons of the theatre and attend movies there approximately once every other month. STIP. 5.
6. On or about July 14, 2004, the Joe and Gladyce visited the theatre and notified the manager that they had had difficulty entering and leaving through the exterior doors with Gladyce's wheelchair. STIP. 6.
7. On September 20, 2004, the Bartoks filed this complaint with the ICRC, alleging that Kerasotes discriminated against them in violation of the Indiana Civil Rights Law, IC 22-9-1 ("the ICRL") by denying them equal access to the theatre because of disability. STIP. 8. More particularly, the Bartoks alleged that the pushing and pulling force of the exterior doors of the facility were not in compliance with the Americans with Disability Act Accessibility Guidelines ("ADAAG") and that installing power doors would not be an undue hardship. STIP. 9. The Bartoks had no other complaints about the theatre. STIP. 10.
8. The theatre has two sets of doors at the entrance of the facility, both exterior and interior doors. The exterior doors, the first set (when entering), connect the outside to a vestibule or entryway. The interior set, the second set, connects the vestibule to the lobby of the theatre. STIP. 3.

9. Kerasotes has a policy on "Special Services for Special Customers". The policy has an attached "Kerasotes Theatres Accessibility Guide" that outlines the employees' duties in assisting patrons with disabilities. The guide directs and requires its facility staff to be prepared to assist all persons upon entering and exiting the facility. The Accessibility Guide, under Doors, provides that "All theatre personnel must be aware and provide assistance to any person needing help with doors." STIP.14.

10. There is no evidence that the theatre's special services policy, as written or as applied, does not provide reasonable access to the facility, either to persons with disabilities in general or to the Bartoks in particular,

11. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The ICRC has jurisdiction over the subject matter and the parties.
2. Each of the Bartoks, Kerasotes, and the theatre is a "person" as that term is defined in section 3(a) of the ICRL. IC 22-9-1-3(a).
3. Kerasotes and the theatre are each a "public accommodation" as that term is defined in section 3(m) of the ICRL. IC 22-9-1-3(m).
4. The ICRL defines the term "discriminatory practice", in material part, as follows:

(l) "Discriminatory practice" means:

(1) the exclusion of a person from equal opportunities because of ... disability ...;

(2) a system that excludes persons from equal opportunities because of ... disability ...;

...

Every discriminatory practice relating to ... public accommodations ... shall be considered unlawful unless it is specifically exempted by this chapter.

IC 22-9-1-3(l).

5. The ADAAG section on door opening force provides as follows:

The maximum force for pushing and pulling open a door shall be as follows:

(1) Fire doors shall have the minimum opening force allowable by the appropriate administrative authority.

(2) Other doors.

(a) exterior hinged doors: (Reserved).

(b) interior hinged doors: 5 lbf (22.2N)

(c) sliding or folding doors: 5 lbf (22.2N)

These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.

ADAAG, §4.13.11.

6. There is no provision in the ADAAG that requires that a facility have power-assisted doors.

7. Summary judgment may be granted if the designated evidence establishes that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. IC 4-21.5-3-23(b), *Madison County Bank & Trust Company v. Kreegar*, 514 N.E.2d 279 (Ind. 1987). No weighing of the evidence is to be involved, *Mogan v. Southern Indiana Bank and Trust Company*, 473 N.E.2d 158 (Ind. App. 1985), and all doubts must be resolved against the moving party. *Jones v. City of Logansport*, 436 N.E.2d 1138 (Ind. App. 1982). Kerasotes has met this standard.

8. Kerasotes did not exclude the Bartoks from equal opportunities because of disability.

A. The ADAAG, upon which the Bartoks rely, does not impose any force standard for exterior doors or any requirement for power-assisted doors.

B. Kerasotes' policy, requiring, in essence, that its employees be vigilant and helpful, has not been shown to deprive the Bartoks of reasonable access to the facility because of disability.

9. Kerasotes did not commit an unlawful discriminatory practice against the Bartoks.

10. If the ICRC finds that a person has not committed an unlawful discriminatory practice, it must dismiss the complaint as against said person. IC 22-9-1-6(m).

11. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis of each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).

12. Any Finding Of Fact that should have been deemed a Conclusion Of Law is hereby adopted as such.

ORDER

1. Respondent Kerasotes Theatres' Motion For Summary Judgment is **GRANTED**.

2. The Bartok's complaint, as amended, is **DISMISSED**, with prejudice.

Dated: 27 April 2007



Robert D. Lange
Administrative Law Judge

To be served by first class mail this 27th day of April, 2007 on the following parties and attorneys of record:

Joe A. and Gladyce Bartok
9324 Spring Creek Drive Unit 3
Highland, IN 46322

Kerasotes Theatres
c/o Chief Executive Officer
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and to be personally served this 27th day of April, 2007 on the following:

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Indiana Civil Rights Commission
c/o The Honorable Gregory Kellam Scott, Esq.; Director
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