

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

John Nichols

Complainant,

v.

P’Nosh Deli and Catering Company, Inc.
d/b/a Old Father Inn,

Respondent.

CRD No. CRD-2020-0255

CONCILIATION AGREEMENT
(Post-Finding)

1. BACKGROUND

1.1 On March 10, 2020, John Nichols (“Nichols” or “Complainant”) filed a Complaint of Discrimination (“Complaint”) with the Arizona Civil Rights Division of the Arizona Attorney General’s Office (the “Division”) against Respondent P’Nosh Deli and Catering Company, Inc. d/b/a Old Father Inn (“Respondent”) alleging that Respondent discriminated against him by refusing to serve him and ordering him to leave Old Father Inn because of his disability and service dog in violation of the Arizonans with Disabilities Act (“AzDA”).

1.2 The Division investigated the Complaint under the authority granted by the AzDA, A.R.S. § 41-1492 *et seq.*

1.3 The AzDA prohibits public accommodations from discriminating against individuals on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations. A.R.S. § 41-1492.02(A).

1.4 Discrimination under AzDA includes a public accommodation's imposition or application of eligibility criteria that screen out or tend to screen out an individual or a class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations. A.R.S. § 41-1492.02(G)(1).

1.5 Discrimination under AzDA includes a public accommodation's failure to make reasonable modifications in policies, practices, or procedures if they are necessary to afford its goods, services, facilities, privileges, advantages, or accommodations, to individuals with disabilities. A.R.S. § 41-1492.02(G)(2).

1.6 Upon completion of its investigation into Nichols's Complaint, the Division determined there was reasonable cause that Respondent discriminated against Nichols by denying him full and equal enjoyment of Respondent's goods, services, and facilities because of his disability and disability-related service animal in violation of A.R.S. § 41-1492.02(A).

1.7 The Division issued a Reasonable Cause Determination on April 2, 2021.

1.8 This Post-finding Conciliation Agreement ("Agreement") does not constitute an admission by the Respondent that any act, omission, policy, or practice made unlawful by A.R.S. § 41-1492 *et seq.* occurred, nor should such inference be drawn.

2. AGREEMENT

2.1 This Agreement is made between the Arizona Civil Rights Division of the Arizona Attorney General's Office, John Nichols, and P'Nosh Deli and Catering Company, Inc. d/b/a Old Father Inn (collectively, the "Parties"). Nichols filed a Complaint of unlawful discrimination with the Division against Respondent pursuant to A.R.S. § 41-1492 *et seq.*, and the Division having found reasonable cause that discrimination occurred, the Parties conferred and hereby voluntarily agree to and do resolve the issued in the Complaint on the following terms:

2.2 Subject to Respondent's fulfillment of all of the obligations set forth in this Agreement, (1) the Division agrees to close Complaint CRD-2020-0255; and (2) Nichols agrees to waive or release all claims against Respondent in any forum with respect to the matters that were alleged in the Complaint, CRD-2020-0255. Nichols agrees not to file any lawsuits based on the Complaint, and any other Complaints, claims, or causes of action arising out of any the events giving rise to the allegations contained in the Complaint.

2.3 In resolving this Complaint, the Division does not waive or in any manner limit its right to process any other complaint or seek relief from Respondent in any other complaint or investigation that may arise. By entering into this Agreement, the Parties do not intend to resolve any complaints of discrimination currently pending before the Division other than Complaint, CRD-2020-0255. The Division does not waive any future claims or complaints against Respondent for any violation of the Arizona Civil Rights Act, A.R.S. § 41-1401 *et seq.*

2.4 The Parties agree that venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17) for any Division enforcement of this Agreement.

2.5 Respondent agrees that it and its agents will abide by the AzDA.

2.6 Respondent agrees that it and its agents will not engage in any discrimination or retaliation of any kind against Nichols or against any other person because they have opposed any practice reasonably believed to be unlawful under the AzDA, A.R.S. §41-1492 *et seq.*, or because they have filed a complaint, given testimony or assistance, or participated in any manner in any investigation or proceeding under the AzDA.

2.7 Having participated in conciliation, the Division, Nichols, and Respondent wish to resolve the allegations raised in the Complaint without resorting to the expense and uncertainty of litigation and have, therefore, entered into this Agreement.

2.8 The Parties agree to be bound by this Agreement and to not contest whether it was validly entered into in any subsequent proceeding to implement or enforce its terms.

2.9 Nothing contained in this Agreement shall be construed to preclude the Division or Nichols from bringing a lawsuit to enforce this Agreement in the event that Respondent fails to perform the promises contained herein.

2.10 Nothing in this Agreement shall be construed to limit or reduce Respondent's obligation to comply with the AzDA.

2.11 This Agreement does not affect the Division's right to bring, investigate, or litigate other complaints that may be in existence or may arise against Respondent in accordance with the statutes enforced by the Division.

3. SPECIFIC RELIEF FOR NICHOLS

3.1 Within forty-five (45) days after the effective date of this Agreement, Respondent shall pay Nichols a total monetary amount of two thousand dollars (\$2,000). Nichols and Respondent acknowledge that the Division makes no representation to either party concerning the tax consequences, if any, of this provision of the Agreement and that they had the opportunity to consult a tax advisor about the consequences of this award if they wished to do so.

3.2 Respondent shall submit payment described in Section 3.1 by certified check made payable to John Nichols and mailed to 11414 Violet Cove, San Antonio, TX 78253.

3.3 Within forty-five (45) days after the effective date of this Agreement, Respondent will donate one thousand dollars (\$1,000) to "Lone Star Paws 4 a Cause." The donation shall be made by check and mailed to Lone Star Paws 4 a Cause, 26739 Shadow Pass, San Antonio, TX 78260-5551. Nichols and Respondent acknowledge that the Division makes

no representation to either party concerning the tax consequences, if any, of this provision of the Agreement and that they had the opportunity to consult a tax advisor about the consequences of this award if they wished to do so.

3.4 Within five (5) business days of issuance of the checks, Respondent will mail a copy of the checks and related correspondence to: Attorney General's Office, Civil Rights Division, c/o Daniel Nies, 2005 North Central Avenue, Phoenix, Arizona 85004 or by e-mail to daniel.nies@azag.gov.

3.5 Respondent shall submit a written letter of apology to Nichols regarding the written interaction that occurred on Respondent's Facebook page relating to the incident between Nichols and Respondent at Old Father Inn that resulted in Nichols's Complaint.

4. CIVIL PENALTY

4.1 Within forty-five (45) days after the effective date of this Agreement, Respondent shall submit a certified check made payable to the Arizona Attorney General's Civil Rights Division in the amount of two thousand five hundred dollars (\$2,500) as a civil penalty pursuant to A.R.S. § 41-1492.09(C). Respondent will deliver the certified check to the Attorney General's Office, Civil Rights Division, c/o Daniel Nies, 2005 North Central Avenue, Phoenix, Arizona 85004 or by e-mail to daniel.nies@azag.gov.

5. EQUITABLE RELIEF

5.1 Anti-Discrimination Policy:

5.1.1 Within forty-five (45) calendar days of the effective date of this Agreement, Respondent agrees to adopt a written policy ("Policy") shall:

- (a) Prohibit discrimination based upon a person's disability as prohibited by the AzDA and federal civil rights laws;

- (b) Prohibit discrimination based on a failure to make reasonable modifications to Respondent's policies, practices, and procedures when necessary to avoid discrimination against persons with disabilities, including persons with disabilities who use service animals; and
- (c) Prohibit retaliation, coercion, intimidation, threats, or interference against any individual because the individual has opposed practices reasonably believed to be unlawful under A.R.S. § 41-1492, *et seq.*, or because a person has filed a complaint, given testimony or assistance or participate in any manner in any investigation or proceeding under the AzDA.
- (d) Detail Respondent's reasonable modification process for individuals with disabilities, including at minimum: (1) an affirmative statement that Respondent and its agents will comply with the obligations under the Americans with Disabilities Act and AzDA; (2) an affirmative statement that individuals with disabilities may request a reasonable modification if needed for their disability; (3) describe a process by which an individual may request a reasonable modification to have a service animal at Old Father Inn; (3) an affirmative statement that a service animal does not require certification in order to qualify as a service animal under the ADA and AzDA; and (4) a statement that unlawful discrimination and/or retaliation violates state and federal civil rights laws.

5.1.2 Within forty-five (45) calendar days of the effective date of this Agreement, Respondent shall submit its Policy to the Attorney General's Office, Civil Rights Division, c/o Daniel Nies, 2005 North Central Avenue, Phoenix, Arizona 85004 or by e-mail to daniel.nies@azag.gov for review.

5.1.3 The Division shall review to confirm that the obligations set forth in this Agreement are contained within the Policy and will submit any comments in writing by email to Respondent within fourteen (14) days of receipt of the draft Policy.

5.1.4 Within seven (7) days from receipt of the email containing the Division's comments, Respondent will incorporate the Division's revisions to meet the minimum requirements set forth in this Agreement. Respondent will submit an email to the Division affirming that the Division's revisions have been incorporated into its Policies, along with a copy of the revised Policies.

5.1.5 Within seventy-five (75) calendar days of the effective date of this Agreement, Respondent shall provide a copy of the Policy to each of Respondent's owners, managers, and employees. Respondent shall obtain a signed acknowledgment of receipt of the Policy from each such person acknowledging receipt of the Policy. Signed acknowledgments shall be sent to Attorney General's Office, Civil Rights Division, c/o Daniel Nies, 2005 North Central Avenue, Phoenix, Arizona 85004 or by e-mail to daniel.nies@azag.gov within ninety (90) calendar days of the effective date of this Agreement.

5.1.6 Respondent agrees to provide a copy of the Policy to each new employee upon hire. Respondent shall obtain a signed acknowledgment of receipt of the Policy from each such person acknowledging receipt of the Policy and shall maintain the signed acknowledgement in the employee's personnel file.

5.2 **Attestation of Understanding:** Within seven (7) calendar days of the effective date of this Agreement, Respondent agrees to review the United States' Department of

Justice's ("DOJ") guidance on service animals. The DOJ's guidance on service animals is available online at https://www.ada.gov/service_animals_2010.htm.

5.2.1 Within fourteen (14) calendar days of the effective date of this Agreement, Respondent shall submit a written attestation of having reviewed the DOJ's guidance on service animals to the Attorney General's Office, Civil Rights Division, c/o Daniel Nies, 2005 North Central Avenue, Phoenix, Arizona 85004 or by e-mail to daniel.nies@azag.gov.

5.3 **Training:** Within seventy-five (75) calendar days of the effective date of this Agreement, Respondent agrees to provide discrimination training for each of its current owners, managers, supervisors, and employees.

5.3.1 The training shall cover (1) Respondent's Policy, in accordance with this Agreement; (2) accommodating persons with disabilities, specifically persons with disabilities who use service animals; and (3) federal and Arizona disability laws regarding the rights of persons with disabilities to access public accommodations, with an emphasis on their right to use service animals.

5.3.2 A qualified trainer shall provide the training. For purposes of this Agreement, a qualified trainer is a person or agency that is knowledgeable about the legal requirements under state and federal disability laws and was not one of Respondent's employees involved in the acts alleged as discriminatory by Nichols.

5.3.3 The training shall consist of at least one (1) hour of instruction for all of Respondent's owners, managers, and employees.

5.3.4 If there are costs associated with such training, Respondent shall pay those costs.

5.3.5 Within ten (10) calendar days of the completion of the training, Respondent shall submit proof of completion of training to the Attorney General's Office, Civil Rights Division, c/o Daniel Nies, 2005 North Central Avenue, Phoenix, Arizona 85004 or by e-mail to daniel.nies@azag.gov. Proof of training includes at a minimum, Respondent's production of the sign in sheet for the training(s) containing the date of training with a completed registration list containing attendees' names, positions, and signatures.

5.4 **Poster:** Respondent agrees to keep posted at all times in a conspicuous, well-lighted place frequented by customers, at the Old Father Inn located at 4080 W. Ina Rd., Tucson, Arizona 85741, a poster or sign which specifically states "Service Animals Welcome."

5.4.1 Within forty-five (45) calendar days of the effective date of this Agreement Respondent will provide a photograph of the poster at the Old Father Inn to the Attorney General's Office, Civil Rights Division, c/o Daniel Nies, 2005 North Central Avenue, Phoenix, Arizona 85004 or by e-mail to daniel.nies@azag.gov.

6. MONITORING AND ENFORCEMENT OF THIS AGREEMENT

6.1 Within one hundred and twenty days (120) of the effective date of this Agreement, Respondent will make an initial written report to the Division outlining its compliance with this Agreement, including supplying documentation that demonstrates Respondent's compliance with this Agreement. Respondent will report the following to the Division every six months after the initial report for the duration of this Agreement:

- 6.1.1 A specific acknowledgment that Respondent has, for the reporting period, complied with the requirements of this Agreement;
- 6.1.2 A copy of any updates or revisions to the Policy;
- 6.1.3 A confirmation that Respondent provided a copy of the Policy to any new employees or managers hired during the reporting period and an attestation that Respondent is maintaining the signed acknowledgment(s) in the employee personnel files; and
- 6.1.4 Notification of any lawsuits, charges or complaints with any governmental agencies alleging that Respondent engaged in unlawful disability discrimination, which includes at a minimum a description of the nature of the allegation(s), the names of any individuals bringing the allegation(s), and a copy of the charge, complaint, or lawsuit.

6.2 The Parties agree that the Division reserves the right and can review compliance with this Agreement at any time. The Division further maintains the right to enforce this Agreement through all available means, including litigation in any court with jurisdiction should Respondent fail to comply with any of the terms of this Agreement.

7. TERM AND SURVIVAL

7.1 Provided Respondent has timely complied with all obligations set forth in this Agreement, the duration of this Agreement will be one (1) year from the effective date; however, the obligations of Respondent set forth in Sections 2, 5.1, 5.4, and 6-8 of this Agreement shall remain in effect and any remedies for the breach of such obligations shall survive the expiration or termination of this Agreement. The Division reserves the right to enforce Sections 2, 5.1, 5.4, and 6-8 during the term of this Agreement and after the

termination or expiration of this Agreement through all available means including litigation in any court with jurisdiction.

7.2 If Respondent fails to comply with all of the obligations in this Agreement within one year of the effective date; the monitoring of Agreement will automatically extend for an additional two (2) years.

8. GENERAL PROVISIONS

8.1 The Agreement constitutes the entire agreement between the Parties. The Agreement may be executed in two or more counterparts, each of which will be deemed an original. Facsimiles and pdf versions of this signed Agreement shall be deemed to be originals.

8.2 The Agreement will become effective when it has been reviewed and signed by a Division representative. The Division representative will be the last party to sign the Agreement.

8.3 Nichols and Respondent agree to pay their own attorneys' fees and costs, if any, and any and all other fees and costs relating to Case No. CRD-2020-0255 and this Agreement.

8.4 Nichols and Respondent represent that they have read this Agreement in its entirety, have had an opportunity to consult with counsel of their choice, are satisfied that they understand and agree to all of its provisions, and have freely signed the Agreement without coercion. Each party entering into this Agreement hereby represents and warrants that it has the capacity and authority to do so, and that no third party has rights that could affect the validity or legality of this Agreement.

8.5 Any signatory to this Agreement affirmatively asserts that he or she is authorized to bind that party to this Agreement.

8.6 This Agreement will be binding on the heirs, assigns, successors, successors-in-interest, receivers, trustees in bankruptcy, and personal representatives of Respondent. Respondent has a duty to inform any successor in interest of the obligations of this Agreement.

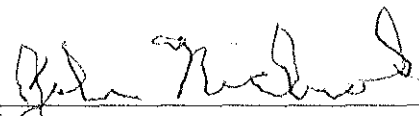
8.7 If any provision of this Agreement is declared illegal, unenforceable, or ineffective by a legal forum or by operation of law, this provision shall be deemed severable, such that all other provisions of the Agreement shall remain valid and binding on the Parties.

8.8 Failure of any party to seek enforcement of this Agreement pursuant to its terms with respect to any provision or instance shall not be construed as a waiver of such enforcement with regard to that provision or to the entirety of the Agreement.

8.9 This Agreement does not limit Respondent's continuing duty to complaint with all aspects of the ACRA.

8.10 This Agreement may be made public if the Attorney General determines that disclosure is required to further the purposes of the Arizona Civil Rights Act, including AzDA.

04/27/2021
Date

By 
John Nichols
Complainant

Date

By _____
P'Nosh Deli and Catering Company, Inc.
d/b/a Old Father Inn,
Brian Bouffard, Owner
Respondent

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Date

By _____
John Nichols
Complainant


4-27-21
Date

By 
P Nosh Deli and Catering Company, Inc.
d/b/a Old Father Inn,
Brian Bouffard, Owner
Respondent

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL CIVIL
RIGHTS DIVISION

4/28/2021

Date

By 
Leslie Ross
Unit Chief Counsel
2005 North Central Avenue
Phoenix, Arizona 85004

Executed copy mailed/mailed
this 28th day of April, 2021 to:

John Nichols
11414 Violet Cove
San Antonio, TX 78253
pamnichols702@gmail.com
Complainant

Brian Bouffard
Owner
P'Nosh Deli and Catering Company, Inc.
d/b/a Old Father Inn
4080 W. Ina Rd.
Tucson, AZ 85741
bgbouf@aol.com
Respondent

By 