

HOW TO WORK THE SYSTEM WHEN THINGS DON'T GO QUITE RIGHT WITH ACCESS

By Joe Landau

In 2008 I became blind as a result of an Auto accident. I suffer from a peripheral loss of vision and I am legally blind. While recovering in the hospital my Niece was brilliant enough to contact Guide dogs for the Blind (GDB) to place me on a waiting list for a guide dog. Six months later, and after receiving mobility training at Braille institute, I arrived home with my Guide Balsam. Balsam is a wonderful companion and allows me to travel safely and maintain an active independent life. In the five years Balsam and I have been a team, I rarely have encountered access issues as a result of using a guide dog. In all cases I ask for a manager and at most present an ID which shows that Balsam is a certified guide dog and we are on our way. That was until March of this year.

My partner and I decided to dine at a restaurant in Hollywood before seeing a play. A waitress greeted us at the door seated us at a table and gave us menus. A minute later she returned to say that her manager asked that we leave. I asked to speak with the manager. The manager said that my guide might upset his other customers. Things went downhill from there and we left to find another place to eat. Sure I was upset and let the manager know it, but we were hungry and had plans so we left to find another restaurant.

The following week I decided to actually test what recourse I had with the restaurant owner that denied us service. Surely the disability laws should cover the situation, but how in real life does a valid claim get processed and what options are available? This is what I found:

I contacted GDB, very helpful, and among the options available, they explained I could file a grievance in writing with the justice Department. I wrote a short narrative of that happened and mailed it to the Justice department in Washington D.C. Six months later I received a large packet of information including a complete copy of the ADA law. The Justice Department suggested mediation with a 3rd party as long as I could convince the Restaurant to participate. If the restaurant were not willing to participate, my recourse would be to find a lawyer and sue. The Justice department has a program in which they will pay for the mediation up to a maximum number of hours. Current costs for mediation start under \$1,000.00 and are based on time used.

Meanwhile, while waiting for the justice department to respond to my letter, I checked the internet for Lawyers that handle discrimination cases. I found that most listed on the web defend employers, or in this case the restaurant. After a few phone calls I ended up with a recommendation for an attorney that would represent me. The firm's name is Metz and Harrison LLP located in El Segundo, CA. Mr. Metz requested I send them a written recap of what occurred and offered to take my case. (As long as I was successful in my lawsuit, the owners of the restaurant would pay for my attorneys' fees and costs, as well as damages that are available to me as a victim of disability discrimination). Instead of waiting for the Justice Department material to arrive, I decided to be more proactive and signed an agreement with Metz & Harrison LLP and they filed suit in Federal Court.

Now this is where the law gets interesting. The law was written to encourage civil rights lawyers to take on discrimination cases by allowing for damages and fee-shifting provisions, which ultimately requires the owners and operators to pay for my, (the plaintiff's) attorneys' fees and costs.

California law provides for a minimum of \$4,000 for each occurrence of discrimination, which, in my case, included the denial of service. However, there is no cap on attorneys' fees, except as ultimately awarded by a court. As we all know, lawyers are expensive and the more the restaurant owner wanted to drag this out the higher both his and my attorneys' fees would climb. Since all the attorneys' fees would have to be paid by the restaurant it would have been in the owner's best interest to settle quickly. The parties agreed to mediation with a mediator who was also a retired judge. The mediation fee of about \$800.00 was split between the two parties since it was outside of the Justice Departments mediation program. Mediation is quite common in these types of cases and avoids the wait and expense of actually going to trial. We ended up settling in mediation and the restaurant will end up paying \$21,000 for my attorneys' fees and damages for not allowing me access. The amount is to be paid over a period of two years. If for some reason the restaurant fails to make payments on time, the amount of the settlement will increase to \$30,000.00. I'm not sure what the restaurant paid to his attorney for representation as their attorney stated that he was working for free as a favor to the restaurant owner. In addition, the owner was also required to post signs indicating that service animals were allowed and provide on-going staff training in regard to the law and serving people with disabilities.

It's not fun to be discriminated against. If the owner of the restaurant would have listened to reason he could have saved a lot of money. In fact, he passed up the opportunity to make \$100.00 by serving us dinner. If you find yourself in a situation where you feel you have been discriminated against because of a disability and can't find a solution with the party doing the discriminating you may want to explore what legal remedies are available to you either through the Justice department or through a civil rights lawyer.