

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

Melissa Erwin,

Complainant,

- against -

VERIFIED ANSWER
Case No. 10157952

Cynthia Gifford, Robert Gifford and
Liberty Ridge Farm, LLC

Respondents.

Respondents, Cynthia Gifford ("Cynthia"), Robert Gifford ("Robert") and Liberty Ridge Farm, LLC ("LLC"), through their attorneys, Cutler, Trainor & Cutler, LLP, as and for their Verified Answer to the Verified Complaint of Melissa Erwin ("Erwin" or "Complainant") dated October 11, 2012 and Amended Complaints dated October 11, 2012, October 23, 2012 and October 24, 2012, hereby aver as follows:

1. Respondents deny the truth of the allegations stated in the entirety of the Complaint and the entirety of the Amended Complaints.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE
NO UNLAWFUL DISCRIMINATION TOOK PLACE**

2. As part of its operation of a private wedding business, the LLC operates an informational website, inviting those who may wish to contractually engage the services of the LLC to call for an appointment in order to visit the premises and negotiate contractual terms.

3. On or about September 25, 2012, Complainant alleges that she called the LLC's telephone number and spoke with one of its members, Cynthia, who invited Complainant to visit the property and negotiate a contract.

4. Complainant declined to make an appointment, visit the premises, or engage in contractual negotiations.

5. No unlawful discrimination has taken place because Complainant never offered to engage the services of Respondents for a wedding ceremony, a wedding reception, or otherwise.

6. No unlawful discrimination has taken place because Complainant was treated the same as all other potential customers, homosexual and heterosexual alike.

7. No unlawful discrimination has taken place as Complainant was invited to visit the premises and negotiate contractual terms for a private reception celebration, which Complainant declined to do.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE
LIBERTY RIDGE FARM IS NOT A PLACE OF PUBLIC ACCOMMODATION**

8. Respondents hereby restate and re-allege and incorporate by reference herein, the statements made in the foregoing paragraphs 1 through 7 as if specifically set forth herein.

9. Complainant alleges that Respondents unlawfully discriminated against her in violation of New York State Human Rights Law §296(2).

10. In order to be bound by New York State Human Rights Law §296(2), Complainant must first allege, and then prove, that each of the Respondents operate a "place of public accommodation".

11. Both the Complaint and Amended Complaints do not allege that Respondents each operate a "place of public accommodation", nor do they allege sufficient facts whereby a reasonable inference can be drawn that each of the Respondents operate a public establishment subject to the cited provision of the Human Rights Law.

12. None of the Respondents operates a "place of public accommodation" in that they have no paid memberships and no overnight accommodations.

13. None of the Respondents operate a "place of public accommodation" in that they do not offer any regular meals or beverage service apart from catered events by private contract only.

14. None of the Respondents operate a “place of public accommodation” as the use of the LLC facility for wedding ceremonies or wedding receptions is not open to the public.

15. None of the Respondents operate a “place of public accommodation” as all wedding events that are held on the premises are private in nature and governed by contractual terms negotiated selectively and exclusively between the parties.

16. Respondents’ selective and exclusive operations designated as a place that is “distinctly private” and thus are specifically exempted from Executive Law § 296 by Executive Law § 292 (9).

17. Liberty Ridge Farm is a working farm and has been in the Gifford family for many years. The entity that operates the wedding business, the LLC, is a family owned business operated on land and in a building where Cynthia and Robert live as a residence and raise their young family.

18. The building where wedding ceremonies and wedding receptions are held has at all times relevant been the residence of the Gifford family. Several years ago, Cynthia and Robert expanded the residence to include a dining hall and upgraded kitchen. During wedding ceremonies and wedding receptions, guests may be invited, through contractual arrangements, for day use of a bedroom inside the families’ living quarters.

19. Both the United States and New York Constitutions protect the right to intimate association in our homes. The source of this Right is found, among other places, in the First, Third, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Sections 1 and 9 of the New York Constitution. “[T]he freedom to enter into and carry on certain intimate or private relationships is a fundamental element of liberty[.]” *Bd. of Directors of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 545 (1987). The Court “ha[s] not attempted to mark the precise boundaries of this type of constitutional protection.” *Id.* But “cohabitation” is a protected intimate association. *Id.* (noting that “cohabitation with relatives” is protected and that “we have not held that constitutional protection is restricted to relationships among family members”). The Court looks to “such attributes as relative smallness, a high degree of selectivity in decisions to begin and maintain the affiliation, and seclusion from others

in critical aspects of the relationship” to determine whether a relationship is an intimate association. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 602 (1984). Relationships without those qualities, “such as a large business enterprise[,] are not intimate associations. Relevant factors for deciding whether an association is an intimate one “include size, purpose, policies, selectivity, congeniality, and other characteristics that in a particular case may be pertinent.” *Id.*

20. It is difficult to imagine an intimate association greater than the one we have with those with whom we choose to share our homes. The Fourth Amendment to the federal Constitution and Article I, Section 1 of the New York Constitution prohibit the State from entering our home without our permission unless it obtains a court warrant. The Third Amendment to the federal Constitution prohibits the State from forcing us to take soldiers into our homes during peacetime. “[I]t is beyond dispute that the home is entitled to special protection as the center of the private lives of our people.” *Minnesota v. Carter*, 525 U.S. 83, 99 (1998) (Kennedy, J., concurring).

21. Not only do constitutional principles prevent the State from bursting uninvited into our homes or quartering soldiers in our homes, they also protect us from being forced to take guests into our homes. We naturally want to maintain “a high degree of selectivity,” *Roberts*, 468 U.S. at 620, in determining with whom we share our homes. Constitutional protection for intimate associations guarantees our right to do so.

22. Subjecting Cynthia and Robert or the LLC to the Public Accommodations Law would violate this constitutional guarantee by forcing the Giffords to share their private home with guests they have not invited by contract to do so. Constitutional guarantees cannot tolerate this level of State intrusion into our homes, and the commissioner should follow the “well established principal that statutes will be interpreted to avoid constitutional difficulties.” *Frisby v. Schultz*, 487 U.S. 474, 483 (1988).

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE
THE PUBLIC ACCOMMODATION LAW (HRL § 296 (2)) AND THE
MARRIAGE EQUALITY ACT (DRL § 10-a) ARE UNCONSTITUTIONAL AS APPLIED
TO RESPONDENTS HEREIN**

23. When contracting to host a marriage ceremony on their premises, Cynthia and Robert are, by necessity, intimately involved in promoting, facilitating and perpetuating the marriage ceremony itself. Not only are they physically present for each step of the ceremony, but they are also “the right hand persons” for the bride and groom, functioning not only as masters of ceremony but also as valets to accommodate their personal needs as they arise. Their physical presence throughout the ceremony is often-times viewed as endorsing the conduct of the wedding itself.

24. Cynthia and Robert maintain their sincerely held religious belief that God has reserved marriage to be between one man and one woman only. Together, the First Amendment of federal Constitution and Article I, Section 3 of the New York Constitution protect the Giffords’ ability to freely hold and exercise these religious beliefs. Forcing Cynthia and Robert to compromise their religious beliefs unduly burdens their constitutional protections without a compelling State interest in doing so.

25. If the Public Accommodations Law and the Marriage Equality Act are enforced to curtail or eliminate marriage ceremonies and/or receptions on the Gifford Farm, such action will unduly burden the Respondents property rights and may result in their losing their home. The deprivation of these rights amounts to a “taking” of Respondents’ property which is strictly prohibited by both the federal and state Constitutions.

26. Complainant has not articulated, much less proven, a compelling State interest in forcing Respondents to violate their sincerely held religious beliefs.

27. Where burdens are placed on free exercise rights in addition to burdens placed on other constitutional rights, strict scrutiny applies. To survive strict scrutiny, the State must demonstrate that the law furthers a “compelling state interest” and is “narrowly tailored” to that interest. Narrow tailoring requires that the State employ the “least restrictive means” for achieving its compelling interest.

A. Strict Scrutiny Applies To Burdens On Privacy And Intimate Association Rights.

28. Constitutional rights of intimate association will not tolerate the State forcing a homeowner to accept a guest with whom he or she does not want to share their residence. The Complainant alleges that Respondents discriminated against her by refusing to allow her to utilize their property and residence for her same sex marriage ceremony and reception. Because applying the Public Accommodations Law to Cynthia, Robert and the LLC would force them to accept anyone protected by that statute to utilize their home against the Giffords wishes, this would impose a direct and substantial burden on their intimate association rights and strict scrutiny therefore applies. See *Louisiana Debating & Literary Ass'n v. City of New Orleans*, 42 F.3d 1483, 1498 (5th Cir. 1995) (discussing *Rotary Club of Duarte*, 481 U.S. at 544). Moreover, application of this heightened standard is bolstered by the New York Constitution's strong protection of privacy rights.

B. Strict Scrutiny Applies To Burdens On Free Exercise Rights Under the New York Constitution.

29. Applying the Public Accommodations Law would substantially burden the Giffords free exercise rights. A substantial burden on free exercise exists where the State pressures a person to violate their religious convictions by conditioning a benefit or right on faith-violating conduct. *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *Thomas vs. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 717-18 (1981). By forcing the Giffords "to choose between following the precepts of [their] religion and forfeiting [the right to conduct wedding ceremonies and receptions for hire], on the one hand, and abandoning one of the precepts of [their] religion in order to [maintain that right], on the other hand," this application of the Public Accommodations Law would impose a substantial "burden upon the free exercise of religion." See *Sherbert*, 374 U.S. at 404; see also *Thomas*, 450 U.S. at 717-18 ("While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.").
30. Strict scrutiny should apply to this burden on free exercise rights under the New York Constitution. This was the standard that prevailed for both state and federal

free exercise claims until 1990, when the U.S. Supreme Court limited the federal constitution protection in some cases, stating that “the right of free exercise [under the United States Constitution] does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the grounds that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990).

31. In response, twenty-nine States insisted that all laws burdening their citizens’ free exercise of religion must survive heightened review. Eighteen States enacted Religious Freedom Restoration Acts, which restored strict scrutiny for laws burdening the free exercise of religion. Another twelve States’ supreme courts have interpreted their state constitutions’ free exercise protections to require heightened constitutional scrutiny, including New York’s Court of Appeals. *Catholic Charities of Diocese of Albany v. Serio*, 859 N.E.2d 459, 466 (N.Y. 2006).

C. Strict Scrutiny Applies To Burdens On Free Exercise Rights Under the United States Constitution Because Other Constitutional Rights Are Also Burdened.

32. In *Smith*, the U.S. Supreme Court explained that it applies strict scrutiny to laws burdening First Amendment free exercise rights when some other constitutional right is also burdened. *Smith*, 494 U.S. at 881. As discussed above, applying the Public Accommodations Law here would burden privacy and intimate association rights in addition to free exercise rights. Thus, strict scrutiny applies to the federal free exercise analysis.
33. Additionally, this application of the Public Accommodations Law will burden the Giffords’ property rights under the Fifth Amendment to the United States Constitution and Article I, Section 7 of the New York Constitution, both of which prohibit the taking of property by the State. Because of their religious beliefs, the Giffords will be forced to cease booking wedding ceremonies and/or receptions if the Public Accommodations Law is applied to them in conjunction with the Marriage Equality Act. This amounts to a taking of their right to generate income

from their property. Also, the Giffords may lose their home, since they cannot pay their mortgage without their business income. This too will amount to a taking of the Giffords' property.

D. The Public Accommodations Law Fails Strict Scrutiny.

34. To survive strict scrutiny, the State must demonstrate that the law furthers a "compelling state interest" and is "narrowly tailored" to that interest. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993). Narrow tailoring requires that the State employ "the least restrictive means" for achieving its compelling interest. *Thomas*, 450 U.S. at 718.
35. Strict scrutiny requires a particularized focus. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31 (2006) (discussing cases showing that strict scrutiny analysis demands a particularized focus on the parties and circumstances). The relevant government interest for strict scrutiny analysis thus is not the State's general interest in prohibiting discrimination, but its particular interest in forcing the Giffords to allow same sex couples to perform same sex marriage ceremonies in their home. *See Attorney Gen. v. Desilets*, 418 Mass. 316, 325-26, 636 N.E.2d 233, 238 (1994) ("The general objective of eliminating discrimination ... cannot alone provide a compelling State interest that justifies the application of that section in disregard of the defendants' right to free exercise of their religion. The analysis must be more focused."). But *this* – forcing a homeowner to perform a same sex marriage ceremony in their home – would permit exactly what the constitutional rights of privacy and intimate association forbid. Overriding the Constitution in this manner is not even a legitimate interest, let alone a compelling one. The Public Accommodations Law, as applied to the Giffords and the LLC, must fail strict scrutiny.
36. Even if, contrary to U.S. Supreme Court guidance, the relevant interest is characterized more broadly – as ensuring that entities providing goods or services to the public treat same-sex couples the same as opposite-sex couples – the Complainant cannot show that the State considers this to be a compelling

government interest. “[A] law cannot be regarded as protecting an interest ‘of the highest order’ when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Lukumi*, 508 U.S. 547 (alterations omitted).

37. Furthermore, even if the relevant interest is characterized even more broadly – such as ensuring that everyone has a place to dine in public accommodations – applying the Public Accommodations Law to the Giffords is not the least restrictive means to achieve the interest. It is simply not necessary to force private homeowners to accept guests into their private homes to ensure that everyone has a place to dine in public accommodations. The State’s interest is readily achieved through nondiscrimination laws applied to inns, hotels, restaurants, and other establishments open to the general public. Applying the law to private homeowners and intruding into their choice of who to share their home with goes too far. It is not narrowly tailored and fails strict scrutiny.
38. Because the Public Accommodations Law, through the Marriage Equality Act, as applied to Cynthia, Robert and the LLC cannot satisfy strict scrutiny review, it is unconstitutional as applied.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
COMPLAINANT’S CLAIM OF DISCRIMINATION FOR NOT ALLOWING A
SAME-SEX MARRIAGE CEREMONY AT RESPONDENTS’ FACILITY
IS MOOT.**

39. As alleged in the First Affirmative Defense, not only did Complainant not offer to contract for Respondents’ services, upon information and belief, Complainant never had any intention of engaging Respondents’ services to actually perform either a wedding ceremony or reception on the Respondents’ premises.

40. Upon information and belief, Complainant permanently resides outside the State of New York and has no intention of returning to Respondents’ premises for her wedding ceremony or reception.

41. Upon information and belief, Complainant is now married, obviating the need for either a marriage ceremony or reception on Respondents’ premises.

42. Additionally, Complainant has neither articulated nor proven any compensable damages as a result of her claim of discrimination.

43. As such, Complainant's claim of discrimination is moot.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
THE COMPLAINT FAILS TO STATE A CLAIM AGAINST CYNTHIA OR
ROBERT GIFFORD INDIVIDUALLY**

44. As previously stated, the LLC operates the wedding business on the Giffords' property.

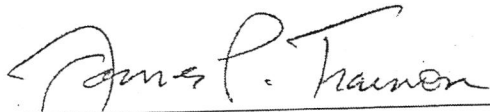
45. Both Cynthia and Robert are individual members of the LLC and at all times and in all ways relevant to the wedding business have acted within the scope of their duties as agents for the LLC.

46. The legal basis alleged for Complainant's claim of discrimination is the requirement that the discrimination be accomplished by "...an agent...of any place of public accommodation...". The purported "place of public accommodation" is operated exclusively by the LLC, not by Cynthia or Robert individually.

47. Therefore, the Complainant fails to state a claim against Cynthia Gifford or Robert Gifford individually.

WHEREFORE, Respondents request that the Administrative Law Judge dismiss the Complaint against them, or, alternatively, against Cynthia Gifford and Robert Gifford individually, together with such other and further relief as to the judge deems just and proper.

Dated: October 30, 2013


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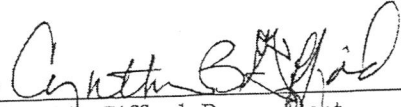
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Albany Regional Office
Empire State Plaza
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Albany, NY 12220

VERIFICATION

STATE OF NEW YORK)
COUNTY OF SARATOGA) ss.:

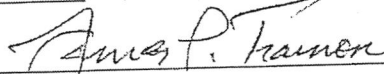
Cynthia Gifford, being duly sworn, deposes and says:

I am the defendant in the within action. I have read the foregoing Answer and am fully familiar with its contents; that the statements made therein are true to the best of my knowledge and belief except for those matters therein alleged upon information and belief, and as to those matters, I believe them to be true.



Cynthia Gifford, Respondent

Sworn to before me this
30th day of October, 2013



Notary Public

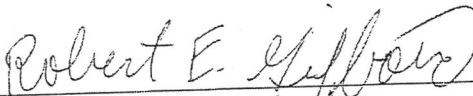
James P. Trainor
Notary Public, State of New York
02TR4980978
Qualified in Saratoga County
Commission Expires April 29, 20 15

VERIFICATION

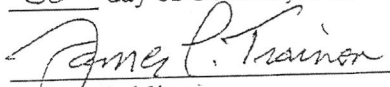
STATE OF NEW YORK)
COUNTY OF SARATOGA) ss.:

Robert Gifford, being duly sworn, deposes and says:

I am the defendant in the within action. I have read the foregoing Answer and am fully familiar with its contents; that the statements made therein are true to the best of my knowledge and belief except for those matters therein alleged upon information and belief, and as to those matters, I believe them to be true.


Robert Gifford, Respondent

Sworn to before me this
30th day of October, 2013


Notary Public

James P. Trainor
Notary Public, State of New York
02TR4980978
Qualified in Saratoga County
Commission Expires April 29, 20 15

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

Melissa Erwin,

Complainant,

- against -

Cynthia Gifford, Robert Gifford and
Liberty Ridge Farm, LLC

Respondents.

AMENDED
VERIFIED ANSWER
Case No. 10157952

Respondents, Cynthia Gifford ("Cynthia"), Robert Gifford ("Robert") and Liberty Ridge Farm, LLC ("LLC"), through their attorneys, Cutler, Trainor & Cutler, LLP, as and for their Amended Verified Answer to the Verified Complaint of Melissa Erwin ("Erwin" or "Complainant") dated October 11, 2012 and Amended Complaints dated October 11, 2012, October 23, 2012 and October 24, 2012, hereby aver as follows:

1. Respondents deny the truth of the allegations stated in paragraph "1." of Complainant's Verified Complaint.
2. Respondents deny the truth of the allegations stated in paragraph "2." of Complainant's Verified Complaint.
3. Respondent's admit that the address of Liberty Ridge Farm, LLC is 29 Bevis Road, Schaghticoke, NY 12154.
4. Respondents deny the truth of the allegations stated in the remainder of each and every paragraph, statement, and/or form of Complainant's Verified Complaint and each and every Amendment thereto.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE
NO UNLAWFUL DISCRIMINATION TOOK PLACE**

5. Respondents hereby restate and re-allege and incorporate by reference herein, the statements made in the foregoing paragraphs as if specifically set forth herein.

6. No unlawful discrimination has taken place because Complainant never offered to engage the services of Respondents for a wedding ceremony, a wedding reception, or otherwise.

7. No unlawful discrimination has taken place because Complainant was treated the same as all other potential customers, homosexual and heterosexual alike.

8. No unlawful discrimination has taken place as Complainant was invited to visit the premises and negotiate contractual terms for a private reception celebration, which Complainant declined to do.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE
LIBERTY RIDGE FARM IS NOT A PLACE OF PUBLIC ACCOMMODATION**

9. Respondents hereby restate and re-allege and incorporate by reference herein, the statements made in the foregoing paragraphs as if specifically set forth herein.

10. Liberty Ridge Farm is not a place of public accommodation.

11. None of the Respondents operates a "place of public accommodation" in that they have no paid memberships and no overnight accommodations.

12. None of the Respondents operate a "place of public accommodation" in that they do not offer any regular meals or beverage service apart from catered events by private contract only.

13. None of the Respondents operate a "place of public accommodation" as the use of the LLC facility for wedding ceremonies or wedding receptions is not open to the public.

14. None of the Respondents operate a "place of public accommodation" as all wedding events that are held on the premises are private in nature and governed by contractual terms negotiated selectively and exclusively between the parties.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE
LIBERTY RIDGE FARM OPERATES IN A MANNER WHICH IS
DISTINCTLY PRIVATE**

15. Respondents hereby restate and re-allege and incorporate by reference herein, the statements made in the foregoing paragraphs as if specifically set forth herein.

16. Respondents' selective and exclusive operations designated as a place that is "distinctly private" and thus are specifically exempted from Executive Law § 296 by Executive Law § 292 (9).

17. Liberty Ridge Farm is a working farm and has been in the Gifford family for many years. The entity that operates the wedding business, the LLC, is a family owned business operated on land and in a building where Cynthia and Robert live as a residence and raise their young family.

18. The building where wedding ceremonies and wedding receptions are held has at all times relevant been the residence of the Gifford family. Several years ago, Cynthia and Robert expanded the residence to include a dining hall and upgraded kitchen. During wedding ceremonies and wedding receptions, guests may be invited, through contractual arrangements, for day use of a bedroom inside the families' living quarters.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
THE PUBLIC ACCOMMODATION LAW (HRL § 296 (2)) AND THE
MARRIAGE EQUALITY ACT (DRL § 10-a) ARE UNCONSTITUTIONAL AS APPLIED
TO RESPONDENTS HEREIN**

19. Respondents hereby restate and re-allege and incorporate by reference herein, the statements made in the foregoing paragraphs as if specifically set forth herein.

20. Cynthia and Robert maintain their sincerely held religious belief that God has reserved marriage to be between one man and one woman only. Together, the First Amendment

of federal Constitution and Article I, Section 3 of the New York Constitution protect the Giffords' ability to freely hold and exercise these religious beliefs. Forcing Cynthia and Robert to compromise their religious beliefs unduly burdens their constitutional protections without a compelling State interest in doing so.

21. If the Public Accommodations Law and the Marriage Equality Act are enforced to curtail or eliminate marriage ceremonies and/or receptions on the Gifford Farm, such action will unduly burden the Respondents property rights and may result in their losing their home. The deprivation of these rights amounts to a "taking" of Respondents' property which is strictly prohibited by both the federal and state Constitutions.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
COMPLAINANT'S CLAIM OF DISCRIMINATION FOR NOT ALLOWING A
SAME-SEX MARRIAGE CEREMONY AT RESPONDENTS' FACILITY
IS MOOT.**

22. Respondents hereby restate and re-allege and incorporate by reference herein, the statements made in the foregoing paragraphs as if specifically set forth herein.

23. Upon information and belief, Complainant never had any intention of engaging Respondents' services to actually perform either a wedding ceremony or reception on the Respondents' premises:

24. Upon information and belief, Complainant permanently resides outside the State of New York and has no intention of returning to Respondents' premises for her wedding ceremony or reception.

25. Upon information and belief, Complainant is now married, obviating the need for either a marriage ceremony or reception on Respondents' premises.

26. Additionally, Complainant has neither articulated nor proven any compensable damages as a result of her claim of discrimination.

27. As such, Complainant's claim of discrimination is moot.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE
THE COMPLAINT FAILS TO STATE A CLAIM AGAINST CYNTHIA OR
ROBERT GIFFORD INDIVIDUALLY**

28. Respondents hereby restate and re-allege and incorporate by reference herein, the statements made in the foregoing paragraphs as if specifically set forth herein.

29. As previously stated, the LLC operates the wedding business on the Giffords' property.

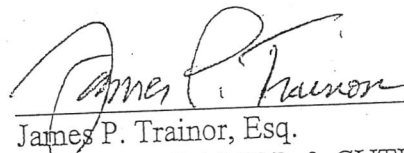
30. Both Cynthia and Robert are individual members of the LLC and at all times and in all ways relevant to the wedding business have acted within the scope of their duties as agents for the LLC.

31. The legal basis alleged for Complainant's claim of discrimination is the requirement that the discrimination be accomplished by "...an agent...of any place of public accommodation...". The purported "place of public accommodation" is operated exclusively by the LLC, not by Cynthia or Robert individually.

32. Therefore, the Complainant fails to state a claim against Cynthia Gifford or Robert Gifford individually.

WHEREFORE, Respondents request that the Administrative Law Judge dismiss the Complaint against them, or, alternatively, against Cynthia Gifford and Robert Gifford individually, together with such other and further relief as to the judge deems just and proper.

Dated: November 5, 2013



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