

**COLORADO COURT OF APPEALS,
STATE OF COLORADO**

2 East 14th Avenue, Suite 300
Denver, CO 80203

**COLORADO CIVIL RIGHTS COMMISSION
DEPARTMENT OF REGULATORY AGENCIES**

1560 Broadway, Suite 1050
Denver, CO 80202
2013-0008

APPELLANTS:

MASTERPIECE CAKESHOP, INC., and any
successor entity, and JACK C. PHILLIPS,

APPELLEES:

CHARLIE CRAIG and DAVID MULLINS.

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▲ COURT USE ONLY ▲

Case Number:

NOTICE OF APPEAL

Appellants, Masterpiece Cakeshop, Inc. and Jack Phillips (“Jack”), by and through counsel, hereby submit this Notice of Appeal pursuant to C.A.R. 3.

I. DESCRIPTION OF THE NATURE OF THE CASE.

A. Nature of the Controversy.

Jack Phillips has owned and operated Masterpiece Cakeshop, Inc. (collectively Jack) since 1994. Jack’s bakery specializes in elaborate cake creations that celebrate the important events of his customers’ lives. Jack conducts his life and his business in accord with his religious beliefs. Because of this, Jack does not create cakes that conflict with those beliefs. Among these are cakes celebrating same-sex unions because he holds to the religious conviction that marriage is a union between one man and one woman. Nor does Jack create cakes or any baked goods for Halloween, because he does not wish to participate in the celebration of what he believes is a pagan holiday. In July of 2012, Appellees visited Jack’s cake shop and requested a wedding cake for their same-sex wedding. Jack declined their request, explaining that he would be happy to provide any other baked goods, but he could not design and create a wedding cake for them because of his beliefs about marriage. Appellees then filed a complaint with the Colorado Division of Civil Rights alleging discrimination because of sexual orientation and the Colorado Civil Rights Commission (Commission) filed a formal complaint against Jack, alleging that he violated Colorado’s public accommodation statute –

COLO. REV. STAT. § 24-34-601 (2). Jack argued that (1) he did not violate the statute because he did not decline Appellees' request because of their sexual orientation; (2) the Free Speech Clause of the First Amendment of the U.S. Constitution and the Colorado Constitution protects Jack from being compelled to use his artistic talents to create expression he disagrees with; and (3) COLO. REV. STAT. § 24-34-601 (2) impermissibly burdens Jack's First Amendment Rights under the Free Exercise Clause of the U.S. Constitution and the Colorado Constitution. The Commission appointed an Administrative Law Judge (ALJ) and the case was decided on cross motions for summary judgment and oral argument on December 4, 2013. The ALJ concluded that Jack violated COLO. REV. STAT. § 24-34-601 (2) and the Commission affirmed that decision on May 30, 2014.

B. Order Being Appealed and Statement Indicating the Basis for the Appellate Court's Jurisdiction.

The Appellant seeks review of the Commission's Final Agency Order affirming the ALJ's Initial Decision; denying Appellants' cross-motion for summary judgment and granting Appellees' motion for summary judgment; granting Appellees' motion for protective order; and denying Appellants' motion to dismiss the complaint and motion to dismiss Jack Phillips entered on May 30, 2014. This Court has appellate jurisdiction over this appeal pursuant to COLO. REV. STAT. § 24-34-307 (1) and (2) and COLO. REV. STAT. § 24—4-106 (11).

C. Whether the Order Resolved All Issues Pending before the Agency.

The Order dated May 30, 2014 resolved all issues pending before the Commission, except one. Appellants filed a Motion for Stay of Final Agency Order, seeking to stay the Commission's order pending this appeal. The Motion is pending before the Commission. Should the Commission deny the motion, Appellants will promptly file a stay request in this Court.

D. Whether the order is final for purposes of appeal.

The Commission's order is final pursuant to 3 COLO. CODE REGS. § 708-1, R. 10.13 (D).

E. Date of Service of the Final Agency Order.

The date of service of the Commission's final order is June 2, 2014.

II. ADVISORY LISTING OF THE ISSUES TO BE RAISED ON APPEAL

- A. The ALJ erroneously denied Appellants' Motion to Dismiss Jack Phillips Pursuant to C.R.C.P. 12(b)(1),(2), and (5).
- B. The ALJ erroneously denied Appellants' Motion to Dismiss Pursuant to C.R.C.P. 12(b)(5).
- C. The ALJ erroneously granted Appellees' Motion for Protective Order and erroneously struck portions of Appellants' discovery requests thereby limiting Appellants' discovery.

D. The ALJ erred in the Initial Decision by granting Appellees' Motion for Summary Judgment and denying Appellants' Cross-Motion for Summary Judgment. Contrary to the findings in the Initial Decision:

- i. Appellants did not discriminate "because of" sexual orientation.
- ii. Appellants acted in accordance with the provisions of Colo. Const. art. II, § 31 and COLO. REV. STAT. § 14-2-104, and the public policy of Colorado.
- iii. Appellants are protected by the Free Speech Clause of the First Amendment of the United States Constitution and by Article II, Section 10 of the Colorado Constitution from being forced to use their artistic talents to design and create expression they disagree with, here in the form of a wedding cake celebrating a same-sex union.
- iv. Appellants are protected by the Free Exercise Clause of the First Amendment of the U.S. Constitution and Article II, Section 4 of the Colorado Constitution from being forced to create a wedding cake celebrating a same-sex union in violation of their deeply held religious beliefs.

- v. The ALJ's recommendation that Appellants "[c]ease and desist from discriminating against Complainants and other same-sex couples by refusing to sell them wedding cakes or any other product Appellants would provide to heterosexual couples" is overbroad and exceeds the scope of relief authorized pursuant to COLO. REV. STAT. §§ 24-34-306 (9) and 24-34-605.

III. TRANSCRIPTS

Transcripts of the hearings on September 26, 2013 (approximately 29 pages in length) and May 30, 2014 (approximately 36 pages in length) are necessary to resolve the issues raised on appeal. The transcript of oral argument on December 4, 2013 (approximately 35 pages in length) is necessary to resolve the issues raised on appeal.

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V. APPENDICES TO THIS NOTICE OF APPEAL

- A. Final Agency Order dated May 30, 2014;
- B. Initial Decision of ALJ dated December 6, 2013;
- C. Order Granting Appellees' Motion for Protective Order dated October 9, 2013; and
- D. Order Continuing Hearing and Order Regarding Pending Motions dated October 2, 2013.

Respectfully submitted this 16th day of July, 2014.

Attorney for Appellants Masterpiece Cakeshop, Inc. and
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/s/ Nicolle H. Martin

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CERTIFICATE OF SERVICE

I certify that on this 16th day of July, 2014, a true and correct copy of the foregoing **NOTICE OF APPEAL** was filed with the Colorado Court of Appeals via ICCES and served via ICCES, and/or electronic mail and U.S. Mail on the Colorado Civil Rights Commission and the parties and/or their counsel of record as follows:

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APPENDICES