NO. CV 02-0562775S

SAM CORCORAN

SUPERIOR COURT

V.

JUDICIAL DISTRICT OF NEW LONDON
AT NEW LONDON

GERMAN SOCIAL SOCIETY
FROHSINN, INC.

FEBRUARY 21, 2008

MEMORANDUM OF DECISION

This action was brought by the plaintiff, Sam Corcoran, against the defendant, German Social Society Frohsinn, Inc., claiming gender discrimination by a public accommodation in violation of General Statutes § 46a-64. After a trial to the court, Honorable Robert C. Leuba, judge trial referee, rendered judgment for the defendant. The plaintiff appealed the judgment to the Appellate Court, which reversed the judgment and remanded the case for future proceedings consistent with its opinion. Corcoran v. German Social Society Frohsinn, Inc., 99 Conn. App. 839 (2007).

Judge Leuba made extensive findings of fact in his opinion, which this court adopts with some revisions based on this court's review of the transcript of the trial, as follows:

The plaintiff is a woman who resides in Mystic, Connecticut. In the summer of 1999, she visited the defendant's club to deliver a message. Several weeks later she was invited to return to the club and, during the summer and fall of 1999, she visited the club usually on a weekly basis. She did not receive any specific invitations to the club, but would show up as she chose.

She was told that a person who signs the sign-in book at the club three times would automatically be sent a membership application. She signed in more than three times, but did not receive a membership application. She asked to become a member and was told that women could not become members .

The club is located on Greemanville Avenue in Mystic, Connecticut, across from Mystic Seaport. The club facility is a building used as a gathering place for workmen. There is a licensed bar on the lower level and a hall on the upper level. The bar is used for drinking and other club activities. Non-members can not use the bar unless they are invited in by a member. If a non-member comes in and no one sponsors the non-member to stay, the non-member is asked to leave. Both men and women utilize the facility. Men can become members under the rules, but the by-laws do not permit female members. Females attend only as guests of members. Guests as well as members are permitted to purchase drinks and sometimes food at the bar.

The hall is used for weddings, birthday parties and other functions. It has been rented out for "swing dance" lessons. The hall can be used by members and non-members. If the hall is rented by a non-member, the club does not receive any part of the profits from the event other than the rental fee. The club does not get any part of any revenue when a member rents the hall. The club does not sponsor events of its own in the hall. Some of its activities in the bar are for members only, such as the club's Christmas party and monthly membership meetings. Otherwise guests are permitted if sponsored by a member. Women are often there. There are no signs outside the building suggesting there is a bar inside. The club does not sponsor any major charitable events.

The club has no connection with any other club, including other German clubs in Connecticut. It was formed for German mill workers in Mystic. The club was a social club where they could speak German and have bands and dances from the old country. The original language at club gatherings was German.

The club has a board of directors and membership meetings, elects officers annually and keeps records and minutes of its doings. It maintains by-laws and rules which are generally available to members. The by-laws are amended from time to time to accommodate changes in conditions. It files 990 tax forms with the Internal Revenue Service designed for non-profit organizations. It has a federal employer identification number. It maintains a State of Connecticut liquor license.

At the time of trial, club membership was about 190 and that number varies. Membership dues are $25.00 per year. The process for seeking members is spelled out in the club's rules and by-laws. If a person wants to become a member he must be brought in by a member, fill out an application, put the application fee in and is considered by the board of directors first and then the entire membership. There are two separate votes. During the application process the application is posted on the club's bulletin board for a period of thirty days so that members are alerted to the applicant's desire for membership and can evaluate the prospective members. Prospective members need two club members to sponsor them. Prospective members are required to be of good character. An investigation is done of the applicant's character at the time the application is made. Sponsors are required by the by-laws to be at the board meeting when the new applicant's name is taken up.

In the period 1999, 2000 and 2001only one applicant was rejected and he was rejected

because he was thought to be a pedophile. In addition, one or two potential members submitted applications and then withdrew the applications. The treasurer of the defendant was a member even though he had three convictions for driving under the influence, multiple convictions for substance abuse and multiple convictions for possession of explosives.

The club tries to have the applicant come into the bar to be introduced, talk to members and in that way present himself to the membership during the thirty day period his name is posted on the bulletin board. After the thirty day posting, the board of directors will talk to the sponsors, ask them what kind of person the applicant is, find out the basis of their knowledge and find out if anyone has any concerns about the applicant's character. If they do, the application is considered. If not, then the application is either approved or disapproved and sent to the general membership meeting for a vote. Members are expelled from time to time.

The club does not actively solicit new members at any place other than the club itself and does not leave membership applications at other locations. The club tries to get people who patronize the club regularly to become members and a person who signs in as a guest three times is asked to become a member.

The club collects about $4,000.00 in dues every year, about $120,000.00 from the bar every year and about $4,000.00 from the rental of the hall every year. The club does not make a profit. The club is non-profit and receives no assistance from the government. The club does not advertise. The club members do not receive dividends from the club. Club members often volunteer their time to make repairs to the club facilities. The club generally has two paid employees, a bartender and a bookkeeper. Sometimes the employees are members but not always.

After the plaintiff was denied membership in the club, members of the club treated her rudely and with disrespect and hostility. As a result, she was mortified and humiliated and became self-conscious and embarrassed. She lost sleep and was under emotional distress, including being less upbeat. She did not, however, consult a physician or take any medication for her problems

Judge Leuba's opinion set forth the legal standard in this case, as follows:

> The plaintiff sues under C.G.S. § 46a-64, entitled "Discriminatory public accommodations practices prohibited." The statute reads, in pertinent part:
>
> (a) It shall be a discriminatory practice in violation of this section: (1) To deny any person within the jurisdiction of this state full and equal accommodations in any place of public accommodation, resort or amusement because of . . . sex. . .
>
> The statutory scheme defines the phrase "public accommodation, resort or amusement" in another section of the same chapter, C.G.S. § 46a-63(1), as meaning:
>
> any establishment which caters or offers its services or facilities or goods to the general public, including, but not limited to, any commercial property or building lot, on which it is intended that a commercial building will be constructed or offered for sale or rent;
>
> Taken together, these two statutes describe the elements of the plaintiff's claims. In essence, to prevail in the instant case the plaintiff must have proved by a preponderance of the evidence that:
>
> (1) The defendant club is a public accommodations, resort or amusement; (2) The defendant club denied the plaintiff full and equal accommodations; (3) The defendant club's basis for said denial was the plaintiff's sex.
>
> The club does not dispute that the by-laws of the club do not permit women members and that the plaintiff was not given an application because she was a woman. The sole issue in dispute, therefore, is weather the club is a "public accommodation."

Judge Leuba relied on United States v. Lansdowne Swim Club, 713 F. Sup. 785 (E.D.

Pa. 1989), aff'd, 894 F.2d 83 (3d Cir. 1990)), which involved the 'private club' exemption to the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000a to 2000a-6. The Landsdowne Swim Club court utilized the following eight factors and suggested that each factor tips the scales for or against finding the status:

1. Genuine selectivity of membership.
2. The membership's control over the operations of the establishment.
3. History of the club to determine legitimacy.
4. Use of club by non-members
5. The purpose of the club's existence.
6. Whether the club advertises for members.
7. Whether the club is profit or non-profit.
8. The formalities observed by the club.

Based on a detailed discussion of each of these eight factors, Judge Leuba found that the defendant was not a place of public accommodation under Connecticut law as defined by Section 46a-63(1) and rendered judgment for the defendant.

On appeal of Judge Leuba's decision, the Appellate Court said:

> It is true that Connecticut's appellate courts, in construing state antidiscrimination statutes that have similar federal counterparts, have looked to federal case law for guidance, even though the federal and state statutes may differ somewhat. It also has been recognized, however, that under certain circumstances, federal law defines the beginning and not the end of our approach to the subject. . . . Consequently, on occasion, we have interpreted our statutes even more broadly that their counterparts, to provide even greater protections to our citizens, especially in the area of civil rights. (Citations omitted; internal quotation marks omitted.) Corcoran v. German Social Society Froshinn, Inc., supra, 843.

Citing Quinnipiac Council, Boy Scouts of America, Inc. v. CHRO, 204 Conn. 287 (1987), the Appellate Court continued as follows:

> Our Supreme Court articulated the relevant considerations for evaluating whether an entity is a "public accommodation" as follows: Although no private organization is duty-bound to offer its services and facilities to all customers, once such an organization has determined to eschew selectivity, under our

> statute it may not discriminate among the general public. Accordingly, coverage under [§ 46a-63(a)] depends, in each case, upon the extent to which a particular establishment has maintained a private relationship with its own constituency or a general relationship with the public at large. (Citations omitted; internal quotation marks omitted.) Corcoran v. German Social Society Froshinn, Inc., supra, 844.

The Appellate Court concluded that, although there are similarities between the Lansdowne Swim Club factors and the tests for determining whether an organization is a public accommodation under § 46a-64(a), the two are not identical and Judge Leuba committed legal error in applying the Lansdowne Swim Club test rather than the test stated in Quinnipiac Council, Id.

The Appellate Court further stated:

> We believe that the Lansdowne Swim Club factors are relevant only to the extent they tend to demonstrate that an establishment "has determined to eschew selectivity," or to indicate whether that establishment "has maintained a private relationship with its own constituency or a general relationship with the public at large." We expect that under different factual scenarios, the relevance of a particular factor could vary. In short, a court may consider the Lansdowne Swim Club factors, but only insofar as they pertain to the overarching test for a public accommodation stated in Quinnipiac Council, Boy Scouts of America, Inc. Because the court's analysis was not so constrained we concluded that it was improper. (Citations omitted.) Corcoran v. German Social Society Froshinn, Inc., supra, 845.

It is clear from the Appellate Court's decision in the appeal of the prior judgment in this case that the primary consideration in determining whether the defendant's club is a public accommodation is whether the club has eschewed selectivity in its membership. In this regard, it is instructive to review cases which have addressed the issue of selectivity of membership in the context of antidiscrimination statutes.

In Quinnipiac Council, Boy Scouts of America, Inc. v. CHRO, supra, the plaintiff

refused to permit the individual defendant to serve as a scoutmaster because she was a woman. The Supreme Court stated, at page 297, "(a)mong the compelling interests that (public accommodation statutes) serve is the state's interest in eliminating discrimination against women." Notwithstanding the Supreme Court's strong statement in support of elimination of discrimination against women, it held against the individual defendant on the basis that Section 53-35a addresses discriminatory denial of access to goods and services and does not incorporate allegedly discriminatory refusal by the Boy Scouts to accept the offer of the individual defendant to serve as a scoutmaster.

In Wright v. Salisbury Club, Ltd., 632 F.2d 309 (4th Cir. (1989)), the plaintiffs, a black man and his wife, brought an action for injunctive relief against the defendant for excluding them from its club. The Fourth Circuit found that the club was not a truly private club and that exclusion of the plaintiffs violated the Civil Rights Act. In its finding, the court stated as to selectivity as follows:

> First, the Salisbury Club does not follow a selective membership policy. Only three white persons have ever been denied membership in the Salisbury Club, and they all resided outside the Salisbury subdivision. Conversely and most critically for this case, no white resident of the Salisbury subdivision has been denied club membership throughout the entire history of the Salisbury Club. The only residents of the subdivision who have been denied membership are the plaintiffs and another black family who applied for membership at about the same time. They were admittedly refused membership because of their race. Thus, it is apparent that the club follows "no plan or purpose of exclusiveness." Rather, membership "is open to every white person within the geographic area, there being no selective element other than race.
>
> The district court was persuaded of the club's supposed selectivity by the formal requirements for membership. All applicants must have two members sponsor their applications. Then, the applicants must be approved by the membership committee. Finally, seventy-five percent of the board of directors must vote to admit the applicant to membership.

> These formal membership requirements however, do not prove that the Salisbury Club is a truly private club because in practice the club admits all white subdivision applicants and practically all white applicants from outside the subdivision. The formalities have little meaning when in fact the club does nor follow a selective membership policy. We find the actions of the Salisbury Club far more convincing than its written procedures. (Citations omitted.) Id., 312.

In Brown v. Loudoun Golf & Country Club, Inc., 573 F. Supp. 399 (D.C.E.D. Va. 1983), the plaintiff, a black, brought suit against the defendant club alleging racial discrimination after the plaintiff was rejected from a foursome playing golf at the defendant's golf course. In denying a motion for dismissal filed by the defendant, the District Court said, that in determining whether an establishment is a truly private club, courts have examined a variety of factors and that "the key factor is whether the club's membership is truly selective." Id., 403

The court concluded:

> Despite the existence of formal admission procedures, defendants' submissions do not show the Club to have well-defined admission policies. The record reveals neither that the Club routinely investigates the background and character of its applicant against any moral, religion, or social standards. Most important, defendants have not provided any hard information concerning how many white applicants the Club has turned away. If only four white applicants have been denied membership since the Club instituted its current admission procedures, the Club cannot fairly be described as truly selective about its members. . . .
>
> In short, on the basis of the existing record, the Court is unable to conclude that the practical effect of the club's membership procedures is to create a truly selective membership and that the Club is therefore within the private club exemption. (Citations omitted.) Id.

In Wright and in Brown, each of the defendant clubs had formal membership requirements. However, in practice, the clubs used the membership requirements to exclude

all black applicants and admitted all, or substantially, all white applicants. In each case, the court found that the practical effect of each club's membership procedures did not create a selective membership and each club did not prove it was a duly private club within the private club exception.

In the present case, since the by-laws of the defendant do not allow women to apply for membership, there is no history of consistent denial of applications for membership filed by women. However, the practical effect of the defendant's membership procedures is the same as the procedures in Wright and Brown; that is, almost all males are admitted to membership and all women are excluded from membership.

Accordingly, the court finds that the defendant has eschewed selectivity in its membership under the principles of Quinnipiac Council and that it is a place of public accommodation under Section 46a-63(1) and not a private club.

In Quinnipiac Council, the Appellate Court stated that the Lansdowne Swim Club factors are relevant only to the extent that they tend to demonstrate that an establishment has determined to eschew selectivity or has maintained a private relationship with the public at large. During the oral argument in this matter, counsel for both parties stated on the record that the effect of the Quinnipiac Council opinion is that, if it is clear based on selectivity factors that a club is not a private club, the court need not consider the Lansdowne Swim Club factors. The court, however, has reviewed the Lansdowne Swim Club factors as they relate to this case and finds nothing in such factors which would alter the court's opinion that the defendant is not a private club.

The plaintiff has claimed damages for emotional distress. A plaintiff who has been

discriminated against is entitled to compensatory damages, including, emotional distress damages. Commission on Human Rights and Opportunities v. Board of Education, 270 Conn. 665, 705 (2004). Although the plaintiff has suffered some emotional distress as a result of the rude treatment accorded to her by members of the defendant, she did not consult a physician or take any medication for her problems and the problems are minor. Accordingly, the court awards $250.00 damages to the plaintiff for emotional distress.

Based upon the foregoing, the court enters the following orders:

1. The defendant is enjoined from treating applications by women for membership in the defendant unequally in the terms and conditions of membership.

2. The plaintiff is awarded $250.00 for emotional distress damages.

3. No attorney's fees are awarded to either party.

4. No costs are awarded to either party.

/Hendel, JTR

Seymour L. Hendel, JTR