

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
MARK WATHEN)	
)	
COMPLAINANT,)	CHARGE NO. 2011-SP-2488
AND)	
)	
TIMBERCREEK BED & BREAKFAST)	
)	
RESPONDENT.)	

VERIFIED ANSWER AND AFFIRMATIVE DEFENSES

NOW COMES Respondent, TIMBERCREEK BED & BREAKFAST, (hereinafter, “TimberCreek”) by and through its attorneys, STEVEN A. AMJAD and LORNA K. GEILER of MEYER CAPEL, P.C., BRYAN BEAUMAN, KY Bar No. 86968, BYRON J. BABIONE, AZ Bar No. 024320 and JAMES A. CAMPBELL, AZ Bar No. 026737 of the ALLIANCE DEFENSE FUND and JASON R. CRADDOCK, and points out that this case and the allegations contained herein reference the same occurrence and identical facts as the allegations stated in 2011-SP-2489, currently pending in this Commission, with the exception that the Complainant in that case is Todd Wathen.

TimberCreek states its answer and affirmative defenses to the Complaint filed by MARK WATHEN (hereinafter, “Wathen”) stating as follows:

VERIFIED ANSWER

1. TimberCreek has insufficient knowledge with which to admit or deny that Wathen is a gay man, but admits the remaining allegations in paragraph 1 the Complaint.
2. TimberCreek admits the allegations contained in paragraph 2 of the Complaint.
3. TimberCreek admits the allegations contained in paragraph 3 of the Complaint.

4. TimberCreek has insufficient knowledge with which to admit or deny the allegations contained in paragraph 4 of the Complaint.
5. TimberCreek admits the allegations contained in paragraph 5 of the Complaint.
6. TimberCreek admits the allegations contained in paragraph 6 of the Complaint.
7. TimberCreek denies the allegations contained in paragraph 7 of the Complaint.
8. TimberCreek has insufficient knowledge with which to admit or deny the allegations contained in paragraph 8 of the Complaint.
9. TimberCreek has insufficient knowledge with which to admit or deny the allegations contained in paragraph 9 of the Complaint.
10. TimberCreek admits the allegations contained in paragraph 10 of the Complaint.
11. TimberCreek has insufficient knowledge with which to admit or deny the allegations contained in paragraph 11 of the Complaint.
12. TimberCreek has insufficient knowledge with which to admit or deny the allegations contained in paragraph 12 of the Complaint.
13. TimberCreek has insufficient knowledge with which to admit or deny the allegations contained in paragraph 13 of the Complaint.
14. TimberCreek admits that an e-mail inquiry was sent on February 15, 2011 from Todd Wathen to TimberCreek with an accurate quotation listed in paragraph 14, but denies that Exhibit A is a true and accurate copy of Todd Wathen's e-mail exchange on or after that date in that a portion of the Exhibit A emails have been redacted with time and date stamps and portions of the e-mails now missing.
15. TimberCreek admits the allegations contained in paragraph 15 of the Complaint.
16. TimberCreek admits the allegations contained in paragraph 16 of the Complaint.

17. TimberCreek admits the allegations contained in paragraph 17 of the Complaint.
18. TimberCreek admits the allegations contained in paragraph 18 of the Complaint.
19. TimberCreek admits the allegations contained in paragraph 19 of the Complaint.
20. TimberCreek admits the allegations contained in paragraph 20 of the Complaint.
21. TimberCreek admits the allegations contained in paragraph 21 of the Complaint.
22. TimberCreek admits the allegations contained in paragraph 22 of the Complaint but affirmatively states that further communications occurred when the Wathens filed a Complaint with the Illinois Department of Human Rights on March 7, 2011.
23. TimberCreek admits the allegations contained in paragraph 23 of the Complaint.
24. TimberCreek admits the allegations contained in paragraph 24 of the Complaint.
25. TimberCreek admits that Exhibit B is a true and accurate representation of the TimberCreek website on or about February 20, 2011, several days after the initial inquiry by Wathen, with the exception of the handwritten text at the top of Exhibit B. TimberCreek possesses insufficient knowledge with which to admit or deny the remaining allegations contained in paragraph 25 of the Complaint.
26. TimberCreek admits that Exhibit C is a true and accurate representation of the TimberCreek website on or about February 23, 2011 with the exception of the handwritten text at the top of Exhibit C.
27. TimberCreek admits that Exhibit D is a true and accurate representation of the TimberCreek website on or about February 20, 2011, several days after the initial inquiry by Wathen, with the exception of the handwritten text at the top of Exhibit D. TimberCreek possesses insufficient knowledge with which to admit or deny the remaining allegations contained in paragraph 27 of the Complaint.

28. TimberCreek admits that Exhibit E is a true and accurate representation of the TimberCreek website on or about February 23, 2011 with the exception of the handwritten text at the top of Exhibit E.
29. TimberCreek admits that Exhibit F is a true and accurate representation of the TimberCreek website on or about February 20, 2011, several days after the initial inquiry by Wathen, with the exception of the handwritten text at the top of Exhibit F. TimberCreek possesses insufficient knowledge with which to admit or deny the remaining allegations contained in paragraph 29 of the Complaint.
30. TimberCreek admits that Exhibit G is a true and accurate representation of the TimberCreek website on or about February 23, 2011 with the exception of the handwritten text at the top of Exhibit G.
31. TimberCreek incorporates by reference its prior Answers to paragraphs 1 through 30 of the Complaint.
32. TimberCreek does not admit or deny the conclusion of law stated in paragraph 32 of the Complaint as said statement is improper and does not require a response.
33. TimberCreek does not admit or deny the conclusion of law stated in paragraph 33 of the Complaint as said statement is improper and does not require a response.
34. TimberCreek does not admit or deny the conclusion of law stated in paragraph 34 of the Complaint as said statement is improper and does not require a response.
35. TimberCreek denies the allegations contained in paragraph 35 of the Complaint.
36. TimberCreek denies the allegations contained in paragraph 36 of the Complaint.
37. TimberCreek denies all remaining factual allegations contained herein that have not been specifically admitted above.

WHEREFORE, Respondent TIMBERCREEK BED & BREAKFAST, respectfully requests that the Complaint against it be denied and that:

- a. TimberCreek be awarded attorneys' fees and costs pursuant to the Illinois Religious Freedom Restoration Act (hereinafter, "RFRA") as outlined in paragraph 3 of its Affirmative Defenses; and
- b. That no relief sought be granted to the Complainant; and
- c. Any other such relief as the Commission deems appropriate and just.

VERIFIED AFFIRMATIVE DEFENSES

1. In these circumstances, TimberCreek did not engage in sexual-orientation discrimination under the Illinois Human Rights Act, 775 ILCS 5/1 et seq.
2. Pursuant to 775 ILCS 5/5-102(B), TimberCreek's communications in response to a specific inquiry from Wathen were not a violation of the Illinois Human Rights Act.
3. In these circumstances, the Illinois Human Rights Act, Article 5: Public Accommodations, 775 ILCS 5/5, violates TimberCreek's and its owners' rights under RFRA, 775 ILCS 35/5, the Free Exercise Clause of the First Amendment to the United States Constitution, and the Illinois Constitution (Ill. Const. art. 1, § 3). Pursuant to RFRA, attorneys' fees can be requested as an affirmative defense; therefore, should the Commission find in TimberCreek's favor in this matter then, pursuant to RFRA, it is entitled to reimbursement of attorneys' fees and costs in the defense of this matter. 775 ILCS 35/20.

4. In these circumstances, the Illinois Human Rights Act, Article 5: Public Accommodations, 775 ILCS 5/5, violates TimberCreek's and its owners' Free-Speech Rights under the First Amendment of the United States Constitution and the Illinois Constitution.
5. In these circumstances, the Illinois Human Rights Act, Article 5: Public Accommodations, 775 ILCS 5/5, violates TimberCreek's and its owners' Rights of Expressive Association granted under the Unites States Constitution.
6. In these circumstances, TimberCreek is not a "place of public accommodation" pursuant to 775 ILCS 5/5-101(A).
7. Wathen's claim is not ripe nor does he have standing to assert that claim because civil unions were not legal in Illinois in February, 2011, and he did not make a specific request to use TimberCreek's facility for any purpose, but only asked about TimberCreek's policies concerning civil unions.
8. Wathen fails to state a claim upon which relief can be granted.

Respectfully submitted,
TimberCreek Bed & Breakfast

By: 

Steven A. Amjad, IL Bar No. 6276342
Lorna K. Geiler, IL Bar No. 7372814
Meyer Capel, P.C.
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Jason R. Craddock, IL Bar No. 6242722
Attorney at Law
227 W. Maple, Suite C
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**PRO HAC VICE MOTION
FORTHCOMING AS TO THE
FOLLOWING COUNSEL:**

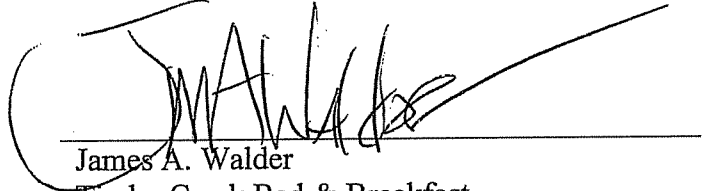
Bryan Beauman, KY Bar No. 86968
Alliance Defense Fund
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Paris, Kentucky 40362

Byron J. Babione, AZ Bar No. 024320
James A. Campbell, AZ Bar No. 026737
Alliance Defense Fund
15100 N. 90th Street
Scottsdale, Arizona 85260

Attorneys for Respondent

VERIFICATION

Under penalties as provided by law pursuant to §1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true and correct.



James A. Walder
TimberCreek Bed & Breakfast

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Verified Answer and Affirmative

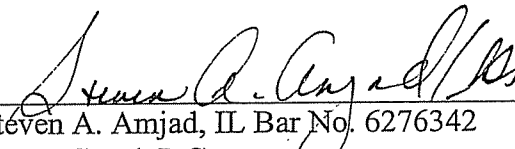
Defenses was served upon:

Betty Tsamis
Tsamis Law Firm, P.C.
1509 W. Berwyn, Ste. 210E
Chicago, IL 60640

John Knight & Harvey Grossman
Roger Baldwin Foundation of ACLU, Inc.
180 N. Michigan Ave., Ste. 2300
Chicago, IL 60601

by depositing same in the U.S. Mail in Champaign, Illinois on the 2nd day of December, 2011.

By:


Steven A. Amjad, IL Bar No. 6276342

Meyer Capel, P.C.

P.O. Box 6750

Champaign, Illinois 61826

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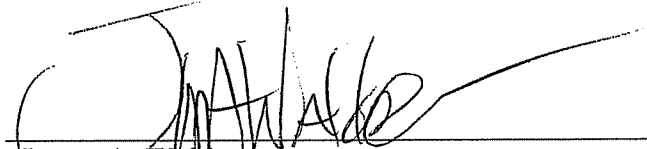
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Under penalties as provided by law pursuant to §1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true and correct.



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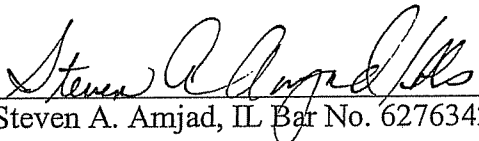
The undersigned certifies that a copy of the foregoing Verified Answer and Affirmative

Defenses was served upon:

Betty Tsamis
Tsamis Law Firm, P.C.
1509 W. Berwyn, Ste. 210E
Chicago, IL 60640

John Knight & Harvey Grossman
Roger Baldwin Foundation of ACLU, Inc.
180 N. Michigan Ave., Ste. 2300
Chicago, IL 60601

by depositing same in the U.S. Mail in Champaign, Illinois on the 2nd day of December, 2011.

By: 
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