



Cathryn L. Hazouri, Executive Director • Mark Silverstein, Legal Director

November 20, 2006

Division of Civil Rights  
1560 Broadway, Suite 1050  
Denver, CO 80202  
VIA FACSIMILE 303-894-7830

Re: Public Accommodations Complaint

Dear Colorado Division of Civil Rights:

We represent Jackie Broadhurst in this complaint to the Colorado Division of Civil Rights regarding unlawful gender discrimination under the public accommodations law, C.R.S. § 24-34-601. This letter is meant to include all the information required by the Colorado Civil Rights Division's public accommodation intake form and statement of discrimination form. I look forward to discussing the issues raised in this complaint.

#### INFORMATION REGARDING COMPLAINTANT

Jackie Broadhurst is an accomplished female billiards player, and a National 8-ball and trick-shot champion. Any communication regarding this complaint may be directed to Taylor Pendergrass, 400 Corona Street, Denver, Colorado 80218, or phone at (303) 777-5482, extension 104.

#### INFORMATION REGARDING PUBLIC ACCOMMODATION

The American Poolplayer's Association ("APA") is the "governing body of amateur pool." The address for the APA is 1000 Lake Saint Louis Blvd. Suite 325, Lake Saint Louis, MO 63367, and the phone number is (636) 625-8611. Rack 'Em Cue Club is a privately-owned establishment serving food and drink and located at 1919 South Havana Street, Aurora, Colorado, (303) 755-7675.

#### DATE OF INCIDENT

The unlawful gender discrimination occurred on September 23<sup>rd</sup>, 2006, at an APA hosted tournament held at Rack 'Em Cue Club. This complaint is timely filed within 60 days of the date of alleged discrimination pursuant to C.R.S. § 24-34-604.

## INFORMATION REGARDING PUBLIC ACCOMMODATION DISCRIMINATION

Each year, the APA holds a national tournament for amateur pool players. To qualify for this tournament, regional competitions are held prior to the national tournament. One such regional competition is held in Colorado. In the fall of 2005, this regional tournament was held at Shakespeare's Billiards in Denver. On September 23<sup>rd</sup> and 24<sup>th</sup>, 2006, the regional tournament was held at Rack 'Em Cue Club. The APA tournament is open to any member of the public who is not a professional pool player, pays an entrance fee, and is 21 years of age.<sup>1</sup>

Traditionally, the APA allowed both men and women to compete in the "men's/open" division, which represents the premier and most competitive of the APA divisions. This changed, however, after Ms. Broadhurst publicly announced her intention to enter into and win the "men's/open" division. Shortly thereafter, the APA rescinded its non-discriminatory rule and allowed only men to compete in the "men's" division, and restricted women to the "women's" division. APA rule number two and eleven now state, respectively:

2. Gentlemen contestants compete in the Men's Division and Lady contestants compete in the Women's Division.

. . .

11. The APA reserves the right to deny participation.

Because of the APA's discrimination against women, Ms. Broadhurst could not compete in the "men's" division at the regional tournament in 2005, nor in the more recent regional competition held on September 23<sup>rd</sup> and 24<sup>th</sup>, 2006 at the Rack 'Em Cue Club.

## NATURE OF PUBLIC ACCOMMODATION

The United States Supreme Court has held that an open tournament is a public accommodation within the meaning of the Americans with Disabilities Act ("ADA"). See *PGA Tour v. Martin*, 532 U.S. 661 (2001). For similar reasons contained therein, the APA tournament is a public accommodation within the meaning of C.R.S. § 24-34-601, and therefore the APA should be prohibited from discriminating amongst persons in terms of the services, privileges and advantages provided to them based solely upon their sex.

In *Martin*, the Supreme Court analyzed whether a professional golf tournament was a "public accommodation" under Title III of the ADA when a disabled golfer requested the ability to use a golf cart<sup>2</sup> in the third of three rounds of a tournament. Under the PGA rules at that time, golfers were required to walk the

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<sup>1</sup> See APA Rules of Participation, <http://www.poolplayers.com/usam/2006usam/rules.html>.

<sup>2</sup> The ADA requires "reasonable accommodations" be made for persons with disabilities.

third round. The PGA Tour was open to “any member of the public” who made the rounds after qualifying school, paid a \$3,000 entry fee, and supplied two letters of recommendation.” *Id.* at 665.

The ADA defines the phrase “public accommodation” in twelve categories, one of which includes “a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.” See 42 U.S.C. § 12181(7)(L). The court noted that the legislative history indicated that what constituted a public accommodation “should be construed liberally.” *PGA Tour*, 532 U.S. at 676.

In *Martin*, the court noted that golf tours and their qualifying rounds occurred on “golf courses” – a type of place identified by the ADA as a public accommodation. See 532 U.S. at 677. The PGA conceded that both the audience and the area “behind the ropes” were places of public accommodation. As the district court had noted earlier in the case, the operator of a public accommodation could not “create private enclaves within the facility” by discriminating against participants but not against spectators. *Id.* at 670. The court stated:

In our view, petitioner’s tournaments...simultaneously offer at least two “privileges” to the public -- that of watching the golf competition and that of competing in it. Although the latter is more difficult and more expensive to obtain than the former, it is nonetheless a privilege that petitioner makes available to members of the general public.

*Id.* at 679-80. The same reasoning applies to the gender discrimination challenged here.

The “men’s” division (formerly the “men’s/open” division) of the APA regional tournaments held in Colorado represents the best and most competitive players in the region. The APA denies all women the right to compete at the highest levels of amateur play by prohibiting women from playing in this division. As a tournament open to the public and held at places that are undisputedly places of public accommodation, the APA is prohibited by C.R.S. § 24-34-601 from creating “private enclaves” within places that are undisputedly places of public accommodation by offering tournament privileges to some and denying them to others based solely upon their sex.

The Colorado public accommodations law includes in its list of possible public accommodations “any place to eat [or] drink” and “any sporting and recreational area and facility.” The list is not exhaustive. See C.R.S. § 24-34-601(1) (“‘place of public accommodation’ means any place...including but not limited to...”). Clearly, when drafting the public accommodations prohibitions, which were first enacted in 1895 (Section 1, Chapter 61, Laws of 1895), the legislature anticipated that it would not be able to list or anticipate each and every possible public accommodation.

Like the tournament at issue in *Martin*, the APA tournament is open to any member of the public over a minimum age limit who pays an entry fee. Like the tournament in *Martin*, the APA offer two privileges to the public: watching the tournament and competing in it. There is little doubt that the billiards halls in which the APA holds its regional tournaments are covered by the C.R.S. § 24-34-601(1). Consequently, these billiard halls would obviously be prohibited from providing only certain services, privileges or advantages to men. Likewise, the APA is so prohibited.

The public accommodations law also provides that

...it is not a discriminatory practice for a person to restrict admission to a place of public accommodation to individuals of one sex if such restriction has a bona fide relationship to the goods, services, facilities, privileges, advantages, or accommodations of such place of public accommodation.

See C.R.S. § 24-34-601(3). There is no such “bona fide” relationship to the discrimination at issue here. As previously mentioned, prior to May 2005, the APA had a policy and practice of allowing any person, regardless of their sex, to compete in the “men’s/open” division.

Finally, the APA’s rule eleven which states that “the APA reserves the right to deny participation” is in contravention of Rule 20.4 of the Colorado Civil Rights Commission’s Rules and Regulations, which states:

#### Rule 20.4

No person shall post or permit to be posted in any place of public accommodation any sign which states or implies the following:

WE RESERVE THE RIGHT TO REFUSE SERVICE TO ANYONE.

For all the foregoing reasons, the APA regional tournament and Rack ‘Em Cue Club squarely fit within the definition of “public accommodation,” and both are prohibited by C.R.S. § 24-34-601 from discriminating against women by limiting their most competitive tournament division to men only.

#### DESIRED RESOLUTION

We request that the Colorado Civil Rights Division pursue relief as provided in C.R.S. §§ 24-34-306 & 605 to remedy past unlawful gender discrimination and prevent future gender discrimination.

We look forward to discussing the issues raised by Ms. Broadhurst’s claim.

Very truly yours,

A handwritten signature in black ink that reads "Mark Silverstein". The script is fluid and cursive, with the first name "Mark" and last name "Silverstein" clearly legible.

Mark Silverstein  
Legal Director

A handwritten signature in black ink that reads "Taylor Pendergrass". The signature is more stylized and compact than the one above, with a prominent initial "T" and a long horizontal stroke at the end.

Taylor Pendergrass  
Staff Attorney