

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL, ALBERT
STEN-CLANTON & MARY STEN-CLANTON¹

Complainants

v.

DOCKET NO. 05-BPA-00758

FUNG WAH BUS TRANSPORTATION, INC.,
AND PEI LING LIANG,

Respondents

Appearances:

Tina R. Matsuoka, Esquire for the Attorney General

Lawrence R. Kulig, Esquire for the Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about March 22, 2005, Complainant, Office of the Attorney General, filed a complaint with this Commission charging Respondents with discrimination against Albert Sten-Clanton and Mary Sten-Clanton on the basis of handicap in a place of public accommodation, in violation of M.G.L.c. 272§§98 and 98A. The complaint also alleged that Respondents aided and abetted, incited, compelled and/or coerced the interference with the Sten-Clantons' rights in violation of M.G.L.c.151B§4(4A) and 4(5). The Investigating Commissioner issued a probable cause determination. Attempts to conciliate this matter failed, and the case was certified for public hearing. A public hearing was held before me on October 27 and November 9, 2006.² After careful

¹ See Conclusions of Law, *infra*

² Liang and Lo testified through a certified Cantonese interpreter, Virginia Lam.

consideration of the entire record and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law, and order.

II. FINDINGS OF FACT

1. Albert Sten-Clanton and Mary Sten-Clanton are a married couple residing in Dorchester, MA, who are both blind. Albert Sten-Clanton has used a guide dog as a mobility aide since 1979. He travels by subway, commuter rail, bus, airplane and taxi, accompanied by his guide dog, Bessie, who helps him travel safely and is trained to assist him with handling traffic and any other obstacles that might get in his way. She helps him find the places he wants to go. Mary Sten-Clanton uses a cane for mobility.

2. Respondent Fung Wah Bus Transportation, Inc. (“Fung Wah”) is a corporation established under the laws of New York with a principal place of business at 139 Canal Street, New York, New York.

3. Fung Wah owns and operates at least twenty buses that travel between Boston and New York City and provides low cost transportation between the two cities. Respondent Pei Lin Liang is Fung Wah’s president. Fung Wah currently employs approximately 70 people.

4. During the relevant time period, Fung Wah had a blanket prohibition against transporting animals.

5. Albert Sten-Clanton testified that when he travels by public transportation, he places his guide dog under his seat or at his feet. He testified that he and his guide dog were trained to situate the dog so that the dog does not protrude into any aisles, both for

the safety of other passengers and the safety of his dog. In January 2004, Mr. Sten-Clanton had a guide dog named Adam.

6. On January 15, 2004, Fung Wah offered for sale to the general public passenger tickets for travel between Boston, Massachusetts and New York, New York. Fung Wah sold these tickets at the Crown Royal Bakery, located at 50 Beach Street, Boston, Massachusetts.

7. On that date, Mr. Liang and Winston Kwok Chu-Lo, a Fung Wah employee since October 21, 2003, were at work at the bakery.

8. The Sten-Clantons entered the bakery in order to purchase two one-way bus tickets from Boston to New York City, which at the time Respondent offered for sale for \$10.00 each. They were accompanied by Mr. Sten-Clanton's guide dog, Adam.

9. The Sten-Clantons selected Fung Wah as their bus carrier because of the low cost of the tickets. The Sten-Clantons were traveling to New York City for the weekend to see a Broadway play written by one of Ms. Sten-Clanton's favorite playwrights. The theatre tickets, which they had already purchased, were for that same evening.

10. Ms. Sten-Clanton told Mr. Lo that she wished to buy two bus tickets and gave Mr. Lo \$20. Initially, Mr. Lo accepted the \$20 and wrote out two tickets. The tickets were pre-printed with the statement, "No pets allow [sic] on the bus."

11. Mr. Lo did not give the tickets to Ms. Sten-Clanton because another Fung Wah employee, Jennie Lee, pointed out to Mr. Lo that the Sten-Clantons were accompanied by a dog and therefore could not be sold tickets. Mr. Lo then refused to sell the tickets to the Sten-Clantons, stating to them, "No dogs." In response, Ms. Sten-

Clanton insisted that Mr. Lo sell her the tickets and told him that Adam was a guide dog and should be allowed on all public transportation.

12. Ms. Sten-Clanton told Mr. Sten-Clanton that Fung Wah had refused to sell them tickets because of Mr. Sten-Clanton's dog. Mr. Sten-Clanton told Mr. Lo two or three times that the law required Fung Wah to permit him to board the bus accompanied by his guide dog.

13. Mr. Lo then consulted with Mr. Liang, who was nearby in the bakery as to whether or not he should sell tickets to the Sten-Clantons. According to Lo's testimony, Mr. Liang responded, "They have a dog so we should not sell a ticket to them." Mr. Lo told Mr. Liang that he had seen blind people with guide dogs in other places open to the public, such as subways, and he thought they should sell the tickets to the Sten-Clantons. I credit his testimony.

14. Mr. Liang repeated that dogs are not allowed on the bus. Liang told Lo that other passengers might be allergic to that type of animal. Liang stated that "no pets allowed" is printed on the ticket, a pet is like a dog, and "a dog is a dog."

15. Mr. Lo then told Ms. Sten-Clanton that he could not sell her the tickets because of the dog. Mr. Lo testified that Mr. Sten-Clanton appeared upset. I credit his testimony.

16. Ms. Sten-Clanton refused to accept the return of her \$20 payment from Mr. Lo and continued to insist that Mr. Lo sell her the tickets. While the Sten-Clantons attempted to purchase tickets, Mr. Liang stood in the doorway of the bakery smoking a cigarette and did not interact with the Sten-Clantons.

17. Mr. Lo resumed selling tickets to other customers.

18. Mr. Sten-Clanton testified that he felt determined to have the incident dealt with correctly, not just for the inconvenience caused to him, but also for the sake of other people who deserve a “measure of justice.” I credit his testimony.

19. Mr. Sten-Clanton immediately telephoned the Massachusetts Office on Disability and the Disability Law Center and learned that neither organization could immediately resolve the matter. He then called the Boston Police Department.

20. Mr. Sten-Clanton then encouraged Ms. Sten-Clanton to take the bus to New York by herself, even though this would have made travel significantly more difficult for both of them. However, when Ms. Sten-Clanton attempted to purchase one ticket for herself, she testified that Mr. Lo again tried to return her money. She responded that she did not have a guide dog, to which Mr. Lo replied, “If you don’t have a dog, who is guiding you?” and refused to sell her a ticket. I credit her testimony.

21. Before the police officers responded to the call, Liang left the bakery to respond to a report of a Fung Wah bus breakdown in Quincy.

22. While the Sten-Clantons waited inside the bakery for the police to arrive, Ms. Stan-Clanton purchased cookies. Shortly thereafter, a Fung Wah employee asked the Sten-Clantons to leave, stating that they were taking up too much space and would have to wait outside. At the time the outside temperature was approximately 15 degrees.

23. After Mr. Sten-Clanton telephoned the Boston Police Department, Officers Deneen Moss and Linda Stanford arrived at the bakery in response to a disturbance call regarding a man who refused to leave a restaurant. Officer Moss first spoke to Lo, who stated that Mr. Sten-Clanton had been asked to leave the restaurant and had refused. Moss

testified Mr. Sten-Clanton was upset and was yelling loudly. She asked him to quiet down. I credit her testimony.

24. After speaking to Mr. Sten-Clanton, Officer Moss spoke to Mr. Lo again and told him that Mr. Sten-Clanton had the right to board the bus accompanied by his guide dog. Moss testified that Mr. Lo responded that his supervisor told him not to sell a ticket to Mr. Sten-Clanton because other passengers might have an allergic reaction to his dog. I credit her testimony.

25. Officer Moss then called her control supervisor, Sergeant Dashner, and he arrived at the bakery. Dashner asked Lo to speak to his boss. Lo testified that he called Liang on his cell phone. Liang told Lo that he was on business, that he was far away from the bakery, and that if the police officers wished to see him, they would have to wait for a long time. However, Mr. Lo estimated that Liang left the bakery approximately 30 minutes prior to the police officers' arrival. I credit his testimony.

26. Sergeant Dashner told Lo that the Sten-Clantons might sue him for not selling the tickets to them. Lo told Dashner that it was not his business and that he does what his boss tells him to.

27. Sergeant Dashner then drove the Sten-Clantons to South Station, where they purchased two one-way tickets to New York on Amtrak for \$92.00 each.

28. On February 3, 2004, Detective John Maloof of the Boston Police Department's Community Disorders Unit, a specialized unit that investigates civil rights violations and hate crimes, told Liang that it is unlawful to refuse to sell a ticket to an individual because a guide dog accompanies him. After explaining the public accommodations law, Maloof testified that he asked Liang what he would do if the same

situation happened again. Liang responded that he would put the dog in the luggage compartment of the bus and that his decision with regard to the Sten-Clantons was the correct one. I credit Maloof's testimony.

29. Mr. Liang testified that he believed, by his observation, Adam would not fit under the seat of the bus and he was concerned that the dog would protrude into the aisle. Mr. Liang never allowed the dog to board the bus to make that determination. Mr. Liang did not measure the dog, nor did he ask Mr. Sten-Clanton whether the dog would fit under the seat or at his feet. Mr. Liang acknowledged that Fung Wah had no prior experience in transporting a guide dog, or any other dog, under a seat.

30. Mr. Liang testified about a single past incident that occurred on a Fung Wah bus in November 2002, when a passenger boarded a bus with a small dog hidden in his carry-on baggage. Once on the bus, the passenger removed the dog from his bag and placed it on his lap. He stated that the dog urinated on another passenger's leg. In addition, a near by passenger claimed to have had an allergic reaction to the dog and threatened to sue the company. Mr. Liang instituted a "no animals" policy following the incident.

31. Mr. Liang testified that he offered to transport Adam separately from Mr. Sten-Clanton in the luggage compartment underneath the bus. He stated that he asked Lo to ask Mr. Sten-Clanton if he would agree to this offer. I do not credit Mr. Liang's testimony in this regard, which neither Lo nor Mr. Sten-Clanton corroborated. In any event Mr. Sten-Clanton testified credibly that he would have refused to travel without Adam on board the bus for his own safety.

32. Even if one luggage compartment could have been devoted entirely to Adam, he would have been loose in the luggage compartment. Moreover, the luggage area of the bus was not equipped to transport animals as it was not ventilated.

33. Mr. Liang testified that during an employee's first day of work, Mr. Liang or a supervisor instructs the employee orally about general company practices for about one hour. That session touches upon the need to provide priority seating to passengers with disabilities and to assist passengers with disabilities in boarding and disembarking from buses. This is the only training Fung Wah provides to its employees about the anti-discrimination laws or the company's anti-discrimination practices. Fung Wah supervisors receive the same training as other employees.

34. Mr. Lo did not receive any anti-discrimination or other training before he began working for Fung Wah. Mr. Lo was not aware of any Fung Wah policy related to people with disabilities. Fung Wah never instructed or discussed with Lo the difference between pets and service animals.

35. On January 15, 2004, Fung Wah's employees at the bakery ticket booth were confused and unsure about their obligations concerning services animals.

36. Mr. Liang testified that he is responsible for managing and training Fung Wah employees, and is solely responsible for training Fung Wah employees about anti-discrimination practices. Mr. Liang has no specialized training in anti-discrimination law.

37. As of the date of the public hearing, Liang claimed that he was still unaware of the correct procedure to follow for passengers traveling with service animals on Fun Wah buses.

38. Mr. Sten-Clanton testified that when confronted with discriminatory acts, he usually attempts to discuss the matter rationally, and in a low-key manner with the discriminating person, so as to persuasively present his view and avoid a fight. He testified that he prefers not to display a strong emotional reaction when confronted with discrimination. I credit his testimony.

39. Mr. Sten-Clanton testified that he was made to feel dependent on others to resolve the matter concerning the Fung Wah tickets, as he did not know when or by what means he would be traveling to New York. The police officers did not arrive at the bakery for at least 30 minutes after he called them. Mr. Sten-Clanton was angry and frustrated that his efforts to persuade Fung Wah to follow the law were futile, and that the police officers could not compel Fung Wah to comply with the law. I credit his testimony.

40. Mr. Sten-Clanton testified that he was also angry because he had never before encountered a problem like this with a bus company; the incident interfered with his travel plans, and the refusal of service was a clear violation of his and Ms. Sten-Clanton's civil rights. I credit his testimony.

41. Mr. Sten-Clanton testified that when his wife was refused a single ticket, his anger was exacerbated because she is the person he cares about the most in the world and her rights were being violated. I credit his testimony.

42. Mr. Sten-Clanton testified that a sense of justice is important to him because blind people are often denied the “normal breaks” in life, not because they cannot see, but due to other people’s attitudes toward them and their power to “bar the door.” He testified that his strong emotional response to the incident was fueled by his knowledge that the law was on his side.

43. Mr. Sten-Clanton felt a lingering of emotions from the incident with Fung Wah throughout the weekend he and Ms. Sten-Clanton spent in New York City. He was preoccupied by the thought that when he returned to Massachusetts he would have to determine how to handle the incident. He has thought about the incident many times since it occurred, and when he does, he becomes angry all over again. I credit his testimony.

44. Mr. Sten-Clanton’s eyes welled with tears when he spoke of the emotional impact the incident with Fung Wah had on him.

45. Ms. Sten-Clanton testified that she was shocked and distressed by Fung Wah’s refusal to allow her to purchase a ticket and board the bus, even without Mr. Sten-Clanton’s guide dog. I credit her testimony

46. Ms. Sten-Clanton testified that she was angry and frustrated that Fung Wah had put the interests of a hypothetical passenger with allergies ahead of actual blind passengers who were attempting to purchase tickets. I credit her testimony.

47. She testified that she was angry that anyone would so completely disregard her and her husband’s rights by asking them to leave the bakery and stand outside in 15 degree weather while waiting for the police to arrive. I credit her testimony.

III. CONCLUSIONS OF LAW

A. Amendment of Complaint

A complaint or any part thereof may be amended to cure technical defects or omissions... Amendments shall relate back to the original filing date. 804 CMR 1.10(6). While the Attorney General was the only named Complainant in this matter, the evidence presented at hearing clearly demonstrates that the Attorney General was acting on behalf of Albert and Mary Sten-Clanton, who were the victims of discrimination and who suffered as a result thereof. Moreover, it is clear that the Attorney General sought damages on behalf of the Sten-Clantons and Respondents were on notice of this. The evidence also supports the standing of the Sten-Clantons as Complainants in this matter. I therefore conclude that justice requires that the complaint in this matter be amended to include Albert Sten-Clanton and Mary Sten-Clanton as party Complainants.

B. Discrimination in a Place of Public Accommodation

The Massachusetts public accommodations law, G.L. c. 272, § 98, provides that it is unlawful to make any “distinction, discrimination or restriction” in a place of public accommodation on the basis of disability, and states that “all persons shall have the right to the full and equal accommodations, advantages, facilities and privileges in any place of public accommodation” Id.

To make out a *prima facie* case of discrimination under this statute, a complainant must prove that: (1) he is a member of a protected category, and that (2) he was denied access to or restricted in the use of (3) a place of public accommodation.” Lombardo v. The Rendezvous Restaurant and Lounge, Inc., 24 M.D.L.R. 250, 251 (2002). Once the complainant makes out a *prima facie* case, the burden shifts to the respondent to show a

legitimate, non-discriminatory reason for its conduct. Abramian v. President & Fellows of Harvard College, 432 Mass 107, 116-17 (2000). I find that Complainants have made out a *prima facie* case of discrimination in a place of public accommodation on behalf of both Mr. Sten-Clanton and Ms. Sten-Clanton. It is undisputed that the Sten-Clantons are blind and that Mr. Sten-Clanton relied on a guide dog because of his blindness. In addition, the parties have stipulated that Fung Wah and its buses are places of public accommodation within the meaning of the statute.

Therefore, the only question is whether Fung Wah denied or restricted the Sten-Clantons' ability to enjoy its services. Respondents do not dispute that Fung Wah refused to permit the Sten-Clantons to travel accompanied in the passenger compartment by Mr. Sten-Clanton's guide dog. Fung Wah's refusal to permit Mr. Sten-Clanton to travel accompanied by his service animal, and then its refusal to sell Ms. Sten-Clanton a ticket even when she sought to travel alone, amounted to a denial and restriction of Fung Wah's services within the meaning of G.L. c. 272. See Bruneau v. G&G Lambert's, Inc., 26 M.D.L.R. 43, 45 (2004) (complainant satisfied *prima facie* elements where food store's "strict and unreasonable monitoring" of complainant's service animal "diminished" complainant's "ability to enjoy the privileges of the facility").

Rather than mount a challenge to the sufficiency of the Commonwealth's *prima facie* case, the Respondents claim that they had a legitimate, non-discriminatory reason for attempting to separate Mr. Sten-Clanton from his guide dog. In support of that contention, Respondents point to a single, isolated incident that occurred more than one year earlier. That incident involved a different passenger who had clandestinely brought

a small dog into the passenger compartment of the bus. Fung Wah alleges that the dog urinated on one passenger and provoked a complaint by another of an allergic reaction.

However, this unrelated incident involving a dog which appears to have been a pet and not a service animal (Respondents presented no evidence that the dog's owner or anyone else ever claimed that the dog was a service animal) does not support Fung Wah's claim of a legitimate, non-discriminatory reason for refusing to sell passage to the Sten-Clantons. Mr. Sten-Clanton's dog was trained as a service animal, and he appeared well behaved to Mr. Liang during the time he observed him. Respondents made no inquiry about the dog's training and/or behavior. Instead, Respondents acted on the basis of an unfounded assumption based on a prior unrelated incident, which is precisely of the type discrimination prohibited by the law. Lowe v. Frank's Place, 16 M.D.L.R. 1478, 1480, 1483 (1994) (tavern liable for violating public accommodations law where it refused entry by customer who used a wheelchair on basis that the wheelchair "posed the possibility of an accident on the premises")

In addition, Fung Wah presented no evidence of knowledge that any passenger on board the bus in question was allergic to dogs, and even if that had been the case, it could have attempted to respond through measures short of an outright service ban, such as relocation of that passenger. *See* DOJ, Civil Rights Division, Disability Rights Section, *ADA Business BRIEF: Service Animals* ("Allergies ... are generally not valid reasons for denying access or refusing service to people with service animals."); DOT Guidance, 68 Fed. Reg. at 24877 ("Passengers who state they have allergies or other animal aversions should be located as far away from the service animal as practicable."); Branson v. West, 17 N.D.L.R. P. 90 [1999 WL 1186420] (N.D. Ill. 1999) (granting injunction against

health care provider who refused employee permission to bring service animal into workplace; allegation that service animal would interfere with care of allergic patients was not supported by evidence); *cf. Clark County School Dist. v. Buchanan*, 924 P.2d 716 (Nev. 1996) (finding school district liable for refusing employee permission to bring service animal-in-training into classroom based on purported fear that some students might have allergies to animal, where school district could respond to any allergies through other measures).

Moreover, Mr. Liang testified that he observed the dog and “knew” that he would not fit under a seat and would otherwise protrude into the aisle. This is despite the fact that Fung Wah had no prior experience transporting service animals in passenger compartments, did not measure Adam, and made no attempt to bring him onto the bus to determine if he could ride safely. Mr. Sten-Clanton testified that on the multiple previous occasions he had traveled his dog on similar buses, the dog had fit under the seat and he had never before encountered any objection from other passengers or bus companies. Finally, none of Respondents’ purported legitimate, non-discriminatory reasons justifies their refusal to sell Ms. Sten-Clanton a ticket to travel to New York alone.

I conclude that Respondents failed to satisfy their burden of articulating a legitimate, nondiscriminatory reason for their actions and that they are liable to both Albert Sten-Clanton and Mary Sten-Clanton under G.L. c. 272, § 98.

That portion of the public accommodations law, referencing disabled persons with guide dogs, G.L. c. 272, § 98A, states that “any physically handicapped person accompanied by a dog guide shall be entitled to any and all accommodations, advantages, facilities and privileges of all public conveyances ... and places of public accommodation,

within the commonwealth, to which persons not accompanied by dogs are entitled.” To make out a *prima facie* case of discrimination under Section 98A, there must be evidence that a physically disabled person accompanied by a dog guide was denied access to, or restricted in the use of, a place of public accommodation. Bruneau v. G&G Lambert’s, Inc., 26 M.D.L.R. 43 (2004).

For the reasons explained in connection with the Complainant’s claim under §98 of the public accommodations law, the Complainants have also made out a *prima facie* case of a violation of §98A of c. 272. Respondents have failed to articulate a legitimate, non-discriminatory basis for refusing the Sten-Clantons permission to travel with Mr. Sten-Clanton’s guide dog in the passenger compartment of Fung Wah’s buses. Therefore, I conclude that Respondents are also liable to Albert Sten-Clanton and to Mary Sten-Clanton for a violation under G.L. c. 272, § 98A.

C. Individual Liability

M.G.L., c. 272§98 states that... “Whoever makes any distinction discrimination or restriction on account of... blindness... relative to the admission of any person to, or his treatment in any place of public accommodation, resort or amusement...or whoever aids or incites such distinction, discrimination or restriction...shall be liable to any person aggrieved thereby for such damages as are enumerated in section five of chapter one hundred and fifty-one B.” c. 272§98A states,. “Whoever deprives any blind person [of equal rights in a place of public accommodations]...shall be liable to any person aggrieved thereby for such damages as are set forth in section five of chapter one hundred and fifty-one B.

I find that Complainant has established a case of individual liability against Mr. Liang under both c. 272§§98 and 98A. The evidence is that it was Mr. Liang himself who established Fung Wah's blanket policy to refuse passengers permission to bring any animal – even a service animal -- into the passenger compartments of its buses. He then personally enforced that policy against the Sten-Clantons, even in the face of Mr. Lo's statement that they should allow the Sten-Clantons to purchase tickets, and despite the intervention of law enforcement representatives. Several weeks later, Mr. Liang still insisted to a Boston Police Department Detective that his decision that Mr. Sten-Clanton should be separated from his guide dog was correct. I conclude that Mr. Liang is individually liable for violating G.L.c.282§§98 and 98A³

Accordingly, Pei Lin Liang is individually liable, and jointly liable with Fung Wah, for the unlawful discrimination established under the facts of this case.

IV. DAMAGES

A. Emotional Distress

G.L. c.272 authorizes the Commission to award such damages as are available under G.L. c.151B§5. The Commission is authorized to award damages for emotional distress resulting from unlawful discrimination. Stonehill College v. Massachusetts Comm'n Against Discrimination 441 Mass. 549 (2004) Bournewood Hosp., Inc. v. Massachusetts Comm'n Against Discrimination, 371 Mass. 303(1976); Buckley Nursing Home, Inc. v. Massachusetts Comm'n Against Discrimination, 20 Mass. App. Ct. 172(1985). The Commission has awarded damages for emotional distress in public

³ In view of my finding Liang individually liable under c.272§§98 and 98A, I need not and do not consider Complainants' claims under c.151B§§4(4A) and 4(5)

accommodation cases consistent with Stonehill, supra. Such emotional distress damages should be fair and reasonable, and proportionate to the distress suffered. Stonehill, supra, at 576. Some of the factors to be considered are; the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has suffered and reasonably expects to suffer and whether the complainant has attempted to mitigate the harm. Id. The Complainant must show a sufficient causal connection between the Respondent's unlawful act and the Complainant's emotional distress. Id.

Albert Sten-Clanton testified credibly and with conviction about the effects of Respondents' refusing access to him and his wife. He stated that it was important to him to obtain justice in this case because blind people often do not receive "breaks" in life, not because of their blindness, but because of the attitude of sighted people toward them. He stated that he usually attempts to resolve acts of discrimination through the powers of persuasion and prefers not to display a strong emotional reaction when confronted with discrimination. However, in this case, Mr. Sten-Clanton, who had never before been denied access to a bus, was angry and made to feel dependent on others in order to resolve the matter and travel to New York. He was left feeling angry and frustrated that his efforts to persuade Respondents to follow the law were futile, and that even police officers were unable to force Respondents to comply with the law. Mr. Sten-Clanton testified that his anger increased when his wife, whom he cares more about than anyone in the world, was refused a single ticket. He testified that his strong emotional response to the incident was fueled by his knowledge that the law was on his side. These emotions continued throughout the weekend he and Ms. Sten-Clanton spent in New York City and he was preoccupied by thoughts of how he would handle the incident when he returned

home. He has thought about the incident many times since it occurred, and when he does, he becomes angry all over again. Mr. Sten-Clanton's eyes welled with tears when he spoke of the emotional impact the incident with Fung Wah had on him. From observing Mr. Sten-Clanton's demeanor at the public hearing in this matter, it was apparent that this matter has taken an emotional toll on him. I conclude that Mr. Sten-Clanton experienced emotional distress as a result of Respondents' unlawful conduct and that he is entitled to an award of \$35,000.00 in order to compensate him for his emotional distress.

Ms. Sten-Clanton testified that she was shocked and distressed by Fung Wah's refusal to allow her to purchase a ticket and board the bus, even without Mr. Sten-Clanton's guide dog. She was angry and frustrated that Fung Wah had put the interests of a hypothetical passenger with allergies ahead of actual blind passengers who were attempting to purchase tickets and that anyone would so completely disregard her and her husband's rights by asking them to leave the bakery and stand outside in 15 degree weather while waiting for the police to arrive. I conclude that Ms. Sten-Clanton experienced emotional distress as a result of Respondents' unlawful conduct and that she is entitled to an award of \$25,000.00 in order to compensate her for her emotional distress.

B. Civil Penalty

M.G.L.c.151B§5 states, in part, "if, upon all the evidence at any such hearing, the commission shall find that a respondent has engaged in any such unlawful practice, it may, in addition to any other action which it may take under this section, assess a civil penalty against the respondent: (a) in an amount not to exceed \$10,000 if the respondent

has not been adjudged to have committed any prior discriminatory practice.” Having found that Respondents have engaged in a discriminatory practice and acted in deliberate disregard of Complainants’ rights, I conclude that a civil penalty in the amount of \$10,000.00 is warranted.

V. ORDER

A. Monetary Relief

1. Pay to Albert Sten-Clanton the sum of \$35,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue, by tendering to the Attorney General’s Office, care of counsel of record for the Commonwealth, a certified check or money order payable to Albert Sten-Clanton.

2. Pay to Mary Sten-Clanton the sum of \$25,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue, by tendering to the Attorney General’s Office, care of counsel of record for the Commonwealth, a certified check or money order payable to Mary Sten-Clanton.

3. Pay to Albert Sten-Clanton and Mary Sten-Clanton each the sum of \$82 (the difference in cost between a one-way Fung Wah ticket from Boston to New York and the \$92 Amtrak tickets the Sten-Clantons were forced to purchase) by tendering to the Attorney General’s Office, care of counsel of record for the Commonwealth, a certified check or money order payable to each in that amount.

4. Pay to the Commonwealth of Massachusetts the sum of \$10,000 as a civil penalty, by tendering to the Massachusetts Commission Against Discrimination, care of the Clerk of the Commission, a certified check or money order payable to the Commonwealth of Massachusetts.

Payment shall be made within 60 days of receipt of this decision.

The parties shall notify the Clerk of the Commission as soon as payment has been made. If Respondents fails to comply with the terms of this Order within the time period allotted, please notify the Clerk of the Commission.

B. Affirmative Relief

Respondents are hereby ORDERED to:

1. Cease and desist from discriminating against individuals based on disability in generally and specifically because they require the assistance of a guide dog, in violation of G.L. c. 272, §§ 98 and 98A.

2. Respondents shall immediately order, verbally and in writing, all employees to sell tickets to individuals with disabilities on the same basis as other customers and permit service animals in all its facilities and on board all buses.

3. Immediately adopt as a policy the Notices to Individuals with Disabilities and the Customer Complaint Notice (the “Notice”), attached as Exhibit A.

4. Within thirty days of this Order, Respondents shall conspicuously post copies of the Notice, in English and in Chinese printed in a large-print format (18-point font or larger), at all of its ticket counter locations and bus boarding areas, in places easily accessible to all customers and passengers.

5. Within thirty days of this Order, Respondents shall conspicuously post the text of the Notice on all of its websites.

6. Immediately adopt and maintain the Equal Access and Anti-Discrimination Policies and Procedures for Customers with Disabilities (the “Policy”), attached as Exhibit B.

a. implement the Policy and distribute it in English and in Chinese to all employees.

b. at all times, make available copies of the Policy in English and Chinese at all ticket counters, sales locations, and on board all buses.

c. promptly provide a copy of the Policy to any person who requests a copy.

d. not rescind, modify, or amend the Policy in any way without prior written approval from the Massachusetts Commission Against Discrimination.

7. Within sixty days of this Order, Respondents shall designate as Disability Access Coordinator a high-level supervisor who is knowledgeable about, and trained in, Massachusetts and Federal anti-discrimination laws.

a. The Disability Access Coordinator shall be responsible for oversight of the implementation of the Policy and shall be available to assist employees and customers with reviewing and responding to requests for reasonable accommodation, including requests for accessible buses.

b. The Disability Access Coordinator shall keep and maintain any documents related to implementation of the Policy.

c. The MCAD Director of Training must approve, in advance, Respondents’ selection of the person it designates as its Disability Access Coordinator. Respondents’

shall provide sufficient information in writing to the MCAD Director of Training regarding all candidates for the position, including the person's title, current duties, and qualifications, to permit the MCAD's Director of Training to make an informed decision about whether to approve the candidate.

8. Within sixty days of this order, designate a high-level supervisor or consultant who is knowledgeable about and trained in Massachusetts and federal anti-discrimination laws and investigatory techniques to be Complaint Officer.

a. The Complaint Officer shall oversee implementation of the Complaint Procedure adopted as part of the Policy and shall investigate allegations of discriminatory conduct and make recommendations for discipline, which Respondents shall implement.

b. The MCAD Director of Training must approve, in advance, Respondents' selection of the person to be designated as its Complaint Officer. Respondents shall provide sufficient information in writing to the MCAD Director of Training regarding all candidates for the position, including the person's title, current duties, and qualifications, to permit the MCAD Director of Training to make an informed decision about whether to approve the candidate.

9. Shall provide to all of their employees training that has been approved by the MCAD Director of Training and that covers all of the requirements identified below. Respondents shall retain, and assume the cost of, interpreter services when one or more of their employees requires those services in order to understand and participate in such training.

a. Respondents shall provide employees with anti-discrimination training that complies with all of the requirements below.

b. The training shall be at least four hours in length and shall cover state and federal prohibitions against disability-based discrimination in the workplace and in public accommodation, and include explanations that it is illegal to: (1) refuse to sell a ticket to a person because the person has a disability and/or because the person is accompanied by a service animal; (2) ask for a license, certification, or other written documentation concerning a service animal; (3) refuse to permit a service animal to travel with a customer aboard a Fung Wah bus; and (4) charge an additional fee because of a service animal or a need for an accessible bus.

c. Respondents may request that the Commission conduct the training, select a trainer who has completed the MCAD-certified discrimination prevention training course, *or* submit another proposed trainer's résumé to the MCAD Director of Training for approval at least one month prior to the training session(s).

d. Respondents shall submit the training agenda to the MCAD Director of Training for approval at least one month prior to the training session(s).

e. All current employees must attend the training within 60 days of this Order. Employees who are hired after the training conducted pursuant to this Section shall be trained as set forth in paragraph 11 of the Policy.

f. Respondents shall maintain a log documenting the attendance of employees at the training conducted pursuant to this Section. These logs shall include (1) the name and job title of the employee; (2) a description of the training provided; (3) the date(s) of training; and (4) the name of the person and/or organization that conducted the training.

h. Within one month after each training session, Respondents must submit documentation of compliance with this agreement to the MCAD Director of Training.

The documentation must be signed by the trainer(s), identifying the training topics, training participants, employees of the company as of the training date(s), and the date(s) and time(s) of the training session(s).

i. These training-related requirements must be completed by any successor of Fung Wah within the stated time frames if any of the following apply:

1) the majority of the managers employed by Fung Wah as of the date of this settlement continue to work for the successor as of the succession date;

2) the majority of Fung Wah's governing board (such as the board of directors or trustees) as of the date of this settlement continue to serve on the successor's board as of the succession date;

3) the new owner is a relative of Fung Wah; and/or

4) Fung Wah retains an interest in the successor entity.

j. The MCAD retains jurisdiction over these training requirements for the purposes of enforcement.

10. Respondents shall maintain all records relating to implementation of this Order, including, but not limited to, documents relating to internal and external employee and customer service complaints, investigative reports and documents reflecting participation of employees in training programs.

11. Upon request of the MCAD Director of Training, Mr. Liang or another legal representative of Fung Wah shall produce all documentation retained pursuant to this Order and/or any other information that MCAD Director of Training may request to determine whether or not Respondents are complying with the terms of the Order, including providing access to Respondents' employees with information that may assist the MCAD Director of Training in making this determination.

So Ordered this 9th day of July, 2007.

JUDITH E. KAPLAN
Hearing Officer

EXHIBIT A

NOTICES TO INDIVIDUALS WITH DISABILITIES

SERVICE ANIMAL POLICY

SERVICE ANIMALS ARE WELCOME IN ALL FUNG WAH FACILITIES AND MAY ACCOMPANY PASSENGERS ON BOARD BUSES.

ACCESSIBLE BUSES

FUNG WAH WILL PROVIDE BUSES THAT ARE READILY ACCESSIBLE TO AND USABLE BY INDIVIDUALS WITH DISABILITIES, INCLUDING INDIVIDUALS WHO USE WHEELCHAIRS. A CUSTOMER MAY REQUEST AN ACCESSIBLE BUS BY CONTACTING A SUPERVISOR ON DUTY OR

NAME
FUNG WAH DISABILITY COORDINATOR
ADDRESS, BOSTON, MA XXXXX
617-XXX-XXXX (VOICE)
617-XXX-XXXX (TTY/FAX)
EMAIL ADDRESS

FUNG WAH WILL PROVIDE THE CUSTOMER WITH WRITTEN CONFIRMATION OF THE REQUEST WITHIN TWENTY-FOUR HOURS AND NO LATER THAN AT THE TIME OF BOARDING. ALL REQUESTS WILL BE ACCOMMODATED AS SOON AS POSSIBLE AND NO LATER THAN FORTY-EIGHT HOURS FROM THE TIME THE REQUEST IS MADE.

CUSTOMER REASONABLE ACCOMMODATION REQUESTS

IF YOU HAVE A DISABILITY AND AS A RESULT OF YOUR DISABILITY YOU NEED A REASONABLE ACCOMMODATION, YOU CAN MAKE THIS REQUEST BY CONTACTING A SUPERVISOR ON DUTY OR

NAME
FUNG WAH DISABILITY COORDINATOR
ADDRESS, BOSTON, MA XXXXX
617-XXX-XXXX (VOICE)
617-XXX-XXXX (TTY/FAX)
EMAIL ADDRESS

**A REASONABLE ACCOMMODATION INCLUDES CHANGES IN FUNG WAH'S
RULES AND POLICIES THAT WOULD MAKE IT EASIER FOR YOU TO USE
OUR SERVICES OR FACILITIES.**

CUSTOMER COMPLAINT NOTICE

CUSTOMER COMPLAINTS, SUGGESTIONS, AND INQUIRIES MAY BE

DIRECTED TO A SUPERVISOR ON DUTY OR TO:

NAME
FUNG WAH COMPLAINT OFFICER
ADDRESS, BOSTON, MA XXXXX
617-XXX-XXXX (VOICE)
617-XXX-XXXX (TTY/FAX)
EMAIL ADDRESS

IF YOU BELIEVE THAT YOU HAVE BEEN DISCRIMINATED AGAINST
BECAUSE OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, SEXUAL
ORIENTATION, OR DISABILITY, YOU MAY SUBMIT A COMPLAINT TO THE
FOLLOWING AGENCIES:

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION
1 ASHBURTON PLACE, ROOM 601
BOSTON, MA 02108
617-994-6000 (VOICE)
617-994-6196 (TTY)
www.mass.gov/mcad

ATTORNEY GENERAL OF MASSACHUSETTS
CIVIL RIGHTS DIVISION
1 ASHBURTON PLACE, BOSTON, MA 02108
617-727-2200 (VOICE)
617-727-4765 (TTY)
www.ago.state.ma.us

EXHIBIT B

**FUNG WAH BUS TRANSPORTATION INC.’S
EQUAL ACCESS AND ANTI-DISCRIMINATION POLICIES AND
PROCEDURES FOR CUSTOMERS WITH DISABILITIES**

SUMMARY

It is unlawful, and against Fung Wah Bus Transportation, Inc.’s Anti-Discrimination Policies and Procedures for Customers with Disabilities (the “Policy”), for any employee to discriminate against an individual on the basis of a disability.

In accordance with state and federal law and Fung Wah policy, Fung Wah allows individuals with disabilities who are accompanied by service animals to purchase tickets and board all buses with their service animals. Upon request, Fung Wah will provide a bus that is readily accessible to and usable by individuals with disabilities.

GENERAL EQUAL ACCESS AND ANTI-DISCRIMINATION POLICY

An individual has a disability if the person (1) has a physical or mental impairment that substantially limits a major life activity, (2) has a record of such impairment, or (3) is perceived as having such impairment. A disability can be apparent, as in the case of someone who needs to use a wheelchair for mobility purposes, or not apparent, as in the case of someone with a cognitive disability or mental illness.

1. The Disability Access Coordinator will supervise the implementation of the Policy: Fung Wah will designate a supervisor who is knowledgeable about and trained in Massachusetts and federal anti-discrimination laws to be its Disability Access Coordinator. The Disability Access Coordinator is responsible for oversight of the implementation of the Policy, and shall be available to assist employees with reviewing and responding to requests for reasonable

accommodations, including requests for accessible buses. [Name] is the Disability Access Coordinator. S/he can be contacted at [Phone and Address].

2. Employees will make reasonable accommodations for individuals with disabilities: Fung Wah and its employees will ensure that to customer with a disability full and equal enjoyment of its services.
3. Employees cannot require proof of disability: Employees may not require an individual to provide proof of his or her disability or enquire about the nature or extent of a person's disability, including the diagnosis, details about treatment, and medications taken, nor may any employee request copies of medical records or any other documentation of disability.
4. Individuals with disabilities are not required to accept an accommodation or aid: An individual with a disability is not required to accept an accommodation, aid, service opportunity, or benefit offered by Fung Wah. For example, an individual with a disability may choose to sit in any available seat on a bus and is not required to sit in a priority seat reserved for an individual with a disability. Fung Wah is also prohibited from requiring that an attendant or any other person accompany an individual with a disability in order for that individual to use its services or facilities.
5. Employees cannot discriminate against individuals because of their association with a disabled person: Fung Wah shall not exclude or deny services to an individual because of the disability of a person with whom that individual is associated.

6. Employees cannot discriminate against individuals with disabilities because of appearance or behavior resulting from a disability: Employees shall not refuse to provide a service to a person with a disability solely because that person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees or other persons.
7. Employees shall provide boarding assistance to individuals with disabilities: Those employees who are properly trained shall provide assistance, as needed, to individuals with disabilities in boarding and disembarking, including moving to and from the bus seat. Fung Wah employees shall not use or request the aid of non-employees for routine boarding or other assistance to individuals with disabilities, including aid from family members or companions of the individual needing assistance, unless the individual requests or consents to assistance from those persons. Fung Wah will provide individuals with disabilities adequate time to board and disembark from a bus.
8. Employees will permit passengers to travel with mobility aids on board buses: To the extent possible, wheelchairs and other mobility aids used by individuals with disabilities shall be permitted in the passenger compartment of buses. If mobility aids cannot be accommodated in the passenger compartment, they shall be placed in the baggage compartment of the bus and shall be stowed before other baggage or cargo is loaded. When the bus is stopped, the driver or other employee shall help individuals with disabilities stow and retrieve mobility aids.
9. Fung Wah shall not impose additional charges for providing accommodations to individuals with disabilities: Fung Wah may not impose special charges on

- individuals with disabilities, including individuals who use wheelchairs, for providing services necessary to accommodate them.
10. Employees will be trained in state and federal anti-discrimination laws and best practices to assist individuals with disabilities: All employees will receive training about (1) the requirements of state and federal anti-discrimination laws; (2) best practices in providing customer service to individuals with disabilities; (3) the technical requirements of the law, such as how to provide safe and appropriate boarding assistance; and (4) the specific provisions of the Policy, including the requirements of the Complaint Procedure.
 11. Violations of the Policy will result in immediate disciplinary action: Any employee found to have violated the Policy or to have discriminated against a customer in any way will be subject to immediate disciplinary action, which may include re-training, suspension, or termination.

SERVICE ANIMAL POLICY

Service animals are not pets. Although the most commonly recognized service animals are “seeing eye dogs,” they may be any type of animal and assist a person in any number of ways. A service animal is any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability. These tasks may include guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing rescue work, pulling a wheelchair, or fetching dropped items.

Under state laws, service animals can include any assistive animal that a disabled person needs because of a disability, whether or not that animal has been specifically trained to help the person.

1. Service animals are welcome on board any Fung Wah bus and in any of Fung Wah’s facilities that are open to its customers: Employees shall not seek to separate a person with a disability from a service animal. A service animal may accompany an individual with a disability to all areas open to the public and will be permitted to travel on board buses at no additional cost.
2. Employees cannot request proof or licensing of a service animal: Employees may not request written proof that an animal is a service animal. If an employee is not certain that an animal is a service animal, he or she may ask the person who has the animal if it is a service animal required because of a disability but may not require any further proof.
3. Employees are not required to care for service animals: Employees are not required to supervise or care for a service animal.

4. Fung Wah may exclude a service animal only if it poses a significant risk to the health or safety of others: Employees shall not make assumptions about how a particular animal is likely to behave and must consider each situation individually, based upon the actual circumstances rather than on beliefs based upon speculation, stereotypes, or generalizations. If an employee believes that a particular service animal may pose a significant risk to the health or safety of any person, the employee will first inform the individual with a disability who uses the service animal about the concerns and then provide the individual with the opportunity to respond and correct the service animal's behavior, if necessary. Other measures should be considered as well. If the problem cannot be resolved, the employee will offer the person the option of continuing to enjoy Fung Wah's facilities and services without the service animal or with the service animal being transported in an appropriate fashion (a fashion that is safe for the service animal) in the bus's luggage compartment and will work together with the individual to otherwise try to identify acceptable alternative accommodations.

COMPLAINT PROCEDURE

Fung Wah is committed to complying with all state and federal anti-discrimination laws and takes complaints of discriminatory conduct very seriously. Employees should immediately notify the Complaint Officer of any acts of alleged discriminatory conduct of which he or she becomes aware so that Fung Wah can promptly investigate the allegations and take appropriate corrective action as necessary.

1. The Fung Wah Complaint Officer will oversee the complaint process: Fung Wah will designate a supervisor, who is knowledgeable about Massachusetts and federal anti-discrimination laws and who is trained in investigatory techniques, to oversee Fung Wah's complaint process. The Complaint Officer is responsible for investigating allegations of discriminatory conduct and for making recommendations for discipline. [Name] is the complaint officer. S/he can be contacted at [Phone and Address].
2. Employees will immediately report complaints to the Complaint Officer: Any employee who witnesses an incident of discriminatory treatment or who becomes aware of a written or verbal complaint of alleged discriminatory conduct will immediately report the matter to the complaint officer or, if that person is not immediately available, to another supervisor.
3. Fung Wah will immediately investigate complaints of discriminatory treatment: The complaint officer will promptly and thoroughly investigate and respond to each report or complaint of alleged discriminatory conduct and will prepare a written report for each investigation. Each report will include (1) the name of the complainant and alleged wrongdoer(s); (2) the date the

complaint was filed; (3) the date and place where the incident allegedly occurred; (3) a summary of the alleged conduct at issue; (4) a summary of the investigation (such as a list of the witnesses interviewed); (5) a recitation of the factual findings relied upon; and (6) the final determination of the complaint, including any discipline or corrective action recommended. Fung Wah will maintain these written reports in a centralized and easily retrievable records system.

4. Fung Wah will take immediate and appropriate corrective action to respond to reports and complaints: If a report or complaint of discriminatory treatment is substantiated by the Complaint Officer, Fung Wah will take immediate and appropriate corrective action that is reasonably calculated to immediately stop any further discriminatory conduct, up to and including termination of an employee. Fung Wah will also promptly respond and communicate results of the investigation to the customer who submitted the complaint.