

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION AGAINST
DISCRIMINATION AND FRANCKLIN ETIENNE,
Complainants

v.

Docket No. 98-BPA-0347

CHAET'S VAC-VIDEO-TV, INC.,
Respondent

Appearances: Ryan E. Thompson, Esquire, for Complainant
Steven Chaet, pro se, for Respondent

DECISION OF THE HEARING COMMISSIONER

I. INTRODUCTION

This case concerns an individual who claims that he was subjected to discrimination in a place of public accommodation on the basis of his race, color and national origin. His complaint alleges unlawful discrimination in violation of chapter 272, section 98 of the Massachusetts General Laws.

II. PROCEDURAL HISTORY

On February 3, 1998, Complainant, Francklin Etienne, filed a charge of discrimination against Respondent, Chaet's Vac-Video-TV, Inc. ("Chaet's"). The Investigating Commissioner issued a finding of Probable Cause. After conciliation

efforts failed, the matter was certified for Public Hearing on July 8, 2002. A Public Hearing was held on January 30, 2003. Post-Hearing findings of fact and conclusions of law were not submitted by the parties.

I have considered the entire record of the proceedings and supporting arguments of the parties. To the extent the testimony of various witnesses is not in accord with the findings herein, such testimony is not credited. Having duly considered the record before me, I make the following Findings of Fact and Conclusions of Law and Order.

III. FINDINGS OF FACT

1. Complainant is a black male from the Caribbean Islands.
2. Respondent is a vacuum, video and television repair store located in Brockton, Massachusetts. Steven Chaet (“Chaet”) is an officer of the corporation. Respondent is a place of public accommodation within the meaning of M.G.L. c. 272, § 98.
3. On January 31, 1998, Complainant brought his vacuum cleaner to Respondent’s store to be repaired. He had not been to Respondent’s store on any prior occasion, having just moved to the area eight days before. Complainant stated that a friend accompanied him to the store, but remained in the car.
4. Complainant entered the store through its front door. Approximately five customers and two to three employees, including Chaet, were present. Complainant brought his assembled vacuum to an employee, who examined it and informed him that the vacuum’s belt was broken and that the interior needed to be cleaned. The employee took the vacuum from Complainant in order to perform this work.

5. After approximately twenty minutes, the employee returned the vacuum to Complainant, informing him the charge for the repair and cleaning would be \$23.90. Complainant testified that he was displeased, because there was dirt remaining on the vacuum. He stated that he showed the employee the dirt and told him, "If you are going to charge me \$23.90, you have to clean the vacuum fully!" According to Complainant, the employee did not offer to clean the vacuum or look at it again.

6. Complainant stated that at this time Chaet came out from the back room of the store and, without giving Complainant a chance to explain the situation, stated angrily, "Who are you to come into my store and tell me what to do. Why don't you go back to your country?" Complainant testified that he was extremely embarrassed and responded, "Why are you embarrassing me in front of people like this? Why are you discriminating against me?" According to Complainant, Chaet responded, "I did you a favor to let you come into this store."

7. Chaet's version of what ensued differs from Complainant's. According to Chaet, the employee at the counter called him out from the back room, saying, "We have a drunk out here," and told him that Complainant was refusing to pay. Chaet testified that when he came from the back room, Complainant asked, "Who are you?" in a slurred voice and stated angrily that there was dust remaining on his vacuum. According to Chaet, he explained to Complainant, "We cleaned the inner motor," and not the outside of the vacuum.

8. After the above exchange, Complainant left the store without having paid, located a pay phone and called 911 to report the incident. The dispatcher informed him that the police would not come to the store, because this was not a criminal matter. He advised

Complainant to return to the store, pay his bill and then come to the police station to file a complaint.

9. Complainant returned to Respondent's store approximately five to ten minutes after he had left and paid his \$23.90 bill, handing Cheat \$24.00. Cheat placed the ten cents in change on the counter. Complainant testified that Chaet stated, "Remember I did you a favor to let you come in this store. Never come in this store again. If you come back in this store, I will kill you." Complainant stated his reply was, "Thank you. I will see you in court."

10. Chaet testified that he did say to Complainant, "I don't want to see you back here," but denied threatening him or treating him in a discriminatory manner. I credit Chaet's testimony that he told Complainant not to return to his store and made no threats to him.

11. Allan Ramos, a frequent customer at Chaet's, testified that Complainant appeared angry when he returned to the store, but he did not recall the conversation between Complainant and Chaet. However, he did not hear Chaet scream any discriminatory words at Complainant, threaten Complainant or tell Complainant to "go back to your country."

12. Ramos testified that he entered the store behind Complainant and saw a broken glass bottle at the front entrance. One of Respondent's employees was picking up broken glass. Ramos did not see the bottle fall to the ground and did not know if the bottle belonged to Complainant. Chaet testified that he also observed a broken glass bottle of alcohol at the front door of the store at approximately when Complainant entered, and believed that the bottle belonged to Complainant, and that Complainant had been drinking. However, since Chaet admitted he did not actually see Complainant enter the

store, I find that neither he nor Ramos knew for certain if the broken bottle was Complainant's. I decline to make a finding as to whether Complainant had been drinking when he entered the store. However, I find that Chaet had a good faith belief that Complainant had been drinking based on his perception that Complainant's speech was slurred, and Complainant's belligerent attitude.

13. Ramos, who is Puerto Rican, testified that he does business with Respondent's store three to four times a week, purchasing parts for his job as an electronic technician. He stated that although he frequents the store, he does not have a personal relationship with Chaet. I found his testimony credible.

14. Complainant testified that he felt extremely embarrassed and frightened during the incident with Chaet and that he thinks about it daily. He stated that he had never experienced discrimination prior to this incident. Although Complainant testified that he felt extremely embarrassed and frightened during the incident with Chaet, he returned to the store alone after calling the police, without his friend, who remained outside in the car. I am not persuaded that Complainant was afraid to return to Respondent's store.

15. Chaet stated that he has been in the appliance business since 1936, has a diverse workforce that includes Haitian and Indian employees, serves a diverse clientele and has never been accused of discrimination.

IV. CONCLUSIONS OF LAW

Complainant alleges that Respondent violated M.G.L. c. 272, § 98, which prohibits any distinction, discrimination or restriction on account of race or national origin relative to the admission or treatment of any person in any place of public

accommodation. The Commission is authorized to enforce this statute pursuant to M.G.L. c. 151B, § 5. M.G.L. c. 272, § 92A defines a place of public accommodation as any place, whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public, including a retail store or establishment.

Complainant must establish that he was a member of a protected class and was denied access, restricted or treated differently from others not of his protected class in a place of public accommodation. In determining whether there has been a violation of the statute, Complainant must prove by a preponderance of the evidence that he was denied “full and equal accommodations, advantages, facilities and privileges” at Chaet’s due to his race or national origin. M.G.L. c. 272, § 98.

There is no question that Respondent’s store is a place of public accommodation. However, I conclude that Complainant was not denied access to the store or refused service on January 31, 1998, when he brought his vacuum to be repaired. A dispute between Complainant and Chaet ensued only after Complainant complained that there was dirt remaining on his vacuum and refused to pay for the service. Complainant claims that as a result of this dispute, Chaet threatened him, told him to go back to where he came from and not to come to the store again. I credit Complainant’s testimony that Chaet stated during the heat of their argument, “Why don’t you go back to your country?” I also credit Complainant’s testimony that Respondent told him not to come back to the store, but I do not credit his testimony that Respondent threatened to kill him.

Generally, a statement such as the one made by Chaet telling Complainant to return to his country could reasonably be interpreted to evidence a bias based on ethnicity or race. Notwithstanding, given the circumstances of their encounter and the context in

which the words were uttered, I do not believe that Chaet's statement constituted a distinction in treatment based on Complainant's race or national origin.

The testimony revealed that Chaet's statement was precipitated by a heated exchange between him and Complainant that was initiated by Complainant when he complained about the job and refused to pay for Respondent's services. Complainant was not denied service or provided with inferior service. Thus, I am not persuaded that Chaet's words to Complainant constituted a distinction in treatment or a failure to provide service within the meaning of M.G.L. c. 272.

While there are most certainly circumstances in which language alone or one comment can constitute a distinction in treatment under M.G.L. c. 272, § 98 because of one's protected class, I do not find that this is the case here. There was credible evidence offered by Respondent that the store has provided services to a diverse population in Brockton for over 65 years and that Chaet has employed a diverse workforce, including individuals of Haitian and Indian descent. Furthermore, Ramos, an unbiased witness of Puerto Rican national origin, testified that he does business on a regular basis with Respondent and has never been treated discourteously, nor has he observed Respondent treat anyone differently on account of national origin.

Given the circumstances, I am not persuaded that Respondent treated Complainant differently on account of his race or national origin. I find that Chaet was justifiably upset by Complainant's refusal to pay for the work performed and his belligerent attitude and believe that his statement was motivated by Complainant's unruly conduct. Accordingly, I conclude that Respondent is not liable for unlawful discrimination in a place of public accommodation, in violation of M.G.L. c. 272, § 98.

V. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, I hereby order that the complaint in this matter shall be dismissed.

This constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

So Ordered this 31st day of July, 2003.

Walter J. Sullivan, Jr.
Hearing Commissioner