

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION AND  
GRACE REESE  
Complainant

v.

DOCKET No. 99-BPA-1678

THE MAY DEPARTMENT STORES  
COMPANY d/b/a/FILENES  
Respondent

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Appearances:

Barbara C. Johnson, Esq., for Complainant

Tabitha R. Jenkins, Esq., for Respondent May Department  
Stores

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On June 24, 1999, Complainant Grace Reese filed a complaint with the Massachusetts Commission Against Discrimination (hereafter: the Commission). The complaint charged that May Department Stores Company d/b/a Filenes (hereafter: Respondent May Department Stores) discriminated against Complainant because of her race and color (black) in a place of public accommodation in violation of G.L. c. 272, §98.

Attempts to conciliate this matter were unsuccessful. On July 25, 2001, the case was certified for a public

hearing. I held a public hearing in this case on July 15, 2002. On September 23, 2002, Respondent May Department Stores filed a memorandum of fact and conclusions of law with the Commission. On November 20, 2002, Complainant submitted proposed findings of fact and rulings of law and filed objections to Respondent May Department Stores' proposed findings of fact and rulings of law.

I have carefully reviewed and considered the entire record before me, including the testimony, all exhibits, the proposed findings of fact, conclusions of law and supporting argument. To the extent the proposed findings and conclusions are not in accord with my findings and conclusions, they are rejected. I have omitted certain proposed findings and conclusions of law as not relevant or unnecessary to a proper determination of the material issues presented. I have modified other findings and conclusions of law to render them acceptable.

Based on the credible evidence and reasonable inferences therefrom, I make the following findings of fact, conclusions of law, and order.

## II. FINDINGS OF FACT

1. Complainant, Grace Reese, is a black woman who lives with her son, Earl Reese, in Ayer, Massachusetts. Complainant has lived with her son since 1998.

2. Earl Reese is a civilian employee who is a logistics manager for transportation and maintenance in the United States Army at Fort Devens, Massachusetts.

3. At all times relevant to this complaint, Respondent May Department Stores owned and operated a Filene's department store (hereafter: "Filenes") at the Solomon Pond Mall, 627 Donald Lynch Boulevard, Marlborough, Massachusetts. Filenes is a place of public accommodation within the meaning of G.L. c. 272, §§92A and 98.

4. Catherine Cardoza is an area sales manager at Filenes. Ms. Cardoza has held her current position for approximately four years. Since March 2000, Ms. Cardoza has served as the sales manager of the men's collection and young men's departments at Filenes. She reports directly to Jim Barry, a divisional sales manager. Prior to becoming a manager, Ms. Cardoza was an associate sales clerk at Filenes.

5. At all times relevant to this complaint, Ms. Cardoza supervised 10 sales associates in the children's department. Ms. Cardoza was also responsible for merchandising in the children's department and closing it at the conclusion of the business day. The children's department is located on the second floor at Filenes.

6. At all times relevant to this complaint, Ms. Cardoza also served as one of two closing managers at Filenes. As a closing manager, Ms. Cardoza was responsible for ensuring that various departments on Filenes' second floor operated smoothly after the day shift was completed at 5:00 p.m. In 1999, Respondent May Department Stores encouraged its' closing managers to "actively" walk through their assigned departments to address customer issues, arrange for change, and monitor security in the fitting rooms. In 1999, Respondent May Department Stores did not encourage its closing managers to complete stock work or perform

individual sales and merchandising activities.

7. On June 16, 1999, Filenes held a storewide "Summer's Best" coupon sale that allowed customers a 15% discount on selected sales merchandise. As part of this sale, Filenes also allowed an additional 10% discount on merchandise purchased in its housewares department. Because of the coupon sale, the closing time for Filenes on June 16, 1999 was 10:00 p.m. Ms. Cardoza testified that the peak customer time during a coupon sale was usually from 6:00 p.m. to 8:30 p.m.

8. On June 16, 1999, Complainant traveled with her son to Filenes. Complainant arrived at Filenes' parking lot around 7:00 p.m. Mr. Reese remained in his car while Complainant went into Filenes to look for a deep fryer in its housewares department.

9. Filenes' housewares department is on the second floor. In June 1999, the housewares department had two sales registers that were back-to-back and separated by a partition or a dividing wall. The divider prevented the sales associates at these registers from seeing each other.

1. On June 16, 1999, Pam Fallo and Laura Glynn were the Filenes sales associates assigned to the two registers in the housewares department. Ms. Cardoza testified that Ms. Glynn was a new sales associate who had only worked for two weeks on the "floor."<sup>1</sup>

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<sup>1</sup> Ms. Cardoza testified that Ms. Fallo left Filenes in March 2001. She also testified that Ms. Glynn worked at Filenes for approximately five weeks and left in June 1999. Ms. Glynn and Ms. Fallo did not testify at the public hearing.

11. Based on her personal observation, Ms. Cardoza testified that the housewares department was busy on June 16, 1999. Ms. Cardoza believed the housewares department was busy, in part, because of the advertised storewide coupon and housewares sales.

2. When Complainant entered the housewares department, she saw customers lined up at each of the two registers. Complainant looked around the housewares department for a deep fryer. After Complainant was unable to find a deep fryer, she got into the line in front of Ms. Glynn's register.<sup>2</sup> After an unspecified period, Complainant moved out of line and stood off to the side. Complainant testified that she stepped out of the line to ensure that Ms. Glynn could see her.

13. Complainant testified that she waited until Ms. Glynn finished with the customers who were in line in front of her register. Complainant also testified that once Ms. Glynn finished with her final customer, Complainant approached her to ask a question. Ms. Glynn asked Complainant, "what she wanted?" Complainant told Ms. Glynn that she was looking for a deep fryer. Ms. Glynn then asked Complainant whether she had looked in the rear of the housewares department where the small appliances were located. When Complainant replied affirmatively, Ms. Glynn directed her to go around to the section where Ms. Fallo was located and ask her for assistance. Complainant testified that Ms. Glynn did not tell her whether there was

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<sup>2</sup>Complainant was unsure about the identity of the two sales associates and the sales manager; specifically their names and the order in which they waited on her. Although Complainant testified that the name of the second sales associate who waited on her was "Laura," Ms. Cardoza's testimony and Complainant's discrimination complaint establish that the second sales associate was Pam Fallo. In addition, the evidence clearly establishes that Ms. Cardoza was the sales manager who assisted Complainant on June 16, 1999.

a deep fryer in the housewares department.

14. Complainant immediately went to Ms. Fallo's register and waited because Ms. Fallo had a customer at her register and three or four customers in line waiting for her. Complainant testified that Ms. Fallo took approximately 5-10 minutes to wait on the customers who were in line.

15. Complainant told Ms. Fallo that she was looking for a deep fryer and that Ms. Glynn had directed her to Ms. Fallo for assistance. Complainant testified that Ms. Fallo told her to wait for a few minutes and that she would help her as soon as she finished with customers who were in her register line. Complainant waited by Ms. Fallo's register and not in line for approximately 5 or 10 minutes and again looked around the housewares department. When Complainant returned to Ms. Fallo, she testified that Ms. Fallo did not "wait" on her, but began to wait on other customers who had gotten in line while Complainant was waiting.

16. Complainant became upset and lost her temper. Complainant was mad because she "waited so long" for assistance and Ms. Fallo began to serve other customers while Complainant was standing in front of her. Complainant also felt that they were "laughing, just laughing in my face" while there was no laughing with other customers.

17. Complainant told Ms. Fallo that it appeared that no one wanted to wait on her and that Ms. Fallo had promised to wait on her after she waited on the customers who were in line. Complainant also testified that Ms. Fallo told her she was "sorry, and that "she was talking to her

boyfriend" on the telephone.

18. Complainant told Ms. Fallo that her "money was good" and "means just as much to [her] as the other person." Complainant also told Ms. Fallo that she felt Ms. Fallo did not want to help her because she was black and the other customers were white. Complainant testified that Ms. Fallo did not respond to her statement. Complainant told Ms. Fallo that she wanted to "speak to somebody" regarding why she was not served.

19. Ms. Cardoza testified that Ms. Fallo called her at approximately 7:45 p.m. and asked for assistance with a customer in the housewares department. Ms. Fallo told Ms. Cardoza that Complainant accused Ms. Fallo of not helping her because she was black. Ms. Cardoza testified that Ms. Fallo told her that Complainant was not in line but stood to the side when she asked Ms. Fallo where she could find a deep fryer. Ms. Fallo told Ms. Cardoza that she explained to Complainant that she was extremely busy and did not ignore her because she was black as Ms. Fallo's fiancé was a black man. Ms. Cardoza testified that she met Ms. Fallo's boyfriend at a Filenes' holiday party and determined that he was black.

20. Complainant denied Ms. Fallo told her that she had a black boyfriend.

21. Ms. Fallo and Ms. Glynn did not make any racially derogatory remarks to Complainant on June 16, 1999.

22. Ms. Cardoza responded to Ms. Fallo's request in less than one minute. When Ms. Cardoza entered the housewares

department, she saw that there was a line at Ms. Fallo's sales register that extended through the display area into Filenes' main marble aisle. Ms. Cardoza testified that there were two white customers who were standing in the line in front of Ms. Fallo's register.

23. Ms. Cardoza did not see Complainant when she entered the housewares department. Ms. Fallo pointed out Complainant who was sitting on a stack of toaster oven boxes that was behind a display. The stack of boxes was not in Ms. Fallo's direct line of vision from her register. Ms. Cardoza also testified that Ms. Fallo told her that Complainant stood off to the side and asked her a question about where to find deep fryers while there were other customers in her line.

24. Ms. Cardoza approached Complainant, identified herself as the floor sales manager, and asked her "what [she] could help her with?" Complainant told Ms. Cardoza that Filenes' sales associates "wouldn't wait on her because she was black and that she didn't think that was fair." Complainant also told Ms. Cardoza that "Rosa Parks had ridden on the bus for her, in her right, and Martin Luther King had marched for her rights" and she was entitled to be helped. Ms. Cardoza understood that Complainant had waited in the housewares department for approximately 15-20 minutes before Ms. Cardoza began to assist her.

25. Ms. Cardoza told Complainant that the sales associates were not ignoring Complainant because she was black. Ms. Cardoza also told Complainant that there were customer lines because of the storewide coupon sale and that the sales associates could not leave their registers to help

her find an item. Ms. Cardoza then told Complainant that Ms. Fallo had called and asked her to help Complainant find what she was looking for.

26. Complainant calmed down and told Ms. Cardoza that she was looking for a deep fryer so that she could make fried chicken for her son. Complainant also told Ms. Cardoza that she could not stand at her kitchen table because her ankles were swollen due to her arthritis. Complainant wanted a deep fryer so that she could fry chicken at her kitchen table. Ms. Cardoza told Complainant that she would immediately search for a deep fryer.

27. Because she was not familiar with the housewares department floor plan, Ms. Cardoza asked Ms. Fallo where she could find deep fryers. Ms. Fallo directed Ms. Cardoza to an area where small electrical appliances were located. Ms. Cardoza proceeded to the area and searched unsuccessfully for a deep fryer.

28. Ms. Cardoza returned to Complainant, reported on her search, and asked Complainant whether she had a problem with her looking in the main housewares stockroom. After Complainant responded negatively, Ms. Cardoza went to the main housewares stockroom and a smaller housewares stockroom but was unable to find a deep fryer. Ms. Cardoza's search on the housewares department floor and in the two housewares stockrooms took approximately 15 minutes.

29. After Ms. Cardoza could not find a deep fryer in the housewares stockrooms, she returned to Complainant who was no longer upset and had calmed down. Ms. Cardoza told

Complainant that Respondent May Department Stores was either out of stock or that it did not "carry" deep fryers. Ms. Cardoza suggested that Complainant consider going to Sears or JC Penneys, also located in the Solomon Pond Mall, to determine if they had deep fryers. Complainant told Ms. Cardoza that she did not want to look in Sears or JC Penneys because she did not want to keep her son waiting too long.

30. After Ms. Cardoza described other stores in the mall that might have stocked deep fryers, Complainant again became upset and began to repeat her feelings that Ms. Glynn and Ms. Fallo had not waited on her because she was black. Ms. Cardoza attempted to reassure Complainant that Ms. Fallo and Ms. Glynn did not discriminate against her because of her "color." Ms. Cardoza told Complainant that their failure to serve her promptly arose from the fact that the housewares department was very busy because of the coupon sale.

31. After Complainant began to calm down, Ms. Cardoza asked whether she wanted to fill out a customer comment form. When Complainant replied affirmatively, Ms. Cardoza accompanied her to Filenes' customer service department. On the way to the customer service department, Complainant told Ms. Cardoza that she was tired and she rested for a short time in the luggage department. During their walk to the customer service department, Complainant did not appear upset and her conversation with Ms. Cardoza was congenial.

32. Once in Filenes' customer service department, Complainant told Ms. Cardoza that she was tired, her hands were bothering her and she didn't write well. Ms. Cardoza

then offered to fill out a customer service comment form for Complainant for her to read and sign.

33. Complainant provided additional information to Ms. Cardoza about the incident involving Ms. Fallo and Ms. Glynn. Ms. Cardoza recorded the information provided by Complainant on the customer comment form. Ms. Cardoza also testified that Complainant was unsure about her son's address and did not give her a telephone number. After Complainant read the information recorded by Ms. Cardoza on the customer comment form, she signed it. (Respondent's Exhibit 1). Ms. Cardoza told Complainant that she planned to give her customer comment form to Sue Gonschor, Filenes' Store Manager, on the following day for Ms. Gonschor's actions.

34. Complainant testified that she "really did not read the [customer service] form" but signed it because she did not believe Ms. Cardoza would lie.

35. After Complainant signed the customer comment form, she told Ms. Cardoza that she was tired and wanted to go home. Ms. Cardoza escorted Complainant downstairs to an entrance door and waited with her until her son came over to where they were waiting. Ms. Cardoza spent approximately 20 minutes assisting Complainant in the customer service department.

36. Ms. Cardoza testified that she spent approximately one hour with Complainant. Complainant left Filenes at approximately 8:30 p.m.

37. After Ms. Cardoza returned to second floor, she talked

with Ms. Glynn who told her that Complainant had waited approximately 10 minutes while she was in the area of Ms. Glynn's register. Ms. Cardoza testified that Ms. Glynn told her that Complainant stood off to the side while Ms. Glynn was waiting on other customers, approached her, and asked where the deep fryers were located. Ms. Cardoza also testified that Ms. Glynn told her that she sent Complainant to Ms. Fallo's register because she thought that Ms. Fallo might have had a shorter line.

38. Ms. Cardoza did not have a follow-up conversation with Ms. Fallo regarding this incident.

39. When Mr. Reese saw Complainant standing next to Ms. Cardoza, he observed that she was crying, appeared very upset and "bothered." After Complainant walked to Mr. Reese's car, she explained to him how she was treated in the housewares department. Their conversation in Mr. Reese's car lasted approximately five or 10 minutes. Mr. Reese testified that he had never seen his mother in such a state prior to June 16, 1999.

40. Approximately 90 minutes had elapsed from the time Complainant entered Filenes until Mr. Reese saw her standing with Ms. Cardoza.

41. Mr. Reese left Complainant in his car and proceeded to the housewares department to obtain the names of the two sales associates so that he could follow up on the incident. Mr. Reese left the housewares department after he received information identifying Ms. Fallo and Ms. Glynn as the sales associates. Mr. Reese did not recall whether he talked with Ms. Fallo or Ms. Glynn while he was in the

housewares department.

42. Mr. Reese spent approximately 5 minutes in the housewares department. He testified that there were only a few customers in Filenes when he entered the store.

43. Mr. Reese testified that Complainant was very upset and emotional for at least 30 minutes or until they arrived at home. Mr. Reese testified that Complainant felt this incident took her back to the discrimination and mistreatment she experienced during her childhood in South Carolina. Mr. Reese also testified that Complainant becomes upset whenever she talks about this incident, including two occasions when she came to the Commission regarding her complaint.

44. Mr. Reese called Ms. Cardoza later that night at approximately 9:00 p.m. Mr. Reese introduced himself and told Ms. Cardoza that he was angry and agitated about how Complainant was treated earlier that evening in Filenes. Mr. Reese told Ms. Cardoza that Complainant was very upset because she was "treated rudely and was not waited on properly by two sales associates." Mr. Reese also called to verify the information he had obtained regarding the identity of the two sales associates who allegedly had not waited on Complainant. Mr. Reese understood that someone from Filenes' management would contact Complainant about the incident.

45. Ms. Cardoza gave Ms. Gonschor's name to Mr. Reese and told him that Ms. Gonschor would be in her office on the following day. Ms. Cardoza understood that Mr. Reese intended to call Ms. Gonschor on the next day.

46. Ms. Cardoza gave Complainant's customer comment form to Ms. Gonschor on June 17, 1999. Ms. Cardoza told Ms. Gonschor about her conversations with Ms. Fallo and Ms. Glynn, and her actions with Complainant. Ms. Cardoza told Ms. Gonschor that Mr. Reese would be calling her that day. Ms. Cardoza testified that Ms. Gonschor told her that she planned to get Complainant's correct address from Mr. Reese and send her a deep fryer because of her "frustration" on June 16, 1999.

47. Ms. Cardoza testified that Ms. Gonschor told her, several weeks later, that she had not heard from Mr. Reese.

48. Ms. Cordoza did not report Complainant's allegation to Mr. Barry.

49. Ms. Cardoza did not maintain any written notes or records regarding what occurred on June 16, 1999. Prior to her experience with Complainant, Ms. Cardoza testified that she had not spent more than 20 minutes with a customer during her five years of employment at Filenes.

50. In 1999, Respondent May Department Stores gave literature and an initial one-hour training session to each manager on respecting the diversity of customers and associates. (Respondent's Exhibit 2). Ms. Cardoza testified that Respondent May Department Store gave its managers an annual update of its diversity literature. (Respondent's Exhibit 3). Ms. Cardoza also testified that she received similar diversity training (one-half hour) while she was a Filenes' sales associate.

51. As part of her one-hour session, Ms. Cardoza received training on how to respond to allegations of discrimination made by a customer against a Filenes' sales associate. Ms. Cardoza testified that she was trained to take the following steps: (1) talk to the customer to find out what happened and then talk to the sales associate; (2) collect the pertinent information and give it to the store manager who would follow up on the complaint.

52. Ms. Cardoza first met Ms. Fallo when she was hired as a sales associate in December 1998 or January 1999. Based on her observations of Ms. Fallo's sales activities, Ms. Cardoza testified that Ms. Fallo provided exceptional customer service. Ms. Cardoza testified that Ms. Fallo would sometimes get "carried away" with customer service and become a "personal shopper" for customers.

53. Ms. Cardoza testified that Ms. Fallo achieved the diamond star award that was the highest level in Respondent May Department Stores' "mystery shopper" program. Ms. Cardoza knew Ms. Fallo achieved this level of recognition because her diamond star was affixed to her lapel name badge, like the other recipients, and it was announced during Filenes' morning storewide employee rallies.

54. Under its mystery shopper program, Respondent May Department Stores uses "mystery shoppers" to secretly observe how its' sales associates wait on customers. Mystery shoppers evaluate whether sales associates smile and greet customers as they approach the registers; whether they are friendly and approachable; how long it takes for them to ring up a sale and whether they thank customers by their names. During 1999, Respondent May Department Stores

conducted approximately 60 "mystery shopper" visits each month in various departments.

55. In 1999, Respondent May Department Stores' customer service policy was that sales associates should not leave a sales register to assist a customer while there are other customers in line. If a customer who is not in line approaches a sales associate, he or she is trained to acknowledge the customer and ask whether the sales associate can help. The sales associate can answer if the customer asks a question that requires a quick response such as where customer service or the restrooms are located. If the customer needs additional assistance, the sales associate is trained to ask the customer to get in line.

### III. CONCLUSIONS OF LAW

G.L. c. 272, §98, makes it an unlawful practice to discriminate against any person because of race or color regarding admission to, or treatment, in a place of public accommodation. Hatten v. Cliff Seafood Restaurant, 22 MDLR 393 (2000); Rome v. Transit Express, 19 MDLR 161 (1997). The phrase "place of accommodation" is defined in G.L. c. 272, §92A as "any place which is open to and accepts or solicits patronage of the general public. . .whether or not it be . . .(4) a retail store or establishment" such as Filenes.

The Commission is authorized under G.L. c. 151B, §5, to adjudicate public accommodation claims brought under G.L. c. 272, §98. To determine whether there is a violation of the public accommodation statute, the

Commission analyzes the evidence in accordance with the disparate treatment standard set forth in Wheelock v. Massachusetts Commission Against Discrimination, 371 Mass. 130 (1976); Lipchitz v. Raytheon Company, 434 Mass. 493 (2001); Wilder v. Diamond Cab Co. and Frank Orlando, 23 MDLR 65 (2001). The key question is whether Respondent May Department Stores violated the prohibition set forth in G.L. c. 272, §98, against denying "all persons. . . the right to the full and equal accommodations, advantages and privileges of any place of accommodation."

To establish a prima facie case of public accommodation discrimination, Complainant must show that (1) she is a member of a protected class(es), (2) she was denied access to, restricted or treated differently from others, not of her protected class(es) in the use of, (3) a place of public accommodation. Hatten v. Cliff Seafood Restaurant, supra.; DeRosa v. Quang Loi Jewelry Store, 20 MDLR 101 (1998); Pares v. Fuel Injections, 17 MDLR 1439 (1995); Bachner v. Charleton's Lounge and Restaurant, 9 MDLR 1268 (1984). Based on the credible evidence in the record, I find that Complainant has established two elements of her prima facie case of unlawful discrimination in a place of public accommodation based on her race and color. Complainant has shown that she is a member of a protected class based on her race and color—black. In addition, there is no dispute that Filenes is a place of public accommodation as described in G.L. c. 272, §92A(4). See e.g., Cummings v. Safeguard Security and Galleria Mall, 24 MDLR 174 (2002)(a shopping mall is explicitly deemed to be a place of accommodation under G.L. c. 272, §92A).

Complainant has failed to show that she was denied "full and equal accommodations, advantages, and privileges" at Filenes on June 16, 1999. The evidence in the hearing record shows that Complainant waited approximately 15-20 minutes for Ms. Glynn and Ms. Fallo to assist her while they waited on other customers who were in line at their respective registers. Complainant has failed, however, to produce any credible evidence to establish that her waiting was attributable to her race or color rather than the level of sales activities at the registers in the housewares department. I credit Ms. Cardoza's testimony that the housewares department was busy on June 16, 1999 because of the storewide coupon sale and that she observed customer lines in front of both registers in the housewares department. I also find that some of Complainant's waiting time resulted from her own actions, including her movement out of the lines in front of Ms. Glynn and Ms. Fallo's registers and her leaving the registers to search for a deep fryer.

Complainant did not show that Ms. Glynn or Ms. Fallo ignored or disregarded her or that they treated customers, not of Complainant's protected classes, more favorably than Complainant. Unlike other customers in the housewares department, Complainant did not remain in line to receive service from Ms. Glynn or Ms. Fallo. There is no evidence that Ms. Glynn or Ms. Fallo provided quicker service to other customers or left their registers to assist customers, in line or out of line, to find items for sale. In addition, their express instructions were not to leave their registers if customers were in line to buy merchandise.

I find that Ms. Glynn and Ms. Fallo waited on customers who were in line while Complainant stood off to the side of their registers. However, Complainant failed to establish that Ms. Glynn or Ms. Fallo assisted customers if they, like Complainant, were not in line in front of their registers. I find that Complainant's conclusion that Ms. Glynn and Ms. Fallo discriminated against her because of her race arises solely from the fact that Complainant perceived that she was the only black customer in the housewares department and had to wait for service.

There is no evidence in the hearing record to support Complainant's contention that no sales associate assisted her on June 16, 1999. While Complainant did not receive immediate service from Ms. Glynn or Ms. Fallo because of the customer lines in the housewares department, I find that Ms. Cardoza promptly assisted Complainant when asked by Ms. Fallo. Ms. Cardoza spent approximately one hour helping Complainant to look for a deep fryer, complete her customer comment form and walk to a Filenes exit on the first level of the mall. Under these circumstances, I do not find that Respondent May Department Stores' actions give rise to an inference of unlawful discrimination based on Complainant's race and color.

Even if Complainant were able to prove a prima facie case of unlawful discrimination because of her race and color, Respondent May Department Stores has articulated a legitimate, non-discriminatory reason(s) for the actions of its sales associates. Ms. Cardoza testified credibly that Respondent May Department Stores' policy in 1999 required its sales associates to assist customers who were in line and not to leave their registers while customers are in

line. In addition, the sales associates were trained to acknowledge customers who were not in line, like Complainant, and respond immediately to questions or inquiries that merely required a quick response. Under Respondent May Department Stores' policy and practice, the sales associates were trained to ask customers to get in line if they required more assistance than a quick reply to a question.

Complainant has produced no evidence that Ms. Glynn and Ms. Fallo failed to consistently and fairly apply Respondent May Department Stores' customer service policies to patrons of all races and color on June 16, 1999. Complainant also failed to produce any statements by Ms. Glynn or Ms. Fallo that evidenced a discriminatory animus based on her race or color. Accordingly, Complainant has not shown by a preponderance of evidence that Respondent May Department Stores' proffered reason is a pretext for unlawful discrimination. Barbot v. Yellow Cab Company, 23 MDLR 317 (2001).

I find that Complainant has not proven by direct evidence or by the inferential standard of proof that she was discriminated against because of her race and color. Complainant has not proven by a preponderance of evidence that she was denied "full and equal accommodations, advantages, facilities, and privileges" of Filenes on June 16, 1999. Lipchitz v. Raytheon Co., 434 Mass. 493 (2001).

#### IV. ORDER

Based on the foregoing findings of fact and conclusions of law, I hereby order that the complaint in this matter be dismissed.

This constitutes the final decision 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 (10) days of receipt of this order and a Petition of Review with the Full Commission within thirty (30) days of receipt of this Order.

SO ORDERED this 27th day of December 2002.

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KENNETH B. GROOMS  
Hearing Officer