

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

IMMACULA SAINT LOUIS
AND
MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION

Complainants

Against

Docket No. 97-BPA-2788

LA REINE BOUTIQUE &
MIREILLE STANBRO

Respondents

Appearances: Wendy A. Cassidy, Esq., for Complainants
Jeremy Theerman, Esq., and Christopher O'Connor, Esq., for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On August 11, 1997, Immacula St. Louis¹ (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) alleging that Mireille

¹ Complainant’s last name is spelled “Saint Louis” in her MCAD file. On the sign-in sheet at the public hearing, Complainant identified herself as “St. Louis.”

Stanbro, owner of La Reine Boutique (“Respondents”) unlawfully discriminated against her in a place of public accommodation on the basis of race.

The MCAD issued a probable cause finding and certified the case for public hearing on December 16, 2003. The issues certified to public hearing were:

1. Whether Respondents discriminated against and/or harassed Complainant on the basis of her race and color in a place of public accommodation during her visit to La Reine Boutique in August 1997 in violation of M.G.L. c. 272, sec. 98A?
2. Whether Complainant incurred damages as a result of Respondent’s alleged discrimination and if so, what is the amount of her damages?

A public hearing was held on June 7, 2004. Two witnesses testified on behalf of Complainants: Immacula St. Louis and Sabrina St. Louis Fraser. The Respondent, Mireille Stanbro, testified on her own behalf. The parties submitted two joint exhibits and the Respondents submitted one exhibit.

The parties submitted post-hearing briefs on September 1, 2004. To the extent the parties’ proposed findings are not in accord with or irrelevant to the findings herein, they are rejected. To the extent the testimony of various witnesses is not in accord with or irrelevant to my findings, the testimony is rejected. Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Dr. Immacula St. Louis (“Complainant”) is an African American female. In August 1997 she had just completed her medical residency and was working at the Harvard Street Neighborhood Health Center in Dorchester, Massachusetts.

2. Sabrina St. Louis Fraser is an African American female who is the sister of Complainant. In August 1997 she had completed law school and was living in New York. At the time Fraser was working in a legal position and was awaiting the results of the New York bar examination. She subsequently accepted employment as a human resource officer.
3. Mireille Stanbro (“Respondent”) is an American citizen who was born in Egypt. Stanbro is the owner of La Reine Boutique, a bridal shop which had a place of business at 81 Boylston Street in Brookline, Massachusetts in 1997. It continues to operate on Newbury Street in Boston.
4. At some time prior to the events at issue, Complainant and Fraser were invited to be matrons of honor in their sister Colette’s wedding. Colette’s bridal party consisted of three matrons of honor --Complainant, Fraser, and Colette’s friend Nadia -- and twelve bridesmaids. Colette was married in October 1997.
5. Complainant proposed that the matron of honor dresses be purchased in Boston because she and Nadia lived in the Boston area. The matrons of honor wanted their gowns to be ordered from the same store at the same time to ensure that they would be cut from the same fabric so the shades would be identical.
6. Complainant contacted La Reine because she saw an advertisement in a bridal magazine stating that La Reine carried the matron of honor gown which she and her sisters had selected. Complainant telephoned La Reine in late July 1997 to verify that the store had the gown in stock. Complainant testified that she was informed over the phone that the store had the gown in stock and that no appointment was necessary because the sisters had decided on the gown they

wished to order. I credit Complainant's testimony.

7. Complainant made arrangements for Fraser to come to Boston on Saturday, August 9, 1997 in order to be fitted for the gown. Complainant was planning to return to La Reine with Nadia on a subsequent day in order to be fitted, to order all three gowns, and to pay the 50% deposit.
8. Complainant picked up Fraser at the South Station bus terminal in Boston on August 9, 1997. Fraser was wearing a sweatsuit, tee shirt, sneakers, and a baseball cap. She wore her hair in braids. Complainant was also casually dressed.
9. Complainant and Fraser drove to La Reine Boutique from South Station. They entered the store, looked around, and were approached by Stanbro who told them to sit down and that someone would help them. The sisters waited between twenty and forty minutes. After waiting a while, they tried to get someone's attention by saying, "hello, hello, is there anyone available to help us?" In response, an assistant of Stanbro offered to help them. The assistant was "Valerie" an African American woman. She looked at the picture of the gown that Complainant and Fraser had brought with them and brought them the gown. Fraser tried it on. Valerie then informed them that they would then have to wait for Fraser to be measured by the owner.
10. The sisters waited another twenty or thirty minutes. They asked Valerie how much longer they would have to wait. Stanbro then appeared and told Valerie to tell the sisters that they would have to pay \$10.00 to be measured. Fraser said that she didn't understand. Stanbro repeated that there would be a \$10.00 measuring

fee. St. Louis said, “for what?” to which Stanbro replied that the \$10.00 fee was required because they were not ordering the gown that day. Stanbro also said that if the sisters were planning to order the dresses at a later time, they should have the measurements taken at the time the dresses were ordered. Complainant told Stanbro that she and her sister had been in a lot of weddings before and they never had to pay a measuring fee. Stanbro repeated that they had to pay a \$10.00 measuring fee. At some point during the conversation, Fraser responded to Stanbro’s insistence that the sisters pay a \$10.00 measuring fee by saying, “whatever.” I credit the testimony of Complainant and Fraser regarding their response to being told that they had to pay a \$10.00 measuring fee. Stanbro testified that the sisters refused to pay the \$10.00 measuring fee, but I do not credit this testimony.

11. During the discussion about the \$10.00 measuring fee, Stanbro said, “I don’t need your kind of business” to which Fraser responded by saying, “Do you know who you’re talking to? We’re professional people.” Fraser identified herself as an attorney and her sister as a doctor. Stanbro replied that she was not impressed with their degrees, that the sisters did not look professional, and that 95% of her business was with professional people.
12. Stanbro testified that Fraser raised the issue of discrimination. According to Stanbro, Fraser said she was, “building a case against [Stanbro]” and that she would, “own her [Stanbro’s] business.” I credit Stanbro’s testimony about the claim of discrimination and the threatened lawsuit.
13. Stanbro admitted that she asked Fraser if she was from Africa and told Fraser that

she [Stanbro] was from North Africa. Stanbro also admitted that she told the sisters that they were a disgrace to their race.

14. After some arguing, Stanbro told Complainant and Fraser to get out of her store and said that she was going to call the police. Fraser responded by saying something like, "Go ahead, call the police."
15. Complainant testified credibly that she did not raise her voice when speaking to Stanbro but that her sister and Stanbro both talked in raised voices. Complainant testified that, at times, her sister and Stanbro were talking over one another.
16. Complainant stepped out of the store thinking her sister would follow her, but Fraser convinced her to wait until the police arrived. The police arrived shortly thereafter. Stanbro told the police that she wanted the sisters out of the store. Complainant and Fraser spoke to the police officers outside of the store. They were not arrested or given a citation.
17. When Complainant and Fraser got home, their mother asked about their shopping experience. Complainant and Fraser started to cry. Complainant testified that she felt like "dirt" and was humiliated. Fraser testified that she was "shattered." and "shocked" at how she and her sister were treated.
18. The following day, Sunday, August 10, 1997, Complainant and Fraser went to another bridal shop in Dedham. Fraser was fitted for the gown. Complainant and Nadia went to the store later in the week for a fitting and placed a fifty percent deposit in order to order the three gowns.
19. Complainant took the following Monday off from work and filed a complaint at the MCAD.

20. At the public hearing, Stanbro testified that it is the store's policy not to take measurements unless a customer orders a gown. She said that the reason for the policy is to prevent individuals from having measurements taken at her store and then going elsewhere to order a gown. Stanbro testified that, on occasion, she will make an exception to this policy if a customer establishes that she plans to order a dress from La Reine at a later date. In such a circumstance, Stanbro will charge a measuring fee and deduct it from the dress deposit. She testified that her store operates on an appointment-only basis, although if someone shows up without an appointment, Stanbro tries not to turn the person away.

III. CONCLUSIONS OF LAW

A. Racial Discrimination

M. G. L. c. 272, sec. 98, prohibits discrimination based on race or color in places of public accommodation. See Hatten v. Cliff Seafood Restaurant, 22 MDLR 393 (2000); DeRosa v. Quang Loi Jewelry Company, 20 MDLR 101 (2000). Pursuant to sec. 5 of G. L. c. 151B, MCAD has jurisdiction to accept, investigate, and adjudicate complaints brought pursuant to G.L.c. 272, sec. 98. The elements of proof necessary to establish a claim of discrimination in a place of public accommodation are similar to those in employment discrimination. See Bachner v. Charlton's Lounge and Restaurant, 9 MDLR 1274, 1287 (1987). Complainant must prove that: 1) she is a member of a protected class; 2) she was denied access or restricted in the use or enjoyment of an area or facility; and 3) the area or facility was a place of public accommodation. Id. Once Complainant establishes these elements, the burden shifts to Respondents to articulate a

legitimate nondiscriminatory reason for its conduct. If Respondents meet this burden, the burden shifts back to the Complainant to show, by a preponderance of the evidence, that Respondents' articulated reason(s) are pretextual. See Wheelock College v. MCAD, 371 Mass. 130, 136 (1976).

Complainant satisfies the initial burden of proving a prima facie case of discrimination. The evidence is undisputed that she and Fraser are African American females who visited La Reine on August 9, 1997. They were subjected to two extensive waiting periods to obtain customer service. Stanbro refused to take their measurements even after they agreed to pay a fee for the measurements. In the course of an argument over the fee for measurements, Stanbro told them that they did not look professional and called them a disgrace to their race. Stanbro called the police and had the sisters evicted from the bridal shop. La Reine, the shop from which the sisters were evicted, is a place of public accommodation. Discrimination in a place of public accommodation can include racial epithets or comments evidencing racial animus against an individual. See Varona v. City of Boston Parks Dept., 21 MDLR 261 (1999).

Since Complainant has established the elements of a prima facie case, the Respondents must articulate a legitimate nondiscriminatory reason for Stanbro's conduct. In this regard, Stanbro testified that Complainant and Fraser refused to pay the measurement fee and became belligerent as she tried to explain the fee requirement. Although these reasons appear rational on their face, a preponderance of the evidence establishes that Stanbro's reasons for refusing to measure Complainant and her sister and for demanding that they leave her shop are not credible, but rather a pretext for racial discrimination.

I arrive at the conclusion of pretext based on finding that the testimony of Complainant and Fraser about key matters of August 9, 1997 was more credible than the testimony of Stanbro.² The sisters' version of the events establishes that after Valerie informed them that they would have to be measured by the owner, they were forced to wait another twenty or thirty minutes. When Stanbro appeared, she told Valerie to tell the sisters that they would have to pay \$10.00 to be measured. At that point, the sisters had already waited approximately an hour for service. They were annoyed by the delay and by the fact that Stanbro did not speak to them directly, but used Valerie as an intermediary. Complainant and Fraser initially questioned the measuring fee, but Fraser ultimately said "whatever." In the context of the parties' discussion, it was clear that "whatever" meant "okay" or "fine." The fact that Fraser traveled all the way from New York to be measured supports her contention that she agreed to pay the nominal fee. Following the discussion about the \$10.00 measuring fee, Stanbro told the sisters that she didn't need their "kind of business," that they didn't look professional, that she was not impressed with their degrees, and that they were a disgrace to their race. Stanbro asked Fraser if she was from Africa and ultimately ordered the sisters to get out of her store. She proceeded to call the police in order to have the sisters evicted.

Complainant acknowledges that during her interaction at La Reine, her sister raised her voice and that, at times, her sister and Stanbro talked over one another. Both sisters questioned the measurement fee as not in keeping with customary bridal practice, and

²I am not persuaded by the argument of Respondent's counsel that because Fraser referred to herself as an attorney during the argument at La Reine, her testimony must be discounted as untrue. Fraser acknowledged at the public hearing that she was not a member of the bar. Nevertheless, she had graduated from law school and was working in a legal position at the time she interacted with Stanbro, so her description of herself as an attorney was not altogether a fabrication. In any event, Fraser's identification of herself as an attorney was merely to impress upon Stanbro that she was an educated professional and deserved respect. Her testimony is supported by the credible testimony of Complainant.

although they ultimately agreed to pay the fee, they did so in an argumentative manner. I find that the long wait for service, the unexpected fee requirement, and the fact that Stanbro did not discuss the fee directly with the sisters, all caused Fraser to accuse Stanbro of discrimination and, possibly, threaten to sue her. Fraser may even have encouraged Stanbro to get the police involved by telling her to, “Go ahead, call the police” after Stanbro threatened to do so. Thus, Fraser’s comments likely exacerbated the dispute. Nonetheless, nothing that Fraser said justifies Stanbro’s refusal to provide service in a place of public accommodation, the racial insults directed at Complainant and Fraser, and Stanbro’s decision to call the police. The behavior of the sisters may have been assertive, but their assertiveness was a response to Stanbro’s mistreatment, not the precipitating factor. Stanbro’s actions justified the sisters’ perception that they were being treated differently on account of their race.

Accordingly, I conclude that Complainant has shown, by a preponderance of the evidence, that Stanbro asserted pretextual reasons for subjecting Complainant and her sister to long waiting times for service, refusing to measure them after they agreed to a measuring fee, harassing them with racial insults, and contacting the police in order to have them evicted. The real reason for Respondent’s treatment of Complainant and her sister was discriminatory animus based on race.

B. Damages

Upon a finding of unlawful discrimination, the Commission is authorized to award remedies pursuant to c. 272, sec. 98 and G.L. c. 151B and to render the injured Complainant whole. Such remedies include damages for lost wages and benefits and for emotional distress Complainant has suffered as a direct result of Respondent’s

discriminatory actions. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988).

I conclude that Complainant sustained emotional distress damages as a result of Respondent's conduct. In this regard, Complainant's entitlement to an award of monetary damages does not need to be based on expert testimony; it can be based solely on the Complainant's testimony as to the cause of her distress. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). Proof of physical injury or psychiatric consultation, while not necessary to sustain an award for emotional distress, is beneficial. See Stonehill, 441 Mass. at 576. An award must rest on substantial evidence that is causally connected to the unlawful act of discrimination and take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. Id.

The evidence of emotional harm in this case consists of the credible testimony of Complainant and her sister that after they left the store and arrived at their mother's house, they started to cry. Complainant testified that she felt like "dirt" and was humiliated. Fraser testified that she was "shattered." and "shocked" at how she and her sister were treated. Based on the credible testimony of Complainant, as buttressed by her sister's credible testimony, I conclude that Complainant is entitled to emotional distress damages in the amount of \$8,000.00.

IV. ORDER

Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G.L.ch. 151B, sec. 5, Respondent is ordered to: 1) immediately cease and desist from further acts of discrimination; and 2) pay the Complainant, within sixty (60) days of receipt of this decision, the sum of \$8,000.00 in damages for emotional distress with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post judgment interest begins to accrue. The parties shall notify the Clerk of the Commission as soon as the ordered payments have been made. If Respondent fails to comply with the terms of this Order within the time period allotted, Complainant should notify the Clerk of the Commission.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 10th day of February, 2006.

Betty E. Waxman, Hearing Officer

