

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

KEXIN YU, XUEBIN FENG and, MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION,
Complainants

v.

Docket Nos. 03-BPA-01946
03-BPA-01954

GANG LI, OCEAN, LEI XIAO, and ACMA,
Respondents

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER OF THE HEARING OFFICER**

I. PROCEDURAL HISTORY

On July 24, 2003, Complainants Kexin Yu and Xuebin Feng,¹ each filed a complaint with the Massachusetts Commission Against Discrimination, (the “Commission” or “MCAD”), against two non-profit organizations, OCEAN² and ACME³; and, two individuals, Gang Li in his individual capacity and in his capacity as President and representative of OCEAN, and Lei Xiao in his individual capacity and in his capacity as President and representative of ACME.⁴ Complainants alleged that Respondents unlawfully denied them admittance to a concert on June 14, 2003, on the basis of their religious beliefs in violation of Massachusetts General Laws, c. 272, § 98.

On January 5, 2005, the Commission certified each of the Complainants’ cases for public hearing. Beginning in November 2005 and ending in January 2006, a public

¹ Yu and Feng shall be referred to collectively as the “Complainants.”

² OCEAN is an acronym for the “Overseas Chinese Entrepreneur Association.”

³ ACME is an acronym for the “American Chinese Medical Association.”

⁴ OCEAN, ACME, Li and Xiao shall be referred to collectively as “Respondents.”

hearing totaling eleven days was held before me in Boston, MA. In deciding this matter, I have considered the entire record, including the testimony and exhibits introduced at the public hearing, and the stipulations of the parties. I have likewise considered the Proposed Findings of Fact and Conclusions of Law submitted by the parties after the public hearing. To the extent that the proposed findings and conclusions are in accord with the findings herein, they are accepted; to the extent that they are not, they are rejected. Certain proposed findings have been omitted as not relevant or necessary to a proper determination of the material issues presented.

II. FINDINGS OF FACT

A. Parties

1. Complainant, Xuebin (“Grace”) Feng, is a woman of Chinese national origin who came to the United States in 2000. In 2003, Feng lived in Massachusetts with her husband Shuan Kuo.
2. Complainant Kexin (“Cindy”) Yu is a woman of Chinese national origin who came to the United States in 1996. In 2003, Yu lived in Massachusetts with her daughter.
3. Both Complainants testified that at all times relevant hereto, they were practitioners of the “Falun Dafa” or “Falun Gong.”⁵ Complainants stated that Falun Gong incorporates a belief in higher spiritual beings known as Buddha, Tao, and God. Practitioners of Falun Gong gather regularly with other practitioners to practice and study the tenets of their faith. Practitioners of Falun Gong believe that their spiritual practice makes them better and more moral individuals, and more tolerant of other people. I

⁵ The parties used the “Falun Dafa” and “Falun Gong” interchangeably.

credit Complainants testimony regarding their religious beliefs and their status as Falun Gong practitioners.⁶ I also credited Complainants testimony that they sincerely held these religious beliefs.

4. In 2003, Complainants worked as reporters for New Tang Dynasty Television (“NTDTV”). NTDTV is a Chinese-language medium founded by Chinese Americans that broadcasts twenty-four hours a day in North America and other continents around the world. Lei Xi is an executive producer at NTDTV who supervised and worked closely with Complainants.⁷ Xi testified that one of NTDTV’s missions is to expose human rights abuses of the government of China, including the persecution of Falun Gong. In addition, Xi contended that the government of China has been trying to prevent NTDTV from doing its business. Feng has worked on a volunteer basis for NTDTV since 2001 and has never received any wages for her services. In 2002, Yu began working as a reporter for NTDTV on a volunteer basis. Feng and Yu usually reported on events for NTDTV together as a team.

5. In addition to working together, Feng, Yu, and Xi often attended the same weekly meetings for Falun Dafa practitioners. Jiang Zhu is likewise a Falun Gong practitioner and a friend of Complainants. Zhu worked as a reporter for the newspaper Epoch

⁶ Respondents did not contest the issue of whether the Falun Gong was a religion for purposes of G.L. c. 272, § 98.

⁷ Lei Xi’s role in this matter was the subject of considerable discussion during the public hearing. On the one hand, Xi was the Complainants’ executive producer, friend, and a fellow Falun Gong practitioner. On the other hand, Xi was identified as a “paralegal” to Complainants’ counsel. Xi also admitted that in the weeks following the June 14, 2003 event, she wrote letters to various non-profit organizations and their officers, including Respondents, requesting to meet and talk with them about the events that transpired at the concert on June 14, 2003. In the letters, Xi threatened legal action if their requests were not met. Moreover, prior to the public hearing, Xi contacted the Respondents directly on behalf of Complainants regarding their claims. I found Xi’s testimony to be inconsistent, non-responsive, and often based on hearsay; consequently, I found most of her testimony lacked credibility. However, Xi did not attend the concert of June 14, 2003 and, therefore, her testimony pertained primarily to matters peripheral to key events of this case.

Times,⁸ and often covered the same events as Complainants. Zhu also attended the concert of June 14, 2003, and witnessed many of the events that gave rise to Complainants' charges.

6. Respondent, OCEAN ("Overseas Chinese Entrepreneur Association") is a Massachusetts non-profit organization. Its primary purpose is to assist Chinese-Americans in becoming entrepreneurs and establishing businesses. OCEAN accomplishes this goal through education, training, and other talks given by experts in the field. I credit Gang Li's testimony regarding these matters.

7. Respondent, Gang Li served as the president of OCEAN in 2003. He ceased his role as OCEAN's president in February 2005. Li resides in Newton, Massachusetts. He has a Ph.D. in bio-organic chemistry, which he received from Northeastern University in 1997.

8. Respondent, ACMA ("American Chinese Medical Association") is a non-profit, non-religious, and non-political voluntary association, whose purpose is to provide free medical services and education to the Chinese American community. Examples of the services ACMA has provided to the Boston Chinese community include free Hepatitis B screenings and publishing an educational pamphlet for the general public on diabetes detection and diagnosis. All of the members of ACMA volunteer their time and services without receiving any compensation. I credit Lei Xiao's testimony regarding these matters.

⁸ Although Jiang and Complainants testified that Epoch Times has the same mission as NTDTV, they are separate entities. Jiang and Complainants described Epoch Times and NTDTV as being "media partners."

9. Respondent, Dr. Lei Xiao, resided in Boston, MA from 1998 to 2003. At the time, Xiao worked at Boston University as an Assistant Professor of Medicine. Xiao became involved with ACMA in approximately 2000 or 2001. In 2002, Xiao was appointed acting president of ACMA for approximately six months. At the end of 2002, Xiao was elected one of two Vice-Presidents of ACMA. Xiao's duties as Vice-President included taking care of the routine office work for ACMA and serving as the contact person to various medical universities, institutes, and associations for purposes of organizing medical lectures and events. I credit Lei Xiao's testimony regarding these matters.

B Events Prior to the Concert of June 14, 2003

10. Lei Xiao testified that he was in China when the Severe Acute Respiratory Syndrome ("SARS") epidemic was announced. Upon his return to the United States, he informed ACMA about the seriousness of the epidemic and suggested that the organization should try to help. According to Xiao, around this time, ACMA was invited and agreed to join approximately eight other Boston-area professional organizations within the Chinese community to form a coalition to raise money to fight and cure SARS. This coalition was called the Alliance of Boston Chinese Professionals ("ABCP"). In addition to ACMA, the coalition members included, among others, OCEAN and NECINA (the "New England Chinese Information & Network Association"). Xiao claimed he had never been a member of NECINA. I credit Lei Xiao's testimony.

11. On May 14, 2003, the ABCP coalition held a meeting to propose and decide on ways that they could help with the SARS epidemic in China. Approximately ten or more

members of ABCP's constituent organizations attended this meeting. Lei Xiao testified that he and two other individuals attended the meeting as representatives of ACMA. Gang Li attended as a representative of OCEAN. At the meeting, the representatives decided that the organizations would hold events to raise money to fight SARS. Xiao testified that ABCP decided to hold two charitable fundraising concerts that would be held, respectively, on June 1, 2003 and June 14, 2003. The June 14, 2003 program would include dance, musical, and instrumental performances. I credit Lei Xiao and Gang Li's testimony regarding this matter.

12. At the May 14, 2003 meeting, Gang Li proposed a requirement that everyone must buy tickets to attend the concerts, including the members of the organizations involved in organizing the events. Li claimed that he proposed this rule because it would set a good example for the community. Lei Xiao testified that he supported this policy because he likewise believed it would important that everyone pay for admission since it would enable the groups to raise more funds. Both Xiao and Li testified that everyone at the meeting agreed to this condition. I credit Lei Xiao and Gang Li's testimony on this matter.

13. Lei Xiao did not recall any discussion at the May 14, 2003 meeting about inviting media to the fundraising events. To the best of Xiao's knowledge, he believed that reporters were not permitted to attend the June 14, 2003 event for free. Gang Li likewise believed that no members of the media were allowed to enter the concert without a ticket. Xiao further testified that at the May 14 meeting, no one mentioned anything about "Falun Gong." I credit Xiao and Li's testimony regarding these matters.

14. Lei Xiao testified that at each ABCP coalition event, one of the member organizations served as the overall coordinator for the event and assumed responsibility for planning and hosting the event. Xiao and Li both claimed that NECINA assumed responsibility for coordinating the June 14, 2003 concert. According to Xiao, no one from ACMA or OCEAN rented the premises or had any involvement in obtaining the entertainment for the event. He further testified that to his knowledge no one from ACMA or OCEAN arranged to have tickets printed or contracted the Chinese Consul about attending the concert. In addition, Li testified that NECINA hired a professional to videotape the concert. Xiao and Li's testimony is supported by the testimony of Complainant Feng, who believed that Jenny Chen of NECINA was the coordinator of the concert. I credit Xiao and Li's testimony.

15. Lei Xiao testified that the June 14 event was funded by private donations and income from the sale of tickets. He claimed that the groups then donated the funds to the Red Cross Society of China for SARS treatment. Xiao stated that ACMA made a donation of \$1,000 to purchase tickets for its members who volunteered on-site at the concert. I credit Xiao's testimony.

16. Gang Li testified that OCEAN likewise helped sell tickets in advance of the June 14 concert. Although tickets cost \$25, people were encouraged to pay more than the face value of the tickets. According to Li, if people made larger donations, such as \$300, they were not necessarily given \$300 worth of tickets. Rather, the participating organizations provided members with a number of tickets equal to the number of relatives and friends they would be bringing to the event. The participating organizations would then try to sell the remaining tickets. Li testified that OCEAN assigned Kaibin Wu with the

responsibility of selling OCEAN's tickets. Li stated that by the day of the concert, OCEAN had sold all of its tickets. Xiao claimed he had no responsibility for selling tickets for ACMA or any other organization. Xiao further testified that he did not know Kaibin Wu. I credit Li and Xiao's testimony.

17. On June 1, 2003, two weeks prior to the fundraising event in Sudbury that is the focus of this case, ABCP held another SARS fundraiser. According to Li, OCEAN coordinated this event. Complainant Yu attended the June 1st event with her friend and fellow reporter, Jiang Zhu. According to Li, when Yu and her companions arrived at the event, they came to see him to request free admittance to the event. Li claimed that Yu argued that they should be allowed into the event for free because they were reporters. Li stated that Jiang Zhu similarly argued that as a reporter for the Epoch Times, she should be allowed in for free. Li testified that he told them that they would each have to purchase a ticket to be admitted into the event. He claimed that he argued with them for about 15 minutes. Yu admitted that she and the other reporters eventually purchased tickets. Yu and Jiang Zhu both testified that an OCEAN member voluntarily purchased a donation ticket for Zhu because Zhu did not have any money on her. Zhu and Yu then attended the event without further incident. I credit Li's testimony with respect to this incident.

18. In addition to the June 1, 2003 event, Jiang Zhu admitted to purchasing tickets and attending at least three events sponsored by OCEAN prior to the June 14, 2003 concert. For example, Zhu testified that she attended a Chinese August Moon Cruise from Boston in 2002. Zhu acknowledged that she brought and distributed Falun Gong literature at the boat cruise event. Zhu stated she carried literature with her about Falun

Gong that she intended to distribute. She also testified that even though she had distributed Falun Gong materials during the boat cruise, someone from OCEAN invited her to subsequent events.

C. The Events of June 14, 2003

19. Complainants Feng and Yu both testified that they planned to go to the June 14, 2003 concert to report on the event for NTDTV. Lei Xi also claimed that she knew the Complainants had planned to report on the concert. Complainants stated that they brought reporting equipment to the concert including a camera, tripod and microphone.

20. Yu testified that she also knew, beforehand, that the Chinese Consul General was going to attend the concert. According to Lei Xi, the presence of the General Consul at the concert would make the event more newsworthy. Although I do not believe that Complainants attended the June 14 concert solely to question or challenge the Chinese Consul General on the persecution of the Falun Gong by the Chinese Government, I do believe that they intended to raise these matters with the Consul General at the concert and possibly engage in some type of protest.

21. Feng testified that a day prior to the event, on June 13, 2003, she called and spoke to Jenny Chen of NECINA to inform her of her interest in reporting on the concert for NTDTV. According to Feng, Jenny Chen told her that she could enter as a reporter. Feng further claimed that Chen told her that NTDTV would be treated the same as other media. Feng claimed that she understood from this conversation that she had been given permission to videotape and conduct interviews at the concert. Feng admitted, however,

that she did not discuss with Chen whether or not she could enter the concert without a ticket.

22. Feng's husband, Shuan Kuo, testified that prior to arriving at the concert, his wife told him that she booked four tickets for the concert under his name. According to Kuo, Feng did not tell him who the tickets were for, but he understood that the tickets were for himself and Feng. During the car ride to the concert, Feng asked Kuo to call "Mr. Wu" to confirm the order for the tickets. Although Feng admitted that she had ordered the tickets in advance, she testified that she did not think about whether she needed a ticket for the concert. Despite the undisputed fact that Feng and Yu tried to gain entrance to the concert without using a ticket, Feng claimed that she never believed or contended that she had the right to get into the concert without a ticket. I decline to credit Feng's inconsistent testimony regarding this matter.

23. The June 14, 2003 concert was held at the Ephraim Curtis Middle School in Sudbury, MA. Li testified that he arrived at the middle school around 6:30 pm. He stated he had been given the responsibility that evening for taking care of the donations received for the concert, assisting in the preparation of the program, and attending a planning meeting and rehearsal. Li claimed he did not have any responsibility for admitting people into the concert. Xiao testified that he likewise arrived at the middle school at 6:30 pm, accompanied by his wife. Xiao testified that prior to walking through the main entrance, a couple of people standing at the main entrance to the school handed his wife a flyer that pertained to the persecution of Falun Gong. I credit Li and Xiao's testimony.

24. Lei Xiao claimed he and his wife entered through the main entrance of the building and came to the front desk. Xiao stated he met and briefly spoke to Jenny Chen of NECINA. Chen informed Xiao of his role that evening and she asked him to help decorate the stage. Xiao stated that he then went to the cafeteria to attend a preparation meeting, but no meeting was taking place. He claimed he then went to help decorate the stage with anti-SARS slogans and spent about 40 or 50 minutes on that task. Xiao testified that later on that evening, he found a program sheet that listed his name under “Security” or “Affairs on Site.” I credit Xiao’s testimony.

25. Suan Kuo drove Complainants Feng and Yu, and Jiang Zhu and another friend, Qiqi Mu, to the concert that evening. According to Suan Kuo, they arrived at the Middle School between approximately 6:00 and 6:15 pm. Kuo testified that after arriving at the concert, Complainants and their friends went inside the building, while he waited outside in the parking lot for approximately 30-45 minutes before purchasing four tickets from “Mr. Wu.” Contrary to Kuo’s testimony, both Complainants claimed they arrived at the Middle School around 7:00 pm. Although Kuo and the Complainant’s may not have arrived as early as 6:15 pm, I believe they arrived to the concert before 7:00 pm. In particular, I credit Gang Li’s testimony that Complainants approached him at the concert around 6:40 pm.

26. Complainants Feng and Yu testified that upon entering the building, they told the man at the door that they were reporters and that they were there to report on the event. Complainants claimed that they later learned that the man at the door was Kaibin Wu of OCEAN. According to the Complainants’ testimony, the man instructed them to find

and talk to Gang Li in the cafeteria. Feng admitted that there was no discussion of Falun Gong at this time.

27. Complainants found Gang Li in the cafeteria. Complainants then told Li that they did not need to buy tickets because they were reporters from NTDTV. Li responded that the event was a fundraiser and according to the rules of the event, everybody had to buy a ticket and media were not invited. Li testified that both Complainants kept insisting that they were members of the media and should be admitted without tickets. According to Li, this conversation lasted for about ten minutes. Li claimed he told Complainants that he was not in charge and not responsible for media. In response, Complainants told Li that Jenny Chen had given them permission to attend the event for free. I credit Gang Li's testimony.

28. Contrary to Li's testimony, Yu claimed that during the initial portion of the first discussion with Li, he stated: "Why are you guys here? Why you [sic] always come to our events?" She further claimed that Li also said to them, "You're Falun Gong; you always come here to disturb us." Feng, however, testified that Li did not say anything about Falun Gong during their discussion in the cafeteria. However, Feng claimed that during this first discussion, Li more than once told Complainants that they were not welcome at the concert. In addition, both Feng and Yu testified that Li told them that they were different from other media. They claimed Li also asked them to host their own event and told them to go home. Feng and Yu both believed that Li was referring to their involvement with Falun Gong. I decline to credit Feng and Yu's testimony. In particular, Yu's testimony on this matter was undermined by the videotape taken by Complainants, which supports the finding that Li specifically mentioned "Falun Gong"

later in the evening. Additionally, both Feng and Yu's memory of this conversation in particular and the events of the concert in general, seemed confused, inconsistent and vague, and, therefore, not credible. On the other hand, I found Li's account of this conversation highly credible.

29. After the discussion in the cafeteria, Gang Li led Complainants to see Jenny Chen, who was at the front desk. Chen claimed that she had not agreed to allow Complainants into the event without paying for tickets. Li testified that Chen stated the Complainants were welcome, but they would have to buy tickets since media were not allowed in for free. Li claimed that he then asked the Complainants why they lied to him. I credit Li's testimony.

30. According to Gang Li, about ten or fifteen minutes later, Complainants came back and insisted again that they be admitted into the concert for free. Li testified that he similarly told them that nobody is allowed in for free and that everyone had to purchase tickets. Li claimed he then brought Complainants to speak to Nanying Yin, the president of NECINA. Nanying Yin apparently told Complainants that they were welcome provided that they did not film the event or conduct interviews in the concert hall. Both Feng and Yu agreed to Yin's conditions. Yu also acknowledged that Li told them at this time that they could be admitted as regular members of the audience. Yu testified that at this point in time, she believed Li knew that she and Feng were Falun Gong practitioners. Although I believe Li likely knew Feng and Yu were Falun Gong practitioners either before or during this conversation, I credit Li's testimony regarding his discussions with Complainants.

31. Complainant Feng then located her husband and received a ticket from him. Li subsequently led Complainants to the entrance of the auditorium. He then left the immediate area. The doormen then requested that Complainants produce tickets in order to enter the Concert Hall. Yu testified that the doorman denied her admission into the concert because she did not have a ticket. Yu acknowledged that she did not have a ticket at this point in time. Again, both Complainants testified that they did not object to the requirement that they have a ticket to enter the concert hall. Yu then went to purchase a ticket from Kaibin Wu. According to Yu, Wu refused to sell her a ticket and told her, "We don't sell tickets here." Yu admitted, however, that Wu had told her that the tickets were for people who had ordered them in advance and were picking them up. Yu further acknowledged that she did not ask Wu where she could buy a ticket.

32. Yu then returned to the doorway to rejoin Feng. Complainants began arguing again that they were reporters and did not need tickets to enter the concert. Feng admitted that she did not show the doorman her ticket at this time. Moreover, Feng acknowledged that she did not tell anyone at the door that she had purchased a ticket. Gang Li claimed that this altercation occurred at approximately 7:20 pm. Li also confirmed that Xiao was not at the entrance to the concert hall at this time. Although Complainants videotaped a number of their subsequent conversations with the persons running the concert, none of the events up to this point appear on Complainants' videotape.

33. With respect to the videotape recorded by the Complainants and their companion, Zhu Jiang, Respondents argued that the videotape is unreliable and of little evidentiary value, if any. While I allowed the videotape into evidence, I concur that it does not merit

significant evidentiary weight. First, the tape was of Complainants' own making and Complainants admit that they selectively videotaped the events of that evening in their role as reporters. For example, the events of that evening took place over the course of several hours, but the videotape footage is only approximately 15 or 20 minutes long. Additionally, the videotape is not continuous; rather, it is broken into clips, and oftentimes considerable time had elapsed between segments. Furthermore, the videotape does not include the initial interactions between Complainants and the individual Respondents at the concert, which I believe to be essential to a full understanding to the factual issues at hand. While I find the videotape to be of insignificant evidentiary value, I do not believe it is wholly unreliable. For instance, the videotape confirmed that at certain times during the evening, Respondents and others did expressly refer to Complainants as "Falun Gong." However, and perhaps most importantly, I found that Xiao and Li's description and depiction of the events as recorded on the videotape, including some of the scenes where persons referred to Complainants as "Falun Gong", to be far more credible than the accounts of the event given by Complainants.

34. Lei Xiao testified that before the concert began, he became concerned because only a few volunteers were in the auditorium helping to set up and the concert was scheduled to start soon. Consequently, he went to call some ACMA members on his cell phone to ask them to help him at the concert. Xiao then left the auditorium to make these calls. Xiao testified that on his way to make the phone calls, he saw Gang Li and two women arguing at the front desk inside the main entrance. Xiao claimed he did not know who these two women were, but he later learned that they were Complainants, Yu and Feng. I credit Xiao's testimony.

35. Lei Xiao testified that when he witnessed the ensuing argument, he walked over to Gang Li, tapped him on his shoulder and said, “Gang, calm down, calm down. This is a good deed. We don’t have to argue. We can solve this thing peacefully.” Xiao stated that he did not know what the argument was about at this time. He then walked away, went outside of the building, and made his phone calls. I credit Xiao’s testimony. In addition, it appears that Xiao was the only ACMA member volunteering at the concert at this time and Complainants have not introduced any credible evidence to the contrary.

36. After making his phone call, Lei Xiao returned to the lobby and then went back into the cafeteria to see if the preparation meeting had started. He did not see anyone in the cafeteria, so he got some water, and then went to the restroom. Xiao believed it was shortly after 7:30 pm. When Xiao walked out of the restroom, some people approached him and told him that there was an argument at the front desk. According to Xiao, he was told that some people did not have tickets and were trying to make some trouble. He claimed he was then asked if he knew who was performing security for the event and Xiao responded that he was providing security. He then went to the lobby area near the front desk to offer his assistance. I credit Xiao’s testimony.

37. Lei Xiao testified that when he approached the front desk, he again saw the Complainants arguing with Gang Li. Xiao stated approximately ten people were standing around the table. Xiao claimed he stood there for about five minutes before saying anything. Although he did not hear the first part of the argument, Xiao testified that he understood from what he had heard that the two women were seeking free entry as reporters without purchasing tickets. Jiang Zhu, who had recently approached the scene, likewise testified that the Complainants were attempting to enter the concert for free.

Zhu testified that she had not observed any of the events leading up to this argument, as she was getting tickets and interviewing people. However, Zhu claimed that after she arrived at the area and before she began videotaping the argument between Gang Li and Complainants, she heard Li say the words “Falun Gong.”

38. Zhu then began videotaping the argument between Gang Li and Complainants. She admitted that she neither asked anyone for permission to videotape, nor did she let people know they were being videotaped. Gang Li asked her whether she was videotaping and asked her to stop, but Zhu told him that she was not videotaping. Zhu testified that she did not know how the video camera got turned on. Complainants and Zhu each admitted that they were the only ones in possession of the video camera inside the building that evening. According to Yu, either Feng or Zhu held the camera most of the time that evening.

39. As depicted on the videotape, during this argument, Complainant Yu said to Gang Li, “We’re not here to watch the performance. My daughter is home alone.” In direct response to that comment, Li said, “Then you should please go. Please go!” Li claimed that before this interchange, he had never told Complainants that they should go home. I credit Li’s testimony.

40. Shortly thereafter, Complainant Yu said to Gang Li, “If you think the timing is off, next time we’ll talk it over with you and find a right time. Please go ahead and take care of your business first. Is that okay?” In direct response to that comment, Li stated, “This time just don’t participate in this event. How about if we have a meeting next time just for you, how’s that?” Li testified that he made this statement in agreement with Yu’s

comment and because he thought that Yu had made a very good suggestion, namely, that they could find a time to talk over their special request at another time. I credit Li's testimony on this matter.

41. Lei Xiao testified that at this time, he became concerned because the ongoing argument with the Complainants was taking place right in front of the main entrance to the auditorium. In addition, Xiao was concerned that the argument would not be a good image for the charitable event. He testified that he thought the event should be peaceful, as everyone should be happy to help the fight against SARS. Xiao also thought that if there was a dispute with Complainants, they should talk it out or take the dispute to another location. Xiao further testified that he overheard one of the audience members suggest that because the argument has been going on for some time, it would not end unless the police were called to intervene and decide what should be done. Xiao claimed he also heard Feng say to Li that she would continue to cover the event and intended to get a lawyer. Xiao testified that he then loudly yelled, "Call the police", as he believed the intervention of the police was the only way to resolve the argument and end the disruption. Xiao's statement appears in the early part of Complainants' videotape. At this point in time, Xiao was neither personally involved in any conversation with Complainants, nor was he aware that any of the conversation was being recorded. I credit Xiao's testimony.

42. Lei Xiao testified that he intervened in the conversation because he understood he had the role of providing security at the concert and he wanted to help solve this problem as peacefully and quickly as possible. Consequently, as shown on the videotape, Xiao stated to Complainants, "This is doing something good for the country...we're doing

something good. Let's not ruin this event, is that okay? Okay...?" Xiao claimed he made these statements because Complainants had earlier mentioned getting a lawyer and continued to insist upon entering the event for free. I credit Xiao's testimony.

43. During this exchange, Lei Xiao also said, "Please help us out, okay? Help us out. If you have an opinion about the Chinese government, if you have an opinion about the Chinese government that's your business." He testified he made this statement because he heard an audience member say that the Complainants were Falun Gong. Although Xiao claimed he did not know if the Complainants were actually Falun Gong practitioners, he thought it might be a possibility since his wife had earlier received a flyer regarding Falun Gong on their way into the building. I credit Xiao's testimony.

44. Lei Xiao next stated to Complainants, "Let's not ruin each other's event... Last time in 2001, an event... I don't want to interfere with your events. I don't want you to interfere with our events." Xiao testified he was referring to an event at MIT in 2001 that was sponsored by ACMA. At this event, ACMA hosted a delegation of doctors from hospitals all over China. To Xiao's knowledge and belief, several Falun Gong practitioners protested at the conference. Xiao testified that at this 2001 conference, ACMA eventually compromised with the Falun Gong practitioners and permitted them to protest outside the event. I credit Xiao's testimony.

45. According to Lei Xiao, Complainant Feng continued to assert that they should be admitted free of charge. Xiao testified that at no time during this exchange with Complainants did he deny the women entry into the concert or tell them that they could come in without tickets. In addition, both Feng and Jiang Zhu admitted that at no time

during this exchange did they say that they had purchased tickets or that they were willing to purchase tickets. Xiao testified that after this exchange, he returned to the auditorium to finish decorating the stage. He then stood inside the double-doors at the entrance of the auditorium, standing behind the one closed door. Xiao testified he spent most of the evening at that spot. I credit his testimony.

46. Lei Xiao testified that after this exchange with Complainants, he witnessed a gentleman pass by the entrance and offer and then give Yu a ticket. Xiao claimed that when the gentleman then came through the door into the auditorium, he explained to the gentleman that Yu did not have a ticket and that tickets were not transferable. Xiao testified that he understood the tickets were non-transferable as a result of the rule agreed to at the May 14, 2003 organizational meeting. According to Xiao, the gentleman, without being asked, then went back outside the auditorium and took his ticket back from Yu. Xiao testified that he thanked the man when he came back in because he was very cooperative. Xiao stated that he had never met the man before. Contrary to Xiao's account of this incident, Complainant Feng testified that Xiao approached the individual who gave Yu a ticket and informed him that Yu was a Falun Gong practitioner. Yu, on direct examination, likewise claimed that Xiao told the gentleman that she was Falun Gong. However, on cross-examination, Yu testified that Xiao had not said anything about Falun Gong at this point in time. Yu and Jiang Zhu testified that when the gentleman approached Yu to get back the ticket, he told Yu that he was "being put in a difficult situation." I credit Xiao's testimony about this interchange.

47. Lei Xiao testified that after the gentleman handed Yu the ticket, he neither saw Yu use the ticket, nor saw or heard any conversation between Yu and the doormen. Jiang

Zhu testified that Xiao was standing inside the door of the concert hall at this time. Feng also admitted that the doorman, as opposed to Xiao, refused to allow Yu into the auditorium. However, according to Xiao, Feng accused him of threatening the man into retrieving his ticket from Yu. Xiao testified that Feng also accused him of threatening and deceiving other people, and told him that he was “contemptible.” Although Feng’s remarks made him feel insulted, Xiao stated that he did not want to continue arguing with Feng. I credit Xiao’s testimony.

48. Complainant Feng testified that at about the same time, she presented a ticket to a doorman at the entrance to the auditorium, who then ripped the ticket. However, she claimed that Xiao then stated to her that she could not enter because her ticket was a “used ticket.” According to Feng, Xiao was standing at the doors to the auditorium at this time and observed her ticket being ripped. Feng further testified that Xiao told her she could not enter the event because she is a Falun Dafa practitioner. In contrast to Feng’s testimony, Yu claimed that Feng did not attempt to enter the auditorium at this time. Instead, Yu testified that Feng showed Xiao her press credential card and, in response, Xiao responded that NTDTV was the same as Falun Dafa. Complainants claimed that at or about this time, Xiao told Feng that if their master is so great, he should pray to eliminate SARS or save people.

49. Lei Xiao testified that he was increasingly losing his patience with Complainants since they had insulted him several times by saying that he threatened people and that he was “contemptible.” He claimed that Feng then stated to him, “A moment ago, a young man gave us a ticket. You threatened him and told him to take it back.” In response, Xiao claimed he said, “I didn’t threaten him! I just told him one sentence. I told him that

you are from Falun Gong.” Xiao testified that he did not really say this to the gentleman; however, he made this statement to the Complainants because he was exasperated as a result of their insults and incessant arguing. Xiao testified that this was the first time he mentioned “Falun Gong.” Xiao claimed that he simply meant to suggest to the Complainants that their reputation was no better than his. According to Xiao, after he made this comment, Feng replied, “We are from Falun Gong... who, where do you see that?” He testified that she further stated, “Nobody says we’re representing Falun Gong.” I credit Xiao’s testimony regarding this conversation. In particular, I find that this was the first time that Xiao mentioned “Falun Gong.” Moreover, I found Yu’s testimony regarding her recollection of when Xiao first referred to her and Feng as “Falun Gong” to be completely lacking in credibility. Specifically, on her first day of testimony, Yu could not recall when “Falun Gong” was first mentioned. After her first day of testimony, she talked to Feng about this matter and together they reviewed the transcript of the videotape. Somewhat not surprisingly, on her next day of testimony, Yu claimed to remember when Xiao first used the words, “Falun Gong.” Additionally, in response to a question from the Hearing Officer, Yu initially testified that Xiao first mentioned “Falun Gong” after she and Feng had already been denied admission to the concert. Yu subsequently tried to change her testimony to say that they were denied admission after Xiao referred to them as Falun Gong. Thus, Yu’s testimony regarding these events was contradictory, inconsistent, and vague, and perhaps improperly influenced by other witnesses during her testimony.

50. Lei Xiao testified that around 8:20 pm, the concert had still not started and some in the audience began to complain about the delay. As a result, some of the performers

began to play some instruments to entertain the audience. Xiao testified that around this time, he heard another audience member, a gentleman in a green shirt, approach the entrance to the auditorium and offer his extra ticket to anyone at the door before going inside. Xiao then came out of the auditorium and asked the man to come inside. Xiao claimed he recognized the man, but did not remember his name. Xiao did not know whether the man had actually given the ticket to anyone. Xiao testified he told the man that he could not give away his ticket because the ticket is non-transferable. I credit Xiao's testimony.

51. Complainants emphasized that the advertising for the concert did not indicate that tickets were non-transferable, or that they had to be purchased in advance. Additionally, the tickets to the concert did not indicate anywhere on their face that they were non-transferable and the program for the concert likewise did not indicate that tickets were non-transferable. Moreover, there was no posting at the venue indicating that tickets were non-transferable. Although purchasers to the event were apparently not informed that the tickets were non-transferable, I credit Xiao and Li's testimony that the participants at the May 14, 2003 organizational meeting intended for the tickets to be non-transferable. Furthermore, I do not find the lack of any notice about the non-transferability of the tickets to be particularly insightful or relevant. This fund-raising event was organized by a collection of non-profit, Boston-area, Chinese American organizations and it is unrealistic to expect that these organizations would attend to the legal technicalities regarding the sale of tickets that would attach to tickets issued by professional organizations such as the Boston Pops at Symphony Hall or to the Red Sox at Fenway Park.

52. Complainants claim the videotape they took showed Xiao allowing a woman in a beige jacket to enter the concert without a ticket. However, Xiao testified credibly that he did not know whether the woman had a ticket. In addition, as shown on the videotape, Xiao was standing behind the door to the auditorium and talking with the man in the green shirt at the time that the doormen let in the woman in the beige jacket. I credit Xiao's testimony.

53. Lei Xiao further stated that while he was standing around the entrance to the auditorium, Complainant Feng had been videotaping him and other people at the doorway to the auditorium and blocking the doorway as she videotaped. Xiao testified that over the course of the evening, he repeatedly asked Complainants to stop videotaping, but Complainants refused to stop. As seen on the videotape, Li and several other people likewise asked Complainants to turn off the video camera, but Complainants continued filming. Xiao further stated that Feng told him that if anyone prevented them from entering the concert hall, Complainants would record them and broadcast it on their TV network. In response, Xiao claimed he responded, "Okay, I didn't do anything wrong, so come on, you go ahead and film me." I credit Xiao and Li's testimony.

54. As shown on the videotape, Xuebin Feng and Lei Xiao continued to argue. Xiao acknowledged that by this time, he had become very annoyed and angry with Complainants. Feng said to Xiao, "We have tickets now. We have tickets now." Xiao testified that he believed that Complainants did not have tickets prior to that time, and were now claiming to have tickets because some people gave them free tickets. Xiao subsequently told Feng, "You are an unwelcome media here." He stated that Complainants were unwelcome because they had caused an argument, refused to buy

tickets, videotaped the argument, and disrupted the event by not following the event rules. Xiao next told Feng, “We were trying to save face for you.” Xiao testified he made the comment about “saving face” because he had avoided telling Complainants at the beginning of the evening that they were very cheap for not paying \$25 for a ticket to the concert. I credit Xiao’s testimony.

55. On the video tape, Complainant Feng then stated, “I want to cry.” Although Lei Xiao’s response is not entirely audible on the videotape, he apparently stated something similar to: “You wanting to cry is also good. Know your master”, “We, as a medical association”, “You as Falun Gong association”, and “Why don’t you just ask your master to chant Falun Dafa to save the people, wouldn’t that do it? That’s doing something good. Isn’t that right? Do something real! Do something real!” Xiao testified that he was trying to express to Feng that the event was focused solely on the SARS issue, and that if she wanted to help SARS patients, she should help rather than frustrate their efforts. In addition, Xiao claimed he was suggesting that as Falun Gong practitioners, Complainants could use their beliefs and powers to help cure SARS patients. Xiao testified that he made these statements based on some Falun Gong literature he had read, claiming that their master had a supernatural ability to cure disease. Xiao claimed he was being serious and not sarcastic when he made these suggestions. Although he did not genuinely believe that these spiritual powers could help SARS patients, he sincerely hoped that they would. I believe that Xiao was being somewhat sarcastic when he made these remarks; however, he made the remarks only after he had become exasperated with Complainants’ insults and their insistence that they be admitted to the concert for free. I further find that Xiao’s statements are not credible evidence of an intent to discriminate

against Complainant because they were Falun Gong practitioners. Complainants had already been denied entrance to the concert for not presenting tickets before the issue of their religious beliefs ever arose. Lastly, I find that Xiao's outburst was largely provoked by Complainants' conduct and the fact that they were disrupting the event.

56. Complainant Feng continued to insult Xiao. She stated, "What you care about is your own fame and interest." In response, Xiao said that he was not getting on the stage to perform, and that performing was not his principal interest. Feng replied that the reason he did not want to get on stage was because the people would knock him off the stage. Feng acknowledged that the doorman who overheard this comment then asked her why she was always insulting others whenever she opened her mouth. I credit Xiao's testimony regarding this conversation.

57. Xiao testified that by this point in the evening, he had become very angry. Although Xiao testified that he was neither a doorman nor a ticket-seller that evening and had no role in deciding who got tickets and who did not, he told Feng that he would not sell her tickets. He claimed he meant that even if he had tickets to sell, he would not sell her any because she had insulted and angered him so much. I credit Xiao's testimony.

58. Also around this time, Gang Li rejoined the argument and said to Complainants, among other things, "You are different from other people." Li testified that he made this comment because Complainants, unlike all the other attendees, sought the special privilege of admission into the fundraising event without purchasing tickets. Li explained that all of the other media who came to the event followed the rules and purchased tickets. I credit Li's testimony.

59. Complainant Feng and Jiang Zhu admitted that Complainants never told Xiao that they had purchased tickets, or that they wanted to enter the concert as regular audience members. Moreover, Xiao testified credibly that Complainants never presented a ticket to him. Similarly, Gang Li testified that he was neither a doorman nor a ticket-seller that evening and at no time did Complainants present a ticket to him or tell him that they had purchased tickets. I credit Xiao and Li's testimony.

60. Lei Xiao and Gang Li testified that no member of ACMA or OCEAN sold or collected tickets at the event. Rather, they claimed that the two doormen who stood by the doorway to the auditorium and collected the tickets were members of NECINA. In addition, Xiao denied telling anyone that it was all right to enter the concert without a ticket. Xiao further stated that no other ACMA members were involved in the dispute with Complainants. I credit Xiao and Li's testimony.

61. Lei Xiao, Gang Li and Complainants continued to argue until the Sudbury Police arrived. Xiao testified that the argument became very loud to be point where members of the audience asked that they close the door to the auditorium. Xiao testified that when he heard someone say that the police had arrived, he went to find them. Complainants and their companion, Jiang Zhu, followed Xiao. Xiao claimed that when he found the police officers, he told them what had happened, namely, that they were holding a charitable event to raise money for SARS, and that the Complainants did not have tickets for the event. Xiao admitted that he told the police officers that the three women were from Falun Gong. Although Xiao testified that he neither called the police nor knew who called them, he expected the police to decide whether Complainants should be admitted into the concert. The police officers then spoke to the Complainants, asked them to leave

the premises, and escorted them outside. Xiao testified that one of the officers then came back to speak with him and told him that the Complainants said that they had tickets. Xiao then explained to the police officer that the only time either of the Complainants had tickets was when an audience member gave them a ticket but immediately took the ticket back upon being informed tickets were non-transferable. I credit Xiao's testimony.

62. Sometime soon after, Lei Xiao went to the parking lot with Gang Li to bring Complainants and Jiang Zhu some bottled water. At this point, Xiao and Zhu apparently had a friendly conversation with one another. Xiao claimed that Zhu was very nice to him and told him that she was a reporter from the Epoch Times. She also gave Xiao her business card and said that they should communicate more in the future about the issue of Falun Gong persecution in China. I credit Xiao's testimony.

63. Complainants contend that other members of the media, namely members of the China Press, were allowed in for free. However, Complainants failed to present any credible evidence to substantiate this allegation. In fact, Complainant Feng admitted that she did not see members of another newspaper, "The China Press", enter the concert without a ticket. Feng also admitted that she had no information that NTDTV was treated any differently from any other media with respect to videotaping the concert.

64. Lei Xiao testified that it was always his understanding that if Complainants had purchased tickets and went directly to the door and presented their tickets to the doormen, they would have gotten in. Xiao believed Complainants had other motives or were "play[ing] tricks" since they had failed to present any tickets at the beginning of the evening. I credit Xiao's testimony.

65. Except for Complainants and Jiang Zhu, other Falun Gong practitioners apparently entered the concert without incident, including Pengfei Wei (the husband of Jiang Zhu) and Qiqi Mu (Complainants' friend who arrived at the concert with them). Xiao testified that he also recognized a hairdresser at the concert who he knew to be a Falun Gong practitioner. Suan Kuo, Feng's husband, also purchased tickets and attended the concert without incident.⁹ Jiang Zhu also testified that she had purchased four tickets and had given them to fellow Falun Gong practitioners, who attended the concert without incident.

66. Both Lei Xiao and Gang Li testified that they each had a friendly exchange with Pengfei Wei that evening. As stated above, Pengfei Wei is the husband of Jiang Zhu and a Falun Gong practitioner. In particular, Xiao claimed that he and Wei had a friendly conversation about Falun Gong. According to Xiao, this conversation occurred right after the police escorted the Complainants out of the building. Xiao testified that Wei stopped him in the hallway, greeted him, and gave him his business card. Xiao stated that he recognized his name as a prominent Falun Gong practitioner at MIT. Xiao stated that Wei had asked him about his perspective on Falun Gong, and Xiao responded that he had no problem when people practice it for their health, but he expressed that he did not agree with the claim that sick people can practice Falun Gong instead of taking medicine. Xiao stated that Wei acted very nicely toward him and suggested that they talk about it again in the future. Complainants have not introduced any credible evidence that Xiao made any attempt to stop Wei or any other person from going into the auditorium. I credit Xiao's testimony about this matter.

⁹ Kuo testified that he entered the concert without having to produce his ticket. Although I credit Kuo's testimony, this was the only credible evidence of someone entering the concert without presenting a ticket.

67. At approximately 11:30 pm, after the Complainants had been escorted out of the building, Complainants stopped and met Lei Xiao and his wife in front of the entrance of the building. Complainants were holding the video camera and asking Xiao for an interview. Xiao told them that it was very late, he had to go home, and did not want to be interviewed; but he would be happy to have a brief, friendly conversation. Complainants insisted on interviewing and videotaping Xiao despite his repeated requests that they turn off the video camera. He claimed Complainants shut off the camera briefly, but then turned it on again, as he observed the red recording light on the camera go on. According to Xiao, Complainants kept harassing and videotaping him and his wife on the way to their car. He then called a police officer over to help him. The police officer apparently told Xiao to get in his car. Xiao claimed that as he tried to back out, the Complainants got in front of his car and continued to videotape him. Xiao then got out of his car, again requested the police officer's help, and was finally able to drive out of the parking lot. Complainants claimed that Xiao tried to attack Feng in the parking lot, which he adamantly denied. Complainants admitted, however, that Xiao was never closer than 5-10 feet from Feng. They further acknowledged that Xiao had asked the police officer for assistance. Moreover, Feng admitted that she called Xiao a habitual liar in front of his wife. I credit Xiao's testimony regarding this matter.

D. Events after the Concert of June 14, 2003

68. On or about June 20, 2003, the Epoch Times published an article written by Jiang Zhu. As described above, Zhu was the Complainant's friend, fellow reporter, and a Falun Gong practitioner. Zhu also attended the concert and witnessed and videotaped many of the interactions between Complainants and Respondents. In the article, Zhu wrote, "Mr.

Gang Li told [the Complainants] they could come into the concert as ordinary concert attendants with purchasing their own tickets, but not as reporters without tickets. The two reporters said that this request was unreasonable as it is their duty and right to report the news.” Zhu testified that as a reporter, she believed it was important to report events accurately and truthfully. She also claimed that she wrote the article to report on the events of the June 14 concert. In the article, Zhu emphasized that she and the Complainants were discriminated against because they were members of the media. Nowhere in the article did Zhu state that she believed she and Complainants were denied admittance because they were Falun Gong practitioners. I find that Zhu’s account of the events of that evening strongly supports the contention that Complainants’ exclusion from the concert was based on their being members of the media and not because of their religious beliefs.

69. Weeks after the concert, Complainant Feng and NTDTV producer Lei Xi met with Zhengkun “Kun” Zhu of ACMA. Feng and Xi claimed that at the meeting, Kun Zhu told them that when members of the Chinese consulate are present at events, “It is better that you guys don’t show up. When they’re not here, you can come.” I decline to credit Feng and Xi’s testimony. Moreover, even if Kun Zhu made this statement about the Chinese consulate, I find no connection between the comment and the events of June 14, 2003. Similarly, I do not believe this statement to be evidence of discriminatory animus based on religion on the part of Respondents at the event June 14, 2003.

E. Complainants’ Damages

70. Complainant Yu testified that as a result of the events of the June 14 concert, she has suffered the long-term effects of emotional distress. She claimed she has not been

able to “put away” the events of the night of the concert from her mind. Yu further testified that since the night of the Concert, she has been unable to parent her daughter as well as before, stating: “I don’t want to talk at home. I don’t want to do housework.” Lei Xi testified that Yu appeared to be more emotional and more argumentative after the concert. Jiang Zhu stated that after the concert, Yu appeared more serious than before and talked less. Zhu claimed that a few months after the concert, she asked Yu if she wanted to do a report for the Chinese community, but she didn’t want to go. Yu testified she found it difficult to participate or report on events in the Chinese community. Yu never sought medical or psychological treatment.

71. Yu also claimed that she lost her job at MIT’s Whitehead Biomedical Institute due to the emotional distress she experienced as a result of the events that occurred on June 14, 2003. However, Yu acknowledged that she was fired from her job after repeated poor performance and inappropriate conduct toward her supervisor. Yu further admitted that her job performance was deficient long before the events that occurred on June 14, 2003. In addition, her performance evaluations reveal that her job performance was actually rated better after the June 14, 2003 incident than before the incident. Lastly, Yu claimed that she has lost wages and benefits as a result of this termination; but she has offered no documentary evidence to substantiate a claim for lost wages. Additionally, she admitted to collecting unemployment benefits and, thereafter, earning \$22,000 in wages over a nine month period.

72. Similarly, Complainant Feng testified that she has suffered severe and pervasive emotional distress as a result of the events of June 14, 2003. Feng admitted, however, that she has neither suffered any economic loss, nor sought any medical or psychological

treatment for her alleged emotional distress. Feng described her life as “very happy” in the years prior to the concert, but afterwards, she became “very upset because [it made] let me to think about the situation in China.” Feng testified that she had previously been incarcerated in China for being a Falun Dafa practitioner. She claimed she felt “very sad because I feel like I am – I was in China. In China wherever you walk people say you were Falun Gong so they would follow you, not allowing you to do this or do that.”

Feng’s husband testified that since the night of the concert, she “is not enthused anymore. She doesn’t have the kind of spunk that she used to.” Moreover, Jiang Zhu stated that after the event, Feng didn’t like to smile a lot, and when she talked, she was very serious.

Both Feng and her husband claimed that since the night of the concert, she has experienced sleeping difficulties. Feng also testified that she has lost weight and experienced difficulties in eating since the concert. Her husband corroborated her weight loss. Her husband further testified that on more than one occasion, she has vomited up water because she could not eat. In support of her claim for emotional distress, Feng suggested that she moved to New York because she was no longer happy in Boston.

However, her husband testified that she moved to New York because “she wanted to volunteer, work for the [NTDTV] station in New York, because she felt she [could] play a more important role.” Feng presently lives in New York, while her husband lives in Melrose, MA. Her husband pays for both residences and supports her.

III. CONCLUSIONS OF LAW

Massachusetts General Laws c. 272, § 98 prohibits any distinction, discrimination, or restriction relative to the admission of any person to a place of public accommodation based on religious creed. Specifically, the statute provides, in pertinent part:

Whoever makes any distinction, discrimination or restriction on account of race, color, religious creed, national origin, sex, sexual orientation...or any physical or mental disability or ancestry relative to the admission of any person to, or his treatment in any place of public accommodation, resort or amusement, as defined in section ninety-two A, 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...

The phrase "place of public accommodation" is broadly defined in M.G.L. c. 272, § 92A as "any place, whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public and, without limiting the generality of this definition, whether or not it be...(7) an auditorium, theatre, music hall, meeting place or hall, including the common halls of buildings; (8) a place of public amusement, recreation, sport, exercise or entertainment..." See, Samartin v. Metropolitan Life Insurance Co., 27 MDLR 210, 213-214 (2005) (Full Commission) (discussing broad language of statute).

The Commission is authorized to enforce the public accommodation statute pursuant to M.G.L. c. 151B, § 5. Ekhatov v. Stop & Shop Supermarket Co. 24 MDLR 147, 149 (2002).

In determining whether a violation of the public accommodation statute exists, the Commission analyzes the evidence in accordance with the disparate treatment standard set forth in Wheelock v. MCAD, 371 Mass. 130, 134 - 136 (1976). Lipchitz v. Raytheon Company, 434 Mass. 493, 495 (2001); Reese v. May Dept. Store, 24 MDLR 395, 399

(2002). To establish a prima facie case of discrimination in a place of public accommodation, each Complainant must demonstrate that she was 1) a member of a protected class, 2) denied access to, restricted, or treated differently from others not in her protected class, and 3) in a place of public accommodation. Rome v. PVTA, 19 MDLR 159, 161 (1997).

As an initial matter, I believe the SARS fundraising concert held at the Ephraim Curtis Middle School on June 14, 2003 was a place of public accommodation. As noted above, c. 272, § 92A broadly construes places of public accommodation to include auditoriums, meeting places, and places of entertainment. Moreover, apparently any member of the public was admitted to the concert if he or she purchased a ticket. I also reject Respondents' argument that they could not be held liable because they did not have control over either the premises or admission to the concert. Although I credited both Gang Li and Lei Xiao's testimony that the organization NECINA assumed overall responsibility for planning and coordinating the event, all of the Respondents, as well as many other organizations and individuals, assisted NECINA in hosting and managing the event. As stated above, pursuant to c. 272, § 98, liability may also be asserted against anyone who "aids or incites such distinction, discrimination or restriction." Thus, while Respondents may not have exercised direct control over the event or the admission of persons thereto, they can still be held liable for aiding or inciting any discrimination relative to Complainants admission to, or treatment at, the concert.

Notwithstanding the issue of whether Respondents are proper parties, given the facts and circumstances of this case, I find that Complainants have failed to establish a prima facie case of discrimination. Although Complainants are members of a protected

class by virtue of their sincerely held religious beliefs, they have failed to establish that Respondents denied them access to the concert based on their status as Falun Gong practitioners or treated them differently from non-Falun Gong practitioners. I find that Complainants dispute with the organizers of the event, including Respondents, centered on their insistence that they be admitted into the concert for free and without tickets because they were reporters. From the time they first arrived at the venue, Complainants Yu and Feng attempted to gain access without paying for admission. They insisted that since they worked for NTDTV, they should be allowed to enter the concert without purchasing tickets. Furthermore, the record overwhelmingly supports the conclusion that Complainants provoked the dispute. For example, Feng continually insisted that she be allowed to enter without a ticket even though she had made arrangements for and had actually obtained tickets to the concert. In addition, organizers of the event agreed that Complainants could enter the concert as regular members of the audience if they purchased tickets and did not videotape the concert. However, Complainants continued to insist upon entering the concert for free and then began videotaping segments of the argument that ensued as result.

Complainants claim is further undermined by the fact that several other persons, known by Lei or Xiao to be Falun Gong practitioners, purchased tickets and attended the concert without incident. Additionally, Jiang Zhu, a fellow reporter, Falun Gong practitioner, and friend of Complainants, who witnessed and videotaped many of the events that evening, wrote an article that largely corroborated Respondents' version of the events. In particular, Zhu reported that Respondents would allow Complainants to come into the concert as ordinary attendees if they had purchased and presented their own

tickets, but not as reporters without tickets. Additionally, Zhu specifically asserted in her article that Respondents had discriminated against her and Complainants because they were members of the media. Zhu did not claim anywhere in her article that she and Complainants were denied entrance because they were practitioners of Falun Gong.

Complainants contended that Respondents allowed other members of the media to enter for free, however, they failed to present any credible evidence to substantiate this allegation. In fact, Feng admitted that she did not witness members of the China Press being admitted to the concert without a ticket. Feng also admitted that she had no information that NTDTV was treated any differently from any other media with respect to the prohibition on videotaping the concert. On the other hand, I credited Gang Li's testimony that he specifically told Complainants that they were asking to be treated differently from members of the public since they insisted upon being admitted to the fundraising event without purchasing tickets. Li testified credibly that all of the other media who attended the event followed the rules and purchased tickets. Consequently, the record amply supports the conclusion that Complainants' exclusion from the event stemmed from their insistence that they be given special treatment because they were reporters and not because of their status as Falun Gong practitioners.

Complainants relied heavily on the alleged disparaging comments made by Li and Xiao pertaining to Complainants being Falun Gong practitioners. I found Complainants' version of the comments purportedly made by Li in the cafeteria to be contradictory, inconsistent and vague and, therefore, I declined to credit their testimony. On the other hand, I found Li's testimony regarding his conversations with Complainants to be highly credible.

With respect to Xiao's remarks about Falun Gong, which were captured on the videotape, I believe that these comments were made in the heat of argument only after he was badgered by Complainants and they had disrupted the event. In addition, he made these remarks after Complainants had already been denied admission to the auditorium by others at the door. In fact, Xiao made these statements after the organizers of the event told Complainants they could be admitted as all other members of the public, but Complainants continued to insist that they need not have purchased tickets and should be allowed free admission. I also credited Xiao's testimony that when he made the statements about Complainants' being different he was referring to the special treatment they were seeking and was not casting aspersions against the Falun Gong. He testified credibly that he told Complainants they should be praying and using their religious beliefs to help SARS patients instead of arguing for special treatment and disrupting the event. This was exemplified by his comment: "Do something real! Do something real!" Lastly, even if Xiao's remarks could be construed as expressions of animus against Complainants' religion, I agree with Respondents that the comments were tantamount to "isolated or occasional comments" and that are insufficient to substantiate a claim under c. 272, § 98, given the circumstances surrounding this event. By analogy, federal and state courts have consistently held with respect to random comments, that the federal and state anti-discrimination statutes, are not clean language statutes. Scott v. Sears, Roebuck & Co., 798 F. 2d 210, 213, n. 2 (7th Cir. 1986), *citing*, Katz v. Dole, 709 F.2d 251, 256 (4th Cir. 1983) ("Title VII is not a clean language act..."); Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 619-620 (1996). Moreover, the Commission has consistently held that "casual comments or accidental or sporadic conversations [in the

workplace] are insufficient to constitute a pervasive, hostile environment” and only if the demeaning comments are “sufficiently continuous and pervasive” will they constitute an unlawful discriminatory practice. Horzesky v. R&M Construction Co., 15 MDLR 1171, 1176 (1993); see, Morrisey v. Holiday Inn, 25 MDLR 74, 84 (2003) (in employment discrimination case, isolated or occasional comments or incident, unless extremely serious, are not sufficient to alter the terms and conditions of employment).

In the case at bar, I conclude that Lei Xiao’s comments to Complainants about their being Falun Gong practitioners, under these circumstances, were not sufficiently severe or pervasive to give rise to a religious discrimination claim under c. 272, § 98. In particular, I have considered the mitigating fact that Xiao made the statements only after Complainants continued to insist that they be allowed to enter the event for free since they were reporters, and after being harangued and insulted by Complainants. Moreover, as stated above, Xiao made these statements after Complainants had already been ostensibly denied access to the concert.

I conclude that Complainants have failed to establish a prima facie claim that Respondents excluded them from the concert based on their sincerely held religious beliefs; and, therefore, failed to establish that Respondents engaged in unlawful discrimination in violation of M.G.L. c. 272, § 98.

IV. ORDER

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 7th day of November, 2006.

EDWARD R. MITNICK
Hearing Officer