

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD & LESLIE SANDIFORD,
Complainants

v.

DOCKET NO. 06-BPA-00211

ROADRUNNER AUTO
SERVICES, INC.,
Respondent

Appearances:

James E. Neyman, Esquire for Leslie Sandiford
Mark Andrade, pro se for Roadrunner Auto Services, Inc.

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about January 31, 2006, Leslie Sandiford filed a complaint with this Commission charging Respondent with discrimination on the basis of race, color and national origin in a place of public accommodation, in violation of M.G.L.c.272§98 and M.G.L.c.151B. The Investigating Commissioner issued a probable cause finding. Attempts to conciliate the matter failed and the matter was Certified for Public Hearing on November 28, 2006. A public hearing was held before me on March 6, 2007. After carefully considering the entire record in this matter, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant Leslie Sandiford is a black man who was born in Barbados and came to the United States in 1974. He has been a United States citizen since 1985. He currently resides in Dorchester, Massachusetts.

2. Respondent Road Runner Auto Services, Inc. is a Towing Company with offices located at 8 Freeport Street, Boston, MA. Mark Andrade is the company's manager.

3. Complainant testified that on December 19, 2005 he drove his car to the parking lot of the Sovereign Bank and Bank of America located at 1440 Dorchester Avenue, Dorchester, MA in order to conduct business at both banks. Complainant testified that he parked his car in a legal space and was inside both banks for approximately 35 minutes.

4. Complainant testified that when he exited the bank he saw that his car had been raised about two feet off the ground by a tow truck with the name "Road Runner" painted on the side and operated by a man later identified as Richard Kurpeski.

5. Complainant testified that he screamed at the man, "Why are you moving my car?" He then climbed into his car and told Kurpeski that his car was not parked illegally and that if Kurpeski wanted to tow the car he would have to take him, too. Complainant

testified that at this point the driver's side door was open and his feet were hanging out the door.

6. Complainant testified that Kurpeski then put his finger in Complainant's face and stated to him, "Your car is parked illegally, nigger and I am not putting it down." Complainant testified that he raised his hands to stop Kurpeski, who said to Complainant, "Get your black bony hands out of my face before I break them." Complainant stated that this exchange lasted for about five minutes. He stated that Kurpeski told him that he would release the car only if Complainant paid him \$40.00. Complainant told Kurpeski to call the police. Instead, Kurpeski went into the bank and summoned the security guard, who is African American

7. Complainant testified that he recognized the security guard, who had worked at the bank for about a year. Complainant told the guard he was glad to see him. The guard responded that Complainant's car was illegally parked and he should follow Kurpeski's instructions.

8. Complainant stated that the police then arrived and told Kurpeski to release his car, because it was not parked illegally. According to Complainant, Kurpeski responded that the "no parking" signs should be removed; however, he then lowered Complainant's car to the ground. I credit Complainant's testimony as to how this entire event unfolded.

9. The police took a complaint which supported Complainant's version of events, although the police officer noted in the report that Kurpeski denied calling Complainant "nigger." (Exhibit C-1)

10. The next morning shortly after 9:00 a.m., Complainant called Road Runner Auto Services, asking to speak to a supervisor and was directed to speak with "Mark." Complainant stated that he told Mark what had happened the day before and Mark responded that he did not believe Complainant and said the police only instructed Kurpeski to release his car out of compassion.

11. Complainant testified that after the incident he felt "belittled" and "mentally and physically stressed out." He stated that although he continues to bank at the same location, the memory of the incident returns and he is very cautious. I credit his testimony.

12. Mark Andrade is a black man of Cape Verdean ancestry. He has been the General Manager of Road Runner for the past five years. Andrade manages crews of up to seven individuals and has worked in the towing business since 1989. Andrade did not witness the incident with Complainant, however, he testified since the parking lot was on private property, the posting requirements are not as stringent as in public areas, and that the police were incorrect in stating that Complainant's car was legally parked. He also stated that he did not recall speaking with Complainant on the telephone.

13. Andrade testified that Kurpeski has worked for him on and off for a number of years, and he has never heard Kurpeski use racist epithets and did not believe that he called Complainant “nigger.”

14. Andrade testified that a tow-truck driver is permitted to release a car to its owner for a fee of \$45.00, which is half of the towing fee of \$90.00, in order to stop the towing procedure while in progress.

III. CONCLUSIONS OF LAW

Massachusetts General Laws, c. 272, s. 98, makes it an unlawful practice to make any distinction, discrimination or restriction on account of race relative to a person's admission to, or his treatment in, any place of public accommodation. Any such action of discrimination is subject to the remedies enumerated in G. L. c. 151B, s. 5, which grants the Commission authority to adjudicate such complaints.

In order to establish a prima facie claim of discrimination in public accommodation, Complainant must prove that (1) he is a member of a protected class; (2) he was denied access to or restricted in the use of (3) a place of public accommodation. Once Complainant has established a prima facie case, Respondent has the burden of articulating a legitimate nondiscriminatory reason for its actions and proof that the articulated reasons are the real reasons for its conduct. Wheelock College v. MCAD, 371

Mass. 130, 136 (1976). If Respondent meets this burden, then Complainant must show by a preponderance of evidence that Respondent's proffered reason is pretext. Id.

Based on the evidence presented at the public hearing, I conclude that Complainant has established a prima facie case of unlawful discrimination. First, it is undisputed that Complainant is a black man and a native of Barbados and therefore a member of a protected class. I credit Complainant's testimony that Kurpeski uttered racist epithets to him. I find that Kurpeski's use of the word "nigger" and "get your bony black hands off me" directed to Complainant, constituted a "distinction" in treatment in a place of public accommodation based on Complainant's race and color; G.L. c. 272, s. 98 specifically provides relief for "any" distinction, discrimination or restriction on account of race and color, including adverse treatment in a place of public accommodation. Pares v. Walee Fuel Injections, 17 MDLR 1439, (1995). In this case, Complainant was treated in a discriminatory fashion on the basis of race and color as a result of Kurpeski's use of the words "nigger" and "get your bony black hands off me."

Having established a prima facie case of discrimination, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for its actions. Although Respondent's manager, Mark Andrade, stated that he had never heard Kurpeski make racist statements and that he would not tolerate such statements in an employee, Kurpeski did not testify at the public hearing, and therefore did not refute Complainant's credible testimony. Moreover, Andrade had no direct knowledge of the incident. Respondent is liable for the actions of its agent/employee, Kurpeski, in the course of his employment.

Therefore, I conclude that Complainant has established an unrebutted prima facie case of discrimination in a place of public accommodation and Respondent is liable for unlawful discrimination in violation of G.L. c. 272, s. 98.¹

IV. DAMAGES

M.G.L.c.282 §98 authorizes the Commission to award those damages enumerated in C.151B§5. The Commission is authorized to award damages for emotional distress resulting from unlawful discrimination. Stonehill College v. Massachusetts Comm'n Against Discrimination 441 Mass. 549 (2004); Bournewood Hosp., Inc. v. Massachusetts Comm'n Against Discrimination, 371 Mass. 303(1976); Buckley Nursing Home, Inc. v. Massachusetts Comm'n Against Discrimination, 20 Mass. App. Ct. 172(1985). Such emotional distress damages should be fair and reasonable, and proportionate to the distress suffered. Stonehill, supra, at 576. Some of the factors to be considered are; the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has suffered and reasonably expects to suffer and whether the complainant has attempted to mitigate the harm. Id. The Complainant must show a sufficient causal connection between the Respondent's unlawful act and the Complainant's emotional distress. Id. Complainant testified that after the incident he felt "belittled" and "mentally and physically stressed out." He stated that although he continues to bank at the same location, he continues to be reminded of the events of that day, and he is very cautious. I conclude that Complainant suffered from embarrassment, humiliation and emotional

¹ There was no evidence that the attempted towing of Complainant's car was motivated by discriminatory animus. The tow truck was not present when Complainant entered the bank, and thus Kurpeski could not have known his race, color or national origin when he began to tow Complainant's car.

distress as a result of the racial epithets of Kurpeski; Given that his testimony in this regard was brief and lacking in detail, I conclude that Complainant is entitled only to a de minimus award of damages for emotional distress in the amount of \$5,000.00.

V. ORDER

Based upon the above foregoing findings of fact and conclusions of law, and pursuant to the authority granted to the Commission under M. G. L. c. 151B, section 5, it is hereby ordered that:

1) Respondent immediately cease and desist discriminating on the basis of race, color and national origin.

2) Respondent pay to Complainant, Leslie Sandiford, the amount of \$5,000 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.

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

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

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

SO ORDERED, this 11th day of July, 2007.

JUDITH E. KAPLAN
Hearing Officer