

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and JEFFREY MAY,

Complainants

Docket No. 16 BPA 01670

v.

PARISH CAFÉ AND BAR,¹
Respondent

Appearances: Wendy Cassidy, Esq. for Complainants
Peter Pasciucco, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On June 27, 2016, Complainant Jeffrey May filed charges of discrimination based on sexual orientation against Respondent Parish Café and Bar. Complainant alleges that while a patron of Respondent, an employee denied him entry to the restaurant's restroom, called him homophobic names, and grabbed him on the arm in order to usher him out of the restaurant. Complainant also alleges that another employee, purporting to be a manager, subsequently treated him disrespectfully over the phone.

A probable cause finding was issued and the matter was certified for a public hearing on November 15, 2017.

A public hearing was held on May 17, 2018. The following individuals testified at the hearing: Complainant, Ryan Lovell, Boston Police Detective John Maloof, Timothy

¹ Per the parties' stipulation, Respondent's correct name is Factotum Tap Room, Inc. d/b/a/Paris Café and Bar on 493 Massachusetts Avenue, Boston. Joint Exhibit 1.

Johnson, Naomi Boran, Neel Schmoll, and Christopher Rodgers. Devon Leahy was subpoenaed to appear at the public hearing but failed to attend. The parties agreed to submit her deposition transcript in lieu of live testimony

Based on all the credible evidence that I find to be relevant to the issues in dispute and based on the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Complainant Jeffrey May is a fifty year old gay male who lives in the South End of Boston with his partner Ryan Lovell.
2. Respondent Parish Café and Bar has two Boston locations: 243 Massachusetts Avenue in the South End and 361 Boylston Street in Back Bay, Boston. In May of 2016, the cafes were owned by Gordon Wilcox, Peter Culpo, Sean Simmons, and Elaine Harrington. Joint Exhibit 4. Employees of the Massachusetts Avenue site included general manager Devon Leahy, daytime bar manager Neil Schmoll, waiter Timothy Johnson, and door man Michael Thompson. A door man was employed on weekend nights to prevent non-patrons, whom bar manager Neil Schmoll described as “homeless, drunks, or on drugs” from using the restaurant’s bathroom facilities.
3. Prior to the events at issue, Complainant and Lovell frequented the Parish Café and Bar on Massachusetts Avenue approximately once a month during 2016. Complainant used the restaurant’s bathroom on prior occasions and was familiar with its location. Complainant and Lovell had previously been frequent customers of Estelle’s, a former restaurant owned by the same management which was located nearby at 782 Tremont Street.

4. On May 28, 2016, Complainant and Lovell arrived at the Parish Café on Massachusetts Avenue between 5:00 and 5:30 p.m., having walked to the restaurant from their residence. Complainant was wearing a polo shirt and khaki shorts. They asked to be seated outside and were given a patio table on the sidewalk. On the evening of May 28th, the Parish Café was not busy.
5. Complainant and Lovell ordered beers and after approximately an hour, ordered sandwiches. They subsequently ordered a second beer each. Joint Exhibit 7.
6. Complainant testified that he left the patio table to use the restroom at approximately 7:30 p.m. He approached the restroom by going through the patio door at the rear of the restaurant and proceeded through the back corridor of the restaurant. According to Complainant, as he walked through the back corridor, a male individual, subsequently identified as restaurant door man Michael Thompson (aka Mikel Thompson), said, "I saw you use the wrong door ... you dumb ass gay ... why do you come in here looking all gay." Complainant testified that he held up his hands, palms out, in response to which Thompson said, "You gotta go you dumb ass gay," grabbed Complainant by the left bicep, swung him around, pulled him towards the back door of the restaurant, and led him outside to the patio area. According to Complainant, Thompson then turned him around and said, "Look at me when I'm talking to you. Nobody disrespects me." Complainant testified that Thompson then poked him in the chest. I credit Complainant's testimony that Thompson made homophobic comments, refused Complainant admittance to the men's room, grabbed Complainant by the arm, led him outside while holding Complainant by the bicep, poked Complainant in the chest, and said to Complainant, "You will not disrespect me."

7. According to Complainant, he asked Thompson who he was and was told by Thompson that he was “the manager.” Thompson was wearing no insignia indicating that he was a restaurant employee. He was actually employed by Respondent as a door man. He had previously worked as a door man at Estelle’s.
8. Complainant testified that after the altercation, a female employee, subsequently identified as the restaurant’s general manager Devon Leahy, appeared, told him repeatedly to sit down, and then walked back into the restaurant with Thompson. After Complainant and Lovell sat at the table for about ten minutes, Leahy returned to the patio to say the meal was on her. Complainant and Lovell subsequently walked home.
9. Ryan Lovell testified that prior to the altercation, he used the bathroom inside the restaurant without incident. After he returned to the table, Complainant got up to use the bathroom. When Complainant returned to the table, Lovell noticed that Complainant was backing up with his hands raised and that Thompson was poking/jabbing him in the chest and saying, “You will not disrespect me.” According to Lovell, Leahy then appeared and spoke to Thompson, after which Thompson went inside. Lovell told Leahy that Complainant had been assaulted. According to Lovell, Leahy said, “I know, I know, I know” and “sorry, sorry, sorry” ... it’s on me.” Lovell described Complainant as very quiet and upset after the incident. They left the restaurant after the waiter failed to return with a check. According to Lovell, Complainant told him later that night that Thompson had called him a “dumb ass gay” and had prevented him from using the restaurant’s bathroom. I credit Lovell’s entire testimony about what transpired on the evening of May 28, 2016.

10. Timothy Johnson testified that he was the waiter serving Complainant and Lovell on May 28, 2016. According to Johnson, he was standing in the back corridor of the restaurant near the bar when he saw Thompson escorting Complainant out of the restaurant by holding onto Complainant's upper arm. Johnson testified that Thompson released Complainant after Leahy intervened. According to Johnson, he and Leahy apologized for the incident, told Complainant and Lovell that they would not be charged for the meal, and served Complainant and Lovell another round of drinks in special beer mugs. I credit Johnson's testimony that he saw Thompson lead Complainant out of the restaurant by holding onto Complainant's upper arm and witnessed Leahy intervene, apologize, and say that Complainant and Lovell would not be charged for the meal, but I do not credit Johnson's testimony that Complainant and Lovell were served another round of beer in special beer mugs reserved for frequent patrons.²

11. In May of 2016, the Parish Café general manager was Devon Leahy. Leahy was subpoenaed to attend the public hearing but failed to appear. Her deposition testimony was proffered by both sides and accepted in lieu of live testimony. In her deposition, Leahy states that Thompson told her on the evening of May 28, 2016 the following: an individual, subsequently identified as Complainant, came inside the restaurant to use

² According to Johnson, Complainant and Lovell qualified for the mugs by having purchased a requisite amount of beer at Estelle's where their special mugs were stored. Johnson testified that he and Leahy went across the street to the shuttered restaurant after the altercation in order to retrieve the mugs. The testimony provided by Johnson about leaving the Parish Café to retrieve the mugs is inconsistent with testimony provided by Leahy during her deposition that she obtained the mugs from behind the bar at the Parish Café. (Deposition at p. 24). Johnson's testimony about walking across the street to retrieve special beer mugs from Estelle's, which was no longer in business, defies credulity and there is no reference on the check to a third round of drinks being provided even though the "comping" of the meal is noted. Joint Exhibit 7.

the bathroom; Thompson didn't think he was a customer; Thompson said, "you can't use the bathroom;" Thompson ushered Complainant out of the restaurant; Thompson was then told by Johnson that Complainant was a customer; Thompson thereafter apologized to Complainant. Deposition transcript at pp. 12-13. According to Leahy, she brought complimentary beer to Complainant and Lovell, serving it in the special mugs stored on site and she "comped" their dinner. Deposition transcript at p. 46.

Leahy stated in her deposition that she did not observe Thompson touching Complainant and that after the incident Thomson behaved like a "scared little dog [saying] I'm so sorry ... I didn't mean it." Deposition transcript at p. 64-5, 67-69, 101. Leahy also stated that Complainant went back inside the restaurant to use the bathroom after the incident. Deposition transcript at pp. 66, 104, 108. I do not credit the assertions in Leahy's deposition transcript related to the altercation except for her statements that she apologized and "comped" the dinners of Complainant and Lovell.

12. According to Leahy, door men are stationed at the front door of the restaurant, do not walk around, can usually tell if someone isn't a customer, and are instructed to be polite and *verbally* deny non-patrons access to the restaurant's bathrooms. Deposition transcript at pp. 73, 76.
13. Leahy, as general manager, was responsible for monitoring security videos produced by the restaurant's security system, but she did not look at the video footage from the evening of May 28, 2016. Deposition transcript at p. 55. The Parish Café keeps video records for fourteen days, after which they are erased.

14. Waiter Timothy Johnson testified that he is gay and has never heard Thompson use homophobic slurs towards himself or his fiancé who, on occasion, would come into the restaurant for drinks.
15. Daytime bar manager Neil Schmoll testified at the public hearing that he heard about the incident from Leahy. According to Schmoll, Leahy said that an outdoor diner went inside to use the bathroom and was intercepted by Thompson who was “maybe a little too physical” and that she [Leahy] “comped” the meals of the diner and his companion.
16. Door man Michael Thompson was terminated by Leahy at the start of his next shift following the May 28, 2016 incident. Deposition transcript at p. 114. According to Leahy, she terminated Thompson for issues about reliability, attitude, and judgment. Deposition transcript at p. 33, 115. Prior to being terminated, Thompson had worked as a door man at the Parish Café for several months and before that had worked as a door man at Estelle’s. Neither side called Thompson to testify at the public hearing. I draw a negative inference from Respondent’s failure to call Thompson as a witness.
17. Complainant found the names of the restaurant’s owners on a website for Massachusetts corporations. On June 3, 2016, Complainant wrote a letter to Peter Culpo, listed on the website as corporate president, and copied Gordon Wilcox, Elaine Simmons and Sean Simmons who were listed as corporate officers. Joint Exhibit 6. Complainant stated in his letter that after finishing his meal on May 28, 2016, he entered the restaurant to use the restroom and was accosted from behind by a male who shouted “maniacally” that the bathrooms were out of order, that Complainant had entered the restaurant through the wrong door, and that Complainant was a “dumb ass” and “a gay.” Joint Exhibit 6. According to the letter, the male “manhandled” and

“grabbed” Complainant in the restaurant’s back hall and “walked” him through the main dining room and out the door. Id. Complainant asserts in his letter that he subsequently used the restroom at Leahy’s invitation but Complainant denied doing so at the public hearing, explaining that the letter was inaccurate. Id. Although the letter contradicts Complainant’s public hearing testimony in some respects, it is consistent with Complainant’s public hearing testimony in asserting that a male -- identified as Michael Thompson -- verbally accosted him when he attempted to use the restroom, made comments that were homophobic, and physically accosted him by grabbing his arm and leading him out of the restaurant. In his letter, Complainant maintained that Thompson behaved with incivility and violently hurt and humiliated him.

18. Chris Rodgers, manager of the Boylston Street Parish Café, responded to the letter by calling Complainant on June 7, 2016. According to Complainant, Rodgers said it probably wouldn’t do any good to go to the police but offered to buy him a beer if Complainant ever came to the restaurant’s Boylston Street location. Complainant states that he told Rodgers that he wanted to speak to the owner and was promised a call by Peter Culpo which never occurred. According to Rodgers, he invited Complainant to return to the restaurant’s Boylston Street location with friends and family for a meal “on us.”

19. Complainant called back several days later, attempting to speak with Culpo, but was not successful. Instead, Boylston Street Parish Café bar manager Naomi Boran spoke to him. According to Complainant, she identified herself as a manager and proceeded to verbally abuse him for approximately nine minutes. Complainant testified that Boran said that Peter Culpo didn’t want to talk to him, that the restaurant didn’t need

“you gays,” that “you gays just want free stuff,” and that he should just take them to court. Testimony, Public Hearing Day 1 at 45:50. I do not credit that Boran used the precise words Complainant attributed to her, but I do credit that Boran said that the restaurant would not address the matter to Complainant’s satisfaction.

20. According to Boran, Complainant called the Boylston Street location during her shift and “flipped out” on the phone after she refused to give him the restaurant owner’s telephone number. Boran testified that she told Complainant she would pass along his message to the owner. She denied saying, “Just because you’re gay, you think you can get free stuff” [or] “The owners are tired of you people and nobody wants you gays.”
21. Following the incident, Complainant contacted GLAD Legal Advocates and Defenders (a non-profit legal rights organization for GLBTQ individuals) and sought counseling at Fenway Health on one occasion.
22. On June 23, 2016, Complainant reported the incident to police at the suggestion of GLAD. Complainant met with Boston Police Detective John Maloof on June 27, 2016. Detective Maloof also interviewed Complainant’s partner Ryan Lovell. According to Detective Maloof, Complainant mentioned that he had suffered bruising as a result of the incident, but Complainant did not produce a picture of the alleged bruising nor did he show the purported bruising to Lovell. I do not credit the assertion that the May 28, 2016 incident caused bruising.
23. Detective Maloof spoke to Devon Leahy on July 3, 2016 about the incident. Subsequently, Detective Maloof and Sergeant-Detective Scott Mackie of the Electronic Crimes Division of the BPD attempted to retrieve the video footage from the

restaurant's security cameras but they were unsuccessful because forty days had elapsed since the incident occurred and the footage was erased.

24. Detective Maloof interviewed Michael Thompson in the presence of Thompson's attorney. According to Detective Maloof, Thompson denied assaulting Complainant and using homophobic slurs. After the interview, Detective Maloof classified the incident as a Civil Rights Unit case and pursued assault and battery charges against Thompson in the Boston Municipal Court. A jury trial was conducted at which the following individuals testified: Thompson, Detective Maloof, Complainant, and Lovell. Joint Exhibit 5. Thompson was acquitted on May 3, 2017. Id.
25. Complainant testified that the incident caused him to stop socializing as much as he had done previously, that he didn't see friends for a while, that he was less outgoing and gregarious, and that he became more self-conscious of the way that he carried himself. He stated that prior to being accused by Thompson of acting "so gay," he had never felt that his sexual orientation was noticeable.
26. Lovell testified that he and Complainant have stopped going out as often as they did before the incident. Lovell described Complainant as not as social or as outgoing as he was prior to the incident. Lovell described the incident as "all consuming" for the past two years.

III. CONCLUSIONS OF LAW

M. G. L. c. 272, sec. 98 provides, *inter alia*, that whoever makes any distinction, discrimination or restriction on account of sexual orientation relative to the admission of any person to, or his treatment in any place of public accommodation, as defined in section ninety-two A, or whoever aids or incites such distinction, discrimination or restriction, shall

be punished by a fine of not more than twenty-five hundred dollars or by imprisonment for not more than one year, or both, and 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. Pursuant to sec. 5 of G. L. c. 151B, the MCAD has jurisdiction to accept, investigate, and adjudicate complaints brought pursuant to G. L. c. 272, sec. 98.

In order to establish a prima facie claim of discrimination in a place of 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 or enjoyment of an area or facility; and 3) the area or facility was a place of public accommodation. See Fiasconaro v Aria Bridal and Formal, Inc., 35 MDLR 128 (2013); Pares v. Walee Fuel Injections, 17 MDLR 1439 (1995); Bachner v. Charlton's Lounge and Restaurant, 9 MDLR 1274, 1287 (1987). If Complainant establishes these elements, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for its conduct that is supported by credible evidence. See Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116-117 (2000); Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000); Blare v. Huskey Injection Molding Systems Boston Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973). Should Respondent satisfy this requirement, the burden shifts back to the Complainant to show, by a preponderance of the evidence, that Respondent's articulated reason(s) are pretextual. See Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001); Wynn and Wynn, P.C. v. MCAD, 431 Mass. 655, 666 (2000). Complainant may carry this burden of persuasion with circumstantial evidence that convinces the fact finder that the proffered explanation is not true. Id.

Complainant satisfies the initial burden of presenting a prima facie case of discrimination based on sexual orientation in a place of public accommodation by the following. He offered credible evidence that he is a gay male who was denied entrance to Respondent's rest room by a restaurant employee later identified as Michael Thompson, that Thompson made homophobic comments to Complainant, and that Thompson grabbed his arm and led him out of the restaurant. Complainant's version of events is corroborated by the testimony of his partner Ryan Lovell who observed Thompson poking/jabbing Complainant in the chest as Complainant backed up and who was told later that night that Thompson had called Complainant a "dumb ass gay." It is likewise supported by waiter Timothy Johnson who saw Thompson holding onto Complainant's upper arm as he led Complainant out of the restaurant and by the acknowledgement of general manager Devon Leahy that Thompson was "maybe a little too physical." According to Leahy, door men are instructed to *verbally* (not physically) deny non-patrons access to the restaurant's rest rooms.

The foregoing evidence establishes that Complainant is a member of a protected class who was restricted in the use/enjoyment of a place of public accommodation. See Fiasconaro, 35 MDLR at 129 (prima facie claim of discrimination in a place of public accommodation where patron in a wheelchair was instructed to go to the front of a bridal store and not permitted to browse its aisles); Varona v. City of Boston Parks Department 21 MDLR 259, 261 (1999) (actions of Boston Parks employee who impeded Complainant's passage in Boston Common and called her "nigger" constituted a prima facie case of discrimination in a place of public accommodation).

Respondent attempts to rebut Complainant's prima facie case at stage two by asserting that Michael Thompson mistakenly thought that Complainant was a non-patron whom he legitimately barred from using the restaurant's bathroom. Such position is negated by Complainant's credible testimony that Thompson uttered homophobic epithets during the incident. Moreover, it strains credulity that Thompson failed to recognize Complainant as a patron when he had been seated at the restaurant's patio for over an hour prior to the incident, had consumed a meal, and had previously patronized the restaurant on numerous occasions. Even if Thompson did not recognize Complainant as a restaurant patron, Thompson's actions were so hostile as to cast doubt on the explanation that they arose from an honest mistake. I draw a negative inference from the fact that Respondent did not subpoena Michael Thompson to attend the public hearing in order to testify about the matter. See In Matter of a Care and Protection Summons, 437 Mass 224 (2002) (judge warranted in drawing a negative inference from parents' unwillingness to testify about location of an infant's alleged remains); MCAD and Ravesi v. Naz Fitness Group, 37 MDLR 1 (2015) (hearing officer drew negative inference from Respondent's failure to produce a spread sheet containing relevant financial data).

Due to Thompson's absence from the hearing, Complainant's version of their interaction was essentially un rebutted since neither Johnson (the waiter) nor Leahy (the general manager) witnessed the entire incident. To the extent that Johnson and Leahy professed to observe some of what transpired, their versions were contradictory insofar as Leahy maintained that she did not observe Thompson touching Complainant but Johnson testified that he did. Leahy's version of what transpired is additionally undermined by the following factors. She failed to honor a subpoena to attend the public hearing, she failed to

review or retain surveillance footage from the night in question, and she failed to inform Detective Maloof that Tim Johnson was a witness to some of the incident.

Turning to the issue of Respondent's accountability for Thompson's conduct, an employer in a public accommodations case is responsible for the actions of an agent who acts within the scope of his/her actual or apparent authority. See Rome v. Transit Express, 19 MDLR 159 (1997) (holding transit authority liable, as matter of public policy, for discriminatory actions of bus driver employed by private company with whom it contracted). Floyd v. Forest Hill Cab Company, 15 MDLR 1181 (1993) (cab driver deemed to be agent of company which owns and leases cabs on the basis that he exercised apparent authority to refuse to stop for a passenger). The apparent authority of an agent is what a third party reasonably believes it to be. See Fiasconaro v. Aria Bridal and Formal, Inc., 35 MDLR 128 (2013) (husband of salesperson deemed to be agent of store where customers reasonably viewed him as in charge during wife's absence). By grabbing Complainant's arm and forcefully leading Complainant out of the restaurant on the evening of May 28, 2016, Thompson was purporting to act on behalf of the restaurant. Complainant reasonably believed that Thompson was a restaurant manager. The fact that his actions were not sanctioned by the restaurant does not protect Respondent from liability.

Respondent relies on testimony by waiter Timothy Johnson to refute Complainant's assertions, but Johnson acknowledged seeing Thompson escort Complainant out of the restaurant by holding onto Complainant's upper arm. I deem the fact that Johnson and his partner are gay and had a cordial relationship with Thompson to be irrelevant to the matter in dispute since the sexual identity of co-workers and friends stands on a different footing than

that of an unknown patron. In any event, Johnson's testimony in support of Thompson's character must be evaluated in light of an understandable desire to remain on good terms with a prior -- and potentially future -- employer. It is notable that following the incident, Johnson was promoted from server to manager in October of 2016 and remained in that capacity until he resigned in June of 2017.

As well, the fact that Thompson was tried and acquitted in a criminal proceeding arising out of the May 28, 2016 altercation does not dictate the outcome in this matter. Unlike a criminal proceeding where the burden of proof is beyond a reasonable doubt, the standard here is preponderance of the evidence. The criminal case also differs from the instant matter in that Michael Thompson testified on his own behalf at the criminal trial.

Despite the attempts of Respondent to minimize the incident in question, taking someone out of a restaurant by the arm is not a normal protocol for enforcing a customer-only bathroom rule. According to Respondent's bar manager Neil Schmoll, the restaurant's policy was to deny bathroom access to non-customers who appeared to be disheveled ("homeless"), drunk, or on drugs. None of Respondent's witnesses explained why Thompson would have concluded that Complainant fell within any of these categories. Even if Thompson genuinely believed that Complainant was not a patron, his actions violated restaurant policy which was to politely and verbally deny access to individuals entering the restaurant from off the street, not to manhandle them. In sum, there is an absence of credible evidence establishing a non-discriminatory reason for Thompson gripping Complainant by the bicep and leading him out the door of the Parish Café. Based on the foregoing, I conclude that the reason was discriminatory animus based on sexual orientation. See Chief Justice of the Trial Court, 439 Mass. at 735 *quoting* Lipchitz v. Raytheon Co., 434 Mass. 493, 506 (2001) (lack of consistent and credible rationales for Complainant's termination undercut Respondents'

position); Wynn & Wynn v. MCAD, 431 Mass. 655, 665-667 (2000) (unconvincing nature of the proffered reasons suggests that a retaliatory rationale is the motivating cause of Complainant's adverse treatment).

IV. Remedy

A. Emotional Distress Damages

Upon a finding of unlawful discrimination, the Commission is authorized to award damages for the emotional distress suffered as a direct result of discrimination. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). An award of emotional distress damages must rest on substantial evidence that the distress 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. See Stonehill College, 441 Mass. at 576. Complainant's entitlement to an award of monetary damages for emotional distress can be based on Complainant's own testimony regarding the cause of the distress. See id. at 576; Buckley Nursing Home, 20 Mass. App. Ct. at 182-183. Proof of physical injury or psychiatric consultation provides support for an award of emotional distress but is not necessary for such damages. See Stonehill, 441 Mass. at 576.

Although I do not credit Complainant's assertion that the incident caused bruising, there is ample evidence that the incident caused him profound emotional distress. Complainant testified that the incident caused him to stop socializing as much as he had done previously, that he didn't see friends for a while, that he was less outgoing and gregarious, and that he became more self-conscious of the way that he carried himself. He

stated that prior to being accused by Thompson of acting “so gay,” he had never felt that his sexual orientation was noticeable.

Lovell testified that he and Complainant have stopped going out as often as they did before the incident. Lovell described Complainant as not as social or as outgoing as he was prior to the incident. Lovell described the incident as “all consuming” for the past two years.

At the hearing, Complainant testified in a sincere and persuasive manner about the shame and humiliation he experienced at being bodily escorted from the premises of the Parish Café. The incident appears to have festered with him. On June 3, 2016, Complainant wrote a letter to Peter Culpo, listed on the website as corporate president, and copied Gordon Wilcox, Elaine Simmons and Sean Simmons who were listed as corporate officers. He subsequently spoke to Chris Rodgers, the manager of the Boylston Street Parish Café, on June 7, 2016. Complainant called back several days later, attempting to speak with Culpo, but was not successful in doing so and spoke to Boylston Street Parish Café bar manager Naomi Boran instead. Approximately three weeks after the incident, Complainant contacted GLAD (a non-profit legal rights organization for GLBTQ individuals) and sought counseling on one occasion at Fenway Health. On June 23, 2016, Complainant reported the incident to police at the suggestion of GLAD and several days later filed the instant action. The aforementioned actions demonstrate that the incident was not a casual encounter but, rather, had a significant impact on Complainant’s dignity and self-esteem.

Based on the foregoing, I conclude that Complainant is entitled to \$25,000.00 in emotional distress damages.


V. ORDER

Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G. L. c. 151B, sec. 5, Respondents are subject to the following orders:

- (1) As injunctive relief, Respondents are directed to cease and desist from engaging in acts of discrimination based on sexual orientation.
- (2) Respondent is liable to pay Complainant the sum of \$25,000.00 in emotional distress damages, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.
- (3) Respondent's owners and staff at both restaurant locations are directed to attend an MCAD-sponsored training pertaining to sexual discrimination within ninety (90) days of this order and provide documentation of their attendance.

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 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 30th day of July, 2018.


Betty E. Waxman, Esq.,
Hearing Officer