

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and OMAR SAHIR, et al.,¹

Complainants

Docket No. 15 BPA 01141

v.

2 Belsub Corp., et al.,²
Respondents

Appearances: John Hitt, Esq. for Complainants
Mark Aronson and David Bae, Esqs. for Respondent 2 Belsub Corp.

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On April 7, 2015, Complainant Omar Sahir, his wife Amal Tourabi, and their two minor children Nassim and Rami Sahir filed charges of discrimination based on national origin, race, religion and ethnicity against the following Respondents: 2 Belsub Corp. (a Subway ® franchise); Doctor's Associates, Inc. (franchisor of Subway® sandwich shops); James Cobb, owner of 2 Belsub Corp.; and Molly Doe, employee of 2 Belsub Corp. Complainants allege that their right to access a place of public accommodation was interfered with when they were treated disrespectfully at a Subway ® franchise in Easton, MA and, after complaining about their treatment, were told that Subway does

¹ Complainants are Omar Sahir, his wife Amal Tourabi, and their two minor children Nassim and Rami Sahir.

² At or prior to the case being certified to public hearing, the Respondents were re-designated as 2 Belsub Corp. and Amber Castaneda.

“not serve foreigners,” that they were “banned” from the restaurant, that they should “go back to [their] fucking country and learn how to speak English.”

A probable cause finding was issued and the matter was certified for a public hearing. A public hearing was held on June 21 and 22, 2018. The following individuals testified at the hearing: Complainants, Allyson Furlong, and Jamie Cobb. The parties submitted seven (7) joint exhibits.

Respondent Amber Castaneda did not Pursuant to the Commission’s Rules of Procedure at 804 CMR 1,21(8), a notice of entry of interlocutory default was issued against her on July 2, 2018, and she was given ten days to petition for removal of the default upon good cause shown. Respondent Castaneda failed to petition for the default to be vacated.

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 FACT³

1. Complainants Omar Sahir, his wife Amal Tourabi, and their two minor children Nassim and Rami Sahir reside in Easton, Massachusetts. They are Arab-Americans of Moroccan descent and describe themselves as having brown skin. Omar Sahir and Amal Tourabi were born in Morocco. Both of their children were born in the United

³ Along with their post-hearing memorandum of law, Respondent presented an unofficial transcript of the Commission hearing. I decline to accept this transcript on the basis that Respondent failed to bring a stenographer to the public hearing in accordance with 804 CMR 1.21 (9), did not request or receive permission to use its transcript in lieu of the Commission’s digital recording which is the official record and did not furnish the transcript to the Commission or to Complainant in a timely fashion.

States. All family members are American citizens and self-identify as Muslims. The parents speak English with an audible Moroccan accent.

2. On Friday, November 21, 2014, at around 1:30 p.m., the family visited the Subway Shop located at 2 Belmont Street in Easton, MA. They had never before been to a Subway Shop and went at the request of the Sahir children. At the time, Rami Sahir was eight years old and Nassim Sahir was ten years old.
3. The Sahir children ordered sandwiches but their parents did not. Because the boys were unsure about what to order, Mr. Sahir told one or two customers to go ahead of them as the Sahir children studied the menu.
4. The Sahirs were waited on by a female employee who appeared to be in her early twenties and was Caucasian. According to all members of the Sahir family, the employee was rude and impatient to Nassim when he inquired about what kind of cheese was available to go on a meatball sub.
5. Nassim Sahir testified credibly that he felt rushed by the employee who was waiting on him. He testified that when he pointed to the various types of cheese in the glass case and asked what they were, the employee said, "It's just cheese." He then ordered a meatball sub with mozzarella cheese.
6. Amal Tourabi testified credibly that the employee behind the counter tried to hurry Nassim as he attempted to decide what to order. According to Tourabi, when her son asked what kind of cheese was available, the employee said "all kinds" and waved her hands around. Nassim's younger brother Rami corroborated the testimony of his brother and mother by testifying that his brother asked what types of cheese he could get on a meatball sub and was told by the employee making his sandwich, "just cheese

... We have all types of cheese” as she made a hand motion with her palms. Omar Sahir likewise corroborated that the female employee making his sons’ sandwiches attempted to rush the boys by placing her hands on her hips and sighing as they tried to decide what to order. According to Omar Sahir, when Nassim asked what kind of cheese was available, the employee said “all this” and when Nassim pointed to a particular type of cheese and asked what it was, she said, “It’s cheese.”

7. Omar Sahir testified that his family paid for the sandwiches and left the shop. The boys were given free cookies by an employee at the register.
8. When the family got home, Omar Sahir telephoned the Subway Shop at 2 Belmont Street in Easton, MA. A female answered the phone and Sahir asked if he had reached the Subway Shop across from CVS. The female said “what” three times, then, “I can’t understand you” followed by “whatever.” Another female then took the phone and said, “What do you want?” Sahir said that he needed to speak to the manager. The female said, “Not here ... call back tomorrow” and told Sahir that she didn’t know the number of Subway’s corporate headquarters. The woman then hung up.
9. Several minutes later, while Omar Sahir was seated at the family’s dining room table and attempting to locate the telephone number of Subway headquarters, the phone rang. According to Sahir’s credible testimony, a female said the following to him when he picked up the phone: “Hi. This is Kathy. I’m the manager of Subway. You are banned from our store. We don’t need people like you. Why don’t you go back to your fucking country and learn how to speak English. We don’t serve foreigners like you. God Bless.” According to Sahir, he could hear people laughing in the background. The female then hung up.

10. Omar Sahir was not on a speaker phone, but his wife and two sons testified credibly that they could hear the female who was talking on the cell phone because the female was speaking in a loud voice and two members of the family (Tourabi and Rami) were seated at the table and the third (Nassim) was seated on a coach within one or two arm's lengths of the table. All family members were in an open dining area in close proximity to one another. Tourbi, Rami, and Nassim corroborated what Omar Sahir claimed the woman said over the phone.
11. After the call, all the members of the family were upset. Rami and Nassim asked their parents why the female said they weren't Americans when they were born in America. According to Tourabi, her husband was shocked by the phone call.
12. At or around 2:08 p.m. on Friday, November 21, 2014, Omar Sahir called the Subway corporate office to complain. He spoke to someone about the incident. He was instructed to fill out an online report. Sahir drafted the following message: "Our visit was our first time and last time to your store. The girl who helped us was very rude and has no patience. When I called to speak with the manager she told me to go back to my country [and] we do not serve foreigners and I am banned from her store. Her name was Kathy. I am contacting my attorney." Joint Exhibit 2.
13. After sending his message to Subway headquarters, Sahir contacted his attorney and a local newspaper reporter about the incident.
14. The Subway corporate office forwarded the online report to 2 Belsub Corp. franchisee owner Jamie Cobb at 3:25 p.m. on November 21, 2014. On the same day, Cobb forwarded the report to his store manager Allyson Furlong.

15. During 2014, Furlong typically worked at the 2 Belmont Street Subway Shop on weekdays from 7:00 a.m. to 2:00 p.m. and on Saturdays from 7:00 a.m. to noon or 5:00 p.m. to closing. She also handled payroll and inventory at the store for approximately two to three hours on Sundays. When she was not at the store, there was no other manager on site. She testified that she could always be reached at home by store employees and could view the store from her house through a security camera that provided video (but not audio) footage. According to Furlong, it was her responsibility to handle customer complaints, whether or not she was on site when they were made. Owner Jamie Cobb concurred that it was company policy that only the manager had the authority to resolve customer complaints, although he acknowledged that the policy was not in writing.

16. The 2 Belsub franchise uses a personnel handbook prepared by the Subway ® Corp. as a guide to employee relations. Joint Exhibit 1. It states in relevant part that the handbook “is a general guideline and may not include all of the policies of [the] restaurant.” *Id.* Furlong testified that she reviewed salient parts of the handbook with new employees and gave them a copy. The handbook contains a “no harassment” policy defined as “verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of that person’s race, skin color, religion, gender, national origin, age, or disability.” *Id.* at p. 16. The handbook prohibits epithets, slurs, negative stereotyping or threatening, intimidating or hostile acts that relate to race, color, religion, gender, national origin, age, sexual orientation, or disability. *Id.* The handbook gives examples of unacceptable behavior that would

result in immediate termination including, “verbal or physical abuses of a guest or co-worker” and “unlawful discriminatory or harassing behavior.” Id. at 21.

17. Furlong investigated the incident by speaking to the employees who were present when the Sahirs were at the store, and she viewed video footage of the Sahirs purchasing food. She determined that the following employees were on duty during the afternoon of November 21, 2014: Amber Castaneda, Molly McGinnis, and Carly Lecuyer.

According to Furlong, McGinnis and Lecuyer did not witness a hostile interaction between Castaneda and the Sahirs nor did the video camera show body language indicative of a confrontation between any of the employees and the Sahir family.

18. Furlong testified that Castaneda told her that: a) Omar Sahir called the store to complain about how the sandwiches were prepared; b) she (Castaneda) called back Sahir after his initial call to the store; c) she denied saying to Sahir, “Go back to your country.” I do not credit this account of the conversation between Castaneda and Omar Sahir. Instead, I credit Omar Sahir’s version and draw a negative inference from the fact that Castaneda failed to appear at the public hearing despite being named as Respondent and being subpoenaed to testify.

19. Furlong testified at the public hearing that Castaneda had only been employed by Respondent for approximately two months at the time of the incident. Furlong described her as a “great” employee with no complaints against her during her probationary period. Castaneda was told at the start of her employment that Furlong handled customer complaints. Castaneda was terminated for attendance issues approximately four months after the incident with the Sahirs.

20. On Monday, November 24, 2014, Furlong called the Sahirs. She identified herself as the store manager. According to Furlong, she made the call to attempt to clarify what happened on Friday, November 21, 2014. Furlong testified that she needed clarification because the store did not employ anyone named Kathy and she wondered if the Sahirs had gone to a different Subway Shop on the previous Friday. According to Furlong, Mr. Sahir was very angry over the phone and said that the sandwiches he purchased for his sons weren't satisfactory and he complained about the price of the sandwiches. Joint Exhibit 4. Furlong testified that she offered him coupons for four six-inch subs but did not apologize because she had not completed her investigation.
21. Omar Sahir testified credibly that during his conversation with Furlong, he complained about Subway's racism. Sahir asked Furlong whether his previous phone calls with the store were recorded and he learned that they were not. Sahir testified that he expected Subway to offer an apology and an invitation to return to the store but that he received neither. According to Sahir, Furlong said that she would call him back after she completed her investigation. Sahir told Furlong that she should talk to his attorney and that he was going to notify the media.
22. Furlong took contemporaneous notes of her conversation with Omar Sahir, including the notation that: "She called back & said banned from store." Joint Exhibit 4. I interpret this note to refer to Omar Sahir's assertion that an employee from Subway called him back on the previous Friday and said that he was not allowed to return to the store.

23. After conducting her investigation, Furlong concluded that Castaneda was wrong to have phoned the Sahirs, but that Castaneda had not violated the company's anti-harassment policy. She issued Castaneda a verbal warning for calling the Sahirs.
24. Omar Sahir called his attorney and a writer for a local newspaper in order to publicize the matter.
25. Rami Sahir testified that the incident made him feel angry and stressed out but not physically sick. On one occasion he discussed the matter with a guidance counselor at school. He testified that he still gets mad when he passes by the store. His mother testified that the incident caused him to become depressed although she admitted that it has not affected his school performance.
26. Nassim Sahir testified that he still gets upset about the incident especially when he passes the store or hears a Subway commercial. He testified that on one occasion when his sports team went into a Subway Shop to purchase food, he stayed on the bus even though it caused him to miss lunch.
27. Amal Tourabi testified that she has been sad and angry about the incident and still thinks about it but does not have physical symptoms. She did not seek treatment for emotional distress and testified that the incident did not impact her ability to work or enjoy herself. Tourabi discussed the matter with a doctor who recommended that she not discuss it with her children.
28. Omar Sahir's medical record indicates that prior to the events at the Subway Shop, he had a history of Sarcoidosis, which caused pulmonary problems. He retired from work on disability status in 2010. He testified that following the Subway incident in November of 2014, he was angry, shaking, and having trouble breathing. He sought

medical treatment from Nurse Practitioner Denise Gnazzo on January 7, 2015, with complaints of being upset and anxious since the Subway incident. Joint Exhibit 6. At that time, his blood pressure was elevated to 160/90. Nurse Practitioner Gnazzo prescribed .5 mg Ativan twice daily and two days later she additionally prescribed 10 mg of Celexa (Citalopram) once daily. Id. & Joint Exhibit 5, p.4. Complainant Sahir returned to Gnazzo on January 23, 2015 for treatment of pneumonia. Joint Exhibit 5, p. 3-4. At that time, he reported, “no depression, no anxiety, no anger, no mania, no phobia, no suicidality, no anhedonia, no insomnia and no hallucinations.” Id. at p. 3. During a subsequent medical appointment on February 23, 2015, he reported anxiety and fatigue attributable to a persistent cough. Id. at 7. At a medical appointment in April of 2015, he no longer had a cough, depression, anxiety, and/or insomnia. Joint Exhibit 5 at p. 12. He continued to report no depression or anxiety until a medical appointment on April 11, 2018. Joint Exhibit 6. At that time, Complainant Sahir re-started Celexa and Ativan due to anxiety, panic attacks, and hyperventilation from having “rehashed” the Subway incident while meeting with his attorney and being deposed on February 20, 2018. Joint Exhibit 6, p. 7.

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 race or national origin 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 section 5 of G. L. c. 151B, the MCAD has jurisdiction to accept, investigate, and adjudicate complaints brought under G. L. c. 272, sec. 98.

In order to establish a prima facie claim of discrimination in a place of public accommodation, Complainants must prove that: 1) they are members of a protected class; 2) they were 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 (1987). If Complainants establish 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 Complainants 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.

Complainants satisfy the initial burden of proving a prima facie case of discrimination by providing credible testimony of the following. They are Arab-Americans

of Moroccan descent. The parents were born in Morocco and speak with an audible Moroccan accent. The family self-describes as having “brown” skin color and they identify as Muslim.

On November 21, 2014, the Sahir family entered the Subway Shop at 2 Belmont Rd in Easton, MA, a place of public accommodation. Complainants testified credibly that the employee who prepared sandwiches for the Sahir sons was impatient and rude. When Omar Sahir telephoned the shop to complain about the treatment, a female answered the phone and said “what” three times in response to his question about whether he had reached the correct store. The female then said, “I can’t understand you” followed by “whatever.” When Omar Sahir said that he needed to speak to the manager, another female said, “Not here. Call back tomorrow” and told him that she didn’t know the number of Subway’s corporate headquarters. The individual then hung up.

According to all four Complainants, the phone rang several minutes later while Omar Sahir was seated at the family’s dining room table attempting to locate the telephone number of Subway headquarters. A female said the following to him when he picked up the phone: “Hi. This is Kathy. I’m the manager of Subway. You are banned from our store. We don’t need people like you. Why don’t you go back to your fucking country and learn how to speak English. We don’t serve foreigners like you. God Bless.”

The foregoing evidence establishes that Complainants are members of a protected class who were 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 presented no evidence at stage two to rebut the prima facie case, apart from hearsay testimony by Subway manager Allyson Furlong that employee Amber Castaneda denied engaging in a discriminatory rant when she called back Omar Sahir. I do not credit this hearsay testimony. It is contradicted by the believable statements of all four Complainants who described Castaneda's comments in a consistent and persuasive manner. Amal, Nassim, and Rami were seated close enough to Omar Sahir that they could hear Castaneda's words over his cell phone.

Castaneda, despite being named a co-Respondent and subpoenaed to testify in this proceeding, failed to appear at the public hearing in order to present a contradictory version of what she allegedly said during the second phone call. I draw a negative inference from her failure to appear. 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).

Turning to the issue of Respondent 2 Belsub Corp.'s accountability for Castaneda's conduct, an employer in a public accommodations case is responsible for the actions of an employee or agent who acts within the scope of his/her actual or apparent authority. See Fiasconaro v. Aria Bridal and Formal, Inc., 35 MDLR 128 (2013) (bridal shop liable under public accommodations law for actions of an individual purporting to act as salesperson);

Rome v. Transit Express, 19 MDLR 159 (1997) (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 company which owns and leases cabs, is liable for actions of non-employee cab driver on basis that the cab driver 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 Floyd v. Forest Hill Cab Company, 15 MDLR at 1187; Fiasconaro v. Aria Bridal and Formal, Inc., 35 MDLR at 129 (husband of salesperson deemed to be agent of store where customers reasonably viewed him as in charge during wife's absence). When Castaneda called Omar Sahir on his cell phone, she identified herself as a Subway manager and purported to speak on behalf of the Subway. The Sahirs reasonably believed that the individual calling them from 2 Belsub had authority to speak for the franchise. Thus, Castaneda acted with apparent, if not actual, authority in making the call. The fact that Castaneda's actions were not sanctioned by Subway's manager or owner does not protect Respondent 2 Belsub Corp. from liability.

Furlong may have informed her staff during training that she would handle customer complaints, but this assertion does not absolve Respondent 2 Belsub Corp. from accountability for Castaneda's conduct for several reasons. First, the handbook does not state that customer complaints are to be handled solely by the manager. Second, Castaneda did not phone Omar Sahir in order to resolve Mr. Sahir's complaint but, rather, to argue with him. Third, Castaneda's call involved customer interaction and sandwich making which were core elements of her job. Joint Exhibit 1 at pp. 5, 11 & 13. Castaneda's words to Mr. Sahir may have been outrageous, but the subject of the call was related to her job.

In this regard, the case differs from situations where an employee engaged in conduct unrelated to his/her job responsibilities. See Timpson v. Transamerica Insurance Co., 41 Mass. App. Ct 344 (1996) (insurance company not liable for a Patriots football player who sexually-harassed a female sports reporter because player was acting outside the scope of his employment); Wilkerson v. Star Market Co., Inc. 2005 WL 366972 (Mass. Super. 2005) (supermarket not liable for bagger with no check-cashing duties who contacted police off-premises about an alleged bad check after being told not to do so because his action fell outside the scope of his duties).

Not only did Castaneda's call relate to Subway business, it was made while Castaneda was on duty at the shop's premises. To be sure, initiating a hostile call to a customer, misidentifying herself as a store manager, and communicating racist remarks were not actions approved by the company, but Castaneda was purporting to act on behalf of the restaurant when she made the call. Complainants reasonably believed that she was the Subway Shop manager. If an employer's liability is limited only to the approved conduct set forth in an employment handbook, the company could avoid responsibility for all acts of its workforce found to violate the law. Rather than apply principles of vicarious liability in such a narrow fashion, the public accommodations law is to be given a broad and inclusive interpretation in order to fulfill the policy of preventing discrimination in the public sphere. See Concord Rod & Gun Club, Inc., 402 Mass. 716, 720 (1988).

Respondent 2 Belsub's liability is compounded by the fact that it failed to take prompt and effective remedial action to resolve the matter such as terminating Castaneda, offering the Sahirs a sincere apology, and making meaningful restitution. It failed to do so because Furlong chose to believe Castaneda's version of what transpired.

Based on the foregoing, I conclude that Respondent 2 Belsub Corp. failed to rebut Complainant's credible contention that Castaneda acted with discriminatory animus based on ethnicity, race, and national origin and that it bears responsibility for Castaneda's work-related conduct. Although Castaneda's words were transmitted through Omar Sahir's cell phone, I deem that they were addressed to the entire Sahir family. I arrive at this conclusion based on the fact that the incident involved all members of the family and that Castaneda's words are susceptible to such an interpretation.

IV. Remedy

A. Emotional Distress Damages

Pursuant to G.L. c. 272, section 98, the Commission may award damages as set forth in G.L. c. 151B, section 5. See Pares v. Walee Fuel Injections, 17 MDLR 1439 (1995).

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; 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.

Omar Sahir testified that following the Subway incident in November of 2014, he was angry, shaking, and having trouble breathing. He sought medical treatment from Nurse Practitioner Denise Gnazzo on January 7, 2015, with complaints of being upset and anxious since the Subway incident. At that time, his blood pressure was elevated to 160/90. NP Gnazzo determined prescribed .5 mg Ativan twice daily and two days later she also prescribed 10 mg of Celexa (Citalopram) once daily. Complainant Sahir returned to Nurse Practitioner Gnazzo later in the month for treatment of pneumonia and at that time reported no depression, no anxiety, no anger, no mania, no phobia, no suicidality, no anhedonia, no insomnia and no hallucinations. However, at a medical appointment approximately three years after the incident, Complainant again reported anxiety, panic attacks, and hyperventilation from “rehashing” the Subway matter while meeting with his attorney and being deposed. He re-started Celexa and Ativan. At the public hearing, Complainant Sahir expressed profound emotional upset that his ethnicity, nationality, race, and possibly his religion were treated with hostility and contempt. He was upset on his own behalf and because the incident exposed his wife and children to virulent discrimination. See Pares v. Walee Fuel Injections, 17 MDLR 1439 (1995) (damages based on impact of discrimination directly on husband and his feeling of helplessness at being unable to protect wife and fear for her safety). The content of the telephone call from Subway to their home undercut the identity of the Sahir children as United States citizens entitled to equal treatment under the law. After considering the factors contributing to Complainant Omar Sahir’s emotional distress, I conclude that he is entitled to \$ 25,000.00 in emotional distress damages.

Insofar as the impact of the incident on Amal Tourabi, Nassim and Rami is concerned, I agree that when Castaneda identified herself as a Subway manager over the phone and said “[y]ou are banned from the store;” “[w]e don’t need people like you;” “[y]ou should go back to your fucking country and learn how to speak English;” and “[w]e don’t serve foreigners like you” she was referring to the entire Sahir family.” Rami Sahir testified that the incident made him feel angry and stressed out but not physically sick. On one occasion he discussed the matter with a guidance counselor at school. He testified that he still gets mad when he passes by the store. His mother testified that the incident caused him to become depressed although she admitted that it has not affected his school performance. Nassim Sahir testified that he still gets upset about the incident especially when he passes the store or hears a Subway commercial. He testified that on one occasion when his sports team went into a Subway to purchase food, he stayed on the bus even though it caused him to miss lunch. Based on the foregoing, I conclude that Rami and Nassim Sahir are each entitled to \$5,000.00 in emotional distress damages.

Amal Tourabi testified that she has been sad and angry about the incident and still thinks about it but that she does not have physical symptoms. She did not seek treatment for emotional distress and testified that the incident did not impact her ability to work or enjoy herself. Tourabi discussed the matter with a doctor who recommended that she not discuss it with her children. I conclude that Amal Tourabi is entitled to \$5,000.00 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 in regard to nationality, race, religion, and ethnicity.
- (2) Respondents, jointly and severally, are liable to pay Complainant Omar Sahir the sum of \$ 25,000.00 in emotional distress damages and to pay the remaining Complainants -- Rami Sahir, Nassim Sahir, and Amal Tourabi -- the sum of \$5,000.00 each in emotional distress damages. The awards shall be computed with 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 2 Belsub employees and managers are directed to attend an MCAD-sponsored training with respect to the requirements of G.L. c. 272, section 98 and the non-discriminatory treatment of patrons in places of public accommodations and present the MCAD within ninety (90) days of receipt of this decision documentation of 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 8th day of August, 2018.



Betty E. Waxman, Esq.,
Hearing Officer