



**COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
TOM SIEFERT,

Complainants,

v.

SHUTESBURY ATHLETIC CLUB, INC.,

Respondent.

DOCKET NO.: 20SEM01983

Appearances: Commission Counsel Kristen Dannay, Esq. and Naiara Souto, Esq.  
for Complainants  
Peter Vickery, Esq. for Respondent

**DECISION OF THE HEARING OFFICER**

**I. INTRODUCTION**

On October 16, 2020, Complainant Thomas Siefert (“Mr. Siefert”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD” or “Commission”) charging Respondent Shutesbury Athletic Club, Inc. (“SAC” or “Respondent”) with sex and sexual orientation discrimination. On May 24, 2021, Mr. Siefert filed a second complaint with the MCAD charging SAC with retaliation. On December 19, 2024, the Investigating Commissioner consolidated these two cases under the above docket number and certified four issues:

1. Whether SAC discriminated against Mr. Siefert on the basis of sexual orientation in the terms, conditions, or privileges of employment by terminating his employment or other conduct in violation of M.G.L. c. 151B, § 4(1);

2. Whether SAC discriminated against Mr. Siefert on the basis of sex in the terms, conditions, or privileges of employment by terminating his employment or other conduct in violation of M.G.L. c. 151B, § 4(1);
3. Whether SAC retaliated against Mr. Siefert on the basis of protected activity in violation of M.G.L. c. 151B, § 4(4);
4. What, if any, damages did Mr. Siefert suffer as a result of the alleged discrimination and retaliation?

On September 16, 17 and 18, 2025, I conducted a public hearing (“hearing”) and the following five people testified: (1) Mark Thomas Olszewski, (2) Thomas Raymond Siefert,<sup>1</sup> (3) Francis Drury McGinn III, (4) Michael Rowe, and (5) Josephine Ciepiela. I entered 59 exhibits into evidence. On January 15 and 16, 2026, counsel filed post-hearing briefs. Unless stated otherwise, where testimony is cited, I find the testimony credible and reliable, and where an exhibit is cited, I find it reliable to the extent it is cited.

## II. FINDINGS OF FACT<sup>2</sup>

1. Mr. Siefert is a gay male who lives in Shutesbury, Massachusetts with his husband, Francis Drury McGinn III, a gay male (“Mr. McGinn”). Days 1 & 2 (Siefert); Day 2 (McGinn).
2. SAC is a not-for-profit bar located at 282 Wendell Road in Shutesbury. Exhibit 20. SAC is run by a board of directors (“BOD”). Day 1 (Siefert); Day 2 (Siefert); Day 3 (Olszewski); Exhibits 1 & 2.
3. SAC’s August 20, 1965 Articles of Organization state that the SAC’s purpose is “[t]o advance sportsmanship among its members, to enlarge and increase the opportunity for the enjoyment of its members of recreational, athletic and social events; to provide and suitably equip a clubhouse

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<sup>1</sup> Mr. Siefert identifies himself as Tom and Thomas Siefert.

<sup>2</sup> The audio recording of the public hearing is the official record. The hearing took place over three days. Citations to the testimony are as follows: Day \_\_ (name of witness); Days \_\_ & \_\_ (name of witness). Citations to exhibits are as follows: Exhibit \_\_.

or club rooms to be used by the members, their families and friends for their pleasure and entertainment; [and] to rent, lease, purchase, sell and convey such real and personal property as may be necessary or proper for that purpose.” Exhibit 2.

4. In the Restated Articles of Organization, dated April 15, 2024, the stated purpose of the SAC was “[t]o operate a social club. The activities of which are substantially all for the pleasure, recreation, commingling, and other nonprofitable purposes for the benefit of its members within the meaning of IRC Section 501(c)(7). Substantially all of the corporation’s gross receipts shall be received from the members for traditional recreational and/or social goods, services, and/or facilities (as defined by the Internal Revenue Service).” Exhibit 1.

5. To become a member of the SAC, an individual fills out a form which asks for contact information and the desired level of membership: Gold (\$100); Bronze (\$60); Annual (\$25) or 65+ years old (free). Exhibit 10. The form does not ask questions other than contact information and membership level. There is no interview process to become an SAC member. Exhibit 10; Day 2 (McGinn); Day 2 (Olszewski). Once the form is received, it is reviewed solely for legibility and then initialed by the bartender. Day 2 (Olszewski). An individual may become a member of the SAC regardless of where he/she resides. Day 1 (Siefert); Day 2 (Olszewski).

6. There was no evidence that an application for membership to the SAC had ever been denied. Day 2 (McGinn); Day 2 (Olszewski).

7. The SAC website describes the SAC as a “community pub” and states that “membership is open to all.” Exhibit 9.

8. A non-member of SAC may enter the SAC and order a drink without restriction. Day 1 (Siefert). The price of alcohol and other consumables at the SAC is the same for members and non-members. Non-members are permitted to attend public events and live music performances

at the SAC. Day 2 (Olszewski). There is a sign in front of the SAC building which states:  
“Shutesbury Athletic Club -- New Members Welcome.” Exhibit 20.

9. Bartenders are encouraged to provide an application form to non-member patrons who come in two or three times. Day 2 (Olszewski). There was no evidence that a person was ever ejected from the SAC because they were not an SAC member, or because they failed to fill out a membership form.

10. The SAC sold drinks at below-market prices and there was no evidence that net earnings inured to the benefit of any BOD member. The SAC is not organized for, nor does it receive, private profit. The SAC has not been declared tax exempt by the Internal Revenue Service. Day 1 (Siefert); Days 2 & 3 (Olszewski).

#### Mr. Siefert is Hired as a Bartender at SAC

11. In August 2017, Mr. Siefert moved to Shutesbury, Massachusetts and learned about the SAC, which is located about 2 ½ miles from Mr. Siefert’s home. Day 1 (Siefert).

12. In May 2018, then BOD president and bar manager, Paul Danielovich, mentioned to Mr. Siefert that a bartending shift would become available at SAC and that a bartender named Josephine Ciepiela (“Ms. Ciepiela”) recommended Mr. Siefert for the position. In May 2018, Mr. Danielovich verbally offered Mr. Siefert the bartending position without conducting an interview. Day 1 (Siefert).

13. Mr. Siefert’s first shift as a bartender was in June 2018. As a bartender at the SAC, Mr. Siefert worked an average of two shifts a week, earning \$7/hour. Day 1 (Siefert).

14. When he first started as bartender, Mr. Siefert was not given onboarding documents or trained on how to handle sexual harassment. He was trained in crowd management – which encompassed building safety, fire safety and crowd control – and “TIPS” Certification for

serving alcohol. Day 1 (Siefert). In addition, Ms. Ciepiela and Mr. Danielovich showed Mr. Siefert where to put empty cans, how to use the ice machine, and how to fill coolers. Day 1 (Siefert).

15. In June 2018, Mr. Danielovich supervised Mr. Siefert. Day 1 (Siefert).

16. As a bartender, Mr. Siefert typically opened the building, ensured a clean workplace and sufficient inventory and provided good customer service. Day 1 (Siefert).

17. Mr. Siefert enjoyed working as a bartender and did not receive any negative feedback while working as a bartender. Day 1 (Siefert).

#### Mr. Siefert Becomes a BOD Member

18. In 2018, a BOD member named John Sullivan nominated Mr. Siefert and Mr. McGinn as BOD members. Day 1 (Siefert). At the end of 2018, Mr. Siefert was elected to be a BOD member, an annually elected position, effective January 1, 2019. Day 1 (Siefert).

19. The BOD had four officers (president, vice president, treasurer and secretary). These positions were unpaid with the exception of the treasurer. Day 1 (Siefert).

20. Mr. Siefert's main responsibilities as a board member were to attend a monthly BOD meeting and raise any topic he felt should be addressed by the BOD. Day 1 (Siefert). At the end of 2018, Mr. Siefert believed that members of the BOD knew that he was gay. Day 1 (Siefert).

21. When Mr. Siefert became a BOD member, he received no training or documents about how to perform BOD duties or on the subject of sexual harassment. Day 1 (Siefert).

#### Mr. Siefert is Hired as SAC's Bar Manager

22. In Fall 2019, Mr. Danielovich encouraged Mr. Siefert to become SAC's bar manager. Day 1 (Siefert). Mark Olszewski ("Mr. Olszewski"), a BOD member, supported Mr. Siefert's candidacy for bar manager and either nominated Mr. Siefert, or seconded the nomination, for Mr.

Siefert to become bar manager. At the time that the BOD decided to hire Mr. Siefert as bar manager, Mr. Olszewski knew Mr. Siefert was gay. Days 2 & 3 (Olszewski).

23. The BOD hired Mr. Siefert as bar manager and he started in this position on January 1, 2020. Day 1 (Siefert); Exhibit 58. When he started as bar manager, Mr. Siefert did not receive sexual harassment training, nor did he receive documents that informed him of the bar manager duties. Day 1 (Siefert).

24. The bar manager oversees the day-to-day operation of the SAC including controlling access to the inventory and the building, giving direction to the bartenders, setting up the bartenders' shift schedule, making sure that bartenders are covering the shifts, distributing supplies for the bar, assigning work, informally disciplining bartenders and communicating with the bartenders about work-related issues such as the SAC's closure due to the COVID-19 pandemic. Day 1 (Siefert); Day 3 (Olszewski); Day 3 (Ciepiela); Exhibit 22 & 38.

25. Mr. Siefert did not receive any negative feedback regarding his performance as bar manager, nor was he issued any performance reviews as bar manager. Day 1 (Siefert).

#### Mr. Siefert's Friendship with Ms. Ciepiela

26. In October 2019, Mr. Siefert and Mr. McGinn hosted the wedding of Ms. Ciepiela and a BOD member named Thomas Drake ("Mr. Drake") at the Siefert/McGinn home. Day 3 (Ciepiela). After this, a number of events occurred that resulted in a fracture in Ms. Ciepiela's and Mr. Siefert's friendship. First, shortly after the wedding, Ms. Ciepiela spoke with Mr. Siefert who told her that he was "very upset" that Mr. Drake and Ms. Ciepiela did not respond to an email that he sent in July 2019 that pertained to Mr. Siefert's interest in the BOD presidency and

bar manager position. Day 3 (Ciepiela).<sup>3</sup> Mr. Siefert said to Ms. Ciepiela that everybody on the BOD, except Ms. Ciepiela and Mr. Drake, responded to this email, that it hurt him deeply that they did not respond, and that when he sends an email, he “demands” or “expects” a response. Day 3 (Ciepiela). Second, at the end of February 2020, Mr. Siefert was angry at Ms. Ciepiela because she did not find coverage for her bartending shift. Mr. Siefert yelled at Ms. Ciepiela in the SAC back room and called her a liar; Ms. Ciepiela got “really scared and uncomfortable.” Day 3 (Ciepiela). Third, in February 2020, Ms. Ciepiela heard Mr. Michael Rowe (“Mr. Rowe”), a heterosexual male SAC member, make a comment about Mr. Siefert which upset her. Day 3 (Ciepiela); Day 2 (Rowe).

#### Rowe Comment

27. In February 2020, Ms. Ciepiela heard Mr. Rowe say at the SAC bar, “If I don’t get laid soon or fucked soon, I’m going to take Tom [Mr. Siefert] up on his offer for a blowjob in the back room.” Day 3 (Ciepiela) (“the Rowe Comment”). After hearing the Rowe Comment, Ms. Ciepiela turned to her husband and said that she wanted to go home. Day 3 (Ciepiela). After she heard the Rowe Comment, Ms. Ciepiela resigned from her bartender position at the end of February or beginning of March 2020. Day 3 (Ciepiela). I infer from the fact that she left the SAC immediately upon hearing the Rowe Comment and soon thereafter, resigned from her bartender position, that Ms. Ciepiela took the Rowe Comment seriously and believed that Mr. Siefert offered people sex in the SAC back room.

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<sup>3</sup> In Fall 2019, Mr. Siefert ran for BOD President; he lost and Nancy Matthews was elected President, effective January 1, 2020. Day 1 (Siefert). Mr. Olszewski voted for Mr. Siefert for BOD President. Day 3 (Olszewski).

28. Based on Mr. Rowe's testimony that he "could have been drunk several times" at the SAC, his unserious demeanor while testifying and his poor memory of relevant events, I do not credit Mr. Rowe's denial that he made the Rowe Comment. Day 2 (Rowe).

29. At the end of February or beginning of March 2020, Ms. Ciepiela sent an email to the BOD resigning from her bartender position. A BOD member, Mr. Alan Hanson ("Mr. Hanson"), contacted Ms. Ciepiela and asked to talk about the reasons for her resignation. Day 3 (Ciepiela).

30. Ms. Ciepiela told Mr. Hanson that she resigned due to: (1) the conversation she had with Mr. Siefert in which he told her he was upset because she had not responded to his email about his bid for the BOD presidency; (2) the incident when Mr. Siefert yelled at Ms. Ciepiela and called her a liar; (3) Ms. Matthew's response to Ms. Ciepiela's complaint about Mr. Siefert;<sup>4</sup> (4) Ms. Matthew's use of vulgar language and her response when Ms. Ciepiela told her to lower her voice; and (5) the Rowe Comment. Day 3 (Ciepiela).

#### Investigation Regarding Mr. Siefert

31. On March 15, 2020, SAC was closed due to the COVID-19 pandemic. Days 2 & 3 (Olszewski). Mr. Siefert informed the bartenders of the closure. Day 1 (Siefert); Exhibit 22.

32. After the COVID closure, in March or April 2020, Mr. Hanson called Mr. Olszewski and asked him if he was aware of the rumor that Mr. Siefert had offered sex to patrons in the SAC back room. When Mr. Olszewski said he had not heard of this, Mr. Hanson told Mr. Olszewski that Ms. Ciepiela had raised these concerns about Mr. Siefert, and informed Mr. Hanson of the

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<sup>4</sup> In February 2020, Ms. Ciepiela had two negative interactions with Ms. Matthews: (1) Ms. Ciepiela told Ms. Matthews that she was very uncomfortable that Mr. Siefert had yelled at her and in response, Ms. Matthews grabbed Ms. Ciepiela's face and said, "[f]ind the love"; and (2) Ms. Ciepiela witnessed Ms. Matthews use vulgar language at the SAC in the presence of children and told Ms. Matthews to lower her voice, and in response, Ms. Matthews told Ms. Ciepiela to be quiet and sent Ms. Ciepiela an email saying that Ms. Ciepiela was trying to tell Ms. Matthews "what to do." Day 3 (Ciepiela).

Rowe Comment. Mr. Hanson told Mr. Olszewski that no one else was looking into this allegation. Day 2 (Olszewski).

33. Mr. Olszewski then contacted Mark Lelacheur (“Mr. Lelacheur”), the BOD vice president, who told Mr. Olszewski that since February 2020, he had been aware of these allegations, including the Rowe Comment. When Mr. Olszewski asked if he was planning to “do anything about it,” Mr. Lelacheur did not respond. Day 2 (Olszewski).

34. Mr. Olszewski then called Mr. Hanson, who told Mr. Olszewski that Ms. Matthews was also aware of the allegations regarding Mr. Siefert. Based on Mr. Olszewski’s understanding that Ms. Matthews and Mr. Lelacheur knew of the allegations regarding Mr. Siefert since February 2020 and had not taken action, Mr. Olszewski did not believe that Ms. Matthews or Mr. Lelacheur intended to investigate the Rowe Comment. Day 2 (Olszewski).

35. Mr. Olszewski felt that the SAC should “look[] into” the allegations regarding Mr. Siefert because he did not believe it was appropriate for an SAC employee to be having sex in the back room, and felt that an investigation would protect the security and safety of the SAC and its patrons. Days 2 & 3 (Olszewski). Mr. Olszewski believed that Ms. Matthews and Mr. Lelacheur should have discussed these allegations and “come up with a plan.” Mr. Olszewski’s view was based on fifteen years of workplace training on human resources, sexual harassment, sexual discrimination, and diversity, equity and inclusion training. Day 2 (Olszewski).

36. Mr. Hanson and Mr. Olszewski talked about “[t]he allegations, what our liability was, if it was true, how we should go about handling it and you know, we needed to get to the bottom of it.” Day 2 (Olszewski). Mr. Olszewski then spoke with Eric Love and Mr. Rowe.

37. Mr. Olszewski spoke with Mr. Love because Mr. Hanson told him that another BOD member, Brad Spry, had suggested that Mr. Love would have information about these

allegations. Days 2 & 3 (Olszewski). When Mr. Olszewski spoke with Mr. Love about the accusations, Mr. Love said, “absolutely not. Never happened.” Day 2 (Olszewski).

38. Mr. Olszewski testified that he spoke in person with Mr. Rowe about the allegations while Mr. Rowe was drinking at the SAC and that Mr. Rowe said, “yeah, I might have said that. I say a lot of fucked up shit when I'm drunk.” Day 2 (Olszewski). I do not credit Mr. Olszewski’s testimony that the conversation with Mr. Rowe took place in person because the SAC was closed due to COVID at the time that the conversation allegedly took place. However, I do credit Mr. Olszewski’s testimony that he spoke with Mr. Rowe about the Rowe Comment and was told the above. I base this on Mr. Siefert’s testimony that on May 2, 2020, Mr. Olszewski told him that he had called Mr. Rowe as well as another individual and that the allegations against Mr. Siefert “didn’t amount to anything in the end” and “weren’t substantiated.” Day 1 (Siefert).<sup>5</sup>

39. Mr. Olszewski did not write notes from the interviews he conducted, nor did he interview Mr. Siefert. Day 3 (Olszewski).

40. Prior to May 2, 2020, Mr. Olszewski reported to Mr. Hanson the results of his conversations with Mr. Love and Mr. Rowe and based on this information, they concluded that there was not enough information to support the conclusion that Mr. Siefert had sex in the back room of the SAC. They concluded the investigation and Mr. Hanson indicated that he was relieved. Days 2 & 3 (Olszewski).

#### The Dinner Party at Mr. Siefert and Mr. McGinn’s Home

41. Shortly after the investigation regarding Mr. Siefert was concluded, Mr. Olszewski was invited to dine at the McGinn/Siefert home on May 2, 2020 (“the Dinner Party”). Day 3 (Olszewski).

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<sup>5</sup> When Mr. Rowe was asked if Mr. Olszewski ever talked to him about an investigation, he testified that he did not know. Day 2 (Rowe).

42. The day before the Dinner Party, Mr. Olszewski spoke with Ms. Matthews and told her that he felt he was in an “awkward spot” given his pending Dinner Party invitation and his investigation following the Rowe Comment. Mr. Olszewski asked Ms. Matthews to call Mr. Siefert and inform him “about these accusations.” Day 3 (Olszewski).

43. On May 2, 2020, before the Dinner Party, Ms. Matthews had a telephone conversation with Mr. Siefert and said that: (1) Mr. Hanson relayed an accusation on behalf of an unnamed BOD member that Mr. Siefert had solicited sex in the back room of the SAC, (2) a “conversation” about this accusation had been going on for approximately one month, and (3) Mr. Olszewski had volunteered to talk with Mr. Siefert about this accusation. During this conversation, Mr. Siefert offered to sit down with the accuser about this accusation. Day 1 (Siefert); Exhibit 25.

44. Later that day, Mr. Siefert “conveyed to [Ms. Matthews] that this accusation might bring up legal issues if it were being tied to [his] continued employment.”<sup>6</sup> Exhibit 25. Ms. Matthews then called Mr. Olszewski and asked him to discuss the accusations with Mr. Siefert. Day 3 (Olszewski).

45. While there was conflicting testimony as to the precise nature of what Mr. Olszewski said to Mr. Siefert at the Dinner Party, I find that Mr. Olszewski told Mr. Siefert that: (1) Ms. Ciepiera alleged something that led to a concern that Mr. Siefert was soliciting or offering sex in the SAC back room, (2) Mr. Hanson and Mr. Olszewski investigated by calling Mr. Love and Mr. Rowe, and (3) they determined that the allegations were not substantiated. Day 1 (Siefert); Day 2 (McGinn). At the Dinner Party, Mr. Olszewski asked Mr. Siefert if he had solicited or offered sex in the SAC back room, and Mr. Siefert said, “absolutely not.” Day 3 (Olszewski). I do not credit

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<sup>6</sup> Mr. Siefert spoke with a lawyer who told him that he has “a right to know now who [his] accuser is and what the exact accusation is.” Exhibit 25.

Mr. Siefert's testimony that Mr. Olszewski told Mr. Siefert at the Dinner Party that Ms. Ciepiela, Mr. Drake, BOD member Dorothy Glidden and Mr. Spry made allegations about Mr. Siefert having sex at the SAC. Day 1 (Siefert); Exhibit 25.

46. When Mr. Olszewski told Mr. Siefert about "the allegations concerning Mr. Rowe" and talking with Mr. Love and Mr. Rowe, Mr. Siefert "was a little upset, a little surprised, a little shocked, but trying to grow (sic) with it in the context of the dinner gathering." Day 3 (Siefert). While I do not credit Mr. Olszewski's testimony that Mr. Siefert told him at the Dinner Party that Mr. Siefert brought people to the SAC to have sex, I credit that portion of Mr. Olszewski's testimony, corroborated by Mr. Siefert, that Mr. Siefert told Mr. Olszewski at the Dinner Party that Mr. Siefert engaged in on-line dating and arranged meetings with such persons at SAC. Day 3 (Olszewski); Day 3 (Siefert).

47. I credit Mr. Siefert's testimony that: (1) Mr. Siefert viewed the SAC as a hookup joint; (2) many SAC patrons told Mr. Siefert that they had met people that they "brought to the [SAC's] parking lot;" (3) it was Mr. Siefert's understanding that people had sex in their cars in the SAC parking lot and (4) Mr. Siefert dated online and that "because it's such a rural area . . . that it was often the case that you might say hello to 20 or more people online before one would even respond to you, let alone whether you might be able to arrange a meeting. . . ." Day 3 (Siefert).

#### Apology Letter

48. On May 4, 2020, Mr. Siefert, Mr. McGinn, Ms. Matthews, Mr. Olszewski and Mr. Hanson met in the SAC parking lot and (1) Mr. Siefert was very upset, and with Mr. McGinn, expressed their view that the SAC's actions were discriminatory; (2) Mr. Olszewski stated again that he had called Mr. Love and Mr. Rowe; (3) Mr. Hanson confirmed that Ms. Ciepiela had brought these concerns about Mr. Siefert to his attention; and (4) Mr. Hanson and Mr. Olszewski stated that the

SAC was unable to substantiate the allegations against Mr. Siefert. Day 3 (Olszewski); Exhibit 58; Day 3 (Siefert). Mr. Olszewski told Mr. Siefert that he and Mr. Hanson felt that they “had to do this investigation” and that they “apologized that he had to go through this.” Day 3 (Olszewski); Exhibit 27 (corroborating apology). Mr. Olszewski and Mr. Hanson did not state that Mr. Siefert was in danger of losing his job or that he would be disciplined. Day 3 (Olszewski).

49. On May 9 and 11, 2020, Mr. Siefert texted Ms. Matthews asking for a letter of retraction from the BOD. Exhibit 26.

50. On May 11, 2020, Ms. Matthews emailed Mr. Siefert and stated that she, Mr. Hanson and Mr. Olszewski had another discussion and attached a letter that “was the conclusion of our conversation. I hope that this offers you some reassurance and serves as a retraction. It was a shitty rumor that got legs. I’m so sorry.” Exhibit 27. The attachment reads:

It was recently brought to my attention that some inappropriate activities were possibly occurring in the backroom of the club. Allen, MarkO, and I have looked into the matter. We have found this to not be the case. Thank you so much for working with us to resolve our concern. We look forward to the reopening of the club and enjoying everyone’s company. (“Apology Letter”).

The Apology Letter is signed by Nancy Matthews. Exhibit 27. I infer from this email and the Apology Letter that Ms. Matthews authorized Mr. Olszewski and Mr. Hanson to conduct the investigative interviews and discussed with them their investigative conclusions.

51. On May 11, 2020, Mr. Siefert responded, stating: “Unfortunately, it is not a retraction. Can we help perhaps with an example?” Exhibit 27. Mr. Siefert acknowledged that he never responded with a proposed retraction letter or edited apology letter. Day 1 (Siefert).

### May 18, 2020 BOD Meeting

52. At a May 18, 2020 BOD meeting, Mr. Siefert: (1) expressed that he was very hurt, concerned and angry and that he and Mr. McGinn felt “this was a case of homophobia” because heterosexual activity and remarks of this nature had never been investigated; (2) stated that the BOD should not have spoken with Mr. Love and Mr. Rowe; and (3) proposed a list of nine items including a request for a retraction or written apology from the BOD and calling for the lifetime resignation from the BOD of Ms. Ciepiela, Mr. Drake, and Mr. Spry. Day 3 (Olszewski); Day 1 (Siefert); Exhibit 13. This BOD meeting “got pretty hot” and at one point, Mr. Siefert called Mr. Hanson, words to the effect of, an “old, white, homophobic male.” Day 3 (Siefert); Day 3 (Olszewski).

53. On May 31, 2020, Mr. Siefert wrote Ms. Matthews asking to talk as soon as possible, and when she responded that she was unavailable, he emailed Ms. Matthews asking that she and another BOD representative provide him with “daily or more frequent updates” about how the BOD would address their conflict. Exhibit 30. A few hours later, Mr. Siefert wrote the BOD asking the BOD to create a team of board members to act as a liaison communication channel for Mr. McGinn and himself. Several BOD members, including Mr. Olszewski, objected to a subcommittee, stating that the BOD investigated the accusations and “found zero evidence confirming those accusations.” Exhibit 31.

### Parking Lot Confrontation

54. Between May 18, 2020 and June 3, 2020, there was a meeting in the SAC parking lot attended by Mr. Siefert, Ms. Ciepiela, Mr. McGinn, Mr. Sullivan, Ms. Matthews and Mr. Hanson (“Parking Lot Confrontation”). Mr. Siefert asked Ms. Ciepiela to walk with him privately and said that Ms. Ciepiela was “doing this to” him was because Ms. Ciepiela was homophobic. Mr.

Siefert repeatedly asked Ms. Ciepiela if she had sex with another bartender on the SAC picnic table. When she did not respond, he said, “[a]nswer me. I know you did. Somebody told me you did” while referring to a paper he was holding. Ms. Ciepiela walked away, returned to the group and said that Mr. Siefert, “just asked me if I had sex with [the bartender] on the picnic table.” Mr. Siefert then said, “[b]ecause she’s not admitting it, she’s guilty.” Ms. Matthews told Mr. Siefert this questioning was inappropriate. Day 1 (Siefert); Day 3 (Ciepiela); Exhibits 32 & 58.

55. After the Parking Lot Confrontation, Ms. Ciepiela felt fearful and went to the police. Day 3 (Ciepiela); Exhibit 32. On or about June 3, 2020, a Shutesbury police officer came to Mr. Siefert’s home because Ms. Ciepiela reported feeling targeted and harassed by Mr. Siefert. Exhibit 58.

56. On June 5, 2020, Ms. Matthews sent an email to Mr. Siefert stating that: (1) Ms. Matthews intended to call a BOD meeting without Mr. Siefert, Mr. McGinn, Mr. Drake and Ms. Ciepiela present; (2) at the May 2020 BOD meeting, Mr. Siefert and Mr. McGinn were given the opportunity to express their feelings, ask questions and identify a solution and that Mr. Siefert stated that he required a letter of retraction from the BOD, and (3) Ms. Ciepiela, Mr. Hanson and Mr. Olszewski had previously apologized to Mr. Siefert. In addition, Ms. Matthews asked that Mr. Siefert craft an apology letter, striving for “brevity” (which according to this email, had been recommended by a Shutesbury police officer), and apologized that the rumor about Mr. Siefert was hurtful and reiterated that there is to be no sex in the SAC back room. She also stated:

I saw you ask [Ms. Ciepiela] to step out to the parking lot, a conversation that she walked away from with you, and then you asked her repeatedly if she has had sex at the club. And this is a problem. You can’t do that. You are the Bar Manager and she is a Bartender. It is the same as a manager badgering an employee about whether or not they’ve had sex at work. Her response was appropriate. She wasn’t going to discuss that with you, and she had to say this numerous times because you asked her the question numerous times. Because you manage the Bartenders, you can’t ask that question, if we have to we can peel apart legally why, I didn’t think that was appropriate, at least not the delivery. You

didn't ask as ex-friends in one of your driveways, but in front of Sully, me, Allen, and Frank. And [Ms. Ciepiela] has now involved the cops. Exhibit 32.

57. On June 9, 2020, Ms. Ciepiela and Mr. Drake submitted their resignations from the BOD.

Also on June 9, 2020, Ms. Matthews wrote the BOD stating that she had asked Mr. Siefert to craft a letter of apology for the BOD to consider, she asked Mr. Siefert, Mr. McGinn, Ms.

Ciepiela and Mr. Drake to be recused from the next BOD meeting, and the BOD would vote on a letter of apology addressed to Mr. Siefert. Day 1 (Siefert); Exhibit 14 & 33.

58. That BOD meeting took place no later than June 17, 2020. On June 17, 2020, Mr.

Lelacheur stated that the BOD: (1) voted to wait for Mr. Siefert to get an attorney before communicating with him further, (2) voted against issuing a letter of apology, and (3) "discussed the possibilities of what to do about the bar manager situation going forward." Exhibit 35.

#### The July 14, 2020 BOD Meeting

59. At a July 14, 2020 BOD meeting, the BOD discussed: (1) the formation of a subcommittee to handle the situation with Mr. Siefert and his request for an apology letter; (2) Mr. Siefert and Mr. McGinn's retention of a lawyer and Ms. Matthews' agreement to hear what Mr. Siefert and Mr. McGinn learned; (3) "9 points" Mr. Siefert wanted the BOD to meet; and (4) the fact that the BOD was advised to reach out to the Shutesbury police department to tell them that the Board "has this." Day 1 (Siefert); Exhibit 14.

60. On July 19 and 20, 2020, Mr. Siefert and Mr. Olszewski exchanged emails and Mr.

Olszewski stated that he did not think it was in his, or the SAC's, best interest to communicate with one another, that he disagreed with how Mr. Siefert was handling this and that they would have to wait to talk until "this situation has been resolved." Exhibit 36. Mr. Olszewski testified that he made these statements because he disagreed with Mr. Siefert's request to remove Mr.

Drake, Ms. Ciepiela and Mr. Spry from the BOD, to prohibit them from entering the SAC

premises, and require the SAC to issue a written statement that the SAC “should never have done this investigation.” Day 3 (Olszewski).

Filing of MCAD Complaint and December 8, 2020 BOD Meeting

61. On October 16, 2020, Mr. Siefert filed an MCAD complaint against the SAC alleging that the SAC discriminated against him on the basis of his sex and sexual orientation. Exhibit 58.

62. As of November 3, 2020, Ms. Matthews resigned as BOD President, and Mr. Olszewski replaced her. Day 2 (Olszewski); Exhibit 21.

63. On or about November 29, 2020, Mr. Olszewski informed the BOD that Mr. Siefert filed a complaint against the SAC and that the SAC needed to file a Position Statement. Exhibit 59, Paragraph 2.

64. On December 6, 2020, Mr. Olszewski scheduled a BOD meeting and stated that there would be a separate executive session that Mr. Siefert and Mr. McGinn would not attend, the purpose of which was “to discuss the MCAD complaint that [Mr.] Siefert has filed against the SAC.” Mr. Olszewski stated that it would be “inconsistent with our duties as board members to deliberate our litigation strategies in the presence of the two members in question.” Mr. Siefert objected. Exhibit 39.

65. Also on December 6, 2020, Mr. Olszewski asked Mr. Siefert to forward an inventory of kegs and beer that the SAC was returning. Exhibit 38. Based on this and the findings in the next paragraph, I find that this request was an indication that Mr. Olszewski was considering terminating Mr. Siefert from the bar manager position.

66. On December 8, 2020, the BOD held an executive session meeting which generated minutes. Exhibit 52. The minutes state: “[w]e don’t want [Mr. Siefert] as Bar manager,” “we can’t do it” as part of a lawsuit and “[w]e need to have grounds that do not relate to his law

suit...” The minutes reflect discussion of several alternative reasons for the decision to terminate Mr. Siefert as bar manager including: “how he treated” Ms. Ciepiela, the conversation that Mr. Olszewski had with Mr. Siefert “about hookups online... out of every 30 he may get 1 or 2.. I met them here at the club,” calling Mr. Hanson “a heterosexual old white guy” and “saying ‘fuck you?’” to another board member. Exhibit 52. The reference to “saying ‘fuck you?’” to another board member is an incident at which Mr. Siefert told Mr. Hanson to “fuck off” at a holiday dinner in December 2019. Day 3 (Olszewski).

67. At the December 8, 2020 executive meeting, the BOD agreed that Mr. Siefert is not the bar manager, and that it will “let that ride until spring ... we are under no obligation to hire him back ... Let it ride until we HAVE to get rid of himm (sic) (emphasis in original).” Exhibit 52. I infer from this language, and the timing of the COVID closure, that on December 8, 2020, the BOD decided that Mr. Siefert would no longer serve as bar manager, but that it was unnecessary to inform him of this at that time because the SAC was closed.

68. At the December 8, 2020 executive meeting, the BOD discussed: (1) doing a background check on Mr. Siefert to see if he is a “repeat offender;” and (2) changing the SAC locks and giving keys only to certain individuals, stating “that would limit [Mr. Siefert’s] input.” Exhibit 52; Day 3 (Olszewski). Mr. Olszewski testified that he did not know what the BOD was referencing when it inquired about seeing if Mr. Siefert was a “repeat offender.” Day 3 (Olszewski). Based on Mr. Olszewski’s inability to explain what “repeat offender” meant, and the timing of this statement which was shortly after Mr. Siefert’s MCAD complaint, I find that the minutes reflected the BOD’s desire to unearth some type of wrongdoing from Mr. Siefert’s past.

69. On December 18, 2020, Mr. Siefert received a copy of the Position Statement, where he first learned that he had been laid off from the bar manager position. Exhibit 59.

Mr. Siefert Does Not Receive a Key to New Locks

70. On December 29, 2020, Mr. Olszewski sent an email to the BOD announcing that the keys and locks to the SAC had been changed and that going forward, only he and Mr. Lelacheur would have keys. Day 1 (Siefert); Exhibit 40. At that time, there had been no issues relative to unauthorized people accessing the SAC building. Day 1 (Siefert).

71. As bar manager, Mr. Siefert felt it was important to have access to the SAC building because he was on the liquor license and was responsible for the inventory. Day 1 (Siefert).

72. On January 28, 2021, BOD officers sent an email to SAC members which included information about Mr. Siefert's MCAD complaint and the SAC's response which explained "what really happened." Although Mr. Siefert was upset about the SAC's use of the term "what really happened" (which Mr. Siefert viewed as questioning whether his MCAD complaint was true), Mr. Siefert did not believe that the BOD was wrong to issue a public statement. Exhibit 20; Day 1 (Siefert).

Email Regarding Mr. Siefert's Termination from Bar Manager and Bartender Positions

73. On February 17, 2021, Mr. Olszewski sent an email to Mr. Siefert, copy to the BOD, with the subject line "rebuttal to MCAD Docket No. 20 SEM 01983." The email stated that: (1) Mr. Olszewski was responding to Mr. Siefert's rebuttal in his MCAD case, (2) Mr. Siefert was not employed by the SAC as bar manager or bartender, (3) Mr. Siefert was not furloughed or on temporary leave, and (4) the SAC was under no obligation to hire Mr. Siefert back as bar manager. Exhibits 41 & 59; Day 1 (Siefert); Day 3 (Olszewski).

74. On March 2, 2021, the BOD held an executive meeting attended by Mr. Olszewski and five BOD members and discussed the fact that Mr. Siefert had been informed that he was no longer the bar manager and that the SAC was “really just waiting around until May” to hear whether the MCAD case would go forward or not. Exhibit 19; Day 3 (Olszewski).

March 17, 2021 Board of Health Meeting

75. On March 17, 2021, Mr. Siefert, Mr. Olszewski, the Shutesbury County health inspector and others attended a virtual Shutesbury Board of Health meeting at which the SAC was seeking approval to hold events during the COVID pandemic. Day 1 (Siefert); Day 3 (Olszewski). At the meeting, Mr. Siefert asked if the SAC required ServSafe certification to serve food, and was told that the SAC did require ServSafe certification and allergen awareness certification. Mr. Siefert said, “I hope we can be a good example of how to do it right” and “I’ve been concerned about access to the club over this winter. Hopefully we do a good job going forward. As far as I know there’s (sic) been several meetings at the club over the winter, without any precautions taking place (“BoH Comments”).” The health inspector’s response were words to the effect of “too much information.” Exhibit 23. During the March 17, 2021 meeting, Mr. Olszewski represented that the SAC would not permit people to bring their own alcohol to the SAC. Exhibit 23.

76. Mr. Siefert testified that his BoH Comments were intended to express his concern that the SAC had not followed COVID protocols during lockdown by permitting people to meet in person at the SAC. Day 1 (Siefert). Mr. Olszewski’s view was that Mr. Siefert “threw the club under the bus.” Day 3 (Olszewski). The BoH Comments: (1) did not affect the SAC’s ability to re-open, (2) did not result in any punitive actions by the Board of Health, and (3) were not discussed at the next BOD meeting on April 6, 2021. Exhibit 16.

Mr. Siefert's Administrative Access to the SAC Website is Removed

77. On April 24, 2021, Mr. Olszewski informed Mr. Siefert that his administrative access to the SAC website had been removed. Day 1 (Siefert); Exhibits 42 & 59. Administrative access to the website included the ability to edit the site. Day 1 (Siefert). I do not credit Mr. Olszewski's testimony that the BOD removed Mr. Siefert's access because it believed Mr. Siefert was communicating with SAC members about his stance in the MCAD litigation by using the SAC website which then resulted in a loss of patrons. Day 3 (Olszewski). While Mr. Siefert acknowledged that access to the website would allow him to edit the website, it was not established that the website had been edited. Day 1 (Siefert). I find Mr. Olszewski's testimony that the website could have been used by Mr. Siefert to contact members to discourage their support of the SAC to be self-serving and unsupported by the evidence.

78. Prior to his removal from access to the SAC website, Mr. Siefert had not been informed that he had done anything inappropriate on the website. Day 1 (Siefert).

May 2021 Argument with BOD Member Dave Hanson

79. Prior to May 26, 2021 and in May 2021, Mr. Siefert and Dave Hanson ("Dave"), a BOD member and the son of Mr. Hanson, had an argument at an outdoor event in the SAC parking lot. Day 3 (Siefert); Exhibit 18; Day 3 (Olszewski). While the details of the confrontation are contested, I find that: (1) Mr. Siefert saw Dave and his girlfriend holding beers in the SAC parking lot, (2) Mr. Siefert expressed his concern that this was a violation of the Board of Health rules and questioned Dave about drinking during COVID on SAC premises, (3) Mr. Siefert asked Dave if he could look in the cooler in the back of Dave's car and Dave refused, and (4) Dave left upset. Day 3 (Olszewski); Day 3 (Siefert); Exhibit 18.

### Second MCAD Complaint

80. On May 24, 2021, Mr. Siefert filed a second complaint at the MCAD, which alleged that the SAC retaliated against him. Day 1 (Siefert); Exhibit 59.

### May 26, 2021 BOD Meeting

81. On May 26, 2021, the SAC had an executive session meeting and discussed the following:

Mark O talked to Lawyer about Tom , . Dave was parked on opposite side of building, Tom showed up with Shelly, Saw Dave's cooler, and a beer can set on his tire. Other people were standing around the truck.. Tom asked Dave if the beer on the tire was Dave, Then Tom asked Dave if he could check the cooler,.. Dave said no.., DAVE GOT UPSET.. Dave left.. unhappily.. "one of us has to leave" so Dave left.

Tom wrote email to BOD, about incident. Board response was we will look in to it.. Tom did not see Dave drinking. Tom said in the email that we were not conforming to BOH "no alcohol" ruling. We as a club said no, not the BOH.

Al returns

We can't function with Tom on the Board. It is too difficult to function with him on the board, we can do it with a 2/3 majority,.. We should have it highlighted on the bylaws, ready for the meeting., This executive session is fine., President made executive decision, We can not relate the MCAD lawsuit to kicking him off the board, The incident with Dave and the incident with the board of health (where he threw us under the bus) these are grounds for dismissing him from the board, He is exhausting the board. We are a private club, we can remove anyone we feel. We could no trespass. With police.

The Cans. Working against the club. Al- homophobic OLD man, the radio station thing, Changing the bar manager (saying we were against bylaws). trying to re-open and no bartender will sign up with him still working here /associated. Exhibit 18.

82. On May 26, 2021, Mr. Olszewski emailed the BOD informing them that the SAC was approved for re-opening on June 4, 2021. On May 28, 2021, Mr. Siefert emailed in response that he "would love to return to [his] bartending shifts and had been expecting to do so once [the SAC] reopened." Day 3 (Olszewski); Exhibit 43.

### SAC's Removal of Mr. Siefert from the BOD

83. At a June 2, 2021 BOD meeting,<sup>7</sup> Mr. Olszewski moved to remove Mr. Siefert from the BOD, stated that the BOD's "mission is to have a harmonious board" and cited Mr. Siefert's BoH Comments. All BOD members present (except Mr. Siefert and Mr. McGinn) voted in favor of the motion to remove Mr. Siefert from the BOD. Exhibit 17.

84. On June 4, 2021, the SAC re-opened and Mr. Olszewski offered work to all the previous bartenders except Mr. Siefert. Day 1 (Siefert); Day 3 (Olszewski).

85. Mr. Siefert's last day as a board member was the first week of June 2021. Day 1 (Siefert).

86. The last time Mr. Olszewski saw Mr. Siefert on the SAC premises was when he was removed from the BOD. Day 3 (Olszewski). The last time Mr. Siefert was on SAC property was in June 2021. Day 1 (Siefert).

### Venison Dinner and No Trespass Order

87. In spring 2022, the SAC announced that they were having a venison dinner. In April or May 2022, Mr. Siefert believed that this was hunted venison and contacted the Environmental Police, the Shutesbury Board of Health, the Shutesbury Police and the Shutesbury Select Board to report that the SAC was serving hunted venison. The basis for Mr. Siefert's belief that the SAC was serving hunted venison was that the SAC members who were advertising the event

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<sup>7</sup> Exhibit 17 references a BOD meeting date of May 4, 2021. Complainants state that Exhibit 17 contains a scrivener's error as to the date that this meeting occurred and that the proper date is June 2, 2021. Complainants' Proposed Findings of Fact and Conclusions of Law, p. 16, n. 26. I accept Complainant's assertion that the correct date is June 2, 2021 for the following reasons: (1) SAC has not filed any statement to contradict this assertion, (2) it is logical that Exhibit 17 occurred after the May 26, 2021 executive session board meeting where the BOD discussed removing, but did not vote, to remove Mr. Siefert from the BOD; (3) Mr. Siefert wrote an email on June 15, 2021 that referenced the BOD removing him as a BOD member "earlier this month," and (4) had the BOD removed Mr. Siefert on May 4, 2021, it would be reasonable to have expected that this would have been referenced in Mr. Siefert's May 24, 2021 MCAD Complaint, and it is not. Exhibits 18, 44 & 59.

had, in the past, hunted deer and given venison to people at the SAC. Day 1 (Siefert); Day 3 (Olszewski).

88. In June 2022, the SAC sent a No Trespass Order to Mr. Siefert. Exhibit 51. Before this, Mr. Siefert received an email from SAC's attorney stating that he could be expecting a no trespass order because he had "sent the police to the Club about a venison dinner" and was driving his car in the SAC parking lot. Day 1 (Siefert). While Mr. Siefert had not driven his car in the parking lot during this period, Mr. Siefert did drive by the SAC in the 12 months after the BOD removed him from the board. Day 1 (Siefert); Day 2 (McGinn).

#### Atmosphere, Comparative Data and Anti-Gay Comments

89. SAC had a "very relaxed, casual, adult atmosphere" where adults drank alcohol and danced, sometimes in a sexually suggestively way. At times, female bartenders at the SAC engaged in sexualized dancing and sexually suggestive conduct and BOD members made some sexually-explicit comments and occasionally discussed their sex lives. While I credit that portion of Mr. Olszewski's testimony that the SAC hosted events that children attended, I do not find credible his testimony that the SAC was "family-friendly." Day 1 (Siefert); Day 2 (Olszewski).

90. Mr. Siefert heard rumors of patrons and bartenders having sex at the SAC. Day 1 (Siefert).

91. Some BOD members and officers frequently interacted in a raunchy way, which included rough language. Day 1 (Siefert). At one point, Ms. Matthews suggested that "FUCK ME HARD" be the login password for the SAC. Day 1 (Siefert) (emphasis in original). The record was not clear whether Ms. Matthews made this suggestion when she was BOD president.

92. At some point prior to Mr. Siefert's employment, the SAC had a male, heterosexual bartender who was terminated because he was "not a good fit" and his "personality did not attract customers." Exhibit 58. I do not find credible Mr. Olszewski's testimony that in 2015 or

2016, after a BOD vote, the SAC terminated this person because female patrons lodged complaints that the bartender made crude sexual comments to them which the BOD investigated and found credible. Day 3 (Olszewski); Day 3 (Siefert); Exhibit 57. I credit that portion of Mr. Olszewski's testimony that the bartender at issue was terminated and that female patrons found him "a little creepy" but I do not credit the assertion that this male heterosexual bartender was terminated because of complaints by female patrons or that the BOD investigated any such complaints by female patrons. Mr. Olszewski's testimony was self-serving and vague, and contradicted by the former BOD President's email on the subject. Exhibit 57.

93. In addition to Mr. McGinn and Mr. Siefert, there was at least one other person on the BOD who currently, or in the past, identified as gay or lesbian. Day 1 (Siefert).

94. I do not credit Mr. McGinn's testimony that around the time of Ms. Ciepiela's wedding, Ms. Ciepiela stated that marriage is "between a man and a woman." Day 2 (McGinn); Day 3 (Siefert). I find Mr. McGinn's testimony self-serving and lacking in credibility. There is no assertion in Mr. Siefert's MCAD complaints that Ms. Ciepiela made this statement about marriage, nor did Mr. Siefert so testify before he heard Mr. McGinn testify. Day 3 (Siefert); Exhibits 58 & 59.

95. When viewing professional athletes on television, a BOD member sometimes swore at the athletes including calling them "c--suckers" or "fa--ts." Day 2 (Siefert).

#### Financial Loss

96. As bartender, Mr. Siefert earned \$7.00 per hour, working approximately 12 hours/week and earning approximately \$84/week. Day 1 (Siefert); Exhibits 45 & 53.

97. As bar manager, Mr. Siefert earned a monthly stipend of \$250, or approximately \$57.69/week<sup>8</sup> and worked approximately eight hours per week. Day 1 (Siefert); Exhibit 53.

98. Starting in July 2019, while working at SAC, Mr. Siefert volunteered approximately four hours per week at the Literacy Volunteers of Orange/Athol (“Literacy Volunteers”). Day 1 (Siefert).

99. From December 24, 2018 to May 30, 2023, Mr. Siefert worked weekly as a housecleaner on a seasonal basis. Exhibits 50 & 54. The record does not contain the number of hours he worked per week as a housekeeper.

100. From March 2021 to April 30, 2024, Mr. Siefert worked as Acting Coordinator for Literacy Volunteers, earning \$20/hour. Day 1 (Siefert); Exhibit 46. Between March 1, 2021 and July 1, 2022, Mr. Siefert’s hours varied at Literacy Volunteers, ranging from 0 hours/month to approximately 13 hours/week with an approximate average of 6.6 hours per week. Exhibit 46.

101. As of July 1, 2022, Mr. Siefert became employed by Wendell County Store, where his weekly hours fluctuated from 9.25 to 32.12, with an approximate average between July 1, 2022 and October 5, 2023, of 19/week.<sup>9</sup> He was paid \$17/hour. Day 1 (Siefert); Exhibit 48.

#### Emotional Impact

102. Mr. Siefert really liked being a bartender and bar manager at SAC and found both roles very rewarding. He also found being a BOD member very gratifying. Day 1 (Siefert).

103. When the BOD changed the locks to the SAC and did not allow Mr. Siefert to have a key, it was very hurtful and worrisome to Mr. Siefert because he felt that the SAC did not trust his ability to work as bar manager and to keep the building safe. Day 1 (Siefert).

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<sup>8</sup>  $(\$250/\text{month} \times 12 \text{ months}/\text{year}) \div 52 \text{ weeks}/\text{year} = \$57.69$ .

<sup>9</sup> This average is based on the records submitted as Exhibit 48, which are missing one pay record and include paychecks without hourly breakdowns. Exhibit 48.

104. Losing his bartender position made Mr. Siefert feel very scared about his future in Shutesbury. It made him wonder whether he wanted to continue living in Shutesbury, made him fear for his financial future and “stressed out” his marriage. It was particularly difficult to go out in public in such a small town where many knew that Mr. Siefert was no longer bartender and bar manager. This made him feel that he lacked control. Day 1 (Siefert).

105. Losing his position on the BOD caused Mr. Siefert a lot of anxiety. He felt it was unfair and retaliatory and that it sent a message to the public that he was “not a good person.” He felt devastated and “emotionally deflated.” Day 1 (Siefert).

106. Mr. Siefert spent time talking with his husband and his friends trying to process his feelings regarding the loss of his bar manager and bartender positions and removal from the BOD. Day 1 (Siefert).

### III. CONCLUSIONS OF LAW

#### A. SAC IS NOT LIABLE FOR SEX/SEXUAL ORIENTATION DISCRIMINATION

##### 1. SAC is an Employer under M.G.L. c. 151B

M.G.L. c. 151B, § 4(1) prohibits an employer, by himself or his agent, to bar or discharge from employment, or to discriminate against an individual in compensation or in terms, conditions or privileges of employment (unless based upon a bona fide occupational qualification) because of sex or sexual orientation. The term “employer” does not include “a club exclusively social, or a fraternal association or corporation, if such club, association or corporation is not organized for private profit....” M.G.L. c. 151B, § 1(5) (“social club exemption”). SAC maintains that it falls within this exemption and thus, is not an “employer.”

The Commission has held that an entity that is open to the public does not fall within the social club exemption. MCAD & DaSilva v. United Fishermen Club, Inc., 46 MDLR 55, 57 (2024). Given the dearth of case law under M.G.L. c. 151B further analyzing the social club exemption, I look to a zoning case which reviews the definition of “club” and provides a useful analysis for M.G.L. c. 151B’s social club exemption. When determining whether a property is used as a “club” and therefore permitted in single residence zoning, the Massachusetts Supreme Judicial Court has considered whether an entity is open to the public and whether its membership is restricted. Carpenter v. Zoning Bd. of Appeals of Framingham, 352 Mass. 54, 56-62 (1967). The Court looked beyond the fact that the swim club at issue was incorporated as a social club and adopted a corporate title and purpose supporting its self-characterization as a “club.” To constitute a club, the Court held, there was no need to “have ‘a misanthropic membership committee which peppers the candidates' list with blackballs.’” Id. at 57. A bona fide club, however, must place restrictions on the public’s physical access to the space the “club” inhabits, impose meaningful limits on the numbers of individuals who may become members, and apply criteria to those seeking membership. Id. at 56-57. Similarly, a proper analysis of the social club exemption in M.G.L. c. 151B should look beyond an entity’s self-serving description as a “club” and consider the way the entity functions.

Physical access to the SAC is not restricted. Any person over the age of 21 can enter the SAC and order a drink. Any member of the public can attend public events and live music performances at the SAC. There was no evidence that a person would remove non-members from the premises, or that the SAC ever ejected a patron because he/she refused to fill out a membership application.

As for the issue of membership, the SAC did not impose meaningful restrictions on its membership, such as limiting the numbers of overall members or applying criteria to potential members. It welcomed the public by advertising for new members on a marquis in front of its building without indicating any restriction on membership. It stated on its website that “membership is open to all.” Based on the evidence before me, the SAC’s membership was not in any way selective or restrictive but designed to include any passerby who sought membership.

Considering that the SAC was physically open to the public, membership in the SAC was not selective or restrictive, M.G.L. c. 151B must be liberally construed, and the social club exemption must be applied narrowly,<sup>10</sup> I conclude that the SAC does not fall within the social club exemption and is an employer under M.G.L. c. 151B, § 1(5).<sup>11</sup>

2. The SAC’s Investigation of Mr. Siefert was not Discriminatory.

Mr. Siefert’s sole claim of sex and sexual discrimination is that the SAC’s investigation arising from the Rowe Comment was discriminatory. To prevail, Mr. Siefert must show that: (1) he is a member of a protected class, (2) he was subject to an adverse employment action, (3) his employer bore “discriminatory animus,” and (4) animus was the reason for the action. Adams v. Schneider Electric USA, 492 Mass. 271, 280 (2023) (citations omitted). As a gay male, Mr.

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<sup>10</sup> M.G.L. c. 151B must be liberally construed to effectuate its purposes. M.G.L. c. 151B, § 9. Further, the social club exemption should be applied narrowly given the Legislature’s gradual restriction of the exemptions to, and corresponding expansion of the definition of, “employer.” See Adams v. Mount St. Vincent Nursing Home, 19 MDLR 123, 125 (1997) (Legislature’s history of narrowing the fraternal organization exemption supported a strict analysis of the fraternal organization exemption); see also Currier v. Nat’l Board of Med. Examiners, 462 Mass. 1, 18 (2012) (applying liberal interpretation of the term “place of accommodation” due, in part, to Legislature’s history of expanding this term).

<sup>11</sup> I reject Mr. Siefert’s argument that the SAC was organized for private profit because it was not tax exempt under the Internal Revenue Code (IRC). Complainants’ Proposed Findings of Fact and Conclusions of Law, p. 36. The SAC sold drinks at below market prices, was incorporated as a non-profit and its net earnings did not inure to the benefit of any BOD member. The SAC’s failure to obtain tax exempt status under the IRC does not change the fact that it was not organized for private profit.

Siefert is a member of two protected classes (male and homosexual). The remaining questions are whether he was subjected to an adverse employment action, SAC bore discriminatory animus, and the animus was the reason for an adverse employment action.

Courts use the term “adverse employment action” – a term not found in M.G.L. c. 151B – to determine “when an act of discrimination against an employee ‘in compensation or in terms, conditions or privileges of employment’ may be remedied under c. 151B.” Yee v. Massachusetts Police, 481 Mass. 290, 295-297 (2019). “Cases have employed the phrase ‘adverse employment action’ to refer to the effects on working terms, conditions, or privileges that are material, and thus governed by the statute, as opposed to those effects that are trivial and so not properly the subject of a discrimination claim.” Id. at 296, quoting King v. Boston, 71 Mass. App. Ct. 460, 468 (2008). The disadvantage to the employee “must be objectively apparent to a reasonable person in the employee's position; ‘subjective feelings of disappointment and disillusionment’ will not suffice.” Yee, 481 Mass. at 297, quoting MacCormack v. Boston Edison Co., 423 Mass. 652, 663 (1996). The words “terms,” “conditions,” and “privileges” of employment are “general and broad, and conditions of employment” may encompass the general environment, atmosphere, or quality of the workplace. Yee, 481 Mass. at 295, n.6.

Mr. Siefert argues that SAC’s investigation of him was an adverse employment action which was motivated by sex and sexual orientation bias. Complainants’ Proposed Findings of Fact and Conclusions of Law (“Complainants’ Memo”), p. 18. An investigation may constitute an adverse employment action. Massachusetts Commission Against Discrimination, Guidelines on Harassment in the Workplace, VIII.A., at 33 (Jul. 2, 2024), available at <https://www.mass.gov/doc/mcad-guidelines-on-harassment-in-the-workplace/download>. (“MCAD Harassment Guidelines”) (investigations of violations of M.G.L. c. 151B must be

conducted without unlawful bias). SAC's investigation did not, however, have a materially adverse effect on Mr. Siefert's working terms, conditions, or privileges. The investigation was based on a genuine, albeit mistaken, belief that Mr. Siefert was engaging in sexual acts in the workplace. The investigation consisted of two interviews, took place over a short period of time, and concluded that the allegations were unsubstantiated. No coworkers or subordinates were physically working in the place of employment while the investigation was taking place. At the time the interviews took place, Mr. Siefert was not aware of the investigation and only learned of the investigation after it was determined that the allegations were unsubstantiated. While it was understandably upsetting to Mr. Siefert to learn of the Rowe Comment and the ensuing investigation, the investigation did not affect the objective terms or privileges of Mr. Siefert's employment, nor did it have an impact on its conditions (general environment, atmosphere, or quality of the workplace) and thus, did not constitute an adverse employment action.<sup>12</sup> This demands the dismissal of Mr. Siefert's discrimination claim.

I briefly address the question of whether sexual orientation and/or sex bias tainted the investigation. It did not. The investigation was conducted based on a concern that SAC had created a sexually hostile work environment.<sup>13</sup> Ms. Ciepiela communicated to Mr. Hanson a

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<sup>12</sup> See Chadwick v. Duxbury Pub. Sch., 97 Mass. App. Ct. 1106 (2020) (M.A.C. Rule 23.0 Decision) (employers' criticisms and general treatment of disabled employee did not affect objective terms and conditions of her employment); see also MCAD & Aime v. Massachusetts Dep't of Correction, 43 MDLR 1, 2 (2021) (transfer did not constitute adverse action as it did not cause any tangible economic loss or change in any other job related benefits). Compare with Ledoux v. Bristol Community Coll., 96 Mass. App. Ct. 1108 at \*4 (2019) (M.A.C. Rule 23.0 Decision), review denied, 484 Mass. 1104 (2020) (adverse employment action where security officer subjected to several hostile acts including false statements that she was having sex with her supervisor, and a lengthy investigation into this allegation that continued well after employer knew it to be false).

<sup>13</sup> If the SAC bar manager was having sexual relations with a patron in the workplace, this would create a sexually hostile work environment. M.G.L. c. 151B, § 1(18)(b) (hostile work environment harassment includes "verbal or physical conduct of a sexual nature" that has the "purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment.") Contrary to the arguments in Complainants' Memo, it is of no

genuine concern that Mr. Siefert was having sex with patrons at the SAC. Upon learning of these allegations that, if true, would create a sexually hostile work environment, Ms. Matthews, as BOD President, should have taken steps to address this concern. She did not, and as a result, Mr. Hanson and Mr. Olszewski conducted a brief investigation. While the SAC's process and investigation fell short of a model investigation,<sup>14</sup> these investigative deficits do not reflect bias. The investigation was neutral, confidential and unbiased. It was prompt and concluded that there was not substantial evidence of wrongdoing. Based on the lack of discriminatory animus,<sup>15</sup> the discrimination claim is dismissed for this additional, independent reason.<sup>16</sup>

#### B. SAC IS LIABLE FOR RETALIATION

M.G.L. c. 151B, § 4(4) prohibits persons, employers, labor organizations and employment agencies from discharging, expelling or otherwise discriminating against any person "because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified or assisted in any proceeding under section five." M.G.L. c. 151B, § 4(4). The proscriptions in M.G.L. c. 151B, § 4(4) apply to the SAC. M.G.L. c. 151B, § 1(1), § 1(5). To

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moment that Ms. Ciepiela did not state that the Rowe Comment was sexual harassment or that the Rowe Comment was not directed at Ms. Ciepiela. MCAD & Barnes v. Sleek, Inc., 33 MDLR 30, 34 (2011) (inappropriate comments that aestheticians made to male manager about clients' genitalia objectively offensive to male manager).

<sup>14</sup> For example, the MCAD Harassment Guidelines counsel employers to select an external investigator trained in interviewing witnesses, evaluating credibility and writing an investigative report. The Guidelines urge employers to conclude with a final written report documenting the investigative findings. MCAD Harassment Guidelines at XI.

<sup>15</sup> The BOD member's use of language such as "c-suckers" and "fa-ts" while watching sports in a bar is boorish, but not reflective of anti-gay bias by the SAC as a whole. Similarly, I do not credit Mr. Siefert's argument that heterosexual bartenders were accused of similar conduct, i.e. having sex in the workplace with patrons, and were not subject to an investigation. The evidence presented did not support this assertion.

<sup>16</sup> It is unnecessary to address causation given that there was no adverse employment action and the SAC did not bear discriminatory animus.

succeed on a M.G.L. c. 151B, § 4(4) claim, a person must prove that: (1) he reasonably and in good faith believed that the respondent was engaged in wrongful discrimination (reasonable and good faith belief); (2) he acted reasonably in response to that belief through acts meant to protest or oppose such discrimination (protected conduct); (3) an employer or other person took adverse action against him (adverse action); and (4) the adverse action was a response to the protected conduct (causation). Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 474 Mass. 382, 405-406 (2016); Ambroise v. Law Office of Howard Kahalas & Howard Kahalas, 45 MDLR 67, n. 13 (2023); MCAD Harassment Guidelines, VIII.A.

Mr. Siefert alleges that SAC retaliated against him in the following ways: (1) terminating him as bar manager, (2) terminating him as bartender, (3) changing the locks at SAC and denying him a key, (4) removing his SAC website access, (5) removing him from the BOD, and (6) issuing a No Trespass Order against him.<sup>17</sup>

For each of these six acts, Mr. Siefert has established the first three elements of a retaliation claim. First, Mr. Siefert reasonably and in good faith believed that SAC was engaging in sex and/or sexual orientation discrimination.<sup>18</sup> Mr. Siefert had a good faith and reasonable belief – which I have found was incorrect -- that heterosexuals and females at SAC had not been investigated for engaging in conduct similar to that in which Mr. Siefert was alleged to have

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<sup>17</sup> While Complainants' Memo asserts that the SAC also retaliated against Mr. Siefert by issuing an email in January 2021 about the MCAD case and by excluding Mr. Siefert from executive session meetings, I **dismiss these claims** for the following respective reasons. First, I do not find the issuance of the January 2021 email to be an adverse action or tainted by retaliatory animus. In fact, Mr. Siefert did not believe that the BOD was wrong to issue this public statement. Secondly, I reject the notion that conducting BOD meetings without Mr. Siefert to address his MCAD complaint was motivated by bias; the BOD had a legitimate business need to discuss counsel's advice and litigation strategy without Mr. Siefert present.

<sup>18</sup> Mr. Siefert's lack of success in proving his underlying claims of sex and sexual orientation discrimination does not impede his retaliation claim from going forward. Town of Brookline v. Alston, 487 Mass. 278, 294 (2021).

engaged. Second, when he filed his first MCAD complaint, Mr. Siefert was acting reasonably in response to his belief that he had been subjected to sex and/or sexual orientation discrimination.<sup>19</sup> MCAD Harassment Guidelines, VIII.A; M.G.L. c. 151B, § 4(4). Third, each of these six acts were “materially adverse” acts as they would all “dissuade a reasonable employee in [Mr. Siefert’s] circumstances from making or supporting a complaint of discrimination.”<sup>20</sup>

With respect to each of these six alleged retaliatory acts, the dispositive question is whether Mr. Siefert has established a causal connection between Mr. Siefert’s protected conduct (filing an MCAD complaint) and the adverse employment action. Verdrager, 474 Mass. at 406. The protected conduct must be a “but-for cause” of, or “determinative factor,” in the employer taking the adverse action. Downey v. Johnson, 104 Mass. App. Ct. 361, 381 (2024), citing Psy-Ed Corp. v. Klein, 459 Mass. 697, 707 (2011).<sup>21</sup> A cause is the but-for, or determinative factor, if it was the active efficient cause in bringing about the adverse employment action. Lipchitz v. Raytheon Co., 434 Mass. 493, 506, n. 19 (2001).

1. Mr. Siefert’s Termination from the Bar Manager Position and the SAC’s Changing of Locks and Denying Mr. Siefert a Key Were Retaliatory.

For several reasons, I find that Mr. Siefert’s first MCAD complaint was the active efficient cause of SAC’s decision to terminate Mr. Siefert as bar manager, and its related decision to

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<sup>19</sup> Mr. Siefert complained internally of discrimination prior to filing his first MCAD complaint, but I find below that it was the filing of the first MCAD complaint that resulted in several of SAC’s adverse actions.

<sup>20</sup> Burlington Northern & Santa Fe Railway v. White, 548 U.S. 53, 67 (2006); Stratton v. Bentley Univ., 113 F. 4th 25, 42-44 (1st Cir. 2024).

<sup>21</sup> Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 121 (2000); Chadwick v. Duxbury Public Schools, 97 Mass. App. Ct. 1106 at \*6 (2020) (1:28); MCAD and Lauria v. Robert W. Sullivan, Inc., 41 MDLR 101, 101 (2019).

change the SAC's locks and deny Mr. Siefert a key.<sup>22</sup> First, Mr. Siefert's work performance as bar manager was competent prior to the decision to terminate him. Second, the decision to terminate Mr. Siefert as bar manager was made less than two months after Mr. Siefert filed his first MCAD complaint, and nine days after Mr. Olszewski forwarded Mr. Siefert's first MCAD complaint to the BOD.<sup>23</sup> Third, the decision to terminate Mr. Siefert as bar manager was made at the December 8, 2020 meeting that was scheduled to deliberate litigation strategies for Mr. Siefert's MCAD complaint, Exhibit 39, and which focused on terminating Mr. Siefert as bar manager, eliminating Mr. Siefert's physical access to the SAC and doing a background check on Mr. Siefert. Fourth, the reference in the December 8, 2020 executive meeting minutes to finding out whether Mr. Siefert is a "repeat offender" reflects the BOD's desire to denounce Mr. Siefert by locating some type of wrongdoing from Mr. Siefert's past. For these reasons, both the dismissal of Mr. Siefert as bar manager, and the related action of changing the locks to SAC and not providing Mr. Siefert with a key (which he needed to perform his position as bar manager) support a finding of retaliation.<sup>24</sup>

I acknowledge that prior to the SAC's decision to terminate Mr. Siefert as bar manager, there were tensions between the SAC and Mr. Siefert which were, in part, due to Mr. Siefert's angry behavior. Badgering Ms. Ciepiela about having sex at the SAC and calling Mr. Hanson names

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<sup>22</sup> The decision to change the locks and deny Mr. Siefert access to the SAC was made at the same time, and appeared to be part and parcel of, the decision to terminate Mr. Siefert as bar manager. It effectively stripped Mr. Siefert of his authority as bar manager by impeding his ability to check and stock inventory.

<sup>23</sup> Mole v. Univ. of Massachusetts, 442 Mass. 582, 592 (2004) (an inference of causation is permissible where adverse action is taken against a satisfactorily performing employee in the immediate aftermath of the employer's becoming aware of the employee's protected conduct).

<sup>24</sup> The SAC decided to change the locks shortly after Mr. Siefert filed his first MCAD complaint. Moreover, the SAC did not justify changing the locks and not giving a key to Mr. Siefert with any legitimate reason, such as Mr. Siefert's unauthorized entry into the SAC.

(“homophobic old white guy”) could have justified Mr. Siefert’s termination in a different workplace context, but I do not find that these two events influenced SAC’s decision to terminate Mr. Siefert as bar manager and to not provide him with a key to the new locks for the SAC. First, it was only after Mr. Siefert filed an MCAD complaint that these issues were raised to support terminating Mr. Siefert’s employment. At the time that Mr. Siefert badgered Ms. Ciepiela and name-called Mr. Hanson, the BOD did not issue a performance warning to Mr. Siefert. Second, while Mr. Siefert’s conduct with Ms. Ciepiela and Mr. Hanson was inappropriate, it was consistent with the behavior of other BOD members and officers who frequently interacted in a raunchy way, which included rough language. Third, the tensions between the SAC and Mr. Siefert centered around Mr. Siefert’s opinion that the SAC discriminated against him during the investigation and the corresponding need for the SAC to consult with counsel, hold executive sessions of its BOD and engage in litigation.<sup>25</sup>

For these reasons, I find that Mr. Siefert’s first MCAD complaint was the determinative factor in SAC’s decision to terminate Mr. Siefert as bar manager, change the locks and deny Mr. Siefert access to the SAC keys.

## 2. Mr. Siefert’s Termination from the Bartender Position Was Retaliatory.

On February 17, 2021, Mr. Olszewski terminated Mr. Siefert as bartender in an email which was a response to Mr. Siefert’s filing of a rebuttal in his MCAD case. Exhibit 41.

For the following reasons, the SAC’s decision to terminate Mr. Siefert as bartender was a retaliatory response to Mr. Siefert’s first MCAD complaint. First, prior to Mr. Olszewski’s

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<sup>25</sup> SAC’s attempt to justify its decision to terminate Mr. Siefert as bar manager due to Mr. Siefert’s conduct at a holiday party that took place a year before the decision to terminate was made, is not credible. If SAC was truly concerned about Mr. Siefert’s conduct in December 2019, one would have expected it to issue discipline against Mr. Siefert at that time (which it did not).

February 17, 2021 email, Mr. Siefert's performance as bartender was not lacking in any way. Second, the timing and context of the SAC's dismissal of Mr. Siefert as bartender is suspect, given that the SAC's termination of Mr. Siefert as bartender came in short succession after the MCAD rebuttal was filed. Third, in his email, Mr. Olszewski closely linked the subject of Mr. Siefert's MCAD rebuttal and his employment as bartender. For these reasons, I find that Mr. Siefert's first MCAD complaint was the determinative factor in the SAC's decision to terminate Mr. Siefert as bartender.

3. The SAC's Decisions to Deny Mr. Siefert's Access to the Website and to Remove Him from the BOD Were Retaliatory.

The April 24, 2021 decision to deny Mr. Siefert's administrative access to the website and the June 2, 2021 decision to remove him from the BOD were made 6-8 months after Mr. Siefert filed his first MCAD complaint. I did not find credible the contention that the SAC eliminated Mr. Siefert's access to the website because he was using the website to contact SAC members and defame the SAC. Other than Mr. Olszewski's self-serving testimony on this topic, there was no evidence that the website could have been or was being used by Mr. Siefert to contact SAC members. The falsity of the SAC's assertion that Mr. Siefert was improperly using the website, in addition to the timing of the decision to deny Mr. Siefert website access, leads me to the conclusion that it was retaliatory. MCAD and Sweet v. Massachusetts Bay Transp. Auth., 27 MDLR 252, 259 (2005).

In addition, I find that the June 2, 2021 decision to remove Mr. Siefert from the BOD was part of the responsive, retaliatory campaign that the BOD launched after receiving Mr. Siefert's first MCAD complaint, starting in December 2020 and ending in June 2021 with the decision to

remove Mr. Siefert from the BOD.<sup>26</sup> I reject the SAC's assertions that it removed Mr. Siefert from the BOD because of Mr. Siefert's BoH Comments and the Dave Hanson Incident. First, the BOD began to discuss removing Mr. Siefert as a BOD member on December 8, 2020, at the same time it made the retaliatory decisions to terminate Mr. Siefert as bar manager and remove his access to the keys to the new locks. This was before Siefert made the BoH Comments. Second, had the BOD truly believed the BoH Comments to be throwing the SAC "under the bus," one would expect that the BOD would have discussed these comments at its next meeting, the April 6, 2021 meeting which took place three weeks after the BoH Comments. It did not. Third, with regard to the Dave Hanson Incident, Mr. Siefert was enforcing Mr. Olszewski's promise to the Board of Health that the consumption of alcohol would not occur on the SAC premises.

I now turn to one of the other reasons stated by SAC for terminating Mr. Siefert from the BOD: to create a "harmonious board." There was no evidence that when there was conflict between BOD members, the SAC removed those BOD members in disagreement from the BOD, except when it came to Mr. Siefert. I infer from the term "harmonious board" that the SAC sought to remove Mr. Siefert from its BOD because of his MCAD complaint, and SAC's desire to create a board of directors who were not in active litigation with the SAC.

In summation, I find that the determinative factor in the SAC's decision to remove Mr. Siefert from the BOD was his first MCAD complaint, and the ensuing litigation.

#### 4. The No Trespass Order was not Retaliatory.

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<sup>26</sup> Due to a lack of evidence regarding the date that the May 24, 2021 MCAD complaint was served, I decline to rely on the temporal proximity of Mr. Siefert's second MCAD complaint and the June 2, 2021 decision to remove Mr. Siefert from the BOD in finding that the removal was retaliatory.

Approximately a year after removing Mr. Siefert from the BOD, in June 2022, SAC sent Mr. Siefert a No Trespass Order. SAC asserts that it sent the No Trespass Order because of: (1) Mr. Siefert's complaints about the SAC to the Environmental Police, the Shutesbury Select Board, the Shutesbury Police and the Shutesbury Board of Health based on Mr. Siefert's assumption that the SAC was selling hunted venison; and (2) Mr. Siefert's driving in the SAC parking lot. SAC's first reason is highly persuasive: at this point in the increasingly hostile relationship between Mr. Siefert and the SAC, the SAC reasonably felt harassed by Mr. Siefert's complaints to governmental agencies, based on Mr. Siefert's unreliable hunch that hunted venison was being served at the SAC and the SAC had engaged in wrongdoing.<sup>27</sup> While the No Trespass Order was a blunt device used to send a message to Mr. Siefert to abstain from contacting governmental agencies based on little to no evidence that the SAC was out of compliance with local and state rules, it was not issued in response to Mr. Siefert's MCAD complaints and as such, this portion of his retaliation claim is dismissed.

In conclusion, I find that the SAC retaliated against Mr. Siefert when it terminated him as bar manager and bartender, changed the locks at SAC and denied him a key, removed his access to the SAC website and removed him from the BOD. I dismiss Mr. Siefert's claim that the SAC issued a No Trespass Order against him because he had filed a complaint(s) at the MCAD.

#### IV. REMEDIES

Upon a finding of unlawful retaliation, the Commission is authorized, where appropriate, to award: 1) remedies to effectuate the purposes of M.G.L. c. 151B; 2) damages for lost wages and benefits; and 3) damages for the emotional distress suffered as a direct result of retaliation. See Stonehill College v. MCAD, 441 Mass. 549, 567-568 (2004); Buckley Nursing Home v. MCAD,

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<sup>27</sup> While the SAC's contention that Mr. Siefert was driving in the SAC parking lot was not supported by the evidence, he did drive past the SAC in the 12 months prior to the issuance of the No Trespass Order.

20 Mass. App. Ct. 172, 182-183 (1988). The Commission has been delegated broad discretion and authority to award “make whole” relief. DeRoche v. MCAD, 447 Mass. 1, 13-15 (2006).

A. BACKPAY DAMAGES

Generally, backpay is the amount a victim of discrimination “would have earned from the time of her wrongful separation” to the time of trial. Beaupre v. Cliff Smith & Associates, 50 Mass. App. Ct. 480, 496, n. 25 (2001). However, the SAC was closed due to the COVID pandemic at the time that SAC terminated Mr. Siefert from the bar manager and bartender positions. No SAC employee was receiving wages from SAC at that time. Thus, from the time that Mr. Siefert was terminated from the bar manager and bartender positions to SAC’s reopening on June 4, 2021, Mr. Siefert had no reasonable expectation of receiving a paycheck. It is therefore appropriate to commence backpay damages from June 4, 2021, which is the date that SAC re-opened and would have resumed paying Mr. Siefert, had it not retaliated against him by terminating his employment.

Having determined a starting date for calculating backpay, I next address whether the income received by Mr. Siefert after the retaliatory terminations by SAC -- for working as a housekeeper, for Literacy Volunteers and/or for Wendell Country Store -- reduces the amount of backpay to which he is entitled, or changes the period backpay damages accrue. Mr. Siefert argues that he could have worked additional hours while employed part-time at the SAC and should not be penalized or subjected to a deduction of backpay damages for the additional hours he worked after SAC terminated his employment. The income Mr. Siefert earned working as a housekeeper and for Literacy Volunteers after the retaliatory terminations does not reduce backpay. Mr. Siefert demonstrated his ability to work as a housekeeper and for Literacy Volunteers while also

working for SAC.<sup>28</sup> That he continued to work as a housekeeper after the retaliatory terminations does not affect his recovery of backpay. The same conclusion applies to Literacy Volunteers. Between March 1, 2021 and July 1, 2022, Mr. Siefert received compensation from Literacy Volunteers and averaged 6.6 hours per week working at Literacy Volunteers – just slightly more than he averaged as a volunteer for Literacy Volunteers while working at SAC.<sup>29</sup> The make-whole purpose of backpay damages would be frustrated by deducting compensation obtained from housekeeping and Literacy Volunteers, which were jobs which Mr. Siefert could have held even if he had not been retaliatorily terminated by SAC. As such, I decline to deduct from lost wages the income Mr. Siefert received from housekeeping and Literacy Volunteers after the retaliatory terminations.

Mr. Siefert's employment at Wendell Country Store is, however, in a different category. On July 1, 2022, Mr. Siefert obtained a part-time job at Wendell Country Store, where he was paid a significantly higher hourly rate than at SAC and worked a schedule that frequently surpassed the 20 hours/week that he worked at SAC. When Mr. Siefert became employed at Wendell Country Store, he had fully replaced the hours and substantially surpassed his hourly compensation at SAC, providing an appropriate end point to the period of backpay damages.

Thus, Mr. Siefert's backpay damages run from June 4, 2021 until July 1, 2022 (56 weeks). Mr. Siefert earned approximately \$141.69/week as SAC's bartender and bar manager. Backpay damages are calculated as follows: 56 weeks X \$141.69/week = \$ 7,934.64.<sup>30</sup>

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<sup>28</sup> From December 24, 2018 to May 30, 2023, Mr. Siefert worked weekly as a housecleaner on a seasonal basis. Starting in July 2019, Mr. Siefert volunteered approximately four hours per week at the Literacy Volunteers.

<sup>29</sup> From March 2021 to April 30, 2024, Mr. Siefert worked as Acting Coordinator for Literacy Volunteers, earning \$20/hour. I focus on the period ending July 1, 2022 because, as detailed below, I cut off backpay as of July 1, 2022.

<sup>30</sup> I reject SAC's argument that Mr. Siefert failed to mitigate. During the period of backpay, individuals

## B. EMOTIONAL DISTRESS DAMAGES

The Commission is authorized to award damages for emotional distress resulting from a respondent's unlawful conduct. Stonehill College v. MCAD, 441 Mass 549 (2004). Awards for emotional distress must "be fair and reasonable, and proportionate to the distress suffered." Id. at 576. Some of the factors to be considered are: "(1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the Complainant has suffered and reasonably expects to suffer; and (4) whether the complainant has attempted to mitigate the harm..." Id. The Complainant "must show a sufficient causal connection between the respondents' unlawful act and the complainant's emotional distress." Id. Complainant's entitlement to an award of monetary damages for emotional distress does not need to be based on expert testimony; it can be based solely on complainant's testimony as to the cause of the distress. Proof of physical injury or psychiatric consultation is not necessary to sustain an award for emotional distress. Id.

Mr. Siefert enjoyed his employment as bar manager and bartender, and it was apparent from his demeanor while testifying about these jobs, that these positions made him feel that he was an integral part of his local community. Maintaining access to SAC's physical space by having a key was an essential component of carrying out his duties as bar manager. When SAC changed the locks and did not allow Mr. Siefert to have a key, it was very hurtful and worrisome because he felt that the SAC did not trust his ability to work as bar manager and to keep the building safe.

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have an obligation to exercise reasonable diligence in finding alternative suitable employment. The burden of proof to show a failure to exercise reasonable diligence lies with the employer. Moore v. Industrial Demolition LLC, 138 F. 4<sup>th</sup> 17, 41-43 (1st Cir. 2025); J.C. Hillary's v. MCAD, 27 Mass App. Ct. 204 (1989). An employer must prove that: (1) one or more discoverable opportunities for comparable employment were available in a location as convenient as, or more convenient than, the place of former employment, (2) the employee unreasonably made no attempt to apply for any such job, and (3) it was reasonably likely that the employee would obtain one of those comparable jobs. Moore, supra, at 41-43. The SAC did not sustain this burden as it made no showing of one or more discoverable opportunities for comparable employment in a location as convenient as the SAC.

When he was terminated as bartender, it had a negative effect on his marital relationship, made him feel scared about his future in Shutesbury, and caused him to fear for his financial future. Mr. Siefert found being in public in his own community to be difficult because of his concern that his reputation had been damaged by his abrupt departure as SAC's bartender and bar manager. Based on his description of his distress, the drawn-out nature of the retaliatory actions by SAC, and the fact that Mr. Siefert continues to reside in Shutesbury, I infer that Mr. Siefert reasonably suffered from a feeling of public shaming for at least a year from the time he was terminated as bartender and bar manager.

Similarly, Mr. Siefert's election to the SAC board was significant to him. His ejection from the board caused him a lot of anxiety, made him feel "emotionally deflated" and caused concern that others would think he was "not a good person." Based on my observation of Mr. Siefert when testifying on this subject, it was apparent that his dismissal from the board affected him at the time of hearing.

Mr. Siefert spent time talking with his husband and his friends to try to process his feelings about the collapse of his employment and board membership at SAC.

Based on the evidence before me, I conclude that Mr. Siefert is entitled to an award of **\$85,000** in damages for the emotional distress he suffered as a direct and proximate cause of SAC's retaliatory actions.

## V. ORDER

For the reasons detailed above, and pursuant to the authority granted me under Section 5 of Chapter 151B, I order the following:

1. Cease and Desist: Respondent Shutesbury Athletic Club, Inc. shall immediately cease and desist from retaliating against its employees.
2. Compensatory Damages: Respondent Shutesbury Athletic Club, Inc. is ordered to pay to Thomas (“Tom”) Siefert damages in the amount of \$ 7,934.64 with interest thereon at the rate of 12% per annum from the date that backpay from the retaliatory acts began to accrue<sup>31</sup> -- **June 4, 2021** --until such time as payment is made or until this Order is reduced to a Court judgment and post-judgment interest begins to accrue.
3. Emotional Distress Damages: Respondent Shutesbury Athletic Club, Inc. is ordered to pay to Thomas (“Tom”) Siefert emotional distress damages in the amount of \$ 85,000 with interest thereon at the rate of 12% per annum from **December 18, 2020**<sup>32</sup> until such time as payment is made or until this Order is reduced to a Court judgment and post-judgment interest begins to accrue.

## VI. NOTICE OF APPEAL

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 within 10 days of receipt of this decision and file a Petition for Review within 30 days of receipt of this decision. 804 CMR 1.23 (2020). If a party files a Petition for Review, the other party has the right to file a Notice of Intervention within ten days of receipt of the Petition for Review and shall file a brief in reply to the Petition for Review within 30 days of receipt of the

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<sup>31</sup> DeRoche, 447 Mass. at 16 (assessment of interest on back pay award should commence on date back pay began to accrue).

<sup>32</sup> I have found that the SAC engaged in several acts which comprised a retaliatory campaign commencing in December 2020, when the SAC notified Mr. Siefert that he was no longer bar manager, and culminating in Mr. Siefert’s removal from the BOD in June 2021. The date that pre-judgment interest on the emotional distress damage award should commence is the date that this retaliatory campaign started: December 18, 2020. Choosing this date best accomplishes the purpose of making Mr. Siefert whole from the emotional distress that he suffered due to SAC’s retaliatory conduct. DeRoche at 13-14.

Petition for Review. 804 CMR 1.23 (2020). All filings referenced in this paragraph shall be made with the Clerk of the Commission with a copy served on the other parties.

VII. PETITION FOR ATTORNEYS' FEES AND COSTS

Any petition for attorneys' fees and costs shall be submitted to the Clerk of the Commission within 15 days of receipt of this decision. Pursuant to 804 CMR 1.12 (19) (2020), such petition shall include detailed, contemporaneous time records, a breakdown of costs and a supporting affidavit.<sup>33</sup> Shutesbury Athletic Club, Inc. may file a written opposition within 15 days of receipt of said petition. All filings referenced in this paragraph shall be made with the Clerk of the Commission, with a copy served on the other parties.

SO ORDERED this 16th day of April, 2026.

*Simone R. Liebman*

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Simone R. Liebman  
Hearing Officer

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<sup>33</sup> The petition should include specific information about the hourly rates of attorneys with similar years of experience who conducted similar work at the times the services in this case were provided and who worked in the same or similar community. A non-exhaustive list of sources of data are model fee charts; market surveys from courts, legal services, or private entities such as Wolters Kluwer Real Rate Reports or Massachusetts Lawyers Weekly; Commission decisions awarding attorneys' fees; and affidavits from other attorneys with knowledge of hourly rates charged by attorneys in the same or similar community with similar years of experience performing similar work in a similar period.