

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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JESSICA FIASCONARO<sup>1</sup> and  
MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION,  
Complainants

Against

Docket No. 10 NPA 00048

ARIA BRIDAL and  
FORMAL, INC.

Respondent

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Appearances: Bill Green, Esq., for the MCAD<sup>2</sup>

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about January 8, 2010, Jessica L. Fiasconaro (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) alleging that Respondent Aria Bridal and Formal, Inc. violated M.G.L. c. 151B and M.G.L. c. 272, sections 92a, 98 and 98a when its salesperson denied her access to the bridal showroom on the basis that she was in a wheelchair.

The MCAD issued a probable cause finding on December 24, 2010 and certified

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<sup>1</sup> Fiasconaro is a minor. Elizabeth Cheney, her mother/guardian participated in the filing of the complaint and attended the public hearing.

<sup>2</sup> Commission Counsel Green presented the case on behalf of the MCAD (the “Commission”) and represented the interests of Complainant Fiasconaro to the extent her interests coincided with those of the Commission.

the case for public hearing on August 28, 2012. A public hearing was held on May 28, 2013. Commission counsel participated in the hearing. Respondent's owner, Sung K. So, attended the hearing but was not represented by counsel.

The Complainant testified at the public hearing on her own behalf. Sung B. Yoon testified on behalf of Respondent. No exhibits were offered into evidence.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

## II. FINDINGS OF FACT

1. Complainant Jessica L. Fiasconaro is a minor (DOB 12/18/97) with a diagnosis of quadriparesis Cerebral Palsy and oculo-motor dysfunction with convergence insufficiency and visual field loss. She is unable to walk and navigates by using a wheelchair with the assistance of an aide.
2. Aria Bridal and Formal, Inc. is a business located at 101 Independence Mall Way in Kingston, MA 02364. It is owned by Sung K. So.
3. On November 23, 2009, Complainant went into Aria Bridal with her aide Miranda Rinaldi and her mother's friend Amanda Hodson. Rinaldi was approximately seventeen years old and was looking for a prom gown.
4. Complainant was seated in a small wheelchair which she describes as similar to a "stroller." She was being pushed by Hodson.
5. Complainant testified that after she, Hodson, and Rinaldi entered the store, they proceeded down an aisle to look at dresses and as they did, an individual who appeared to be a salesperson said, "Move your cart to the front of the store."
6. Sung B. Yoon testified that he was the individual who was present at the store on the

day in question and spoke to Complainant and her companions. Complainant testified that she did not recognize Mr. Yoon, but I conclude, on the basis of his testimony, that he was the individual present in the store on November 23, 2009.

7. According to Complainant, Rinaldi asked why the wheelchair had to remain at the front of the store and the salesperson said something about the aisles. Complainant and her friends tried to communicate with Yoon but could not do so because of a language barrier. Complainant denied that she was having trouble negotiating the aisles or that there was insufficient room in the aisles for her wheelchair. I credit her testimony.
8. After Complainant and her companions left the store, they filed a complaint with the mall manager's office. A mall employee accompanied Complainant and her companions back to the store and spoke to Mr. Yoon about widening the aisles.
9. Elizabeth Cheney, Complainant's mother, testified that when her daughter and companions returned home, they were very upset about the incident. Cheney described her daughter as "flustered" and "hurt." Cheney testified that her daughter was thereafter afraid to go to public places unless she was assured, in advance, that she would be welcome.
10. Mr. Yoon testified that on November 23, 2009, he was filling in for his wife at the bridal store where she was worked. According to Yoon, the store's owner was his friend. Yoon denied being paid for working at the store, but acknowledged that his wife was a paid employee and that he was substituting for her.
11. Yoon described Complainant and her companions as "giggling," "talking loudly," "almost running," and pushing the wheelchair in a "rushing" and "dangerous"

fashion. Yoon testified that he said, “Please, you better be out of the aisles because there are lots of dresses and you might get hurt” or, “Please stay out of that aisle and you’d better slow down.” Yoon denied telling Complainant to go to the front of the store. I do not credit his testimony.

12. According to Yoon’s testimony at the public hearing, he was not concerned that display dresses would be harmed by Complainant’s wheelchair but was afraid that the dresses would get entangled in the wheelchair and cause Complainant to have an accident. I do not credit this testimony.
13. Yoon maintains that after he cautioned Complainant and her companions to be careful, they started to yell, said that they would never come back, and threatened to tell people not to patronize the store. He testified that approximately an hour after the incident, a security man came into the store and said that the aisles should be wider and the dress racks higher. I credit that Complainant and her companions protested Yoon’s conduct prior to leaving the store but do not credit that they yelled and threatened Yoon.
14. Yoon testified that he was so upset about the incident that he left early in the afternoon and that someone else covered the store in his absence.
15. Complainant testified that the incident was “really embarrassing” and that she was subsequently diagnosed with generalized anxiety disorder. Following the incident, Complainant had her mother call stores ahead of time to make sure that they were handicap-accessible.

### III. CONCLUSIONS OF LAW

M. G. L. c. 272, sec. 98 provides, *inter alia*, that whoever makes any distinction, discrimination or restriction on account of any physical or mental disability relative to the admission of any person to, or his treatment in any place of public accommodation, resort or amusement, as defined in section ninety-two A, or whoever aids or incites such distinction, discrimination or restriction, shall be punished by a fine of not more than twenty-five hundred dollars or by imprisonment for not more than one year, or both, and shall be liable to any person aggrieved thereby for such damages as are enumerated in section five of chapter one hundred and fifty-one B. Pursuant to sec. 5 of G. L. c. 151B, the MCAD has jurisdiction to accept, investigate, and adjudicate complaints brought pursuant to G. L. c. 272, sec. 98.

In order to establish a prima facie claim of discrimination in a place of public accommodation, Complainant must prove that: 1) she is a member of a protected class; 2) she was denied access to or restricted in the use or enjoyment of an area or facility; and 3) the area or facility was a place of public accommodation. See Bachner v. Charlton's Lounge and Restaurant, 9 MDLR 1274, 1287 (1987). Once Complainant establishes these elements, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for its conduct. If Respondent meets this burden, the burden shifts back to the Complainant to show, by a preponderance of the evidence, that Respondent's articulated reason(s) are pretextual. See Wheelock College v. MCAD, 371Mass. 130, 136 (1976).

Complainant satisfies the initial burden of proving a prima facie case of discrimination. She has Cerebral Palsy, uses a wheelchair, and is assisted by a personal aide. She entered Aria Bridal and Formal, Inc., a place of public accommodation that

sells wedding dresses and other formal apparel to the public. Complainant was restricted in the use or enjoyment of the showroom when she was instructed to go to the front of the store and not permitted to browse its aisles in her wheelchair. According to Complainant's credible testimony, the wheelchair she was using at the time resembled an oversized stroller and did not present any difficulty negotiating the aisles of the store or pose a threat to the dresses on display.

Mr. Yoon claims that he was concerned for Complainant's safety rather than the condition of the gowns on display, but such a contention is not believable. I deem it more credible that he feared the store's inventory of dresses would be damaged if run over by Complainant's wheelchair. Mr. Yoon claimed that Complainant and her companions were "giggling," "talking loudly," "almost running," and pushing the wheelchair in a "rushing" and "dangerous" fashion. These claims were credibly denied by Complainant. Moreover, his request or instruction to Complainant that she vacate the aisles of the store based on concerns about safety shifts the responsibility for maintaining safe conditions away from the store where it rightfully belongs.

Although Complainant has satisfied the elements of a prima facie case, the status of Mr. Yoon, as a substitute for his wife, must be addressed. He claims that he was a volunteer and/or friend of the store's owner, not a salesperson employed by the store. Even so, he was filling in for his wife who was a paid employee and held himself out as having authority to make representations for and take action on behalf of the establishment. When Complainant and her companions entered the store, they reasonably viewed Mr. Yoon as the individual in charge, and given his admonition to them, he communicated that he had such authority. Had Miranda Rinaldi bought a prom

gown from the store, Mr. Yoon would have handled the transaction. Thus, Mr. Yoon functioned as an agent for the store. See Rome v. Transit Express, Inc. et al., 22 MDLR 88 (2000) (bus companies liable jointly and severally for discrimination by bus driver); Floyd v. Forest Hill Cab Co., 15 MDLR 1181 (1993) (cab company liable under agency principles for taxi drivers who are independent contractors as long as the taxi drivers are engaging in discriminatory practices within scope of their actual or apparent authority).

Mr. Yoon made a “distinction, discrimination or restriction” based on Complainant’s physical disability by asking her to remove herself from the store’s aisles. In doing so, Mr. Yoon took steps related to the store’s operation. These actions had the effect of distinguishing Complainant from other shoppers in a place of public accommodation and in so doing, established liability for discrimination on the part of the store’s owner.

#### IV. DAMAGES

Upon a finding of unlawful discrimination, the Commission is authorized to impose remedies to effectuate the purposes of G.L. c. 151B and to assess damages for the emotional distress suffered as a direct result of Respondent’s discriminatory actions. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, Div. of Interco, Inc. v. MCAD, 400 Mass. 156 (1987); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). The appropriate remedies in this case are a cease and desist order, the requirement that Respondent’s owner and all of the store’s employees attend discrimination training, and damages for the emotional distress suffered by Complainant. As far as damages are concerned, such an award may be based on Complainant’s testimony concerning the emotional harm she experienced as a result of the unlawful act

of discrimination. See Stonehill College v. MCAD, 441 Mass. 549, 576 (2004). Factors to be considered are the nature, character, severity, and duration of the harm and whether Complainant attempted to mitigate the harm. Id.

Complainant testified credibly that the incident was “really embarrassing” to her. Her mother corroborated that when her daughter and companions returned home, they were very upset and that her daughter was “flustered” and “hurt.” Complainant was subsequently diagnosed with generalized anxiety disorder. Complainant asked her mother thereafter to call stores ahead of time to make sure that they were handicap-accessible in order to be assured that she would be welcome. Based on the foregoing, I conclude that Complainant is entitled to \$1,500.00 in emotional distress damages.

#### V. ORDER

Based on my findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G.L. c. 151B, sec. 5, Respondent is ordered to:

- 1) Cease and desist from engaging in any discriminatory conduct in violation of M.G.L. 151B;
- 2) Pay Complainant, within sixty (60) days of receipt of this decision, the sum of \$1,500.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.
- 3) Attend employment discrimination training within one hundred twenty (120) days of the receipt of this decision from a trainer provided by the Massachusetts Commission Against Discrimination or a graduate of the MCAD’s certified “Train the



Trainer” course. The training shall be provided to Respondent’s owner and to all store employees. At least one month prior to the training, notice of the date and location shall be submitted to the Commission. Following the training session, Respondent shall send to the Commission the names of all persons who attended the training.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 4th day of September, 2013.

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Betty E. Waxman, Esq.,  
Hearing Officer

