

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
MARCUS EDDINGS,
Complainant

v.

DOCKET NO. 05-BPA-03196

CAPITOL COFFEE HOUSE,
Respondent

Appearances: Gerard Malone, Esq., for the Complainant
Douglas Hyne, Esq., for the Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF THE HEARING COMMISSIONER

I. PROCEDURAL HISTORY

On December 5, 2005, Complainant, Marcus Eddings, filed a complaint with this Commission against Respondent, Capitol Coffee House, alleging that he was discriminated against in a place of public accommodation on the basis of his race in violation of G. L. c. 272, § 98. The Complaint arose out of an incident in which Complainant, who is African American, alleged he was treated differently from white individuals who were his colleagues, when he was asked to pay prior to being served his order while his colleagues were not.

The Investigating Commissioner found probable cause to credit the allegations of the complaint and subsequent conciliation efforts were unsuccessful. The matter was

certified for a public hearing, which took place before me on February 7, 2008.¹ Having reviewed the record in this matter and the post-hearing submissions of the parties, I make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Complainant, Marcus Eddings, is an African American male. He is employed by the Boston Police Department (“BPD”) as a sergeant detective in the internal affairs division. Prior to holding this position, and at the time of the events relevant to this matter, Complainant performed undercover drug work for the BPD.

2. Respondent, Capitol Coffee House, is a restaurant that serves breakfast and lunch and is located at 122 Bowdoin Street in Boston, Massachusetts. Respondent is owned and operated by Sam Maione.

3. Customers of Respondent place their orders at the counter upon entry, either for take-out or, alternatively, they eat in at the counter or at a table. While the restaurant does contain several tables for customer use, Respondent does not offer table service and, accordingly, does not employ any wait staff. Raffaele Maione, the owner’s son, testified that the tables are located in the back of the restaurant, which is not in plain view of the counter, and he identified pictures showing how the restaurant is laid out. (Exhibits. R-2; R-3; R-4)

¹ At the time of the Hearing and until February of 2010, the undersigned served as a Commissioner of the MCAD and was the Hearing Officer in this matter. By way of special designation by the current Chairman of the MCAD, the undersigned retained authority to issue this Hearing Officer decision.

4. At the time of the hearing, Raffaele Maione had worked at Respondent for eight years as a full-time employee and for fifteen years on a part-time basis. His job was to take customers' food and drink orders.

5. On September 10, 2005, at some time between ten and eleven o'clock in the morning, four of Complainant's fellow officers entered Respondent coffee shop to have breakfast. These individuals—Scott Mackie, Brian Waters, Gerard Bailey, and Garrett Mitchell—are all Caucasian. Since their assignment in the BPD's drug unit that day was of an undercover nature, all of the detectives were dressed in plain clothes, and not in uniform, and were otherwise not identifiable as police officers.

6. Complainant and another fellow detective, Michael Ross, entered the Respondent coffee shop several minutes after the first four individuals, with the intention of joining them for breakfast. Complainant testified that he was the only African American individual in the coffee shop at the time.

7. Scott Mackie, Brian Waters, and Gerard Bailey testified on behalf of Complainant at the public hearing. All three individuals testified that upon entering the coffee shop, they proceeded to the counter and placed their orders with Raffaele Maione. They all testified that they were not asked to pay when they placed their orders.

8. There was conflicting testimony among Complainant's four witnesses about whether the men sat at the counter after they ordered. Mackie testified that he did not sit down at the counter but proceeded to a table immediately after ordering. Waters testified that he did not believe that he sat down at the counter, but he acknowledged that he might

have sat down as he was placing his order. When presented with his affidavit on cross-examination, wherein he stated that he sat down, Waters testified that he might have sat down at the counter but that he did not intend to eat there. Bailey testified that he remained standing while placing his order, but he also stated that he could not “say for certain” whether any of his colleagues sat down at the counter. Waters and Bailey both testified that they walked to a table and sat down after placing their orders.

9. Complainant testified that when he and Michael Ross entered Respondent, their four colleagues were already at the counter placing their orders and that “at some point in time they got up to move to the rear.”

10. Michael Ross testified on direct examination that when he and Complainant entered the shop, their four colleagues were “already seated in the restaurant.” On cross-examination, Ross testified that two of his colleagues were standing and two were sitting at the counter. When presented with his affidavit, in which he testified, “Bailey, Mitchell, Mackie and Water were all seated on stools at the front of the restaurant,” Ross acknowledged the discrepancy with his testimony.

11. Ross testified that once he approached his colleagues, who were completing the process of placing their orders, he began to joke around with them. Ross testified that after they finished ordering, his four colleagues (Mackie, Waters, Bailey, and Mitchell) moved to a table since there was not enough room for all six of the men to sit together at the counter. Ross testified that his co-workers’ drinks were placed on the counter and he carried them back and put them on the table.

12. Complainant testified that after Raffaele Maione took the orders from Complainant's colleagues, Maione checked on two patrons who were seated at the counter and then returned to Complainant. Complainant testified that he placed his order after Maione asked, "What do you want?" Complainant testified that immediately after he placed his order, Maione told him, "Wait, you have to pay first." Complainant testified that he was taken aback by this request, and that he turned to Ross, who was behind him, and said, "That's fucked up." Complainant testified that he then said to Ross, "Nobody else was asked to pay for their food." Complainant testified that while he initially paid for his order, he told Maione a few minutes later, "I want my money back." Complainant testified that as Maione was returning his money, Maione said, "I was going to give them a bill." Complainant testified that there was a distinction between the way Maione spoke to him and the way he spoke to the others in the restaurant. He stated that he believed Maione wouldn't have let him stay there "if he didn't have to."

13. Complainant testified that after he ordered, Maione said to him, "Wait, you have to pay first." Complainant's initial testimony placed no particular emphasis on any part of Maione's statement. Upon repeated questioning about Maione's statement from his counsel—questioning that caused counsel to be admonished not to lead the witness—that Complainant repeated Maione's statement, placing a slight emphasis upon the word "**you**," as if to imply Maione was singling him out, presumably because of his race. Maione denied ever making this statement to Complainant, stating instead that he asked Complainant if he was with the others and if he wanted a separate bill, and that he told Complainant what he owed for his order, thereby indicating that payment was due. I

credit Complainant's testimony that he was asked for payment up front and that he was the only one in the group that had to pay at the time he placed his order.

14. Raffaele Maione testified that when Complainant's four colleagues entered the restaurant, there were already between six and eight patrons in the coffee shop. Maione stated that the four men approached the counter and one of them spoke to Maione's co-worker, who told them that Respondent did not provide table service. Maione testified that the men then placed their orders with him and that they all sat down at the counter. Maione testified that they later moved to a table in the back, while he was dealing with Complainant and Ross, before he had an opportunity to ask for payment.

15. According to Maione, Respondent's policy is that if patrons are taking their purchases away from the counter, they need to pay before doing so. He noted that there is a sign posted in the shop that reads "Please Pay When Served" to notify patrons of this policy. (Exhibit R-8) Complainant and his witnesses all testified that they did not recall seeing this sign. Maione testified that the reason for the payment policy is that things can get chaotic when a lot of people enter the restaurant and order at once and it is hard to keep track of who has paid and who has not. Maione testified that he did not ask Complainant's four colleagues to pay at the time they ordered since they were seated in plain view at the counter right in front of him. He stated that in his experience, people who sit at the counter "usually stay at the counter."

16. Maione testified that after Complainant and Ross came into the coffee shop, he realized they knew the first four individuals because they were conversing together. He stated that when Complainant placed his order, he asked Complainant if he was with

the others and if he wanted his order to be put on the same bill with the others, but Complainant indicated he wanted a separate bill. Maione testified that he did not ask the other four men to pay when he observed them leaving the counter to go to a table because he wanted to offer Complainant and Ross the opportunity to “be on the same bill” with the others. He also testified that he was trying to “give good service” by taking Complainant’s order first rather than making him wait while “chasing the others down first.”

17. Maione testified that once he realized that the men were going to sit at a table, he sought payment from them as soon as it made sense to do so. He stated that he took Complainant’s order first rather than chasing after the four men for payment as they moved to the back of the restaurant. After taking Complainant’s order, Maione rang up a bill and brought it to the table requesting payment. Complainant testified that before Maione took his order, Maione paused to ask a couple of patrons at the counter if everything was all right.

18. Maione stated that after Complainant indicated his preference for a separate bill, he rang up the bill and told him the total. He stated that Complainant then paid for his order. As Maione was giving Complainant his change, Complainant asked if the others had paid for their orders and Maione responded that they had not yet paid, but that he was on his way to give them their bill. Maione denied ever saying to Complainant, “Wait, you have to pay first.” As stated above, I credit Complainant’s testimony that he was asked to pay directly after his placed his order, and that he reacted immediately to

the statement by turning to his colleague, Ross, and saying, “That’s fucked up” and, “Nobody else was asked to pay for their food.”

19. Maione testified that Complainant asked for his money back directly after he paid for his food. Maione stated that he tried to explain the reason he had not yet collected money from the others, but Complainant just walked out of the shop. According to Maione, he then brought a bill to the table where the other four men were seated and one of the men asked what had happened. Maione replied that Complainant had paid but was not happy about it. He stated that one of the men said, “We have to stay together,” and then they all left the restaurant.

20. Maione testified that when he told Complainant what he owed, he was not asking him to pay before being served on account of his race, and that he harbored no discriminatory intent. He stated that he did observe that Complainant was not pleased about having been asked to pay. Maione testified that he has never before had a complaint of discrimination brought against him, either at this job or in any position.

21. Ross testified that he was not at the counter when Complainant placed his order, and did not observe the interchange between Complainant and Maione. He believed he was delivering the drinks to his colleagues at that time. Ross testified that when Complainant told him what had happened, he said to Complainant, “Okay, let’s get out of here.” Ross testified that he could tell from Complainant’s demeanor that he was upset, and when he told the others what Complainant had relayed to him, the rest of the police officers left the shop.

22. Mackie, Waters, and Bailey testified that they did not observe the interaction between Complainant and Maione, as they were seated at a table by the time the interaction occurred. Waters testified that he did not learn about the alleged incident until after he left the restaurant. Mackie and Bailey testified that they were at the table when Ross told them what had transpired. It is clear that they did not witness the interchange that occurred between Complainant and Maione.

23. Mackie testified that as he and his colleagues were walking toward the exit, Maione tried to give them a bill. Waters testified that Maione tried to give them a bill at their table before they rose to leave. He stated that they told Maione not to bother with the bill.

24. Sam Maione, Respondent's owner, testified that he makes all of the rules and policies at Respondent. He testified that the restaurant services somewhere between 550 and 800 customers per day, and that there is usually a morning rush for breakfast. He stated that the procedure is for the person taking the order to ask if the order is "for here or to go" and to ring in the order. He stated that it is customary to then ask for payment. According to Maione, a sign reading "Please Pay When Served" has been posted on Respondent's wall for thirty-one years, since the restaurant was founded, and that the sign's purpose is "to avoid a lot of misunderstandings."

25. Sam Maione testified that while it is customary for a patron to pay when their order is taken, as he claimed the sign instructs, this rule is "relaxed" if a patron sits at the counter, because those seated at the counter are right in front of Respondent's employees and do not need to be tracked down through a steady throng of customers.

26. Sam Maione testified that throughout the restaurant's thirty-one years of operation, Respondent has never received a complaint of discrimination other than Complainant's. He stated that he serves many state employees, state legislators, and on occasion even the Governor.

III. CONCLUSIONS OF LAW

Massachusetts General Laws, c. 272, § 98, makes it an unlawful practice to make any distinction, discrimination, or restriction on account of race relative to a person's admission to, or his treatment in, any place of public accommodation. Massachusetts General Laws c. 151B § 5 grants the Commission authority to adjudicate complaints of discrimination in a in a place of public accommodation and the Commission may order the remedies and relief prescribed in G. L. c. 151B, § 5.

The Commission analyzes complaints of public accommodation discrimination in accordance with the disparate treatment standard set forth in Wheelock v. MCAD, 371 Mass. 130, 134–136 (1976); Lipchitz v. Raytheon Co., 434 Mass. 493, 495 (2001); Reese v. May Dept. Store, 24 MDLR 395, 399 (2002). To establish a *prima facie* case of discrimination in a place of public accommodation, Complainant must demonstrate that he was (1) a member of a protected class, (2) denied access to, restricted, or treated differently from others not in his protected class, and (3) in a place of public accommodation. Yu v. Li, 28 MDLR 212, 221 (2006).

I find that Complainant has established a *prima facie* case of discrimination. Complainant is member of a protected class by virtue of his race. He alleges that while

his colleagues, who are not African American, were not required to pay up-front at Respondent coffee shop when they placed their orders, he was nevertheless required to do so. Thus Complainant has demonstrated that he was “treated differently from others not in his protected class” at a restaurant, a place of public accommodation

Once Complainant has established a *prima facie* case of discrimination, Respondent must articulate and produce credible evidence to support a legitimate, non-discriminatory reason for its actions. Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000). Raffaele and Sam Maione both testified that Respondent has a longstanding policy that requires customers to pay when their order is taken, and that this policy is reflected by a sign hanging on the wall that reads “Please Pay When Served.” Respondent asserts that its policy is stated in a sign that is clearly visible to patrons. Respondent acknowledged that Complainant was not asked to pay when he was served, as they allege the sign specifies, but when he ordered. Respondent argues that because it does not have wait staff or table service, the policy is that customers generally pay upon placing their orders. While this may in fact be Respondent’s policy, Maione did not adhere to that policy on the day in question, and a preponderance of the evidence establishes that Respondent’s reasons for requiring Complainant to pay for his food when he ordered it were not credible but, rather, a pretext for racial discrimination.

Respondent relies upon this sign as evidence of its policy, which it claims indicates it had a legitimate, non-discriminatory reason for asking Complainant to pay up-front. Thus Respondent asks the Commission to interpret this policy as “please pay when placing order.” In my view, Respondent’s interpretation of its requirement for

payment up-front strains credibility given that the plain language of the sign indicates that payment is due when the food is served, not when the order is placed.

Complainant, who is an African American undercover police officer, was the only non-Caucasian in his party and the only person subjected to this asserted “policy.” None of his fellow officers who were white were required to pay for their orders up-front. I find that not only the plain meaning of the sign requesting payment when served, but also the disparate treatment of Complainant, expose the pretext in Respondent’s proffered rationale for asking Complainant to pay for his food when he placed his order.

I conclude that Respondent’s explanation for the disparate treatment of Complainant is not credible. Respondent asserts that the rule requiring payment up-front is relaxed when a customer sits at the counter in plain view of its counter help. While Respondent attempted to articulate that it occasionally deviates from its policy of requiring payment from patrons when their order is taken, the proffered explanation that this was because Complainant’s colleagues may have initially sat at the counter is not credible.² It does not sufficiently explain why Complainant was treated differently from his white colleagues. The undisputed evidence is that Mackie, Waters, Bailey, and Mitchell were not required to pay at the time they placed their orders. Complainant was clearly a member of the same party, and Maione knew this because he witnessed them conversing and asked if Complainant wanted to be on the same bill. Since Maione intended to bring the bill to their table, there is no reasonable explanation as to why Complainant should not have been treated similarly. Maione’s explanation does not explain why the rule was relaxed for the others in Complainant’s party but not for him.

² While there were some minor discrepancies in the testimony about whether the initial party sat at the counter or not, I do not find these discrepancies to be dispositive of the outcome and they do not impact my determinations as to credibility.

Indeed, Maione stated that when Complainant placed his order, he asked Complainant if he was with the others and if he wanted his order to be on the same bill. Given Maione's understanding that Complainant was accompanying the other individuals, it stands to reason that Complainant would have proceeded to join the others once he placed his order. But the undisputed testimony from both Complainant and Maione is that, in contrast to how the others were treated, Maione stopped Complainant and asked him to pay before he proceeded to join his colleagues at the table. Rather than simply allowing Complainant to join the others at their table after ordering, and treating Complainant similarly as a member of that party by bringing both bills to the table, Maione singled out Complainant by seeking immediate payment. I conclude that there is no other reasonable explanation for this disparate treatment other than Complainant's race.

It is also undisputed that not only were the white individuals not required to pay for their food upon ordering, as was Complainant, but they were also not stopped and required to pay when they proceeded to leave the counter area to seat themselves at a table in the back of the restaurant. Maione testified that he did not ask the others to pay when he observed them leaving the counter area to go to a table because he wanted to offer Complainant and Ross the opportunity to "be on the same bill" with the others. He also testified that he was trying to "give good service" by taking Complainant's order first rather than making him wait while "chasing the others down first." I do not find this explanation credible. It is undisputed that after taking Complainant's order, Maione rang up a bill for the others and brought it to the table requesting payment. Maione's testimony that he proceeded immediately to the table was belied by the fact that he paused to ask a couple at the counter if everything was all right even before he took Complainant's order.

While Maione sought immediate payment from Complainant, he did not display the same urgency in pursuing Complainant's colleagues for payment.

Accordingly, I conclude that Complainant has proven, by a preponderance of the evidence, that Respondent's reasons for the disparate treatment of Complainant were a pretext for race discrimination and that the real reason for Respondent's treatment of Complainant was discriminatory animus based on race.

IV. REMEDY

Pursuant to G.L. c. 151B, § 5, the Commission is authorized to grant remedies in order to make Complainant whole. This includes an award of damages to Complainant for emotional distress suffered as a direct and probable consequence of Respondent's unlawful treatment of him. Bournemouth Hospital v. MCAD, 371 Mass. 303, 316–317 (1976). An award of emotional distress must rest on substantial evidence and a factual basis clear on the record. Factors that should be considered in making such awards include: (1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time Complainant has suffered and reasonably expects to suffer; and (4) whether Complainant has attempted to mitigate the harm. Stonehill College v. MCAD, 441 Mass. 549, 576 (2004). Complainant must also show a causal connection between Respondent's unlawful actions and his emotional distress. *Id.* at 576.

I conclude that Complainant sustained emotional distress damages as a result of Respondent's conduct. The evidence of emotional harm in this case consists of the credible testimony of Complainant and his fellow officers. Complainant testified at the hearing that that he had never been subjected to such treatment in his life, and he testified

that he felt upset and awful. His fellow officers testified about the distressed look on Complainant's face and that they observed the experience to be painful for him both during the incident and afterwards. Indeed, in response to witnessing Complainant's anger, embarrassment, and humiliation, all of the white officers left Respondent in solidarity with Complainant, without eating their breakfasts. Based on the evidence, I find that Complainant is entitled to an award of emotional distress damages in the amount of \$5,000.00.

V. ORDER

Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G.L.ch. 151B, § 5, Respondent is ordered to: (1) immediately cease and desist from further acts of discrimination; (2) draft and implement an equal opportunity public accommodation policy, acceptable to the General Counsel of the MCAD (whose approval will not be unreasonably withheld); (3) post for a period of three years, within 30 days of the date of this order, the notice attached hereto as Exhibit A, in conspicuous places in its place of business where its customers may easily view it; and (4) pay to Complainant, Marcus Eddings, the sum of \$5,000.00 in damages for emotional distress with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post judgment interest begins to accrue.

This decision constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full

Commission within ten (10) days of receipt of this Order and a Petition for Review to the Full Commission within thirty (30) days of receipt of this Order.

SO ORDERED, this Twenty-Sixth day of April 2013.

Martin S. Ebel
Hearing Officer

EXHIBIT A

NOTICE TO CUSTOMERS OF CAPITOL COFFEE HOUSE

1. Massachusetts law prohibits discrimination based upon an individual's race, color, religious creed, national origin, sex, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, deafness, blindness or any physical or mental disability or ancestry, relative to the admission of any person to, or his treatment in any place of public accommodation.
2. Capitol Coffee House has been ordered to comply with Massachusetts law.
3. Capitol Coffee House has an equal opportunity public accommodation policy and will ensure that all employees involved in serving the public will abide by the requirements of Massachusetts law.

Should you have any complaints of discrimination you may contact:

Massachusetts Commission Against Discrimination (MCAD)
One Ashburton Place
Sixth Floor, Room 601
Boston, MA 02108
Phone: 617-994-6000
Fax: 617-994-6024
TTY: 617-994-6196
Website: www.mass.gov/mcad

Dated: May 26, 2013

This Notice must remain posted for three (3) years from the date shown. Any questions concerning this Notice or compliance with its provisions may be directed to MCAD at the above address.