



GOVERNMENT OF THE DISTRICT OF COLUMBIA
COMMISSION ON HUMAN RIGHTS
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August 21, 2007

To: All Parties

From: Mario Acosta-Velez, Vice-Chairperson *MAV/C.A.*

Subject: Notice of Final Decision and Order in the matter of **Mildred Gresham-against-Back Door Pub, Inc. t/a Bachelor's Mill**, Docket Number 00-200-PA

Attached hereto is the Final Decision and Order for the above-referenced matter. In accordance with 4 DCMR § 431 (1995) of the Commission's Rules of Procedure for Contested Cases, any party adversely affected thereby may apply to the Hearing Tribunal for reconsideration of the ruling within fifteen (15) calendar days of receipt of the ruling. Parties wishing to file application for reconsideration shall submit them to the Commission in triplicate and serve copies of each remaining party to the proceeding.

Failure to apply for reconsideration shall not be deemed a failure to exhaust the administrative remedies under the Human Rights Act of 1977, D.C. Official Code § 2-1401.01 *et seq.* Any party adversely affected by this decision may file a petition for review in the District of Columbia Court of Appeals in accordance with the Administrative Procedure Act, D.C. Official Code § 2-1403.14.

If, in accordance with D.C. Official Code § 2-1403, the attached order requires the respondent to correct unlawful discriminatory practices and provide remedial relief as required by the order, and thirty (30) calendar days following service of the order have lapsed without the Commission's receipts from the respondent of either (1) documentation of compliance with the order, (2) confirmation of filing a petition for judicial review in the D.C. Court of Appeals in accordance with D.C. Official Code § 2-1403.14 of the Act, or (3) a timely filed application for reconsideration; the Commission shall certify the matter to the Attorney General of the District of Columbia for compliance with the order, D.C. Official Code § 2-1403.15.

**DISTRICT OF COLUMBIA
COMMISSION ON HUMAN RIGHTS**

In the Matter of:

MILDRED GRESHAM
Complainant

v.

**BACK DOOR PUB, INC.,
t/a BACHELOR'S MILL,**
Respondent

Docket Number: 00-200-PA
Final Decision and Order

BEFORE

Commissioner, Deborah Wood Dorsey
Commissioner, Mario Acosta-Velez
Commissioner, Monica Palacio

Chief Hearing Examiner, Cornelius R. Alexander, Jr.

For the Complainant

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For the Respondent

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SUMMARY OF PROCEEDINGS

On July 12, 2000, Mildred Gresham (hereinafter the "Complainant") filed a complaint of discrimination with the District of Columbia Office of Human Rights under the D.C. Human Rights Act of 1977, D.C. Official Code § 2-1401. The Complainant charged the Back Door Pub, Inc., t/a Bachelor's Mill (hereinafter the "Respondent") with gender discrimination based on her protected status as a female, sexual orientation discrimination based on her protected status as a lesbian, and retaliation for filing a claim of discrimination.

The Office of Human Rights (hereinafter "OHR") investigated the allegations and produced a Letter of Determination on February 7, 2002. The Complainant indicated that her disparate treatment prior to entering the club in February 1999 constituted gender discrimination, and the Respondent's permanently ban on Complainant from entering their nightclub constituted retaliation. OHR found probable cause regarding gender discrimination and retaliation claims, and no probable cause for sexual orientation discrimination on behalf of the Complainant.

In April 2002, OHR attempted to schedule a conciliation conference between the parties. After both the Complainant and the Respondent failed to contact OHR to schedule the conference, the matter was then certified to the D.C. Commission on Human Rights (hereinafter the "Commission") on April 16, 2002. On May 2, 2002, OHR informed the Chief Hearing Examiner that it had certified the Complainant's case to the Commission.

Thereafter, the Complainant requested the Commission to remand the case to OHR in order to amend the complaint by adding an individual respondent. As requested,

the Commission remanded the case back to OHR for further review. OHR submitted an amended letter of determination on July 22, 2002, finding probable cause for the Complainant's amended complaint. Again, however, efforts to conciliate between the parties failed.

As a result, on December 20, 2004, OHR re-certified the claim to the Commission, based on the failure of conciliation between the parties. The Commission held a status conference on June 22, 2005 and conducted an evidentiary hearing examination regarding the matter from March 16-17, 2006 before Chief Hearing Examiner, Cornelius R. Alexander, Jr. Thereafter, the Commission issued a proposed decision and order, finding that the Respondent did not discriminate against the Complainant. No exceptions were filed.

Having reviewed the entire record in this matter (including the transcript of the proceedings and the proposed decision), the Commission issues the following Final Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Complainant, Mildred Gresham, is an African-American lesbian foster parent who patronized the Respondent's establishment for nearly thirty years. The Complainant has suffered from breast cancer since 2000. (Tr. At 44, 106, 247, 248, 254, 292). The Complainant is also known by her nickname, "Slyde."
2. At the time of the hearing, the Complainant worked as a photographer at The Edge, a nightclub located in Southeast Washington that caters to a primarily gay clientele. In the past, the Complainant also worked as a photographer at two shows, hosted by the Days Inn hotel chain, which also catered to the black gay community. (Tr. At 97, 99).
3. In addition to being a photographer at The Edge, the Complainant, pursuant to a verbal agreement with Respondent's management, provided photography services within the Bachelor's Mill nightclub on a freelance basis. The Complainant

photographed club patrons, as in that capacity, paid \$1 per photograph directly to Respondent's owner as compensation for allowing her to photograph within the club. The Complainant compensated the owner on an average of approximately \$20.00 per night of work. The Complainant photographed patrons of the club on Wednesday and Sunday nights. Additionally, the Complainant referred to herself as "Virgo Vision Media," but did not file taxes as a separate commercial entity. (Tr. At 47-49, 232).

4. The Respondent, Back Door Pub, Inc., t/a Bachelor's Mill, provides food, beverages, entertainment and dancing as part of a nightclub complex in Southeast Washington. The complex, located at 1106 8th Street, is divided into two separate sections but operates as one corporate entity. The nightclub portion of the complex, Bachelor's Mill, caters primarily to the gay and lesbian population within the larger African-American community. A carryout food section operates adjacent to the Respondent's establishment. There also exists another smaller club adjacent to the carryout section. The Respondent's nightclub has existed at its current location on Capitol Hill in Southeast for the past sixteen years. (Tr. At 16, 21, 50, 276).
5. The Respondent's owner, Beatrice Gatch, holds one hundred percent interest in the Back Door Pub/Bachelor's Mill nightclub. Ms. Gatch met the Complainant when the Bachelor's Mill was located at 500 8th Street in Southeast Washington and it was called "Club Madame." Ms. Gatch knew the Complainant socially, and carried on a friendly relationship with her. In fact, Gatch had even accepted several car rides home from the Complainant. Ms. Gatch does not drive, and paid the Complainant for providing this transportation. (Tr. At 215-216).
6. The Bachelor's Mill was previously known for sixteen years as both "Club Madame" and "Joanne's," when the nightclub was located at a different address in Southeast Washington. Originally, the Bachelor's Mill began as the Horseshoe Bar, undergoing several name changes over a three-decade period. Wednesday nights at the Bachelor's Mill had previously been designated as "Ladies Night" before being discontinued by Respondent's owner based on the death of Mark King, the former manager on the Bachelor's Mill side that ran those evenings of entertainment. The club also once sponsored picnics including the same social circle that frequented the nightclub. (Tr. At 27, 29, 119, 198, 227, 231, 250, 293).
7. Respondent's owner, Beatrice Gatch, made the decision to end the Wednesday Night shows at the Bachelor's Mill, based on fighting within the club itself on those evenings of entertainment. Currently, contractual obligations insist that entertainers performing on a given night at the Bachelor's Mill remain liable for any and all altercations or incidents that occur on that given night. Gatch kept records regarding any fights that occurred in the club. (Tr. At 197, 198, 242-244).
8. The "old bar" refers to the Bachelor's Mill nightclub in its previous incarnation, located at 500 8th Street and administered under the "Club Madame" marquee. At

that time, seventy-five percent of patrons were male with the remaining twenty-five percent being female. More recently, the Bachelor's Mill has seen an influx of young professional women patronizing the establishment. Also, the Bachelor's Mill is open for business weekly from Thursday through Sunday, and closed from Monday through Wednesday. (Tr. At 229, 232).

9. David Michael Lewis administered the Back Door Pub, Inc., the upstairs portion of the entity, as manager. Beatrice Gatch administered the downstairs portion, known as Bachelor's Mill but still considered part of the Back Door Pub complex. Beatrice Gatch, or "Bebe," owned the entire complex, although the upstairs and downstairs portions operated separately from one another. Mr. Lewis holds a position in the corporation of the Back Door Pub, Inc., but does not handle financial affairs. Instead, Lewis sets all policies regarding admittance to the Bachelor's Mill, and confirms decisions the same night or the next day with Ms. Gatch. The upstairs portion, Back Door Pub, contained a horseshoe bar and an outside terrace, as well as lip-synched live performances. Occasionally, Lewis held a Ladies' Night on his side of the complex on Friday nights. (Tr. At 51, 127, 197, 226).
10. The Complainant planned to assist Mr. Lewis in sponsoring a "Ladies' Night" at the Bachelor's Mill, in conjunction with the continuation of her freelance photography business. This budding business partnership soured after Complainant's conflict with Respondent's security personnel in 1999. (Tr. At 100, 129).
11. The Respondent retained several individuals as security personnel for the Bachelor's Mill. The first, Anthony Stocks, served as a security guard at the front entrance of the nightclub. The Complainant introduced Stocks to his position by suggesting that Stocks inquire about a security vacancy at the nightclub. Mr. Lewis, manager for the Back Door Pub, Inc., hired Stocks initially. (Tr. At 16, 104, 147).
12. Mr. Stocks' duties at the Bachelor's Mill consisted of patrolling the club's premises, checking bathrooms and the parking lot for illicit activity, and preventing robberies of customers. The club retains two other security officers that report to Stocks directly. Prior to employment with Respondent, Stocks worked as a store detective at Safeway Security for five years prior to joining the Bachelor's Mill staff. He also worked at a predominantly female club, Hill Haven, for five years, as well as a stint as a uniformed security guard with Eastern Shield. Stocks' total time in security exceeds twenty years' duration. Mr. Stocks also serves as a fugitive recovery agent, retrieving individuals who make bail and do not appear for the assigned court dates. Stocks performed in this capacity for fifteen years, concurrent with his security personnel positions. (Tr. At 168-171).
13. The second security personnel, Carl Wiley, collected admission fees to the Bachelor's Mill establishment at a booth outside the club's entrance. Carl Wiley

knew the Complainant for approximately twelve to thirteen years prior to the March 2006 hearing. Wiley and Respondent's owner, Beatrice Gatch, were involved in a romantic relationship. Ms. Gatch fired Wiley from his position collecting admissions at the club in 2000. Mr. Wiley has not returned to the Bachelor's Mill in the six years since Ms. Gatch fired him. (Tr. At 125, 134, 138-140).

14. Security at the Bachelor's Mill centers primarily on weapons confiscation. In addition, club personnel attempts to prevent the entry of any outside alcoholic beverage. These individuals collected entrance fees and searched all entering customers for weapons and proper legal identification. As a public accommodation that served alcohol, such precautions were necessary to ensure that minors did not enter into the club's premises. Prior to 1999, the security measures at the club included patting down all males, and asking all females to open any purse or bag they carried. (Tr. At 161).
15. Currently, all individuals attempting to enter the premises of the Bachelor's Mill nightclub are searched with a security wand. The guard at the door may or may not ask for identification, based on the individual case and the guard's familiarity with the individual seeking admittance. If the guard knows the individual personally, he may not request to see identification. (Tr. At 160-161, 165, 168).
16. In the past, the club had problems with automobile break-ins and fights nearly every weekend. Also, the Bachelor's Mill routinely had incidents of fighting where security later found knives on the floor of the club. According to Stocks, current patrons of the club sometimes bypass security due to personnel being involved with other customers at the time of their entrance. (Tr. At 160-161, 165, 168)
17. Jacqueline Barber, A forty-seven year old friend of the Complainant, has visited Respondent's club since age sixteen. She was one of two friends of Complainant who observed the 1999 "February Incident." See Infra. (Tr. at 270, 290)
18. Barber believed that Mr. Stocks sought to involve the Complainant in a scheme to see illegal substances within the club's boundaries in conjunction with a group of cross-dressing females called "The Family." The Complainant knew most of the club's regular patrons, and Barber believed that Stocks needed a liaison in his dealing with "The Family," which Barber believes sells drugs in the Bachelor's Mill. The Complainant refused Stocks' request, after which Stocks began to harass the Complainant. This disagreement occurred, in Barber's estimation, before the 1999 "February Incident." (Tr. at 261-263, 284, 290).
19. In February 1999, the Complainant visited the Respondent's establishment with two female companions, one of whom was Jacqueline Barber, during what the Complainant calls "The February Incident." At the door that evening, Anthony Stocks asked the Complainant to present her identification prior to entering the

Back Door Pub/Bachelor's Mill, where in practice the Complainant had worked at the club as a photographer in the past and had not been asked for identification. (Tr. at 33, 72)

20. Additionally, Complainant's two companions had their purses searched by Mr. Stocks at the door and were asked to present identification. One companion produced identification, while the other became agitated and left the club entrance. Meanwhile, two trans-gendered entertainers entered the premises behind the Complainant's group without any search.¹ (Tr. At 33, 72, 75, 165, 175).
21. Ms. Barber complained to Mr. Stocks regarding the need to show identification at the club, when the two male entertainers did not have identification verified by Stocks. Stocks replied that the gentlemen worked at the club and did not need to produce their identification. (Tr. At 270, 280, 297).
22. Ms. Barber had attended the Bachelor's Mill consistently for a period from 1994 to 1999, when she moved out of the D.C. metropolitan area. During that five-year period, Mr. Stocks required Barber to demonstrate identification, despite being a regular customer of the nightclub. Such a request was club procedure and viewed as a requirement for admission by Barber. (Tr. At 277, 278).
23. Shortly after the "February Incident," the Complainant immediately complained to Ms. Gatch regarding what she saw as harassment by Anthony Stocks at the door of the Bachelor's Mill. The Complainant referenced Stocks' attitude as the reason for her grievance. Ms. Gatch and Mr. Lewis instructed Stocks not to confront the Complainant or say anything to her subsequent to her complaints regarding Stocks' prior conduct. At the time of the hearing, Stocks knew of the complaints lodged against him. (Tr. At 34, 81, 166).
24. Subsequent to the "February Incident," the Complainant had several encounters with the Metropolitan Police Department regarding her presence at the club. Two or three days subsequent to the "February Incident," Stocks indicated to Officer Tracy Brown that a parked truck with children left inside unattended belonged to the Complainant. The Complainant ventured outside and spoke to the officer regarding the children in the truck. (Tr. At 166, 178).
25. During this February 1999 altercation with the police officer outside the Respondent's nightclub, the Complainant insisted that Stocks not use the police to harass her, stating, "Call me out yourself; don't use the police, don't use the club" and referring to him using a derogatory epithet. (Tr. At 106-107).
26. The Respondent instituted a permanent ban on the Complainant's entrance on or around June 3, 1999. The Complainant told Ms. Gatch that she had information that could "blow this mother-f--ker up" in reference to the Bachelor's Mill.

¹ According to the Complainant, this remains an isolated incident for her.

Metropolitan Police Officer Jameson was present when the Complainant made this assertion. In addition, Ms. Gatch overheard the Complainant's threats from the establishment's hallway. Subsequent to the statement, the Complainant departed in her vehicle. After the comment about "blowing up" the club, Mr. Stocks explained the night's events to Ms. Gatch and Mr. Lewis. Mr. Lewis made the decision to prevent the Complainant's further entrance into the club via a ban. The reason for the Complainant's permanent ban from the club centers on this threat to burn down the facility. (Tr. At 180, 220, 224).

27. A patron of the Bachelor's Mill receives a ban based on two main reasons: either taking alcohol outside the establishment or fighting within its boundaries. On occasion, patrons of the Bachelor's Mill have smoked marijuana on the club's dance floor, as well as performed illicit sexual activity. Both of these actions contribute to a ban as well. Mr. Stocks held the responsibility of informing certain barred customers that they no longer enjoyed the privilege of entering the Bachelor's Mill. In addition, the decision to bar anyone from the club went through Mr. Lewis. (Tr. At 189, 191).
28. Although Complainant never entered the Bachelor's Mill after the Respondent barred her from the club, the Complainant did appear outside the establishment on four separate occasions subsequent to the ban from the club. The Complainant also appeared outside the club on one occasion to deliver a gift of cookies and pass out flyers, but remained on the street and did not enter the facility. Sergeant Nikki Tyler, a bisexual female that frequents the Bachelor's Mill, bore witness to three incidents of verbal threatening of Mr. Stocks by the Complainant. In addition, Taylor and Stocks have been involved in a relationship for five years. Sgt. Taylor observed the Complainant making verbal threats to Stocks from a parked car, as well as the Complainant verbally threatening Stocks while the Complainant placed the flyers on vehicles outside the club. The Complainant only became aware that the Respondent barred her after the fact, because the Respondent never informed her directly that she had been permanently banned from its establishment until she attempted to enter the facility as a patron. (Tr. at 60, 63, 65, 67, 194-195).
29. Mr. Stocks explained to the Complainant that she was banned from the Bachelor's Mill club. The Complainant proceeded to verbally threaten Stocks, though Stocks regarded her statements as "an exchange of words." That first time Stocks felt threatened by the Complainant, Stocks spoke to Officer Brown, who was already at the club, and the Complainant left. The Complainant continued to return to the club after being banned, and exchanged words with Mr. Stocks. (Tr. At 181-182).
30. The second time the Complainant appeared at the club after the ban, she approached Mr. Lewis. Mr. Lewis instructed Mr. Stocks to call the police on the Complainant. The police arrived and spoke to the Complainant regarding her ban and her continued presence at the club. Also, Mr. Stocks described a phone call from Mr. Lewis that informed Stocks that the Complainant had followed Lewis in

her vehicle making hand gestures in imitation of a handgun, and directed at Lewis. (Tr. At 182-184).

31. The third time the Complainant returned to the Bachelor's Mill was on Memorial Day Weekend. She walked in the club's entrance with her camera, walked around the complex, and left the building, only to remain in her parked vehicle outside the club. Mr. Stocks called the police, but the Complainant had already left. (Tr. At 184).
32. In 2005, the Complainant returned to the club a fourth time. When Mr. Stocks informed her of the ban against her presence, the Complainant taunted Stocks by telling him to call the police. Stocks did so, and after verifying the Complainant's banned status with Ms. Gatch, the police arrested the Complainant for entering the vestibule of the Club to pay the entrance fee for a companion. (Tr. At 61, 186).

CONCLUSIONS OF LAW

I. Gender Discrimination

The D.C. Human Rights Act of 1977 declares that it shall be an unlawful discriminatory practice for a public accommodation to discriminate against an individual on the basis of gender or to retaliate against an individual for participation in a protected activity. *See* § 2-1401 D.C. Code, as amended.

In analyzing gender discrimination and retaliation cases brought under the D.C. Human Rights Act, the Commission on Human Rights and the District of Columbia Court of Appeals follow the legal precedent outlined by the United States Supreme Court in reviewing case brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* and the Rehabilitation Act of 1973, 29 U.S.C. § 791 (1973). *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Duncan v. Washington Metropolitan Authority*, 201 F.3d 482 (D.C. Cir. 2000); *Natural Motion by Sandra et al. v. District of Commission on Human Rights*, 687 A.2d 215 (D.C. 1997); *Thompson v. International Association of Machinists*, 614 F. Supp. 1002 (D.C.D.C 1985); *Wisconsin Avenue Nursing Home v. District of Commission on Human Rights*, 527 A.2d 287 (D.C. 1987).

In *McDonnell Douglas*, the Supreme Court ruled that the plaintiff bears the burden of production of evidence sufficient to establish a *prima facie* case of discrimination. When the plaintiff's initial burden of production is met, the burden shifts to the defendant to articulate a legitimate, non-discriminatory explanation or reason for the circumstances giving rise to the *prima facie* inference. Thereafter, the plaintiff must be afforded an opportunity to demonstrate that the defendant's explanation is, in fact, a pretext for discrimination.

The *prima facie* elements enumerated in *McDonnell Douglas* were as follows:

- 1) The plaintiff is a member of a protected class;
- 2) The plaintiff was qualified and applied for a vacant position;
- 3) The plaintiff was rejected; and
- 4) The position remained vacant while the defendant continued to seek applicants with the plaintiff's qualifications. *McDonnell Douglas, supra* at 82.

Although the facts in *McDonnell Douglas* concerned a failure to hire, the Court specified that the *prima facie* elements would vary depending upon the facts of the case in question. *Id.* at 802. In general, it is sufficient for the plaintiff to show that he or she was subjected to adverse treatment or denied favorable treatment under circumstances which gave rise to an inference of discrimination. *Furnco Construction Corp. v. Waters*, 438 U.S. 576-577 (1978); *Burdine, supra* at 254.

In this matter, the Complainant asserts that the Respondent subjected her to disparate treatment in the form of gender discrimination when Respondent allowed its security personnel to request her valid identification for entrance to its nightclub, as well as search the personal effects of her companions, while not doing the same for similarly situated male customers. To establish this type of *prima facie* case of gender discrimination, the Complainant must demonstrate that:

- 1) She is a member of a protected class;
- 2) She attempted to access or enter into a public accommodation; and
- 3) Similarly situated individuals outside her protected class received more favorable treatment when attempting to do the same. *American University v. District of Commission on Human Rights*, 598 A.2d 216 (D.C. 1991); *Burdine*, 450 U.S. at 252-253.

In reviewing the record on the matter, the Commission finds that the Complainant establish the elements of a *prima facie* case of gender discrimination, in violation of the D.C. Human Rights Act of 1977, D.C. Official Code § 2-1401, and her claim fails. The Commission's analysis of each of these elements is set forth below.

A. The *Prima Facie* Elements

1. Membership in a Protected Class

With regard to the first element of the test, the Complainant fulfills her burden as a female. Thus, the complainant satisfies the initial element of the *prima facie* case.

2. Access to a Public Accommodation

The Complainant satisfies the second element of the *prima facie* case of gender discrimination as well. The Respondent qualifies as a public accommodation because of its status as a nightclub open to members of the public. As a place of entertainment that

caters to the general public and offering food, beverages, dancing and entertainment, the Respondent, Bachelor's Mill, constitutes a public accommodation. This element is also not at issue for the Commission.

3. Adverse Treatment While Accessing a Public Accommodation

The Complainant also satisfies the third element of the *prima facie* case of gender discrimination. During the aforementioned "February Incident," which occurred in 1999, the Complainant attempted to gain entry into the Bachelor's Mill, a public accommodation. While attempting entry, the Respondent's security personnel requested that the Complainant, a regular female patron and former freelance photographer for the Bachelor's Mill, produce legal identification prior to entering the nightclub.

In addition, the Respondent's security personnel also subjected the Complainant's female companion to a search of her handbag. Conversely, two male patrons that worked as entertainers at the club did not fall subject to the same request for proper identification, and instead were allowed to enter the club without any verification of identity or any search of personal belongings.

Since the Respondent held the Complainant and her companions to a different standard upon attempting to gain access to its public accommodation, the Bachelor's Mill, the Commission finds that the Complainant meets the third element of a *prima facie* gender discrimination case, and this element does not remain at issue.

4. Disparate Treatment Based on Gender Discrimination

With regard to the fourth issue, the Commission finds that the Complainant indeed suffered disparate treatment when attempting to enter the Respondent's nightclub. Although a regular patron of the Bachelor's Mill establishment, the Respondent's security personnel asked the Complainant to demonstrate identification for admission to the club, referred to as the "February Incident," whereas male employees of the club did not have to present identification. The Complainant indicated that she was a well-known club patron who moonlighted as a photographer, and club security required her to show ID while male employees in a show did not face the same requirement.

Although not a club employee, the Complainant operated as a freelance photographer within the club itself, and the Respondent's security personnel knew that the Complainant was twenty-one years of age or older. The Respondent's security explained that, in practice, after a continuous period of attendance of five years, the customer became known to the security personnel, and they requested no identification at the door to the establishment.

As a result, the Complainant meets the specific aspect of the fourth *prima facie* element of her gender discrimination claim.

B. Respondent's Defense

In its defense, the Respondent explained that its security personnel simply followed legitimate, non-discriminatory procedures for admitting individuals into a public accommodation that serves alcohol. The Respondent indicates that the process for entering the club applied to all patrons, and the individuals outside the Complainant's protected class that did not undergo a search actually worked for the club as entertainers and thus, were not similarly situated to the Complainant and her companions.

The Respondent also proffered a legitimate, non-discriminatory reason for its actions in February 1999. The Respondent indicated that the request for valid identification, as well as the search of two females' purses, fell within the limits of reasonable procedures for admitting paying customers into a public accommodation. Such an accommodation as the Respondent's nightclub, Bachelor's Mill, institutes entrance policies to prevent weapons, outside alcohol beverages as well as minors from entering club property. The Respondent cites security as the reason for its entrance policy as applied to Complainant and her companions.

In addition, the Complainant previously freelanced as a photographer within the club's limits on Wednesday and Sunday nights, pursuant to an agreement with former manager Mark King. According to the records before the Commission, when Mark King passed away, the Complainant's agreement changed in the sense that the Complainant no longer enjoyed the same privileges with regard to photography within the club. Had the Complainant's agreement continued as before, she would not have discussed the option of a commercial agreement with Michael Lewis, the Respondent's manager, to sponsor an evening of entertainment that featured the Complainant's photography services.

After the death of Mark King, Michael Lewis became manager at the Back Door Pub, Inc. Lewis worked as manager at the Respondent's club as early as 1998. (Tr. at 114, 119). The Complainant stated that "at one point, [Lewis and she] talked about photography. [They] talked about a ladies night where [Lewis] would sponsor it. [They] talked on a couple of occasions about doing business together." (Tr. at 100) These conversations occurred prior to 1999, and the "February Incident." Therefore, the Commission concludes that the Complainant did not still work as a freelance photographer, in the capacity enjoyed under the management of Mark King, at the time of the "February Incident" in 1999.

Accordingly, any actions taken against Complainant does not necessarily result from discrimination. For example, in *Chang v. Institute for Public-Private Partnerships, Inc.*, the appellee, a consulting firm, terminated the appellant's employment not for participation in a protected activity by filing a claim of discrimination but due to "IP3 management...dissatisfaction...with Ms. Chang's professionalism and ability to communicate with co-workers and vendors." *Teru Chang v. Institute for Public-Private Partnerships, Inc.*, 846 A.2d 318, 321. There, the Complainant's poor communication skills propelled her employer to discharge her from her position at their consulting firm.

Additionally, in *O'Brien v. Lucas Associates Personnel Inc.*, the Complainant in that case had many of her subordinates resign, while "many of the continuing employees characterized O'Brien as 'hostile,' a 'gossip,' 'mean,' 'misleading,' and a 'playground bully'...de Martino and Lucas decided to terminate O'Brien as a managing partner in May of 2001, but allowed her to retain her recruiter position." *O'Brien v. Lucas Associates Personnel Inc.*, 127 Fed. Appx. 702, 704. As in *Chang*, O'Brien's poor communication skills led to her demotion.

In both instances referenced above, the adverse action taken did not stem from the Complainant's membership in a protected class, but rather from a legitimate, non-discriminatory line of reasoning. Similarly, the Respondent's request that the Complainant present proper identification to enter a nightclub does not violate the rights of her protected class as described by the D.C. Human Rights Act of 1977. The Respondent's security personnel only asked the Complainant for identification once, in February 1999. The security personnel also checked the bags and identification of her companion, who did not frequent the club in a regular fashion as did the Complainant.

Another example of security measures misconstrued as discrimination occurred in a 2005 case concerning an allegedly improper request for a luggage search at an airport, similar to the Complainant's alleged improper search by the Respondent's security personnel. In *Kalantar v. Lufthansa German Airlines, Inc.*, the plaintiff could not substantiate claims that a German airline discriminated against him based on his race as an Iranian national; in fact, the court decision found "an essential defect in Kalantar's position...he does not provide any evidence that shows, or even implies, that race was the reason he was subjected to a more extensive search." *Kalantar v. Lufthansa German Airlines, Inc.* 402 F.Supp.2d 130, 137. Therefore, the plaintiff lost his case based on his inability to verify discrimination as the reason for his disparate treatment at an airport ticket counter.

In a similar vein, the Complainant does not indicate how her protected status as a female alone prompted the Respondent's decision to ask for valid identification and perform a bag search in February 1999. The Respondent needed to verify the legal age of patrons entering the establishment due to liquor license concerns and the prevention of minors entering the nightclub. Also, one of the Complainant's witnesses, Jacqueline Barber, indicated that security personnel routinely searched females' bags or purses, and asked for identification as a method of controlling admission to the Bachelor's Mill nightclub. (Tr. At 277, 278). As a result, the Commission concludes that the Respondent had instituted the practice of searching females' purses prior to the Complainant's grievance, not specifically to harass the Complainant.

In addition, the waiver of identification appears a privilege of frequent attendance rather than an established facet of the nightclub's admissions process. Furthermore, the Commission finds that the D.C. Human Rights Act does not protect complainants from being personally disliked by other individuals. The Complainant considered herself the official photographer for the Bachelor's Mill nightclub. (Tr. At 31). Although the Complainant likely knew most of the staff employed by the Respondent, this fact does

not exempt her from being required to present legitimate identification to enter a venue that sells alcohol.

The Respondent's security guard, Mr. Stocks, simply followed procedure in asking the Complainant to demonstrate identification and in searching the handbags of her companions. Additionally, the Respondent proffered a legitimate, non-discriminatory reason for allowing two trans-gendered entertainers to enter the club without a search. Both individuals performed in shows at the club, and were scheduled to perform that evening of the "February Incident." Therefore, as club employees, the entertainers did not fall under the same category as paying customers and were not "similarly situated" to the Complainant. Thus, the Respondent's security personnel declined to search their belongings. The security personnel did not single out the Complainant and her party for gender discrimination.

C. Conclusion

Therefore, the Commission does not find that gender discrimination directly motivated the actions of Respondent's security personnel in asking the Complainant to present valid identification. If the Respondent's security guard had some personal issue with the Complainant, such an issue does not fall under the protection of the D.C. Human Rights Act of 1977. As a result, the Commission finds that the Complainant fails to satisfy all elements of a *prima facie* case of gender discrimination, and her claim fails.

II. Retaliation

The Respondent did not retaliate against the Complainant on the basis of her permanent ban from Respondent's establishment, in violation of the D.C. Human Rights Act of 1977 (D.C. Official Code § 2-1401). When considering a case of retaliation, the courts have developed a three-prong test to determine whether retaliation indeed occurred. As stated in *Young v. Sutherland*, the Complainant must demonstrate that 1) she engaged in a protected activity; 2) that the Respondent took an adverse action against the Complainant; and 3) there exists a direct causal relationship between the protected category and the adverse action taken by the Respondent. *Young v. Sutherland*, 631 A.2d 354, 368 (D.C. 1993). Following this standard, the Commission does not find that the Respondent retaliated against Complainant in a manner protected under the D.C. Human Rights Act of 1977.

A. The *Prima Facie* Elements

1. Complainant's Participation in a Protected Activity

The Complainant alleged that the Respondent retaliated against her by instituting a permanent ban on her attendance at Respondent's entertainment complex, the Bachelor's Mill, subsequent to Complainant bringing grievances to management. These grievances focused on Complainant's treatment by Respondent's security personnel, specifically actions taken by security guard Anthony Stocks in preventing her admittance to the Bachelor's Mill nightclub and harassing Complainant and her companions.

The Complainant contends that after she approached Beatrice Gatch, club owner, and Michael Lewis, manager, and complained of her treatment by Mr. Stocks, the club's management decided to permanently bar the Complainant from attending the Bachelor's Mill. Following the standards set forth in *Young v. Sutherland*, the Complainant meets the first element of a *prima facie* case of retaliation. The Complainant lodged a grievance with nightclub management, specifically Ms. Gatch and Mr. Lewis, regarding her disparate treatment as female attempting to enter the Bachelor's Mill.

The issue now before the Commission rests on whether the Complainant, while engaging in a protected activity, participated in an activity protected under the D.C. Human Rights Act, such as filing a discrimination claim, grieving a claim, testifying in a hearing etc. In fact, the Complainant did file a formal complaint of discrimination in 2000, after the Respondent imposed a permanent ban on her attendance at its establishment in June 1999.

In applying the decision in *Burlington Northern & Santa Fe Ry. V. White*, the Commission notes that the federal Equal Employment Opportunity Commission "supports a broad interpretation of the anti-retaliation provision. 126 S.Ct 2405, 2413 (2006). As such, by analogy the Commission concludes that the Complainant's action of lodging a grievance with Respondent's management concerning her disparate treatment while attempting to gain access to Respondent's public accommodation constitutes a protected activity.

Utilizing the example set forth in *White*, the Commission finds that the Complainant indeed meets the first element of *prima facie* case of retaliation based on her grievance with the Respondent's management and ownership regarding her disparate treatment at the hands of Respondent's security personnel.

2. Respondent's Alleged Adverse Action

Since the Commission finds that the Complainant meets the first element of a *prima facie* case of retaliation, then the Respondent's action of permanently banning the Complainant from accessing its public accommodation qualified as an adverse action. The Complainant lodged a complaint with the Respondent's upper management regarding her treatment by security personnel in 1999's "February Incident." Subsequent to this grievance, club management decided to permanently ban the Complainant from

entering their establishment, the Bachelor's Mill, declining to tell the Complainant of the imposition of a ban.

3. The Causal Connection Between Activity and Action

Although the Commission finds that the Complainant meets both the first and second elements of a *prima facie* case of retaliation, she fails to establish a causal connection between her permanent ban from Bachelor's Mill and her protected activity of filing a discrimination claim. Although the ban from entering the nightclub qualified as an adverse action and fulfills the second element of the *prima facie* case of retaliation, the Respondent proffers a legitimate, non-discriminatory reason for instituting the ban.

B. Respondent's Defense

The Respondent indicates that the Complainant made verbal threats to destroy the club premises, which Complainant confirmed in hearing examination. The Complainant stated that she "would blow this mother-fucker (*sic*) up" to the Respondent's owner, Ms. Gatch. (Tr. At 180, 220, 224). The Respondent indicated that these threats formed the basis for the institution of a permanent ban on Complainant's entry into the Bachelor's Mill nightclub. The Respondent imposed the ban long before the Complainant filed a claim of discrimination with OHR in the year 2000. Therefore, the Respondent did not institute the ban on Complainant's attendance in response to that formal filing of a discrimination claim, as the Complainant alleges.

C. Conclusion

The Commission finds that the Complainant cannot demonstrate that a causal connection exists between the Respondent's institution of a permanent ban against her and her decision to lodge a grievance with club management regarding her treatment while attempting to enter the Bachelor's Mill. The Commission further finds that the Respondent instituted a permanent ban against the Complainant based on her perceived threats to destroy the club premises.


As a result, the Commission concludes that the Complainant fails to satisfy the three elements of a claim of retaliation based on the protected activity of filing a formal complaint of discrimination, and her claim fails.

CONCLUSION

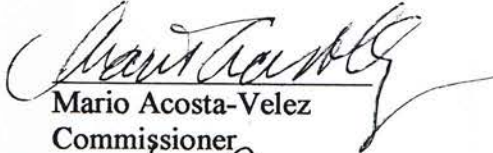
Based on the foregoing, the Commission finds that the Complainant's claim of gender discrimination as well as her claim of retaliation both fail to satisfy the necessary elements of their respective *prima facie* cases. So ordered.

For the Commission

15 August 2007
Date


Deborah Wood Dorsey
Commissioner

8/15/07
Date


Mario Acosta-Velez
Commissioner

8/15/07
Date


Monica Palacio
Commissioner

Cc: All parties/representatives
D.C. Office of Human Rights
Commission File