

**BEFORE THE HUMAN RELATIONS COMMISSION  
FOR THE STATE OF DELAWARE**

MATTHEW CLENDANIEL	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. K-EA-1729-18
	)	
SPENCE'S BAZAAR FOOD MARKET	)	
and BLAKE SCOTT	)	
	)	
Respondents.	)	

**MEMORANDUM DECISION AND ORDER**

Pursuant to due notice of time and place of meeting served on all parties in interest, the above-stated cause came before a Panel of the Delaware State Human Relations Commission on Wednesday, October 17, 2018 in the Cannon Building, 861 Silver Lake Boulevard, Suite 145, Dover, Delaware to determine whether a violation of the Delaware State Equal Accommodations Law, 6 *Del. C.* Ch. 45 (“DEAL”), had occurred.

**PRESENT:**

Nancy Maihoff, *Commissioner and Panel Chair*,  
Earnest Gulab, *Commissioner and Panel Member*,  
Kerri Harris, *Commissioner and Panel Member*,  
Daniel C. Mulveny, *Deputy Attorney General*,  
*Counsel for the Commission and the Panel.*

**APPEARANCES:**

Ronald Poliquin, *Counsel for Complainant*,  
Gregory Morris, *Counsel for Respondents.*

A meeting of a Panel of the Delaware State Human Relations Commission (“SHRC”) convened on October 17, 2018 in order to determine whether a violation of Delaware’s Equal Accommodation Law, 6 *Del. C.* § 4504, occurred. Mr. Matthew Clendaniel brought a complaint alleging that Spence’s Bazaar Food Market (“Spence’s Bazaar”) and Mr. Blake Scott (collectively “Respondents”) discriminated against Mr. Clendaniel on the basis of his disability. Immediately after the hearing, the panel conducted its deliberations.

### **SUMMARY OF THE COMPLAINT**

Mr. Clendaniel alleged in his complaint that he was refused, withheld or denied accommodations, facilities, advantages, or privileges of a place of public accommodation because of his disability. Mr. Clendaniel further alleged that on January 2, 2018, he entered Spence’s Bazaar with his service dog “Tuco.” Tuco was wearing a vest that read “Service Dog” and “Do Not Remove From Handler.”

The Complaint alleges that when Mr. Clendaniel was inside Spence’s Bazaar, he was approached by vendors who disagreed with Tuco being inside the building. At some point, Mr. Scott approached him and asked if Tuco was a service dog. Claimant explained that Tuco was a service dog and attempted to provide Mr. Scott with his Americans with Disabilities Act (ADA) card that contained information about service animals and listing questions people are permitted to ask. Mr. Clendaniel alleged that after he gave Mr. Scott the ADA card Mr. Scott

said that he “would call animal control.” This caused Mr. Clendaniel to believe that Mr. Scott said he would call animal control to intimidate him and make him leave the premises. Mr. Clendaniel then left Spence’s Bazaar.

Later, on January 9, Mr. Clendaniel went back to Spence’s Bazaar—without Tuco—to seek an answer whether he could bring Tuco in the future. He approached Mr. Scott and asked if he could bring Tuco. Mr. Scott shrugged and did not respond. When Mr. Clendaniel asked if Mr. Scott called animal control, Mr. Scott responded that he did not need to or was not going to call animal control.

Later that day, Mr. Clendaniel returned to Mr. Scott’s office where Messrs. Clendaniel and Scott engaged in a heated discussion. Mr. Clendaniel alleged that strong words were exchanged and that Mr. Scott insulted him. Mr. Scott is alleged to have told Mr. Clendaniel to leave the Spence’s Bazaar property.

### **PRE-HEARING MATTERS**

Both parties requested the sequestration of witnesses, which was granted. Both parties made opening statements.

### **SUMMARY OF THE EVIDENCE**

#### **A. Complainant’s Case**

##### **1. Mr. Clendaniel**

Mr. Clendaniel was sworn and testified in response to questions from his counsel, Mr. Poliquin. Mr. Clendaniel explained that he is a 36-year-old veteran of

the United States Air Force (USAF). While serving in the USAF, Mr. Clendaniel worked as a criminal investigator where he would investigate various crimes.

Mr. Clendaniel had four years of service including deployments to Iraq and Afghanistan. Mr. Clendaniel has been diagnosed with PTSD, anxiety, and a heart condition; he has also undergone open-heart surgery. He explained that his PTSD diagnosis stemmed from his combat service where he saw many dreadful events and things. His symptoms include anxiety, stuttering, and loss of his train of thought. Mr. Clendaniel is under treatment from a medical doctor for his illnesses. He said that his symptoms can be triggered by high-stress or high-tension situations. For example, Mr. Clendaniel explained that when he is in a grocery store with crowds of people he will need to leave the store. For treatment, Mr. Clendaniel has been prescribed medications, he exercises, and strives to maintain a consistent daily regimen. He also has a service dog.

Mr. Clendaniel then introduced his service dog, "Tuco," to the Panel.<sup>1</sup> Mr. Clendaniel's psychiatrist suggested that a service dog would be beneficial in treatment of his symptoms. Tuco was provided by Code Paws. Mr. Clendaniel explained that he purchased the dog and was assigned a trainer. Mr. Clendaniel said that there is continuous training of Tuco.

Mr. Clendaniel explained that having Tuco with him allows him to focus

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<sup>1</sup> Mr. Clendaniel attended the hearing with Tuco.

when he is in crowded environments and where his anxiety is high. Specifically, Tuco is trained to lick Mr. Clendaniel's left hand and also places himself between Mr. Clendaniel and others when needed.

Turning to the events leading to his Complaint, Mr. Clendaniel said that on January 2, 2018, he went with Tuco to Spence's Bazaar in the mid-afternoon. There are two buildings on the premises, one with food vendors and the other where vendors sell furniture and other merchandise. Mr. Clendaniel entered the first building with Tuco, who was wearing a vest identifying him as a service animal.<sup>2</sup>

Mr. Clendaniel said that the entrance door to the first building has a "No Dogs Allowed" posted. He saw the sign when he entered the building. There was no sign stating whether service animals were allowed.

While he was inside the first building, an Amish man approached Mr. Clendaniel and asked him if he could read the "No Dogs Allowed" sign on the door. In response, Mr. Clendaniel explained that Tuco was a service dog. Mr. Clendaniel said that the man seemed satisfied with the explanation.

When Mr. Clendaniel went into the second building, he was approached by a woman vendor who pointed and gestured to the "No Dogs Allowed" sign posted

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<sup>2</sup> Mr. Clendaniel walked around the hearing room with Tuco to demonstrate to the Panel how Tuco was wearing a vest with the service animal identification on the date in question.

on the entrance door. Mr. Clendaniel did not try to explain Tuco's status as a service dog to the woman. At this point, Tuco laid down next to Mr. Clendaniel.

Then Mr. Scott approached Mr. Clendaniel. According to Mr. Clendaniel, Mr. Scott asked if Tuco was a service dog. Mr. Clendaniel responded "yes." Mr. Clendaniel said Mr. Scott had a puzzled look on his face as if he did not seem satisfied with his response. Mr. Clendaniel then provided Mr. Scott with an ADA card providing information about Tuco. Mr. Clendaniel explained to the Panel that the ADA card lists the questions that can be asked of a person with a service animal. Mr. Scott took the card, but he did not read it or ask any of the questions on the card. Mr. Clendaniel testified that after giving Mr. Scott the ADA card, Mr. Scott said that he "would call animal control." This caused Mr. Clendaniel to feel threatened. Mr. Clendaniel said that he never had a problem before with Tuco in a public place and he was not sure if the rules had changed regarding service animals in public places.

After Mr. Scott said that he would call animal control, Mr. Clendaniel left the building. He thought that Mr. Scott was threatening to take away Tuco. Mr. Clendaniel said that he was unsure if private establishments had different rules for service animals. He then called the Dover Police department who transferred his call to animal control. The person at animal control, however, was away on vacation for the week.

A week later, on January 9, 2018, Mr. Clendaniel returned to Spence's Bazaar without Tuco because he was not sure if Tuco would be allowed to enter the building. Mr. Clendaniel explained that he was confused because he thought service animals were allowed anywhere.

Mr. Clendaniel approached Mr. Scott and asked him whether Tuco could come into Spence's Bazaar. Mr. Clendaniel said that Mr. Scott shrugged in response and did not give a solid answer. Mr. Clendaniel denied that Mr. Scott said service animals are welcome. Mr. Clendaniel again asked Mr. Scott if service animals were allowed and got no response. Mr. Scott appeared to be agitated.

Mr. Clendaniel walked away and then called his Veterans Affairs representative to get more information. While on the phone, Mr. Scott walked by and said not to "eyeball" him.

Mr. Clendaniel testified that he went into Mr. Scott's office and asked him again whether service animals were allowed. At this point, Mr. Clendaniel said that Mr. Scott's tone changed. Mr. Scott called him a "retard," an "idiot," and also a "cry baby" because Mr. Clendaniel called the police. Mr. Clendaniel explained that he called the police because Mr. Scott was belittling him with the embarrassing treatment.<sup>3</sup> Mr. Clendaniel said that he felt like Respondents did not allow service

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<sup>3</sup> Mr. Clendaniel submitted a recording of the 911 call he made to the police. It was entered into evidence without objection as Ex. Complainant 1 and played for the Panel.

dogs.

Mr. Clendaniel further testified that Mr. Scott was being very aggressive during this conversation. He told Mr. Clendaniel to leave the premises, that it was private property. This caused Mr. Clendaniel to have trouble with his words prompting a response from Mr. Scott that he “needed an interpreter.” Mr. Scott told Mr. Clendaniel to pursue his complaints with another owner of Spence’s Bazaar.

Mr. Clendaniel then went to his car in the parking lot. A police officer arrived and went inside the building to investigate. The officer returned and said that Mr. Scott does not want Mr. Clendaniel on the property. The officer did not provide a reason why Mr. Scott wanted him to leave. Mr. Clendaniel left.

On cross-examination, Mr. Clendaniel admitted that on January 2, Mr. Scott never told him that he could not have a service dog, that he had to leave, or that the service dog had to leave. Mr. Clendaniel said that he left because of the threat about calling animal control.

When asked about the events on January 9, Mr. Clendaniel confirmed that he did not have his service dog with him. He did not telephone Spence’s Bazaar because he wanted to go in person. He admitted that when he came to Spence’s Bazaar without Tuco on January 9 that it caused him anxiety and stress but denied that it affected his recollection.



Mr. Clendaniel testified that on January 9 he went into Mr. Scott's office uninvited. He went into Mr. Scott's office to discuss the service dog policy because he did not get clarification earlier. Mr. Clendaniel admitted that he became stressed and anxious while he was in Mr. Scott's office. Mr. Scott was calling him names and he was embarrassed. Mr. Clendaniel could not recall whether he was told on January 9 that he could have his service animal at Spence's Bazaar.

On redirect, Mr. Clendaniel said that the incident caused him stress and that he sought treatment from a therapist. He stopped using Tuco as a service animal because he was afraid. Mr. Clendaniel explained that he called the police on January 9 because he was scared by Mr. Scott's demeanor.

On re-cross-examination, Mr. Clendaniel said that he did not just leave Spence's Bazaar on January 9 because he wanted a clear answer whether he could have his service dog with him. Mr. Clendaniel said that he intended to stay until he got an answer.

At that point, Mr. Clendaniel rested.

## **B. Respondent's Case**

### **1. Mr. Scott**

Mr. Scott, duly sworn, testified in response to questions from Mr. Morris. Mr. Scott described Spence's Bazaar: it is a flea market, auction, and furniture market, and has food vendors. The business has been in Mr. Scott's family for 85

years.

Mr. Scott said that the people who approached Mr. Clendaniel on January 2 were not agents of Spence's Bazaar; they were independent vendors.

Mr. Scott recounted the events on January 2. He said that he was working at his desk when he was told that there is a dog in the building. He went out to investigate and saw a dog. He could not immediately tell if it was a service animal. As he approached closer he saw the dog was wearing a service animal vest. Having confirmed it was a service dog, he began to walk away. Mr. Clendaniel offered him an ADA card and Mr. Scott said that he did not need it. Mr. Scott said that he told Mr. Clendaniel that "if he had any issues he would call animal control." Mr. Scott said that he repeatedly told Mr. Clendaniel that he could stay inside Spence's Bazaar with his service dog. Mr. Clendaniel, however, seemed like he did not hear Mr. Scott. He said that he was consistent in telling Mr. Clendaniel that he could stay in the business with his service dog. Mr. Scott said that service dogs are common at Spence's Bazaar—they are there all the time. Mr. Scott denied that he told Mr. Clendaniel that he needed to leave or that he had to remove his dog from the building.

In response to a question, Mr. Scott clarified that he initially approached Mr. Clendaniel and his service dog because he could not immediately see if his dog was a service animal.

Mr. Scott then testified regarding the events of January 9. He said two other employees were there at the same time: Ms. Elizabeth Tisher and Ms. Michelle Domino. He said both women could see the incident; they saw Mr. Clendaniel approach Mr. Scott at his desk.

According to Mr. Scott, Mr. Clendaniel entered his office and asked if he could have his dog inside Spence's Bazaar. Mr. Scott then stood up and said "of course" he could have his service dog here. He stated that he told Mr. Clendaniel that he could have his service dog at Spence's Bazaar at least 10 times. Mr. Clendaniel responded that his civil rights were being violated. Mr. Clendaniel was being "very aggressive." According to Mr. Scott, it seemed that Mr. Clendaniel was not getting the answer he wanted.

Mr. Scott returned to his office and began speaking with a co-worker, Ms. Catherine Skinner. Mr. Clendaniel then entered Mr. Scott's office and demanded an answer. The exchange became heated, and Mr. Scott admitted that he called Mr. Clendaniel names. He then asked Mr. Clendaniel to leave. The police came and he told the officer that he wanted Mr. Clendaniel to leave, not because of his service animal, but because Mr. Clendaniel was very aggressive and very agitated. Mr. Scott said that he has since invited Mr. Clendaniel to return to Spence's Bazaar.

As his direct examination continued, Mr. Scott said that he did not call the police on January 2, nor did he call animal control. On January 9, Mr. Scott said he

called animal control because he was upset but he did not recall his conversation with animal control.

When asked if he had any regrets, Mr. Scott said that he has no regrets from the incident on January 2 other than he wished that he had not approached Mr. Clendaniel and his service dog; if he had been able to see Tuco's service animal vest from afar he would not have approached Mr. Clendaniel. But he could not see the vest until he started to approach Mr. Clendaniel.

However, Mr. Scott testified that he regrets calling Mr. Clendaniel names on January 9. He never intended to have the incident escalate because of the service dog.

On cross-examination by Mr. Poliquin, Mr. Scott said that service dogs are welcome at Spence's Bazaar as a matter of public policy. When asked if the vendors know about this policy, Mr. Scott said that he did not know what the vendors knew. Mr. Scott acknowledged that Spence's Bazaar is responsible for acts on the property. Mr. Scott said that he saw the Amish man approach Mr. Clendaniel. He did not see the woman approach Mr. Clendaniel.

Mr. Scott was asked whether Spence's Bazaar publishes its service animal policy. He said there is no policy to publish; he did not tell vendors of the policy to allow service animals. He said there have never been any complaints. He admitted that at the time of the incident the entrance door had a "No Dogs Allowed" sign

and that there was not an exception for service dogs posted. He said after the incident with Mr. Clendaniel, Spence's Bazaar now has a sign stating that service dogs are welcome.

When asked why he called animal control on January 9, Mr. Scott said that he did so because Mr. Clendaniel made him upset. He did not know what else to do. He knew the policy to allow service animals but Mr. Clendaniel seemed to be a problem. He said that he called animal control to seek advice on how to handle the situation.

Mr. Scott was questioned about a written statement from Spence's Bazaar regarding the incident. He said that his statement was prepared by his secretary; they worked on it together and he reviewed it before it was submitted. He explained that the date—May 24, 2018—was wrong.

Returning to the events of January 2, Mr. Scott said that he did not introduce himself as an owner or manager of Spence's Bazaar. He did not take Mr. Clendaniel's ADA card because he did not need it; he told Mr. Clendaniel that service dogs are welcome. Mr. Scott did not know why Mr. Clendaniel handed him the ADA card. Mr. Scott said that he told Mr. Clendaniel that he would call animal control if he had any questions.

Following the incidents involving Mr. Clendaniel on January 2 and 9, Mr. Scott said that there have not been any other incidents involving service dogs at

Spence's Bazaar. He said that vendors have been informed of the service animal policy, although there is not a written policy.

Mr. Scott explained that at some point he wanted Mr. Clendaniel to get away from him so he told Mr. Clendaniel that he should talk to Mike Scott, who is the manager of Spence's Bazaar.

Mr. Scott did not recall saying not to "eyeball" him; he could have said that. Mr. Scott admitted to calling Mr. Clendaniel an "idiot" but did not recall other derogatory terms. Mr. Scott did recall telling Mr. Clendaniel that Tuco is smarter than him. He also recalled telling Mr. Clendaniel that he was banned from the property.

Mr. Scott was questioned about the events described in a letter from Spence's Bazaar dated May 24, 2018. Mr. Scott admitted that on January 9 he made fun of Mr. Clendaniel. He was aggressive in response to Mr. Clendaniel's aggression. He said that on January 9 he was trying to get out of a situation that was not going to improve. He did not recall specifically what he said.

On redirect, Mr. Scott said that he told Mr. Clendaniel that he was welcome with his service dog at Spence's Bazaar. But as Mr. Clendaniel continued to pursue him, he felt that he was being "set up" and tried to remove himself from the situation.

Mr. Scott repeated that he did not take Mr. Clendaniel's ADA card because

he saw no issue—he saw that Tuco was a service dog.

On re-cross-examination, Mr. Scott admitted that he did not know what the ADA card was that Mr. Clendaniel attempted to give him. He was done with the situation when he told Mr. Clendaniel that service dogs were welcome on the property. He said that in his view, the issue was resolved and he walked away. Mr. Clendaniel pursued him, offered his ADA card, and asked if he had any questions. In response, Mr. Scott said that he had no questions about service dogs.

## **2. Witness Michele Domino**

Ms. Michele Domino, duly sworn, testified in response to questions from Mr. Morris. She explained that she worked for Spence's Bazaar as a secretary. She was present on January 2 and recalled the events involving Messrs. Clendaniel and Scott.

She was working in the office and someone had told Mr. Scott that there was a dog in the building. At some point Mr. Clendaniel entered the office. Mr. Scott told him that service dogs were allowed to stay. She said Mr. Clendaniel then walked away and then returned to argue some more. She said Mr. Clendaniel was arguing why service dogs were not allowed on the property. And Mr. Scott kept responding that they were allowed. She said Mr. Clendaniel kept wanting to argue and then Mr. Scott walked away. She believed Mr. Scott repeated his statement that service dogs were allowed about five to six times. She said Mr. Clendaniel

was agitated. She recalled that Mr. Scott told Mr. Clendaniel that service dogs were allowed and then walked away. Ms. Domino recalled hearing Mr. Scott say that he did not need to see the card because service dogs were allowed.

Ms. Domino worked for Spence's Bazaar for 27 years; she had seen service dogs in the building before. She said all the employees at Spence's Bazaar knew service dogs were allowed and that there were about seven to eight employees. She said she was never instructed that service dogs were not allowed, nor was she instructed that service dogs were allowed.

On cross-examination by Mr. Poliquin, Ms. Domino was asked about her loyalty to Spence's Bazaar. She said that there were a lot more vendors than employees at Spence's Bazaar. She said there was no discrimination training by Spence's Bazaar or Mr. Scott. Nor was there a policy book. She did not recall if there was a sign posted stating that service animals were allowed. She also did not recall if there was a "No Dogs Allowed" sign posted. She did recall a "Service Dogs Only" sign being posted.

Ms. Domino did not know why Mr. Scott said he would call animal control; she did not hear him say that he would call animal control.

Ms. Domino said that she wrote a statement about the incident. She denied that she wrote the May 24, 2018 letter from Spence's Bazaar regarding the incident with Mr. Clendaniel.



On re-direct, Ms. Domino did not recall ever hearing someone from Spence's Bazaar order anyone to leave because they had a service dog.

### **3. Witness Elisabeth Tisher**

Ms. Elisabeth Tisher, duly sworn, testified in response to questions from Mr. Morris. She explained that she has worked for Spence's Bazaar since she was nine years old. On January 2, she was in the office. She recalled hearing Mr. Scott say to Mr. Clendaniel that no dogs were allowed on the property. She also recalled that Mr. Clendaniel told Mr. Scott that the dog was a service animal and then hearing Mr. Scott say that it was Ok to stay. She recalled that Mr. Scott told Mr. Clendaniel multiple times that it was Ok for him to stay with his service dog.

She testified that she did not think Mr. Clendaniel understood that he was allowed to stay with his service dog because he kept after Mr. Scott. She said that Mr. Scott walked away from Mr. Clendaniel. Ms. Tisher specifically recalled Mr. Scott telling Mr. Clendaniel that it was Ok for him to stay. She further testified that she never heard Mr. Scott tell Mr. Clendaniel that he had to leave because of his dog. It was common to have service dogs at Spence's Bazaar.

On cross-examination by Mr. Poliquin, Ms. Tisher did not recall hearing Mr. Scott say he would call animal control. She did not recall if there was a written policy regarding service animals. Nor was there any training. She recalled there was a sign posted stating "No Dogs," and that there was no exception posted for

service dogs. She recalled Mr. Clendaniel trying to hand Mr. Scott the ADA card and Mr. Scott walking away.

Ms. Tisher said that she is loyal to Spence's Bazaar.

#### **4. Witness Catherine Skinner**

Ms. Catherine Skinner, duly sworn, testified in response to questions from Mr. Morris. She explained that she worked for Spence's Bazaar in the office for about three-and-one-half years and for about eight years in all.

Ms. Skinner was in the office on January 2. She recalled hearing Mr. Scott say that there was someone out there calling the Attorney General or something. Then Mr. Clendaniel came into the office asking why service dogs were not allowed. Mr. Scott responded that he never said that, he said service dogs are allowed. She heard Mr. Scott say service dogs were allowed about eight or nine times; she personally heard Mr. Scott say that. She said Mr. Scott kept telling Mr. Clendaniel that he was fine to stay and that Mr. Clendaniel kept asking Mr. Scott about service dogs. She said Mr. Clendaniel appeared agitated; he would not let the issue drop.

She recalled Mr. Clendaniel say that he felt threatened. She denied that Mr. Scott ever threatened Mr. Clendaniel. She thought Mr. Clendaniel was too far away from Mr. Scott during the conversation to feel threatened. She recalled that she asked Mr. Clendaniel why he was calling 911.

Ms. Skinner testified that as the incident continued she felt that Mr. Clendaniel needed to leave. She told Mr. Clendaniel that it was private property and that he needed to leave. Mr. Clendaniel then left.

Ms. Skinner confirmed that service dogs were allowed in Spence's Bazaar. She had never seen anyone asked to leave because of a service dog. In her view, it was clear that Mr. Clendaniel could stay with his service dog; there was no reason to be confused.

On cross-examination by Mr. Poliquin, Ms. Skinner said that she did not hear Mr. Scott say he would call animal control. She believed Mr. Scott got agitated because of the back-and-forth between Messrs. Scott and Clendaniel. She felt that it was "verging on harassment" by Mr. Clendaniel.

During the January 9 incident, she recalled hearing Mr. Scott call Mr. Clendaniel an "idiot." She was "100% positive" that Mr. Scott did not say "retard" in front of her. She did not recall Mr. Scott calling Mr. Clendaniel a "cry baby".

She said there is no written policy and there are no postings regarding service animals at Spence's Bazaar. She did say there were several signs stating "No Dogs." At the time of the incident, there was not a posting excluding service dogs from the "No Dogs" posting.

Ms. Skinner felt that both men were being aggressive. To her it seemed if Mr. Clendaniel was looking for a fight. When Ms. Skinner asked Mr. Clendaniel

why he was calling 911, she said he responded that he felt threatened.

Upon questioning from the Panel, Ms. Skinner said that she wrote the May 24, 2018 letter from Spence's Bazaar.

### **C. Complainant's Rebuttal**

In rebuttal, Mr. Clendaniel testified in response to questions from his counsel that he did not recall seeing Ms. Domino; he never saw her. He never saw Ms. Tisher. He did see Ms. Skinner when he was at Spence's Bazaar. He said that she was behind a desk.

### **D. Panel Questions**

Upon questioning from the Panel, Mr. Clendaniel said that on January 9 he did not come to Spence's Bazaar for shopping. He said that he initiated the conversation with Mr. Scott. Mr. Clendaniel further said that there was no discussion about him being welcome to shop at Spence's Bazaar. He has not returned to Spence's Bazaar since January 9.

The Panel then asked how Mr. Scott brought up the subject of animal control. Mr. Clendaniel said that on January 2, Mr. Scott said "I'm going to call animal control" in a threatening manner.

The Panel questioned Mr. Scott regarding his conduct on January 9. Mr. Scott said that after he told Mr. Clendaniel "several times" that he was welcome with his service dog, he "lost patience," but that had nothing to do with his service

dog. He has not seen Mr. Clendaniel at Spence's Bazaar since January 9.

### **E. Closing Arguments**

Mr. Poliquin argued for Mr. Clendaniel that Mr. Scott's threat to call animal control caused Mr. Clendaniel to be denied access to Spence's Bazaar with his service dog Tuco. Mr. Poliquin further argued that Respondent's witnesses were incredible; it was incredible that Mr. Clendaniel would pursue Mr. Scott after being told he could stay with his service dog.

Mr. Scott called Mr. Clendaniel names; Mr. Clendaniel wanted an answer to his question about service dogs; Mr. Scott cannot recall why he called animal control.

Mr. Poliquin asked that the Panel find that Respondents discriminated against Mr. Clendaniel because he had his service dog with him. He asked that the Panel find in Mr. Clendaniel's favor and demanded an award of \$20,000 for emotional distress.

Mr. Morris argued for Respondents that there were two different stories presented to the Panel. Mr. Morris asked the Panel to consider whether Mr. Clendaniel was ever asked to leave—he was not. Was Mr. Clendaniel ever told that service dogs were not allowed on the property? No.

Mr. Morris argued that to find for Mr. Clendaniel, the Panel would have to find that sworn witnesses were lying; Mr. Clendaniel and Respondents' witnesses

all agree that Mr. Clendaniel was never told to leave Spence's Bazaar.

Mr. Morris argued that Mr. Scott only said: "If I have any questions, I will call animal control." Mr. Morris said for some reason the incident escalated. Mr. Clendaniel was looking for a fight. Mr. Clendaniel has not shown any evidence that he was singled out because of his disability.

In rebuttal, Mr. Poliquin argued that being told to leave is not the standard for discrimination. He said to look at Mr. Scott's behavior—his threat to call animal control caused Mr. Clendaniel to be effectively excluded from Spence's Bazaar, thus constituting a violation of the DEAL.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Mr. Clendaniel alleges that Respondents violated 6 *Del. C.* § 4504(a), which provides that "no person being the owner...manager...agent or employee of any place of public accommodation, shall directly or indirectly refuse, withhold from or deny to any person, on account of race, age, marital status, creed, color, sex, handicap or national origin, any of the accommodations, facilities, advantages or privileges thereof." The provisions of the DEAL are to be "liberally construed" to safeguard the rights set forth therein.<sup>4</sup> "The ultimate purpose [of the DEAL] is to eliminate the inconvenience, unfairness, and humiliation of...discrimination."<sup>5</sup>

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<sup>4</sup> 6 *Del. C.* §4501.

<sup>5</sup> *Uncle Willie's Deli v. Whittington*, 1998 WL 960709 at \*4 (Del. Super. Dec. 31, 1998) (citations and internal quotations omitted).

Under Delaware law, claims alleging a direct or indirect refusal or denial of public accommodations based upon unlawful discrimination are decided using the guidance of the U.S. Supreme Court's three-part analysis in *McDonnell Douglas Corp. v. Green*.<sup>6,7</sup> Thus, the Panel must determine the following:

- (1) The complainant must establish a *prima facie* case of discrimination.
- (2) Once a *prima facie* case is established, the burden shifts to the respondent to present evidence of a legitimate, non-discriminatory reason for denying plaintiff access.
- (3) After this production of evidence, the complainant retains the burden of persuading by a preponderance of the evidence that the respondent's proffered reason was a pretext for discrimination.<sup>8</sup>

Here, to meet the initial burden of going forward and establishing a *prima facie* case of discrimination, Mr. Clendaniel must show: (a) that he is a member of a protected class, in this case, based on his disability; (b) that he was denied access to the public accommodations at Spence's Bazaar; and (c) that non-members of the protected class were treated more favorably. Further, because Equal Accommodations hearings before the SHRC are subject to the provisions of Delaware's Administrative Procedures Act (APA)<sup>9</sup>, "the burden of proof shall

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<sup>6</sup> 411 U.S. 792 (1973).

<sup>7</sup> See, e.g., *DP, Inc. v. Harris*, 2000 WL 1211151 at \*6 (Del. Super. July 31, 2000) ("Delaware Courts have applied the standard articulated in *McDonnell Douglas Corporation v. Green* for cases alleging unlawful discrimination.") (citations omitted); *Uncle Willie's*, 1998 WL 960709, at \*4 (applying the *McDonnell Douglas* analysis to a case brought under the DEAL).

<sup>8</sup> *Salty Sam's Pier 13 v. Washam*, 2000 WL 1211227, at \*2 (Del. Super. Aug. 3, 2000) (citations omitted).

<sup>9</sup> 29 Del. C. Ch. 101.

always be upon the applicant or proponent.”<sup>10</sup>

Here, there is no dispute that Mr. Clendaniel has a disability and is a member of a protected class under the DEAL. Nor is there any dispute that Spence’s Bazaar is a place of public accommodation under the DEAL. The issue here is whether Mr. Clendaniel was denied access to Spence’s Bazaar by Respondents. For reasons stated below, the Panel finds that Mr. Clendaniel has not shown by a preponderance of the evidence that he was denied access because of his disability.

The gravamen of Mr. Clendaniel’s complaint is that he believed Mr. Scott threatened to call animal control on January 2 to force Mr. Clendaniel to leave Spence’s Bazaar, effectively denying him access to a place of public accommodation. It is on this issue that the parties are directly at odds with one another.

Only two witnesses—Mr. Clendaniel and Mr. Scott—testified as to what was said about animal control on January 2. Mr. Clendaniel testified that Mr. Scott threatened that he “would call animal control.” Mr. Scott testified that “if he had any issues, he would call animal control.” The Panel gives equal weight to each witness’s testimony and finds that Mr. Clendaniel showed that he believed Mr. Scott would call animal control following the incident. The Panel cannot find,

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<sup>10</sup> 29 *Del. C.* § 10125(c).



however, that Mr. Scott's statement that "if he had any issues, he would call animal control" was said as an attempt or threat to force Mr. Clendaniel to leave Spence's Bazaar. Indeed, the Panel finds that the evidence shows that Mr. Scott repeatedly and consistently told Mr. Clendaniel that he could stay at Spence's Bazaar with his service dog.<sup>11</sup>

The Panel also finds that the evidence shows that Mr. Clendaniel was asked to leave Spence's Bazaar because of Mr. Clendaniel's aggressive behavior. The Panel finds insufficient evidence to conclude that Mr. Clendaniel was asked to leave because of his disability.

Accordingly, based on the evidence presented, the Panel cannot find, as a matter of fact or law, that Respondents denied services or accommodations to Mr. Clendaniel on the basis of his disability. Mr. Clendaniel has the burden of proof and the Panel concludes that Mr. Clendaniel failed to meet his burden to establish a case of discrimination by a *preponderance* of the evidence. Specifically, Mr. Clendaniel has not shown sufficient evidence to tip the scales such that the Panel can conclude that Mr. Scott threatened to call animal control to get Mr. Clendaniel to leave the Spence's Bazaar property because of his disability. Because Mr.

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<sup>11</sup> While Mr. Clendaniel denies that Mr. Scott told him that he could stay at Spence's Bazaar with Tuco, Respondents presented three witnesses who each corroborated Mr. Scott's testimony that he repeatedly told Mr. Clendaniel that he could stay at Spence's Bazaar with Tuco. The Panel finds this to be sufficient evidence that Mr. Clendaniel was told that he could stay.

Clendaniel has not established a violation of the DEAL occurred, he cannot prevail on his complaint.

The evidence taken as a whole suggests that Mr. Clendaniel misheard or misunderstood Mr. Scott's statement about calling animal control. This misunderstanding caused these two men to have a heated discussion on January 2. And, sadly, when Mr. Clendaniel entered uninvited into Mr. Scott's office a week later on January 9, they engaged in an even more heated argument where Mr. Scott used undeniably unacceptable language towards Mr. Clendaniel.

Undoubtedly, Respondents could have handled the incident with Mr. Clendaniel and his service dog in a more professional and compassionate manner. From the evidence presented, the Panel finds that while Spence's Bazaar does have a policy to allow service animals, it does not have a written policy in place or a procedure to formally inform employees of this policy. Nor are the vendors being formally informed regarding Spence's Bazaar's service animal policy. While these findings do not change the Panel's conclusion that no violation of the DEAL occurred, the Panel strongly suggests that Spence's Bazaar require its administrative and management staff familiarize themselves with (1) the ADA regulations regarding service animals,<sup>12</sup> and (2) the provisions of the DEAL

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<sup>12</sup> The U.S. Department of Justice has published an overview of these regulations and they are available at [https://www.ada.gov/service\\_animals\\_2010.htm](https://www.ada.gov/service_animals_2010.htm) (December 2018).

regarding service animals in places of public accommodation.<sup>13</sup> The Panel further suggests that Spence's Bazaar provide all current and future indoor vendors a written summary of these laws and specifically inform each vendor that, pursuant to Federal and State law, service animals are permitted inside Spence's Bazaar.

### CONCLUSION

After careful consideration of the evidence presented, the Panel, by unanimous vote, concludes that Mr. Clendaniel failed to show by a preponderance of the evidence that Respondents Spence's Bazaar and Mr. Scott violated the provisions of the DEAL alleged in the Complaint to have been violated.

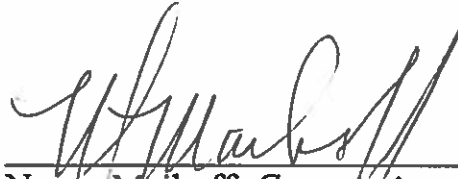
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<sup>13</sup> See 6 Del. C. § 4504(a)(3).

**ORDER**

Pursuant to 6 *Del. C.* § 4508(g), the Complaint against respondents Spence's Bazaar and Mr. Scott is **DISMISSED**.<sup>14</sup>

**IT IS SO ORDERED** this 10<sup>TH</sup> day of January, 2019.



Nancy Maihoff, Commissioner and Panel Chair



Earnest Gulab, Commissioner and Panel Member



Kerri Harris, Commissioner and Panel Member

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<sup>14</sup> Because Mr. Clendaniel failed to prove that a violation of the DEAL occurred, he is not entitled to a monetary award. *Uncle Willie's*, 1998 WL 960709, at \*4 (citing 6 *Del. C.* § 4508(h))