

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

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|-----------------------|---|-----------------------|
| NIKKI LANE |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Case No. K-EA-1939-19 |
| |) | |
| SAMBO'S TAVERN et al. |) | |
| |) | |
| 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 7, 2020 in a video conference hearing in Delaware¹ to determine whether a violation of the Delaware Equal Accommodations Law, 6 *Del. C.* Ch. 45, had occurred.

PRESENT:

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

APPEARANCES:

Nikki Lane, *Complainant, pro se*,
Gregory A. Morris, Esq., LIGUORI & MORRIS, *Counsel for
Respondents.*

¹ The hearing was conducted by video conference in accordance with the recommendations in section I.2 of the Governor's Twenty-Seventh Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat issued on September 3, 2020.

A meeting of a Panel of the Delaware State Human Relations Commission (the “SHRC” or “Commission”) convened by videoconference on October 7, 2020 in order to determine whether a violation of Delaware’s Equal Accommodation Law (the “DEAL”, Title 6, Chapter 45 of the *Delaware Code*) occurred. Ms. Nikki Lane (“Complainant” or “Ms. Lane”) brought a complaint alleging that Respondents Sambo’s Tavern (“Sambo’s”) and Ms. Elva Burrows (collectively “Respondents”) discriminated against her on the basis of her color. Immediately after the hearing, the Panel conducted its deliberations.

SUMMARY OF THE COMPLAINT

In brief summary, Ms. Lane alleged in her complaint that she was refused, withheld, or denied accommodations, facilities, advantages, or privileges of a place of public accommodation because of her color. Ms. Lane is black.

Specifically, Ms. Lane alleges that on Saturday, August 3, 2019 at approximately 1:45 PM she arrived with her dining companion at Sambo’s. After seating themselves, Ms. Lane alleges that she and her companion waited for nearly 15 minutes without getting any service. While they were still waiting to be served, two white men came in the restaurant and were immediately greeted by Ms. Burrows, who promptly gave them menus, seated them, and took their order.

Ms. Lane walked over to Ms. Burrows and got menus and returned to her table. She saw that her companion was becoming increasingly distressed and asked

if she wanted to leave. When her companion said “yes”, they gathered their belongings and left.

While in the parking lot outside the restaurant, Ms. Lane called Sambo’s and asked who the owner was. She was transferred to Ms. Burrows. The Complaint alleges that Ms. Burrows came on the phone and when Ms. Lane pointed out that she had been inappropriately treated, Ms. Burrows screamed that she was “working like a dog” and had instructed another one of the staff to take care of them. When Ms. Lane said that she was going to report the incident to the authorities, Ms. Burrows hung up the phone.

SUMMARY OF THE EVIDENCE

Both parties made brief opening statements in support of their respective cases.

A. Complainant’s Case

1. Ms. Lane

Ms. Lane, duly sworn, testified that on August 3, 2019, she and her dining companion, Ms. Nikko Brady, came to Sambo’s to have a meal. They entered the restaurant and neither Ms. Burrows nor any other wait staff acknowledged them; Ms. Burrows was standing at the end of the bar when Ms. Lane and Ms. Brady entered.

Ms. Lane said that the restaurant was not crowded at all; there was a large

party in the back room but only two couples in the front room.

They sat at their table for about 15 minutes with no service. Ms. Lane said that they initially sat down at one table and then got up and moved to a different table due to flies.

While they sat without getting any service, two white men arrived and were immediately greeted by Ms. Burrows; she asked if they had a reservation; she gave them menus and took their order.

Ms. Lane stated that she and Ms. Brady “watched in disbelief” as Ms. Burrows waited on the two white men. Ms. Lane approached Ms. Burrows to get menus. Ms. Burrows asked Ms. Lane if she and Ms. Brady wanted some drinks. Ms. Burrows explained that she had asked one of the waitresses working to serve them. Ms. Lane returned to her table and asked Ms. Brady if she wanted to leave and they left.

In the parking lot, Ms. Lane called Sambo’s and asked to speak to the owner. Ms. Burrows came on the phone and said that she had been working like a dog and that she had asked another waitress to serve Ms. Lane and Ms. Brady. Following the incident, Ms. Lane was very upset. She had looked forward to going to Sambo’s.

Ms. Lane referred to a diagram of Sambo’s floorplan that was drawn by Ms.

Burrows.² Ms. Lane said that all the tables in the front room were visible; the bar was very visible. The rear dining area was partially blocked by a wall. Ms. Lane was in the front dining room.

Ms. Lane also referred to a prior written statement by Ms. Kim Hellein that Ms. Lane said supported her version of the events.³

On cross examination by Mr. Morris, Ms. Lane explained that Ms. Brady is her daughter. This was their first time to Sambo's. Sambo's had been recommended by an associate for "good crabs."

When they arrived, they were not greeted by anyone. Ms. Lane asked Ms. Burrows where they should sit; she asked "do we seat ourselves?" They were told to sit anywhere; there was an event in the back room. Ms. Burrows said that the back room was for reservations. They were not given menus; Ms. Lane had to ask to get menus from Ms. Burrows.

Once they sat down, they were seated for about a minute when Ms. Lane got up to look around the back room; she was gone about a minute. When she returned she and Ms. Brady decided to move to a different table because of flies. At the second table there was not an issue with flies. They had only moved from one table to the next.

² Identified at the hearing as Complainant's Exhibit 1 (previously marked as Exhibit A).

³ Identified at the hearing as Complainant's Exhibit 2 (previously marked as Exhibit B).

Upon questioning from the Panel, Ms. Lane said that nothing was said to her about her color. Nothing was said about the restaurant being shorthanded. Only when she called on the telephone did Ms. Burrows say the restaurant was shorthanded; Ms. Burrows said she was extremely busy and that she told someone else to wait on Ms. Lane and her companion. Ms. Lane did not think that it was just poor customer service when the two white men were immediately greeted and served before her and her companion. Ms. Lane said she was in the restaurant for about 30-40 minutes total; it did not appear busy, it appeared quite calm.

Ms. Lane also submitted a verified statement by Ms. Burrows⁴ and Respondent's refusal of a no-fault settlement signed by Ms. Burrows.⁵

2. Ms. Elva Burrows

Ms. Burrows, duly sworn, testified in response to questions by Ms. Lane. Ms. Burrows explained the floorplan of the restaurant. In the front dining room where Ms. Lane had sat there is a workstation at the end of the bar near the kitchen. That was where Ms. Burrows was sitting when Ms. Lane entered on August 3. The bartender can see the dining room from behind the bar.

Ms. Lane asked about Sambo's staffing that day. Ms. Burrows explained that there were only two waitresses working that day. It was very busy. Kim, the

⁴ Identified at the hearing as Complainant's Exhibit 3 (previously marked as Exhibit C).

⁵ Identified at the hearing as Complainant's Exhibit 4 (previously marked as Exhibit D).

bartender, stays behind the bar. Ms. Burrows explained that Sambo's uses a team approach and everyone pitches in where needed.

Regarding August 3, Ms. Burrows recalled that Ms. Lane and her companion entered the restaurant. The front dining room wasn't crowded but the back dining room was partly full and customers were coming in. Ms. Burrows told Ms. Lane that the back room required reservations and that they could sit anywhere in the front room.

Ms. Burrows said that she walked up to Ms. Lane—maybe Ms. Lane was seated—and she asked if they had reservations and then welcomed Ms. Lane and her companion to sit in the front dining room. Ms. Burrows told Ms. Lane that they were very busy right now. Once Ms. Lane and her companion were seated, Ms. Burrows did not wait on them; she asked one of the waitresses working in the back dining room to wait on them. Ms. Burrows said she gave Ms. Lane and Ms. Brady menus. Ms. Burrows explained that there were two servers, one bartender, and herself working that day.

Ms. Burrows said that she saw that Ms. Lane had moved from one table to another. Regarding the menus, Ms. Burrows thought that they were walking towards each other when Ms. Burrows handed Ms. Lane menus. Ms. Burrows recalled Ms. Lane returning to her table but did not recall what happened next. She believed that Ms. Lane returned to her seat and nobody took their drink order and

when someone came from the other dining room to wait on them, Ms. Lane and her companion were gone.

Ms. Lane asked about Ms. Burrows's prior statement marked as Exhibit 3. Ms. Burrows recalled that two white men came in after Ms. Lane. She greeted them when they came because she was standing by a table near where the men entered. She handed them some menus that were lying on the table and the men sat down. Ms. Burrows said that Ms. Lane wasn't at her table at this time. Ms. Burrows didn't serve Ms. Lane drinks because every time she looked for Ms. Lane, she was not seated at a table. Ms. Burrows explained that she came out into the front dining room and Ms. Lane went into the back dining room; Ms. Lane wasn't at the table when staff were trying to wait on them; it was very busy.

Ms. Lane asked Ms. Burrows to read her statement marked as Exhibit 3. Ms. Burrows complied. Ms. Burrows recalled that the men came in after Ms. Lane; Ms. Lane wasn't at her table. When Ms. Burrows brought the men their drinks, she saw Ms. Lane was at her table and gave them menus. Ms. Burrows said that she made the statement marked as Exhibit 3 in September 2019 and that her recollection of the events was better at that time.

In response to Panel questioning, Ms. Burrows explained that she usually seats customers but sometimes the waitresses do. Ms. Burrows said that Sambo's clientele is mixed and racially diverse. At the time of the incident, there were other

black customers in the back dining room; there were four or five other black customers that day. Ms. Burrows said she does not pay attention to the skin color of Sambo's customers.

3. Ms. Kim Hellein

Ms. Kim Hellein, duly sworn, testified in response to questions from Ms. Lane. Ms. Hellein explained that she was an employee of Sambo's at the time of the incident and was working that day; she was the bartender. Her function was to answer the phone, take reservations, make drinks, and serve bar customers. She said the work philosophy depended on the situation but generally she would pitch in when needed. In the rare instance she did not have work to do as the bartender, she would go on the dining room floor to help. If she found that a customer was upset she would tell Ms. Burrows.

On cross examination by Mr. Morris, Ms. Hellein said that on the day of the incident the back room was totally full. She said people were being seated in the back when Ms. Lane and her companion were being seated. When Ms. Burrows asked where Ms. Lane and her companion went, Ms. Hellein said that they went into the back dining room.

Ms. Hellein denied ever witnessing discrimination based on race or color at Sambo's.

4. Ms. Nikko Brady

Ms. Brady, duly sworn, testified in response to questions from Ms. Lane. Ms. Brady explained that on August 3, she and Ms. Lane had gone to Sambo's and were seated by the front door and by a window. There were flies in this area so they moved over to another area. While they were seated, Ms. Brady did not get up; Ms. Lane did get up from the table. She said Ms. Lane stood for about 30-seconds at the entryway into the back dining room.

Nobody greeted them when they entered the restaurant. After waiting a while without menus, Ms. Lane got up to get menus from Ms. Burrows. Nobody ever came over to their table. There were four other people in the dining room with them. It was very calm.

Two white men entered the restaurant after Ms. Lane and Ms. Brady were seated. The men were greeted and told to sit; they were waited on by Ms. Burrows. She walked over to them and took their drink order and served them the drinks.

Ms. Lane and Ms. Brady were never served. They were in shock and disbelief at the disparate treatment. Ms. Brady was unhappy and upset. Ms. Lane asked if she wanted to leave and they left. They never got an apology; when Ms. Lane called, Ms. Burrows shouted that she was working like a dog.

On cross examination by Mr. Morris, Ms. Brady said that she was Ms. Lane's daughter. She does not live with her mother. This was her first trip to

Sambo's. She explained that Ms. Lane asked her if she wanted to leave and that Ms. Lane called Sambo's from the parking lot.

In response to Panel questioning, Ms. Brady said that when Ms. Lane got up, she stayed seated. Nobody ever waited on them.

B. Respondent's Case

1. Ms. Angela Burton

Ms. Angela Burton, duly sworn, testified in response to questions from Mr. Morris. She resides in Dover and has been a patron of Sambo's for 47 years. She is black. She has never witnessed any discrimination at Sambo's; she loves going there. She has never seen any discrimination by Sambo's employees. She has seen many other races at Sambo's; she recalled going to Sambo's back when she and her husband were the only black patrons; she has never seen any mistreatment.

Ms. Burton said that Ms. Burrows was very upset about this case. Ms. Burton did not believe that it was Ms. Burrows's nature to discriminate—she is a nice person. Ms. Burton explained that she has seen Ms. Burrows pay for a family's meal because the children were not using electronic devices at the table.

Upon cross examination by Ms. Lane, Ms. Burton explained that she had experienced discrimination because of her race in the past. It made her feel bad, angry, hurt, and mad. She believed that all blacks experience discrimination at some point in their lifetime. When asked how she would respond to discrimination,

Ms. Burton explained that it depends on the person—some people are more sensitive than others.

In response to Panel questioning, Ms. Burton explained that in her personal opinion, she did not think Ms. Lane and her companion were discriminated because of their race. Based on her experience, she believed it to be a bad happenstance of the staff being very busy. In her experience she was always waited on and she found it hard to imagine what happened to Ms. Lane. She had never seen any instances of discrimination because of race at Sambo's. She explained that she is a long-time customer. She did not recall being there on August 3. She said that she usually makes reservations and Ms. Burrows will have a table available.

2. Mr. Gary Mekins

Mr. Gary Mekins, duly sworn, testified that he lives in Millsboro and has been a Sambo's patron for 13 years. He is black. He would go to Sambo's about one-to-two times per week. He has never seen discrimination at Sambo's because of race or other bases; he had never been the subject of discrimination at Sambo's.

On cross-examination by Ms. Lane, Mr. Mekins said that he had experienced discrimination in his past. He believed that waiting a long time was not discrimination. He explained that he grew up in the 1960s; he had not witnessed any discrimination at Sambo's; if there was a place where he knew there

was discrimination, he would not go there. Mr. Mekins said that he was not at Sambo's on August 3, 2019. He knew Ms. Burrows and she had asked him if he ever felt discriminated because of his race. He did not.

3. Ms. Lydia McCray

Ms. Lydia McCray, duly sworn, testified in response to questions from Mr. Morris. She has worked for Sambo's for 22 years. She has been a cook at Sambo's for all 22 years. She is black. She has never witnessed any discrimination at Sambo's. She wouldn't continue working there if there was discrimination; she loves working at Sambo's. Ms. McCray was working on August 3. She recalled that the restaurant was short-staffed on that date.

On cross examination by Ms. Lane, Ms. McCray explained that she was the head cook in the kitchen. She cannot see into the dining room from the kitchen normally. She has never been discriminated against by Sambo's or in general.

In response to Panel questioning, Ms. McCray said that she's never been discriminated against. She did not recall how many people were working in the dining room on August 3—it was over one year ago. She said normally Sambo's would have five waitresses at night; mid-day there is usually two waitresses and a bartender. She did not recall exactly why Sambo's was shorthanded on August 3.

4. Ms. Joanne Pugh

Ms. Joanne Pugh, duly sworn, testified that she has worked at Sambo's for 20-plus years. She also works for the State of Delaware Department of Health and Human Services. She has never seen discrimination at Sambo's.

She was working on August 3. It was busy that day. There were not enough waitresses to do all that needed to be done—run food and run drinks. There were customers waiting. She recalled that it was one of the busiest days they had ever had at Sambo's.

Ms. Pugh explained that she went to the bar to put a drink order in and Ms. Burrows asked her to wait on Ms. Lane and her companion. She said that when she went over to wait on them, they were not at the table. A man seated at the bar said Ms. Lane and her companion went in the back. Ms. Pugh moved on to wait on other tables. When she checked again, she didn't see Ms. Lane or her companion. The next time she saw Ms. Lane and her companion is when they were walking out of the restaurant. She recalled that Ms. Lane called Sambo's but could not recall what was discussed. Ms. Pugh apologized to Ms. Burrows when she heard that Ms. Lane complained about the incident.

On cross examination by Ms. Lane, Ms. Pugh recalled that she saw Ms. Lane walking in and sitting down. She did not recall where Ms. Lane sat. Ms. Pugh explained that in the main dining room it was so busy she couldn't get her tickets

in.⁶ Ms. Burrows's husband was also helping out, as was the bartender.

Ms. Pugh recalled being at the bar and telling Ms. Lane that she would get to her as soon as she could. She recalled that Ms. Lane was initially seated by the bathroom, but when she came back, Ms. Lane wasn't there.

In response to Panel questioning, Ms. Pugh said that there were two servers, one bartender, and Ms. Burrows working on August 3. They were overwhelmed because it was unusually busy; had they known it would be this busy, they would have called in additional staff.

On re-direct by Mr. Morris, Ms. Pugh explained that the main dining room was "packed".

C. Closing Arguments

In closing, Ms. Lane thanked the Panel and argued that she had shown that she was denied public accommodations. She argued that, as a professional, simply apologizing goes a long way. Discrimination dims the light on the progress that has been made to treat citizens equally. She said that she did not deserve the experience that she got at Sambo's and, at the end, she was never served at Sambo's.

⁶ The Board notes that there was some discussion about the layout of Sambo's and some confusion about which dining room was "the front" and which was "the back". In any case, the Panel finds that on August 3, 2020, the dining room where Ms. Lane and her companion sat had relatively few guests (the witnesses usually referred to this room as the "front" dining room) and the other dining room overlooking the water (the witnesses referred to this one as the "main" or "back" dining room) was full of guests who had reservations and was very busy.

Mr. Morris argued for Respondents. He argued that there's no law to protect against bad service. There was no discrimination here. And Respondents presented two key witnesses, Ms. Burton and Mr. Mekins, who testified at their own expense, that they have never seen or experienced discrimination at Sambo's.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. Lane alleges that Respondents violated the DEAL because of her color. Section 4504(a)(1) of the DEAL 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, disability, sexual orientation, gender identity, 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.⁷ “The ultimate purpose [of the DEAL] is to eliminate the inconvenience, unfairness, and humiliation of...discrimination.”⁸

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*

⁷ 6 Del. C. §4501.

⁸ *Uncle Willie's Deli v. Whittington*, 1998 WL 960709 at *4 (Del. Super. Dec. 31, 1998) (citations and internal quotations omitted).

Corp. v. Green.^{9,10} This analysis requires the following steps:

- (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.¹¹

Here, to meet the initial burden of going forward requires a *prima facie* case of discrimination and Ms. Lane must show: (a) that she is a member of a protected class; (b) that she was denied access to public accommodations; and (c) that non-members of the protected class were treated more favorably.¹² Further, because Equal Accommodations hearings before the SHRC are subject to the provisions of Delaware's Administrative Procedures Act (APA),¹³ "the burden of proof shall always be upon the applicant or proponent."¹⁴

The Panel finds that Ms. Lane has met her initial burden to prove a *prima facie* case under the first step of the *McDonnell Douglas* analysis. There is no

⁹ 411 U.S. 792 (1973).

¹⁰ 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).

¹¹ *Salty Sam's Pier 13 v. Washam*, 2000 WL 1211227, at *2 (Del. Super. Aug. 3, 2000) (citations omitted).

¹² See *Boggerty v. Stewart*, 14 A.3d 542, 550 (Del. 2011) (citations omitted).

¹³ 29 Del. C. Ch. 101.

¹⁴ 29 Del. C. § 10125(c).

dispute that Ms. Lane is black and is a member of a protected class under the DEAL.¹⁵ And there is no dispute that neither Ms. Lane nor her companion, who is also black, were not waited on by Sambo's.¹⁶ The Panel finds this to be a denial of public accommodation.¹⁷ And there is no dispute that two white men—non-members of Ms. Lane's protected class—were preferentially treated by Respondents because they were waited on and served while Ms. Lane and her companion were not.

Since the Complainant has met her initial burden and proven a *prima facie* case of discrimination under the DEAL, the Panel turns to the second step in the *McDonnell Douglas* analysis. Here, Respondents have the burden of production to show that there was a "legitimate, non-discriminatory reason" for not waiting on and serving Ms. Lane and her companion. The Panel finds that Respondents have shown that the reason for Ms. Lane and Ms. Brady not being served was due to the restaurant being understaffed on August 3. Each of Ms. Burrows, Ms. Hellein, Ms.

¹⁵ See 6 Del. C. § 4503 ("All persons within the jurisdiction of this State are entitled to the full and equal accommodations, facilities, advantages and privileges of any place of public accommodation regardless of the race, age, marital status, creed, color, sex, handicap, sexual orientation, gender identity, or national origin of such persons.").

¹⁶ While Respondents' witnesses said that they attempted to wait on Ms. Lane and her companion but did not see her seated at the table when they checked, the Panel finds that everyone is in agreement that Ms. Lane and her companion did not have their order taken or get served food or drinks while they were inside Sambo's.

¹⁷ Because the purpose of the DEAL is "to remove the daily affront and humiliation involved in discriminatory denials of access to facilities ostensibly open to the general public," *Stewart v. SHRC*, 2010 WL 2653453, at *3 (Del. Super. July 6, 2010) (citation and internal quotations omitted), the Panel concludes that Respondents' failure to wait on Ms. Lane was a denial of public accommodations.

McCray, and Ms. Pugh testified that Sambo's was understaffed and that the waitresses were having difficulty promptly serving all the customers. Further, the Panel finds credible Ms. Pugh's testimony that she attempted to wait on Ms. Lane and her companion, but did not find them at the table when she came out from the main dining room to provide service.¹⁸ While Ms. Lane testified that it was "calm" in the front dining room where she and her companion sat, Ms. Lane presented no evidence that directly rebutted Respondents' evidence that Sambo's was understaffed on August 3 and that the waitresses were having difficulty serving all of the customers in the main dining room and, as a result, they were unable to timely wait on Ms. Lane and her companion. The Panel concludes that Respondents have met their burden of production to show that there was a "legitimate, non-discriminatory reason" for what happened—the restaurant was understaffed.

This brings us to the final step in the *McDonnell Douglas* analysis. At this point, the burden of proof is on Ms. Lane to show by a preponderance of the evidence that Respondents' proffered reason for what happened—being understaffed—was a pretext for discrimination. It is here that the Panel concludes

¹⁸ The Panel notes that Ms. Lane and Ms. Brady both testified that Ms. Brady did not leave the table. This conflicts with Ms. Pugh's testimony. The Panel finds, however, that the conflicting versions of the events is insufficient to cause the Panel to find incredible Ms. Pugh's testimony that when she looked for Ms. Lane and Ms. Brady they were not there. And because Ms. Pugh's version of the events was corroborated by both Ms. Burrows and Ms. Hellein, on balance, the Panel finds Ms. Pugh's version to be slightly more credible than Ms. Lane's.

that Ms. Lane failed to prove that Respondents' excuse of being understaffed was a pretext for discrimination which is necessary for the Panel to conclude that Respondents violated the DEAL.

Apart from the incident on August 3, Ms. Lane presented no evidence to cause the Panel to find that Respondents' excuse was a pretext for discrimination. Ms. Lane testified that that nothing was said to her about her color on August 3. Ms. Lane did not present any evidence suggesting a pattern of discrimination by Respondents. And Ms. Lane did not show that other Sambo's customers were the subject of discrimination. Indeed, Respondents presented evidence showing that other Sambos customers who were black did not experience discrimination.¹⁹ At the hearing, Ms. Burton and Mr. Mekins—two long-time customers who were black—testified that over the many years they have dined at Sambo's, they have neither been discriminated against by Respondents, nor have they witnessed any discrimination. The Panel found both Ms. Burton and Mr. Mekins to be credible, and Ms. Lane did not present any evidence or provide other reasons for the Panel to discount their testimony. Additionally, Ms. Burrows, Ms. Hellein, Ms. McCray, and Ms. Pugh all testified that they never witnessed discrimination at Sambo's.

¹⁹ The Panel notes that under Delaware law, Respondents do not have the burden to prove a lack of discrimination. Rather, it is the complainant, Ms. Lane, who bears the burden to show by a preponderance of the evidence that discrimination in violation of the DEAL took place, and this burden includes proving that Respondents' excuse was a pretext for discrimination.

While these witnesses were current employees of Sambo's, there was no evidence presented to cause the Panel to discount their testimony merely because they were employed by Sambo's. After carefully considering all of the evidence presented, the Panel finds that Ms. Lane did not present sufficient evidence to cause the Panel to conclude that Respondents' excuse was a pretext for discrimination.

In sum, while Ms. Lane did present a *prima facie* case of discrimination, Respondents explained that the incident was due to the restaurant being understaffed on August 3. Under Delaware law, for the Panel to conclude that Respondents violated the DEAL, Ms. Lane needed to also prove that Respondents' explanation was a pretext for discrimination. She did not do that. Because Ms. Lane failed to meet her burden of proof for the last step in the *McDonnell Douglas* analysis, the Panel must find that no violation of the DEAL occurred.

The Panel does find that the evidence presented showed that Sambo's staff was overwhelmed and that Ms. Burrows was having a bad day in dealing with the situation. The Panel agrees with Ms. Lane's statement that an apology can go a long way. And while this is not an official finding or conclusion of the Panel, the Panel believes that Ms. Burrows could have mitigated the situation with a sincere apology rather than tersely rejecting Ms. Lane's complaint during their phone call.

CONCLUSION

After careful consideration of the evidence presented, the Panel, by unanimous vote, concludes that Ms. Lane has failed to show that Respondents violated the DEAL.

ORDER

Pursuant to 6 *Del. C.* § 4508(g), the Complaint against Respondents is **DISMISSED**.

IT IS SO ORDERED this 17th day of December, 2020.



Gail Tarlecki, *Commissioner and Panel Chair*



[NAMAHOFF \(Dec 16, 2020 23:17 EST\)](#)

Nancy Maihoff, *Commissioner and Panel Member*



Earnest Gulab, *Commissioner and Panel Member*
