

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

DeSheah LYLES	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. NC-EA-2280-21
	)	
DELAWARE RACING ASSOCIATION	)	
d/b/a DELAWARE PARK RACETRACK	)	
AND SLOTS	)	
	)	
Respondent.	)	

---

**MEMORANDUM DECISION AND ORDER**

---

HEARING PANEL:

Gail Tarlecki, *Commissioner and Panel Chair*,  
Chok-Fun Choi, *Commissioner and Panel Member*,  
Rosemarie Williams, *Commissioner and Panel Member*, and  
Daniel C. Mulveny, Deputy Attorney General, *Counsel for the  
Commission and the Panel*.

APPEARANCES:

Patrick Gallagher, Esq., Jacobs & Crumplar, P.A.  
*Counsel for Complainant.*

Jennifer Gimler Brady, Esq., Potter Anderson & Corroon LLP  
*Counsel for Respondent.*

Pursuant to due notice of time and place of meeting served on all parties in interest, the above-identified Panel of the Delaware State Human Relations Commission (the “SHRC” or “Commission”) convened a hearing by videoconference on October 6, 2021 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. DeSheah Lyles (“Ms. Lyles” or “Complainant”) brought a complaint alleging that Respondent Delaware Racing Association, d/b/a Delaware Park Racetrack and Slots (“Delaware Park” or “Respondent”) discriminated against her based on her religion and gender. Immediately after the hearing, and continuing to the next day, the Panel conducted its deliberations.

### **SUMMARY OF THE COMPLAINT**

In very brief summary, Ms. Lyles alleged in her complaint that Delaware Park wrongfully refused, withheld, or denied accommodations, facilities, advantages, or privileges of a place of public accommodation because of her religion and gender. Ms. Lyles is female and at the time she was wearing a hijab as part of her Muslim faith.

Specifically, Ms. Lyles alleges that she went to Delaware Park on the afternoon of September 29, 2020 to cash in a lottery ticket/football ticket for a friend. Ms. Lyles was wearing a hijab as part of her Muslim faith that covered all

of her face except her eyes.

When Ms. Lyles attempted to enter the casino at Delaware Park, she was stopped by an unknown security guard. Ms. Lyles alleged that the security guard said he worked for Gettier Security. The security guard allegedly told Ms. Lyles that she could not enter the casino wearing her hijab. When asked if the problem was with a face covering due to the COVID-19 pandemic, the security guard responded that it had to do with her hijab.

According to the complaint, at some point the security guard brought in his supervisor “Tony”. Ms. Lyles alleged that she believed Tony was a Delaware Park employee. Ms. Lyles alleged that when she explained to Tony that the security guard would not let her into the casino because of her hijab, Tony reaffirmed that Ms. Lyles could not enter the casino while wearing her hijab. Ms. Lyles video-recorded part of the conversation with Tony. After Ms. Lyles was told she could not enter, she left the building.

### **PRELIMINARY MATTERS**

Prior to the parties’ respective presentations, Delaware Park argued that Ms. Lyles’s complaint was filed after the 90-day deadline required by the DEAL and

was, therefore, untimely.<sup>1</sup> It was argued that Delaware Park was “a little bit prejudiced” because the late-filing prevented Delaware Park from presenting certain evidence that is no longer available. Delaware Park further argued that, had it known about the complaint earlier, it could have preserved this evidence.

In response, Ms. Lyles’ counsel argued that Ms. Lyles submitted a completed questionnaire to the Division within 90-days of the alleged incident and that the completed questionnaire contained the relevant allegations and information. It was admitted that the complaint was filed after the 90-day deadline.

The Panel considered Delaware Park’s motion to be a motion to dismiss. It then recessed and deliberated the motion.<sup>2</sup> The Panel returned and issued its decision to deny Delaware Park’s motion to dismiss. The following explains why.

The Panel determined that the questionnaire containing the information required by § 4508(a) of the DEAL was filed within 90 days of the alleged events and that the Division allowed Ms. Lyles’s complaint to relate back to the date the questionnaire was filed. In such circumstances, the courts have allowed an

---

<sup>1</sup> Section 4508(b) of the DEAL requires a complaint to be filed with the Delaware Division of Human Relations not later than 90 days after the alleged discriminatory events.

<sup>2</sup> At the hearing, the Panel denied Delaware Park’s motion without prejudice to renew the motion. After the hearing concluded, the Panel maintained its decision to deny Delaware Park’s motion to dismiss and expands on the reasons for its denial here.

untimely complaint to relate back to the date of the questionnaire.<sup>3</sup> Accordingly, the Panel finds the Ms. Lyles’s complaint should relate back to the date of the questionnaire. Further, while Delaware Park argued that it may have been a “little bit prejudiced”, during the course of the hearing, Delaware Park did not show that it was *unduly* prejudiced due to an inability to present its case. For these reasons, the Panel denies Delaware Park’s motion to dismiss Ms. Lyles’s complaint as untimely under § 4508(b) of the DEAL.

### **SUMMARY OF THE EVIDENCE**

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

#### **A. Complainant’s Case**

##### **1. Ms. Lyles**

Ms. Lyles, duly sworn, testified in response to questions from Mr. Gallagher. Ms. Lyles explained that she is a practicing Muslim; she has been for three years. She wears a hijab in public to cover her face. At the hearing, she was wearing the same hijab she was wearing on September 29, 2020. It covers her

---

<sup>3</sup> See *Paitzel v. State of Delaware*, 2016 WL 1424828, at \*5 (Del. Super. April 7, 2016) (finding that in the context of employment discrimination matters, “the Federal District Courts have found that the use of an intake questionnaire is sufficient to constitute a charge and that later verification of a charge will relate back to the date of the questionnaire.”).

whole face except for her eyes.

On the day in question, she went to Delaware Park to cash in a reward; a winning ticket. She explained that Muslims are not allowed to gamble but they can accept gifts. The ticket was a gift from her husband.

She went into Delaware Park alone. She had been there previously about 10 years ago but never as a practicing Muslim. When she went inside, she was greeted by a tall white man; he said that she cannot wear a hijab at Delaware Park; it is not permitted. She requested an explanation. At that point, the supervisor arrived. He was a heavy-set black man.

Ms. Lyles explained to the supervisor that the security guard said that she was being denied access to Delaware Park because of her hijab; that she cannot wear a hijab. Ms. Lyles said that the supervisor confirmed that she cannot wear a hijab at Delaware Park. At this point Ms. Lyles started to record the conversation on her iPhone.

The recording was then played for the Panel.<sup>4</sup> Briefly summarized here, the recording shows the feet and body of the supervisor who is standing across from Ms. Lyles. Ms. Lyles and the supervisor are having a conversation. Ms. Lyles explained that her hijab is a “religious thing” and asked if the supervisor was

---

<sup>4</sup> Mr. Gallagher noted that the audio from the video was difficult to hear. During the hearing, the recording was played several times.

saying that she cannot go into the casino. The supervisor confirmed that she cannot go into the casino. The recording then ended. Ms. Lyles said that the recording captured the entire conversation.<sup>5</sup>

After Ms. Lyles stopped recording the conversation with the supervisor, she left the building. She returned to her car. Her friend, who was in the car, then went inside the building. Her friend was wearing jeans, a shirt, and a face mask.<sup>6</sup> She was not Muslim and she was not wearing a hijab. Her friend was allowed into the casino and was able to cash in the lottery ticket.

---

<sup>5</sup> Delaware Park objected to the video arguing that it was incomplete. This objection was noted at the hearing and it is overruled here. Under Rule 8.16.1 for DEAL hearings, formal rules of evidence are not strictly followed. That said, as the Panel understands Delaware Park's objection, the problem is that Delaware Park believes that Ms. Lyles's iPhone video purportedly did not record the entire conversation between Ms. Lyles and the supervisor. Ms. Lyles, however, said that it was the whole conversation. In any event, the "completeness" rule, Del. R. Evid. 106, requires the proponent of a partial recoding to submit the other parts upon request by the opponent. Here, there is no dispute that Ms. Lyles was submitting the entire iPhone recording. Therefore, Rule 106 does not apply and the objection is overruled. The Panel finds that Delaware Park's objection that the recording did not include the entire conversation is a fact dispute and not an alleged evidentiary defect. For this reason, the objection is overruled because it goes to the weight of the evidence, not its admissibility.

<sup>6</sup> The Panel takes notice that at the time of the incident, due to the COVID-19 pandemic, among other public health protective measures, patrons of businesses were required to wear face coverings. *See* Twenty-First Modification of the Declaration of a State of Emergency For the State of Delaware due to a Public Health Threat at section D.5 (Signed June 14, 2020) (requiring that, among other things, all employees, patrons, and visitors of Delaware businesses must wear cloth face coverings).

Ms. Lyles denied that she was offered a mask but said that there were masks available nearby.

Since the September 29, 2020 incident, Ms. Lyles has not returned to Delaware Park. She did not want to go through the ordeal of being denied entry because of her religion.

As relief, Ms. Lyles said that she wants Delaware Park to revise its religion policies and to educate its staff. She further requested her attorney's fees and damages.

On cross-examination by Ms. Brady, Ms. Lyles explained that her husband is Muslim; he is not supposed to gamble but he sometimes does.

Regarding having masks available, Ms. Lyles said that masks were available in plain sight; she did not ask for a mask. She denied that she was asked to put a mask over her hijab.

Ms. Lyles explained that she started recording the conversation with the supervisor when he came over. She said that neither man offered Ms. Lyles a mask nor did they ask her to wear a mask.

When asked about the statement in her complaint that the security guard's clothes "indicated he worked for Gettier Security", Ms. Lyles said that when she filed the complaint, she knew it to be truthful but she now recognizes that the statement was in error.



When asked why her complaint did not mention masks, Ms. Lyles said that the security guard and supervisor never discussed masks and never discussed COVID with her.

When asked about her iPhone video, Ms. Lyles initially said the total conversation was about three minutes. When told that the video was about 14 seconds, Ms. Lyles corrected herself and said it was a 14 second conversation.

On damages, Ms. Lyles said that she was embarrassed. There were no other people around; she was embarrassed within herself. She has been unable to obtain treatment or counselling during the COVID pandemic but is not getting counselling in Maryland. She had no documentation of the counselling.

Ms. Lyles said that neither the security guard nor the supervisor would let her into the casino because of her hijab.

On redirect by Mr. Gallagher, Ms. Lyles said that the security guard was a white man. The supervisor was a black man. The conversation with the supervisor was very brief.

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

### **1. Mr. Kevin DeLucia**

Mr. Kevin DeLucia, duly sworn, testified in response to questions from Ms. Brady. Mr. DeLucia explained that he is a senior vice president and the chief financial officer at Delaware Park. He was involved in drafting the protocols to

reopen Delaware Park during the COVID pandemic. The requirement for face masks happened around September 2020; Delaware Park was following the various amendments to the State of Emergency in place at the time. Mr. DeLucia explained that masks were required to be worn at all times inside the facility under Delaware law. He said that Delaware Park provided masks that were acceptable under the Centers for Disease Control and Prevention (“CDC”) guidance. Mr. DeLucia said that Delaware Park’s compliance with Delaware law regarding COVID was being monitored and reported. Delaware Park trained all staff on the face mask requirement sometime prior to June 2020. The training covered all COVID protocols, including masks.

Delaware Park had its employees monitor the entrances to the buildings and trained the monitors on the COVID protocols. They would stop anyone trying to enter wearing a non-CDC compliant face mask. There were signs that informed patrons of the COVID protocols in place. Mr. DeLucia showed one of the signs to the Panel. He said that it was one of the signs that was posted in September 2020.

Delaware Park was relying on guidance from Delaware Health and Social Services for masks. He said that if a patron did not have a mask, Delaware Park would provide a mask.

When asked if a hijab would be compliant with Delaware law and CDC guidance, he said it would not be. A hijab was viewed as not safe enough, it had to

be a 3-ply mask; Delaware Park was providing these masks for free.

Mr. DeLucia said that Delaware Park has had patrons who wear hijabs. When asked if other patrons wearing only a hijab were refusing to comply with Delaware Park's COVID protocols, he said that he believed there were others not allowed in because of the inadequate protection.

On cross-examination by Mr. Gallagher, Mr. DeLucia said that he was not present on the day of the events in question. He did investigate the incident. He said that Delaware Park's policies were reviewed; Delaware Park had an existing non-discrimination policy; the policy prohibits discrimination in hiring and in the treatment of patrons. Mr. DeLucia said that the policy does not specifically mention religious discrimination.

On re-direct by Ms. Brady, Mr. DeLucia described the dress of Delaware Park security personnel. He said that Delaware Park employees were permitted, and have worn, religious garments to work. He recalled an employee who wore a hijab; he said that this employee was required to wear a mask due to COVID.

In response to Panel questioning, Mr. DeLucia said that the required masks needed to be more than single-layer fabric. Mr. DeLucia said that the COVID signs were posted at the entrances to the casino and grandstands. The signs were five-foot high and at least three signs were posted at each entrance; they were posted

right at the doorway.<sup>7</sup>

## **2. Mr. Timothy Leonard**

Mr. Timothy Leonard, duly sworn, testified in response to questions from Ms. Brady. He is a security supervisor at Delaware Park and was working on the day of the events in question.

He said that the role of the security supervisor is to maintain order. When the situation becomes one that the security guard cannot handle, the supervisor gets called.

Delaware Park had a face covering policy at the time due to COVID; they had to follow CDC guidelines. If a patron did not have a mask, Delaware Park would provide a mask. If a patron had a non-compliant mask, a mask would be given to them. That was the policy. Mr. Leonard said that Delaware Park provided training on the mask policy; the training explained what was and was not acceptable.

Mr. Leonard recalled Ms. Lyles and the events of September 29, 2020. He was called by a security guard because of a dispute with Ms. Lyles who was refusing to wear a mask. Mr. Leonard arrived and talked to Ms. Lyles. She refused to wear a mask either under or over her hijab. Mr. Leonard explained to her that

---

<sup>7</sup> Mr. DeLucia showed the sign to the Panel to demonstrate its size and content.

she needed to wear a mask either under or over her hijab. When asked if there were other patrons who refused to wear masks, Mr. Leonard said it is a daily occurrence; it happens every shift.

Mr. Leonard said the encounter with Ms. Lyles lasted about five to six minutes. He repeated his instruction for her to wear a mask. She refused. He said that during the COVID pandemic, you had to wear a mask and Ms. Lyles simply refused to do that.

Mr. Leonard explained that Ms. Lyles was not the only patron who was denied entry because of a mask. Many other patrons would not wear masks and they were not permitted to enter.

When asked if he denied Ms. Lyles entry because of her hijab, he said that the hijab had nothing to do with it—she refused to wear a mask.

When asked about the recording, Mr. Leonard said it was taken out of context. He said Ms. Lyles cut off the recording. He explained that after she stopped recording, he explained that she needed to wear a mask either under or over her hijab. And she refused to do so.

When asked about the COVID signs that Mr. DeLucia showed the Panel, Mr. Leonard said that these signs were posted on September 29, 2020.

When asked if other patrons were permitted entry wearing religious garments, Mr. Leonard said that other patrons would be permitted as long as they

followed the COVID mask policy; if not, they would be asked to leave. Mr.

Leonard said there was no religious discrimination at Delaware Park.

On cross-examination by Mr. Gallagher, Mr. Leonard said that he was the security supervisor on September 29, 2020. He has worked at Delaware Park since 2008 in security.

There was no specific training on religious discrimination, Mr. Leonard said it was not necessary. As long as you followed Delaware Park's COVID policy, you are welcome to come in.

When asked about the events on September 29, 2020, Mr. Leonard explained that he was called by the dispatcher. He did not recall who was the security guard.

When asked about the video that Ms. Lyles recorded on her iPhone, Mr. Leonard confirmed that he was the man in the video.<sup>8</sup> He said that he and Ms. Lyles were standing outside the security office window together; there was a door nearby. Mr. Leonard said that the video did not capture the entire conversation; he agreed that he said "yes" in response to Ms. Lyles question about her hijab. Mr. Leonard disputed that he told Ms. Lyles that she was not allowed in because of her hijab; he explained that the reason was that she needed to wear a mask and she

---

<sup>8</sup> Mr. Gallagher played the video for Mr. Leonard.

refused to wear a mask. Mr. Leonard admitted that what was recorded was correct but he said that Ms. Lyles cut off the recording when he told her that she needed to wear a mask to enter the building.

On re-direct by Ms. Brady, Mr. Leonard explained that after Ms. Lyles stopped recording, he told her that she needed to wear a mask. Mr. Leonard denied that he told Ms. Lyles that she could not enter because of her religious garments; he did not deny her access because of her hijab; she needed to wear a mask and she refused to do so.

When asked about training on how to treat patrons, Mr. Leonard explained that, in general, Delaware Park requires that security personnel are courteous and to treat patrons with respect. They are not trained to exclude anyone because of their religion or their religious garments.

In response to Panel questioning, Mr. Leonard said that he could not recall exactly how many people he interacts with on each day; it varies; sometimes 2, 12, 17, it depends on the day. When he was informed about the instant DEAL case, Mr. Leonard said that he recalled the incident with Ms. Lyles.

### **C. Closing Arguments**

In closing, Mr. Gallagher argued that Ms. Lyles's iPhone video is dispositive. He argued that Mr. Leonard had the chance to "set the record straight" and he did not. He argued that Delaware Park discriminated against Ms. Lyles

because of her religion. He asked for \$75,000 in compensatory damages and attorney's fees for approximately 15.4 hours at \$400 per hour.

In response, Ms. Brady argued that Ms. Lyles is asking the Panel to suspend reality as it existed in September 2020. Ms. Lyles was denied entry because her hijab was not acceptable and she refused to wear a mask. Ms. Brady argued that Ms. Lyles's version of the events is not true. Her complaint contained inaccuracies, the complaint said the security guard worked for Gettier yet Delaware Park has its own security. Ms. Brady argued that other patrons wearing hijabs have been allowed at Delaware Park and that Ms. Lyles's version of what happened is not credible; her complaint alleged she was denied entry because of her hijab but it was all about masks and Ms. Lyles's refusal to wear one. If she had worn a mask, there would not have been a dispute. Ms. Brady said that Delaware Park was operating under the requirements of the State of Emergency that was in effect at the time.

Ms. Brady said that Ms. Lyles's requested relief is unnecessary and unsubstantiated. Delaware Park believes that Ms. Lyles's case was filed for an improper purpose and Ms. Brady asked the Panel to order Ms. Lyles's to pay its attorney's fees.

In rebuttal, Mr. Gallagher argued that the Delaware Park security guard's outfit had some red color in it and that Ms. Lyles's statement in her complaint was



not material to her credibility at the hearing. He said that Ms. Lyles's iPhone video is permitted because Delaware is a "one-party" state. Mr. Gallagher also argued that Ms. Lyles was new to the Muslim faith.

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

Ms. Lyles alleges that Respondent violated the DEAL because of her religion and gender. 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.<sup>9</sup> "The ultimate purpose [of the DEAL] is to eliminate the inconvenience, unfairness, and humiliation of...discrimination."<sup>10</sup>

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*

---

<sup>9</sup> 6 *Del. C.* §4501.

<sup>10</sup> *Uncle Willie's Deli v. Whittington*, 1998 WL 960709 at \*4 (Del. Super. Dec. 31, 1998) (citations and internal quotations omitted).

*Corp. v. Green*.<sup>11,12</sup> 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.<sup>13</sup>

Here, to meet the initial burden of going forward requires a *prima facie* case of discrimination and Ms. Lyles 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.<sup>14</sup> Further, because Equal Accommodations hearings before the SHRC are subject to the provisions of Delaware's Administrative Procedures Act (APA),<sup>15</sup> "the burden of proof shall always be upon the applicant or proponent."<sup>16</sup>

---

<sup>11</sup> 411 U.S. 792 (1973).

<sup>12</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>13</sup> *Salty Sam's Pier 13 v. Washam*, 2000 WL 1211227, at \*2 (Del. Super. Aug. 3, 2000) (citations omitted).

<sup>14</sup> See *Boggerty v. Stewart*, 14 A.3d 542, 550 (Del. 2011) (citations omitted).

<sup>15</sup> 29 Del. C. Ch. 101.

<sup>16</sup> 29 Del. C. § 10125(c).

The Panel finds that Ms. Lyles has met her initial burden to prove a *prima facie* case under the first step of the *McDonnell Douglas* analysis. There is no dispute that Ms. Lyles is a practicing Muslim and according to her religion, as a woman, she wears a hijab in public and that she was wearing a hijab on the day in question. Therefore, she is a member of a protected class under the DEAL.<sup>17</sup> And there is no dispute that Ms. Lyles was denied entry to Delaware Park.<sup>18</sup> And there appears to be no dispute that Ms. Lyles’s companion—a woman who was not wearing a hijab—was allowed into Delaware Park to cash in the lottery ticket while Ms. Lyles was 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, Respondent has the burden of production to show that there was a “legitimate, non-discriminatory reason” for not allowing Ms.

---

<sup>17</sup> 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.”).

<sup>18</sup> 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 Delaware Park’s refusal to allow Ms. Lyles into the building was a denial of public accommodations.

Lyles to enter the casino wearing a hijab. The Panel finds that Respondent has shown evidence that the reason why Ms. Lyles was denied entry was due to her alleged refusal to wear a COVID mask and that her hijab was not a permitted face mask. Mr. Leonard testified to this and Mr. DeLucia said that there was a mask rule in place at the time. The Panel therefore concludes that Respondent has met its burden of production to show that there was a “legitimate, non-discriminatory reason” for what happened—there was a face mask requirement due to COVID and, according to Respondent, Ms. Lyles refused to comply with that requirement.<sup>19</sup>

This brings us to the final step in the *McDonnell Douglas* analysis. At this point, the burden of proof is on Ms. Lyles to show by a preponderance of the evidence that Respondent’s proffered reason for what happened—the COVID mask requirement—was a pretext for discrimination.<sup>20</sup> The Delaware Supreme Court has explained that at this stage, Ms. Lyles needs to present evidence

---

<sup>19</sup> The Panel notes that, at this stage of the analysis, Respondent’s burden is merely that of *production*, that is, Respondent only needs to present evidence of a legitimate non-discriminatory reason for what happened. *See Boggerty*, 14 A.3d at 552. Respondent is not required to *persuade* the Panel that its actions were lawful. *Id.*, and see n.37 (“it is unnecessary for the Commission to determine at that stage whether it was actually persuaded by the defendant’s proffered explanation, so long as the defendant has set forth some evidence to support his assertions of a nondiscriminatory reason.”) (quoting *Russo v. Corbin*, 2002 WL 88948, at \*8 (Del. Super. Jan. 8, 2002)) (internal modifications omitted).

<sup>20</sup> *See Boggerty*, 14 A.3d at 553.

sufficient to convince a reasonable jury that Respondent’s explanation for what happened “lacks all credibility.”<sup>21</sup> In explaining what this means in practicality, the Delaware Supreme Court has said that while identifications of inconsistencies in Respondent’s testimony can be evidence of pretext, mere denial of credibility has no evidentiary value.<sup>22,23</sup>

As found above, nobody disputes that Ms. Lyles was denied access into Delaware Park’s casino. The question for the Panel to decide here is *why* she was denied access.

At the hearing, the parties presented competing—indeed completely opposite—versions of what caused Ms. Lyles to be denied entry to Delaware Park. On one hand, Ms. Lyles testified that she was being denied entry because she was wearing a hijab and that COVID face masks had nothing to do with it. On the other hand, Mr. Leonard testified that Ms. Lyles was denied entry because she refused to wear a COVID face mask and her hijab had nothing to do with it.

---

<sup>21</sup> *Id.* (citing *Jaramillo v. Colorado Judicial Department*, 427 F.3d 1303, 1310 (10th Cir. 2005)) (other citations omitted).

<sup>22</sup> *Id.* (citing *Ekokotu v. Boyle et al.*, 294 Fed. Appx. 523, 526 (11th Cir. 2008)).

<sup>23</sup> The Panel also notes that under Delaware law, Respondent does not have the burden to prove a lack of discrimination. Rather, it is the complainant, Ms. Lyles, 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 Respondent’s excuse lacks all credibility and was a pretext for the discriminatory conduct.

At bottom, this is a credibility determination. After careful, and extended, deliberations, the Panel concludes that Mr. Leonard's version of what happens lacks credibility for the following reasons.

In considering the evidence presented, the Panel finds that the strongest evidence of what happened is Ms. Lyles's iPhone video. In this video, the Panel finds that Mr. Leonard approached Ms. Lyles and then she explained to Mr. Leonard what the security guard said. She then explained that the hijab was "a religious thing" and confirmed that she was not allowed in. Mr. Leonard responded, "that's right ma'am". She then thanked Mr. Leonard and turned away. From this video, the Panel concludes that Mr. Leonard told Ms. Lyles that she would not be allowed into Delaware Park because of her hijab.

Delaware Park attempted to rebut the strong evidence in the video with Mr. Leonard's testimony that the video did not capture the entire conversation with Ms. Lyles. Mr. Leonard testified that in the conversation not recorded, he explained that the reason why Ms. Lyles was being denied entry was because she would not wear a COVID mask. Ms. Lyles, however, testified that Mr. Leonard never mentioned masks. It is here that the Panel finds that Mr. Leonard's testimony lacks credibility.

To explain, the Panel finds the video evidence compelling and the video shows Mr. Leonard approaching Ms. Lyles and then he stands with his feet apart

and his hands spreading his suit jacket back. The Panel found Mr. Leonard's stance to be "aggressive" which supports Ms. Lyles's testimony that she was being discriminated against, that is, she was being denied access because of her hijab. The Panel infers that, had Mr. Leonard been trying to explain to Ms. Lyles why the hijab was not compliant, he would not have taken such an aggressive stance.

Further, the Panel finds that the video supports Ms. Lyles's testimony that she recorded the entire conversation between herself and Mr. Leonard. The video begins with the two coming together and Mr. Leonard taking his stance. Once Ms. Lyles confirmed that she was being denied access because of her hijab, she said "thank you" and turned away from Mr. Leonard to the right. The video does *not* show Mr. Leonard trying to continue the conversation, which, if Mr. Leonard's testimony is to be believed, he would have done. In view of this video evidence, the Panel is compelled to conclude that Mr. Leonard's version of what happened is just not credible and the proffered reason was a pretext for discrimination.

Finding that Ms. Lyles has proven her claim that Delaware Park discriminated against her because of her religion in violation of § 4504 of the DEAL, the next question is what to do about it.

Pursuant to § 4508(h) of the DEAL, the Panel has discretion to order "such relief as may be appropriate." This includes actual damages, including damages caused by "humiliation and embarrassment", costs, expenses, reasonable attorneys'

fees, and “injunctive or other equitable relief.” And, “to vindicate the public interest”, the Panel may assess a civil penalty to be paid into the Commission’s Special Administration Fund.

To begin, the Panel agrees with Delaware Park that Ms. Lyles did not substantiate her \$75,000 claim for damages with receipts or other documentation of any treatment that she has undergone. That said, the Panel recognizes that the DEAL provides for the award of damages for “humiliation and embarrassment”. The Panel found credible Ms. Lyles’s testimony that she was embarrassed by Delaware Park’s conduct. And the Panel finds that Delaware Park’s discrimination against Ms. Lyles’s to be inexcusable.<sup>24</sup>

In the circumstances here, the Panel believes that it is appropriate to award Ms. Lyles \$5,000 in compensatory damages for her embarrassment caused by Delaware Park. The Panel also believes that Ms. Lyles should be compensated for her costs and attorneys’ fees in prosecuting her case. And, in view of the strong public interest of prohibiting and preventing discrimination combined with the inexcusable discrimination that occurred, the Panel believes that Delaware Park should pay a \$5,000 civil penalty and also should conduct anti-discrimination

---

<sup>24</sup> The Panel notes that it found incredible Mr. Leonard’s testimony where he attempted to justify denying Ms. Lyles access to Delaware Park. Accordingly, the Panel concludes that the discrimination was inexcusable.



training to prevent future occurrences.

### **CONCLUSION**

After careful consideration of the evidence presented, the Panel, by unanimous vote, concludes that Ms. Lyles has shown that Respondent violated § 4504 of the DEAL.

## ORDER

The Panel has found that Delaware Park violated § 4504 of the DEAL.

Pursuant to § 4508(h) of the DEAL, the Panel hereby orders the following:

- (1) Delaware Park shall pay \$5,000 in compensatory damages to Ms. Lyles;
- (2) Delaware Park shall pay Ms. Lyles's costs and attorneys' fees in prosecuting her case and Ms. Lyles shall submit a certified bill of her costs and attorneys' fees for the Panel's approval by separate order;
- (3) Delaware Park shall pay a civil penalty of \$5,000; and
- (4) Delaware Park shall conduct anti-discrimination training of its employees within 180 days of this Order and provide proof of this training to the Commission.

**IT IS SO ORDERED** this 14<sup>th</sup> day of December, 2021.

  
Gail Tarlecki (Dec 14, 2021 22:15 EST)

Gail Tarlecki, *Commissioner and Panel Chair*

  
Chok-Fun Choi (Dec 14, 2021 22:59 EST)

Chok-Fun Choi, *Commissioner and Panel Member*

  
Rosemarie Williams (Dec 15, 2021 08:02 EST)

Rosemarie Williams, *Commissioner and Panel Member*