

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

VALERIE PRINEZ)	
)	
Complainant,)	
)	
v.)	Case No. K-EA-2301-21
)	
HERTRICH NISSAN, 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 (“Panel”) on Thursday, September 30, 2021 via videoconference¹ to determine whether a violation of the Delaware Equal Accommodations Law, 6 *Del. C.* Ch. 45, had occurred.

PRESENT:

Nancy Maihoff, *Commissioner and Panel Chair*
Olga Ramirez, *Commissioner and Panel Member*
Whittona Burrell, *Commissioner and Panel Member*
Kemba S. Lydia-Moore, *Deputy Attorney General, Counsel for the Commission and the Panel*

APPEARANCES:

Valerie Prinez, *Complainant, pro se*
Fred Hertrich, III, *Respondent, pro se*

A meeting of the Panel convened on September 30, 2021 in order to determine whether a violation of Delaware’s Equal Accommodation Law (“the DEAL”), 6 *Del. C.* § 4504, occurred. Valerie Prinez (“Complainant” or “Ms. Prinez”) filed a written Complaint Form (“Complaint”) alleging that Hertrich Nissan, et. al. (“Respondents”) discriminated against Ms. Prinez on the

¹ Microsoft Teams videoconference was initially used but after experiencing technical difficulties, WebEx videoconference was utilized. It should be noted that Ms. Prinez’s video reception was unstable on both platforms and for the majority of the hearing she attended and participated via telephone.

basis of her race/color (black), sex (female), and disability (mental).² Immediately after the hearing, the panel conducted its deliberations.

SUMMARY OF THE COMPLAINT

Ms. Prinez 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 race/color, sex, and disability.

Specifically, Ms. Prinez contends that on January 27, 2021, she called and scheduled a service appointment for her vehicle at Hertrich Nissan (“Hertrich”), located in Dover, DE, which is an automobile dealership. The appointment was scheduled to occur the same day. Ms. Prinez contends upon arrival for the appointment, Debbie, the same Hertrich employee with whom she spoke to schedule the appointment was “distant,” “talked down to” Ms. Prinez, and shoved paperwork at Ms. Prinez because Ms. Prinez is a black woman.

Ms. Prinez further contends Debbie told Ms. Prinez she would have to provide documentation that her dog, which was not present during the January 2021 appointment, is a service animal before Ms. Prinez could receive accommodations at her next appointment scheduled for February 2, 2021.

Ms. Prinez’s vehicle was serviced at Hertrich on January 27, 2021, but Ms. Prinez contends that Debbie’s actions were discriminatory due to Ms. Prinez’s race/color, sex, and disability and that the discrimination caused Ms. Prinez to become physically ill.

² In her Complaint, Ms. Prinez asserts that Respondents violated the Americans with Disabilities Act (“ADA”), but for purposes of rendering a decision here the Panel’s powers and duties are codified in the DEAL. The Panel cannot consider laws beyond the scope of its jurisdiction. To the extent that Ms. Prinez’s Complaint alleges disability discrimination in violation of the ADA, the Panel addresses said allegations in accordance with the DEAL.

SUMMARY OF THE EVIDENCE

Both parties presented opening statements.

A. Complainant's Case

1. Complainant Valerie Prinez

Ms. Prinez, duly sworn, requested that her Complaint be adopted as part of her testimony. The Panel admitted Ms. Prinez's Complaint into evidence as Complainant's Exhibit #1.³ Ms. Prinez testified that on January 27, 2021 she called Hertrich and scheduled an appointment for later the same day at 3:00 P.M. to have the oil and filter changed in her 2013 Nissan Altima. Ms. Prinez said she spoke with and scheduled the appointment with Debbie, a Hertrich employee. During the conversation, Ms. Prinez informed Debbie she would bring her service animal, which is a dog, to the appointment. Ms. Prinez testified that Debbie was receptive of her need to bring a service animal and that Debbie was informative and helpful during their telephone conversation.

Ms. Prinez testified she opted not to take her service animal because she did not expect the appointment to take longer than one hour. Ms. Prinez testified she was offended by Debbie's greeting when she arrived at Hertrich. Ms. Prinez testified that Debbie's interaction with her was different than when they spoke on the telephone. Ms. Prinez testified that the change in behavior was due to Debbie's realization that Ms. Prinez is a black woman and not a white woman, which is what Debbie believed during their telephone conversation. Ms. Prinez described Debbie as "distant." Ms. Prinez said Debbie "talked down to" her, shoved paperwork at her, and rummaged in her vehicle trunk unnecessarily.

Ms. Prinez testified that Debbie said Ms. Prinez would have to provide documentation of

³ The following summary of Ms. Prinez's testimony incorporates her verbal testimony as well as her written testimony gleaned from the Complaint.

her disability and documentation that her dog is a service animal before Ms. Prinez could receive accommodations during her next appointment scheduled for February 2, 2021. Ms. Prinez testified that this amounted to a denial of service in violation of the law.

Ms. Prinez testified she waited in the customer waiting area and while waiting she spoke with Hertrich's service manager, Michael Lundin, to lodge a complaint about Debbie. Ms. Prinez testified she informed Mr. Lundin that Debbie violated the law by requiring proof that her dog is a service animal, but Mr. Lundin simply responded, "oh well." Ms. Prinez testified she became physically ill as a result of this discriminatory treatment due to her race and disability, and as a result she called her doctor. Ms. Prinez said the discriminatory treatment "began to elevate my blood pressure and ignited an onset of my medical conditions."

Ms. Prinez played an audio recording of a telephone conversation that she said occurred on February 10, 2021 between her and Brian Brockman, Vice President of Communications at Nissan North America, Inc.⁴ Ms. Prinez offered this recording into evidence to counter Mr. Hertrich's accusation made during the fact finding hearing⁵ that she was belligerent when she spoke with Mr. Brockman. Ms. Prinez testified that she was not belligerent and Mr. Hertrich is clearly racist for having described her, a black woman, in this manner.

During the hearing, the Panel could only hear and comprehend portions of what Ms. Prinez said during the recorded conversation but the Panel could not hear any of the other person's portion of the conversation. In the recording, Ms. Prinez provided an account of her conversation with Mr. Lundin that occurred after January 27, 2021. In the recording, Ms. Prinez stated she informed Mr. Lundin that she was discriminated against due to her race and her

⁴ Respondents objected to allowing Ms. Prinez to play the recording because it had not been provided to Respondents prior to the hearing and because it was unclear who actually participated in the conversation. The Panel exercised discretion and overruled Respondents' objection. *See* Equal Accommodations Regulations 8.10 and 8.10.1.

⁵ *See* 6 *Del. C.* § 4508(c) and Equal Accommodations Regulations 7.1.

disability but Mr. Lundin ignored her; Mr. Lundin wanted to schedule her next service appointment but she already had her vehicle serviced at another dealership; and their conversation ended after it “got ugly.”

Ms. Prinez testified that Hertrich violated ADA and discriminated against her because she is black. Ms. Prinez testified that Mr. Hertrich and Mr. Lundin directed employees to discriminate in this manner.

On cross examination, Mr. Hertrich asked Ms. Prinez if she has witnesses to the alleged discrimination. Ms. Prinez responded by stating that Mr. Hertrich was not present on January 27, 2021 and the evidence he presented is based upon accounts provided by other people who did not testify.

Upon concluding her testimony, Ms. Prinez rested her case-in-chief.

Later during the hearing, additional questions were posed to Ms. Prinez by the Panel and Deputy Attorney General. Ms. Prinez testified that her service animal provides assistance related to her diagnoses of lupus and heart disease. Ms. Prinez explained that her service animal helps mobilize and calm her down when she has lupus flare ups, gets help when necessary as he can alert others when she needs help, and responds to 200 different English commands when Ms. Prinez needs assistance. Ms. Prinez testified she never returned to Hertrich after January 27, 2021. Ms. Prinez seeks \$100,000 in damages which she says will compensate for the mental and physical trauma she endured and will ensure that Respondents receive consequences for their actions.

After the hearing, Ms. Prinez provided a copy of her recorded conversation with the individual she identified as Mr. Brockman. The Panel admits that recording into evidence as Complainant’s Exhibit #2. Upon review of this exhibit, the Panel was able to hear the entire conversation between Ms. Prinez and an unidentified male. Ms. Prinez advised the unidentified

male of the incident that occurred at Hertrich on January 27, 2021 as well as her conversation with Mr. Lundin that occurred thereafter. The unidentified male apologized for Ms. Prinez's experience and inquired if she had reported the incident to the proper authorities. The unidentified male explained that Hertrich is an independently owned company over which he has no control/authority. The unidentified male informed Ms. Prinez that he notified Hertrich leadership of Ms. Prinez's complaint. The unidentified male offered a one year pre-paid maintenance agreement and/or a purchase program through which Ms. Prinez could receive a discount on the purchase of a new vehicle. Ms. Prinez rejected these offers.

B. Respondents' Case

1. Respondent Fred Hertrich

Mr. Hertrich, duly sworn, is the President of Hertrich. Mr. Hertrich requested that the *Questionnaire*⁶ and Respondents' responses thereto, dated May 18, 2021, be admitted into evidence.^{7,8} The Panel admitted the *Questionnaire* and responses into evidence as Respondents' Exhibit #1. During direct examination, Mr. Hertrich read the questions and responses which included the following testimony: Ms. Prinez was not denied service on January 27, 2021 and that Hertrich provided the service she requested; Ms. Prinez did not have her service animal on January 27, 2021 and she never brought her service animal to Hertrich thereafter; Hertrich has never denied services to Ms. Prinez or anyone that comes to Hertrich with a service animal; Ms. Prinez was not treated discriminatorily on January 27, 2021 and she has no evidence to support her Complaint; Ms. Prinez has received service from Hertrich on eight prior occasions and she

⁶ The Panel is aware that the Delaware Division of Human Relations submitted the *Questionnaire* to Respondents during its investigation of the Complaint. *See 6 Del. C. § 4508(c)* and Equal Accommodations Regulations 2.1 and 6.1.

⁷ Ms. Prinez objected to admitting the *Questionnaire* into evidence because she only received the questions and not the responses. The Panel exercised discretion and overruled Ms. Prinez's objection. *See* Equal Accommodations Regulations 8.10 and 8.10.1.

⁸ The following summary of Mr. Hertrich's testimony incorporates his verbal testimony as well as evidence gleaned from Respondent's Exhibit #1.

has never lodged a complaint; Ms. Prinez has been a wonderful customer and Hertrich has taken excellent care of her.

On cross examination and questioning by the Panel, Mr. Hertrich testified that Hertrich does not question whether a customer has a disability. Mr. Hertrich further testified if a customer has a service animal, Hertrich only asks about the specific task that the animal is trained to perform to ascertain the best way to accommodate the customer and service animal.

Upon concluding his testimony, Mr. Hertrich rested Respondents' case-in-chief.

C. Complainant's Closing Arguments

In closing, Ms. Prinez reiterated she was treated differently because she is a black woman who has a service animal. Ms. Prinez argued she was treated unequally and discriminatorily by Debbie who thought Ms. Prinez was a white woman when they spoke on the telephone but then Debbie learned otherwise when Ms. Prinez arrived for her appointment on January 27, 2021. Ms. Prinez stated she was treated as if she is nothing and as if she is excrement on the street.

D. Respondents' Closing Arguments

In closing, Mr. Hertrich stated Respondents took Ms. Prinez's allegations seriously and he personally investigated the allegations. Mr. Hertrich stated his investigation revealed no witnesses who could corroborate Ms. Prinez's allegations. Mr. Hertrich stated Hertrich has been in business for thirty-six years and there has never been a complaint of this nature. Mr. Hertrich stated Hertrich apologized to Ms. Prinez and during closing arguments he again apologized that she felt discriminated against. Mr. Hertrich reiterated that Hertrich employees did not break any laws or discriminate against Ms. Prinez.

E. Complainant's Rebuttal Arguments

In rebuttal, Ms. Prinez stated she never received an apology from Hertrich. Ms. Prinez argued a white woman with a disability would not have been treated in this manner. Ms. Prinez

stated Mr. Hertrich is in denial about being racist and his calling her “belligerent” is proof that he is racist.⁹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. Prinez alleges Respondents violated the DEAL and denied her access to public accommodation because of her race/color, sex, and disability. 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.¹⁰ “The ultimate purpose [of the DEAL] is to eliminate the inconvenience, unfairness, and humiliation of...discrimination.”¹¹

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*.^{12,13} This analysis requires the following steps:

- (1) The Complainant must establish a *prima facie* case of discrimination.

⁹ The Panel permitted Mr. Hertrich to respond to this statement. Mr. Hertrich apologized to Ms. Prinez for calling her “belligerent” and explained he used that word because there was an email message which described Ms. Prinez as having a “combative attitude” when she spoke with Mitchell Wilson, Executive Specialist for Consumer Affairs (and not Brian Brockman as Ms. Prinez believed). See Respondent’s Exhibit #1 at page 14.

¹⁰ 6 Del. C. § 4501.

¹¹ *Uncle Willie’s Deli v. Whittington*, 1998 WL 960709 at *4 (Del. Super. Dec. 31, 1998) (citations and internal quotations omitted).

¹² 411 U.S. 792 (1973).

¹³ 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).

- (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.¹⁴

Here, to meet the initial burden of going forward and establishing a *prima facie* case of discrimination, Ms. Prinez must show: (a) that she is a member of a protected class; (b) that she was denied access to public accommodation; and (c) that non-members of the protected class(es) were treated more favorably. Further, because Equal Accommodations hearings before the SHRC are subject to the provisions of Delaware's Administrative Procedures Act (APA),¹⁵ "the burden of proof shall always be upon the applicant or proponent."¹⁶

The first question for the Panel to decide is whether Ms. Prinez is a member of a protected class. Ms. Prinez is a black woman and is therefore a member of the protected classes race/color and sex. In her Complaint, Ms. Prinez also indicated she has a mental disability.¹⁷ However, Ms. Prinez's written testimony¹⁸ and her verbal testimony indicate she has a physical disability. Notwithstanding this conflicting information, the Panel finds that Ms. Prinez has a disability and is a member of that protected class given that the DEAL defines "disability" as "...a physical or mental impairment which substantially limits a person's major life activities, or being regarded as having such an impairment..."¹⁹ In support of this finding, the Panel relies upon Ms. Prinez's testimony that she is diagnosed with lupus and heart disease and that she has a

¹⁴ *Salty Sam's Pier 13 v. Washam*, 2000 WL 1211227, at *2 (Del. Super. Aug. 3, 2000) (citations omitted).

¹⁵ 29 Del. C. Ch. 101.

¹⁶ 29 Del. C. § 10125(c).

¹⁷ See Complainant's Exhibit #1, page 1, #4.

¹⁸ See Complainant's Exhibit #1, pages 2-3.

¹⁹ 6 Del. C. § 4502(7).

service animal because of her disabilities.

The next question for the Panel to decide is whether Ms. Prinez was denied access to public accommodation. “‘Place of public accommodation’ means any establishment which caters to or offers goods or services or facilities to, or solicits patronage from, the general public....”²⁰

As an automobile dealership that provides services to the general public, Hertrich is clearly a place of public accommodation.

However, Hertrich did not deny Ms. Prinez service or access to public accommodation. On January 27, 2021, Ms. Prinez received the service that she sought. While Ms. Prinez believes she was denied service because Debbie purportedly said Ms. Prinez would not receive accommodations at her next appointment sans documentation of her disability and documentation that her dog is a service animal,²¹ Ms. Prinez received the oil and filter change that she was scheduled to receive on January 27, 2021. Debbie’s purported statement pertained to an appointment that never occurred because Ms. Prinez never returned to Hertrich after January 27, 2021. There can be no denial of service when the service was never sought.

Ms. Prinez’s failure to prove that she was denied service, precludes her from establishing a *prima facie* case of discrimination and she cannot prevail on her Complaint. Nevertheless, the Panel will address the remaining element required to establish a *prima facie* case.

Ms. Prinez did not present any evidence that non-members of the protected classes were treated more favorably. Ms. Prinez’s failure to prove this element further supports the conclusion that she cannot prevail on her Complaint.

As previously noted, “the burden of proof shall always be upon the applicant or

²⁰ 6 Del. C. § 4502(14).

²¹ The Panel does not determine whether Debbie actually made this statement as it has no bearing on the outcome of this case given that Ms. Prinez did not have her service animal during her January 27, 2021 appointment and that she received the requested service.

proponent,” which is Ms. Prinez in the instant matter. It is irrelevant that the Respondents did not present witnesses who had first-hand knowledge of the events that occurred on January 27, 2021. Ms. Prinez bears the burden of establishing a *prima facie* case of discrimination and she failed to satisfy that burden as discussed herein.

CONCLUSION

After careful consideration of the evidence presented, the Panel, by unanimous vote, concludes that Ms. Prinez has failed to establish a *prima facie* case of discrimination and therefore Ms. Prinez failed to prove that Respondents violated the DEAL.

ORDER

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

IT IS SO ORDERED this 6th day of December, 2021.

Nancy A. Maihoff
Nancy A. Maihoff (Dec 5, 2021 16:27 EST)

Nancy Maihoff, *Commissioner and Panel Chair*

Olga Ramirez
Olga Ramirez (Dec 5, 2021 10:09 EST)

Olga Ramirez, *Commissioner and Panel Member*

Whittona R. Burrell
Whittona R. Burrell (Dec 6, 2021 21:51 EST)

Whittona Burrell, *Commissioner and Panel Member*

