

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

JEA P. STREET	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. NC-EA-1742-18
	)	
WELLS FARGO BANK N.A.,	)	
	)	
Respondent.	)	

**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 Tuesday, March 26, 2019 in the Carvel State Building, 820 North French Street, 3rd Floor Conference Room, Wilmington, Delaware 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*,  
Calvin Christopher, *Commissioner and Panel Member*,  
Olga Ramirez, *Commissioner and Panel Member*,

Daniel C. Mulveny, Deputy Attorney General,  
*Counsel for the Commission and the Panel.*

**APPEARANCES:**

Jea P. Street, *Complainant, pro se*,  
Seth A. Niederman, *Counsel for Respondents.*

A meeting of a Panel of the Delaware State Human Relations Commission (the “SHRC” or “Commission”) convened on March 26, 2019 in order to determine whether a violation of Delaware’s Equal Accommodation Law (the “DEAL”), 6 *Del. C.* § 4504, occurred. Mr. Jea P. Street (“complainant or Mr. Street”) brought a complaint alleging that Wells Fargo Bank N.A. (“Wells Fargo”) discriminated against him on the basis of his race and age. Immediately after the hearing, the panel conducted its deliberations.

### **SUMMARY OF THE COMPLAINT**

Mr. Street 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 race and age. Mr. Street is black. And at the time of the incident, he was 65 years old.

According to the complaint, on February 22, 2019, Mr. Street went to the Wells Fargo branch office at 10th and Shipley Streets in Wilmington, Delaware. Mr. Street wanted to access an item in his safe deposit box at the branch. He was a long-time customer of Wells Fargo.

When Mr. Street entered the branch, there was one bank officer on staff who was working with a customer. Another customer arrived at about the same time as Mr. Street. Mr. Street and the second customer sat down in the waiting area to wait for the bank officer to become available.

As Mr. Street was waiting, he observed the bank officer go into the safe deposit box vault. Mr. Street held up his safe deposit box key and told the bank officer: "I just need to get into my box." The bank officer responded that he would be with Mr. Street shortly.

The first customer then left the building. The bank officer told Mr. Street and the second customer that he would be with them in five to ten minutes. About five minutes later, the first customer returned and continued his business with the bank officer. Mr. Street approached the bank officer and asked if there was another Wells Fargo employee who could assist him. The bank officer told Mr. Street to "sit down and wait his turn" and further warned him that "if you don't sit down, I will have the police remove you." Shortly thereafter, another Wells Fargo employee intervened and assisted Mr. Street to access his safe deposit box. Mr. Street then told the employee that he would be closing all of his accounts with Wells Fargo.

Mr. Street alleged that Wells Fargo treated him disrespectfully and in a discriminatory manner because of his age and race. The bank officer was Spanish. The first customer helped by the bank officer appeared to be Indian. The second customer, whom the bank officer treated politely, was white.

## PRE-HEARING MATTERS

Counsel for Wells Fargo, Mr. Seth A. Niederman, requested that witnesses be sequestered until they testified. This request was granted.<sup>1</sup>

Mr. Niederman objected to Ms. Williams's proposed testimony because she was not previously disclosed as a witness and requested that she be excluded. This request was denied.<sup>2</sup>

Mr. Street submitted a collection of documents purported to be the complete record in the case.<sup>3</sup> Mr. Street also submitted another collection of documents represented to be the documents he will be relying upon in his presentation of evidence.<sup>4</sup> Mr. Street explained that the documents in Ex. Complainant 2 are found within the larger collection of documents marked as Ex. Complainant 1.

Both parties made opening statements.

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<sup>1</sup> Mr. Street did not object to Mr. Niederman's request and further requested that his witness, Ms. Michelle Williams, be permitted to remain in the hearing room following her testimony. This request was granted.

<sup>2</sup> The Panel notes that Mr. Street failed to identify Ms. Williams prior to the hearing as required by Equal Accommodation Regulation 8.8. The Panel exercised its discretion to allow Ms. Williams to testify despite Mr. Street's failure to disclose her finding no undue prejudice to Wells Fargo.

<sup>3</sup> These documents were provisionally admitted, collectively, as Ex. Complainant 1. The Panel overruled Wells Fargo's objections that (a) the document collection was not previously disclosed in accordance with EA Regulation 8.10, and (b) some of the documents were not relevant. Wells Fargo was given leave to renew any objections when and if Mr. Street specifically relied on a document within the collection in his presentation of evidence.

<sup>4</sup> Admitted, collectively, as Ex. Complainant 2. The Panel overruled Wells Fargo's objection that the document collection was not previously disclosed in accordance with EA Regulation 8.10. The Panel exercised its discretion to admit the documents into evidence finding no undue prejudice to Wells Fargo.

## SUMMARY OF THE EVIDENCE

### A. Complainant's Case

#### 1. Mr. Jea P. Street

Mr. Street, duly sworn, started his presentation with a description of the events that occurred on February 22, 2018.<sup>5</sup> Mr. Street went to the Wells Fargo branch office at 100 W. 10th Street in Wilmington, Delaware. He went there to retrieve an item from his safe deposit box.

Mr. Street said that he arrived around 4:00 PM. There was only one bank officer working in the branch. This was Mr. Angel Jesus Rivera IV.<sup>6</sup> When Mr. Street arrived, Mr. Rivera was already working with a first customer. A second customer arrived at about the same time as Mr. Street. Both Mr. Street and the second customer took a seat and waited to be served.

At some point while Mr. Street was waiting for service, Mr. Rivera left his desk and went into the safe deposit box vault. As he walked by, Mr. Street waved his keys and said "I just need to get into my box." Mr. Rivera responded that he would be with Mr. Street "in a second." Shortly thereafter, the first customer left

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<sup>5</sup> Mr. Street began his presentation by reading his February 28, 2018 letter written to the President and CEO of Wells Fargo. A copy of the letter is included in Ex. Complainant 2. The following is a summary of both Mr. Street's reading of the letter and his later testimony that emphasized certain of the same facts and circumstances.

<sup>6</sup> The bank officer was Mr. Angel Jesus Rivera IV who testified for Wells Fargo at the hearing. As discussed below, Mr. Rivera testified that he was the bank officer described in Mr. Street's letter and direct testimony.

the building and Mr. Rivera came over to both Mr. Street and the second customer and explained that he would be with them in five or ten minutes. The first customer returned but then left the building again about five minutes later. After watching the first customer return and go outside again, Mr. Street went to Mr. Rivera's desk and asked if there was someone else available to assist him with accessing his safe deposit box. At this point things broke down.

Mr. Rivera responded: "You need to sit down and wait your turn." This infuriated Mr. Street and caused him to voice his outrage accordingly. This prompted Mr. Rivera to say: "If you don't sit down, I will have the police remove you." Mr. Street invited him to call the police and said that he would be removing his things out of the safe deposit box with or without the police. To which Mr. Rivera responded: "Stop talking and sit down, you're not going to get waited on at all." Mr. Street then let Mr. Rivera know that there was no way he was going to let him or anyone else treat him differently than other people.

The heated exchange caused Mr. Street to feel that he was being treated differently from others. He told Mr. Rivera that he would not be treated this way; he demanded access his safe deposit box.

At this point, another Wells Fargo employee, Ms. Gloria McGregor, intervened and took Mr. Street into the vault to give him access to the safe deposit box. By this time, however, Mr. Street was outraged. He removed all of his

belongings from the safe deposit box and attempted to hand the key to Ms. McGregor. She responded that she could not close out his safe deposit box at this time. Mr. Street said that he would be closing all of his accounts with Wells Fargo.

Mr. Street then left the branch office.

Mr. Street then argued that Mr. Rivera's October 25, 2018 "Statement of Angel Rivera" contained an untruth.<sup>7</sup> Mr. Street denied that he said to Mr. Rivera that he was powerful and influential.

Mr. Street then explained to the Panel the nature of some of the documents contained in Ex. Complainant 2. There was a letter from Mr. Street to Wells Fargo's counsel, Mr. Niederman. There also was an email exchange between Mr. Niederman and Mr. Street regarding the closure of Mr. Street's safe deposit box. There was another email from Mr. Street sent on January 25, 2019 purportedly amending his complaint submitted to the Commission. And there was a March 18, 2019 letter from Wells Fargo following up on the complaint he made to the company. Mr. Street stated that he did not know why Wells Fargo sent him the March 18 letter.

Mr. Street testified that Wells Fargo did not prevent him from accessing his safe deposit box—he admitted Ms. McGregor gave him access. Mr. Street said that Mr. Rivera denied him service by telling Mr. Street he was not going to get waited

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<sup>7</sup> This statement is contained in Ex. Complainant 2.

on; said that was a denial of public accommodation in violation of the DEAL. Mr. Street said that Mr. Rivera told him to come back another day.

On cross-examination by Mr. Niederman, Mr. Street said that he came to the bank on February 22; on previous occasions when he accessed his safe deposit box he was accompanied by a Wells Fargo employee. Mr. Street explained that there are two keys for the safe deposit box—he had one and the bank kept the other.

Mr. Street described the layout of the branch with the tellers to the right and the bank officers to the left when you come in the main doors. The bank officers are the employees who assist with accessing safe deposit boxes.

Mr. Street said that he entered the branch around 3:59 PM; the only bank officer working was already with the first customer when he entered. Mr. Street waited for service.

The second customer arrived at about the same time as Mr. Street. They both waited about 10-15 minutes for service. Mr. Street said that they both sat down at about the same time.

Mr. Street said that incident with Mr. Rivera escalated to a point where he was yelling at Mr. Rivera. Then another bank employee intervened and gave Mr. Street access to his safe deposit box.

Mr. Niederman submitted a copy of the Wells Fargo's Safe Deposit Box



Entrance Record.<sup>8</sup> Mr. Street recognized Ex. Respondent 1 as the sign in sheet. He acknowledged his signature on the sheet and that he signed the sheet on 3:59 on February 22, 2018.

Mr. Street admitted that there was only one bank officer working on February 22; it seemed short staffed. Mr. Rivera was assisting the first customer.

When asked to explain how he was treated any differently from the other customers, Mr. Street explained that Mr. Rivera told him: “You need to sit down and wait your turn.” He said that he was treated completely differently by Mr. Rivera because he was told to sit down and wait his turn. Mr. Street explained that Mr. Rivera was more polite to the other customers; it seemed that it was more important for Mr. Rivera to deal with the business account customers than Mr. Street. Mr. Street repeated that the first customer was going in and out of the building and that when he asked Mr. Rivera if someone else could assist him, he was told to sit down. Mr. Street admitted that Mr. Rivera did not make any comments about his race or age.

When asked about his damages, Mr. Street responded that he just wanted fairness. He will never go into another Wells Fargo branch. Mr. Street said that he thought he was being discriminated against based on the hat and shabby clothes he

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<sup>8</sup> Admitted as Ex. Respondent 1. Mr. Street’s objection that the document was cumulative was overruled.

was wearing.

Upon questioning from the Panel, Mr. Street explained that he did not know what happened to the second customer who was in the bank at the same time. He thought the second customer left. He said that Ms. McGregor came over and let him access his safe deposit box. He did not remember any other customers trying to access their safe deposit boxes.

Mr. Street then rested his case.

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

### **1. Mr. Angel Jesus Rivera IV**

Mr. Rivera, duly sworn, testified in response to questions from Mr. Niederman. Mr. Rivera explained that he works at Wells Fargo at the branch and was present when Mr. Street came in on February 22. He has worked at Wells Fargo for 4 years. He is a business banking specialist. His duties include assisting business customers with loan applications, lines of credit, and opening and closing accounts. Mr. Rivera's duties also included helping customers access their safe deposit boxes.

Mr. Rivera described the banking area at the branch. There are twelve open desks and three bank officers. On February 22, he was the only bank officer working. This was not typical and caused customers to have longer wait times.

He did not recall Mr. Street entering the branch on February 22. There were

three customers at that time. Mr. Rivera was helping the first customer open a business account. The first customer was trying to email documents from his phone but could not get reception inside the building. The first customer went outside to send the email. It was at this time that Mr. Street entered the branch. Mr. Rivera did not recall how long Mr. Street was waiting to be served while he was helping the first customer.

Mr. Rivera said that typically he would offer to help whomever was next when there are multiple customers waiting.

Mr. Rivera said that Mr. Street demanded that he be helped immediately. Mr. Street was yelling. Mr. Rivera did not recall everything that happened that day; he said Mr. Street demanded immediate service, saying that he was a “powerful person.” This caused Mr. Rivera to feel uncomfortable and he told Mr. Street that he needed to either leave or wait.

At some point, Ms. McGregor arrived and she assisted Mr. Street. Mr. Rivera did not have any further interactions with Mr. Street after that. He was still helping the first customer. The yelling occurred in front of the other customers.

Mr. Rivera reported the incident to his manager the next day. He informed his manager that there was no indication that Mr. Street was being discriminated against.

On cross-examination by Mr. Street, Mr. Rivera said that since the incident

on February 22, he had not heard anything about the matter until a few weeks before the hearing.

Mr. Street showed Mr. Rivera his statement that is in Ex. Complainant 2. Mr. Rivera said that he did not type the statement. He said that he had spoken with a Wells Fargo lawyer prior to signing the statement but did not recall who it was or when the conversation occurred. Prior to the discussion with Wells Fargo's counsel, Mr. Rivera did not recall any other discussions with Wells Fargo about the incident.

Mr. Rivera was asked to explain how Mr. Street "demanded" immediate service as described in his statement. Mr. Rivera did not recall any specifics.

Mr. Rivera did not recall if Mr. Street asked if someone else could help him. He did not recall how the conversation with Mr. Street started; he only recalls the demand for immediate help.

Mr. Rivera did not recall how many emails the first customer attempted to send in the process of assisting him. Nor did he recall where the customer went when he left the building.

When asked about the maximum time he expected a customer to wait to be assisted, Mr. Rivera said that he thought about 15-20 minutes. Mr. Rivera admitted that it could take a few minutes to get into a safe deposit box.

Mr. Rivera said that he did not recall seeing Mr. Street leave the building on

February 22. He was still with the first customer.

Mr. Rivera confirmed that he told Mr. Street that he could come back later that day or another day.

Mr. Rivera denied telling Mr. Street: "You need to sit down and wait your turn." Mr. Rivera said that it appeared that Mr. Street became agitated without provocation.

Mr. Rivera did not recall what happened to the other customers that were in the branch at the time of the incident. He did not recall what happened to those customers after Mr. Street left. Mr. Street asked if Mr. Rivera's lack of recollection of the events on February 22 was because he was not asked about those events until around October 2018 when he signed his written statement. Mr. Rivera did not know.

Mr. Rivera recalled Mr. Street started yelling for no reason. He denied doing anything to provoke Mr. Street.

Mr. Rivera did not recall the race or age of the first customer.

Mr. Rivera confirmed that he did not let Mr. Street access the safe deposit box vault. He did not recall exactly how Ms. McGregor got the key that would be needed to allow Mr. Street to access the safe deposit box. Mr. Rivera said the key is normally kept on the vault door; he did not recall exactly where it was that day.

Upon questioning from the Panel, Mr. Rivera recalled saying he would call

the police. He explained that Mr. Street was yelling at him causing him to feel uncomfortable. He recalled Mr. Street saying that he was an important and powerful person. He did not recall Mr. Street using profanity.

Mr. Rivera was not involved in any other complaints from customers; this was the only complaint. Mr. Rivera said that he followed Wells Fargo's procedures in handling the incident. He said it is Wells Fargo's customer service philosophy to provide service to the best of his ability and that in this case Mr. Street did not get that service. He was not aware of any formal apologies issued by Wells Fargo to Mr. Street. Mr. Rivera wants to give good service.

On redirect, Mr. Rivera said that when he reported the incident to his manager, he did not know Mr. Street's name at the time. Because of this, he could not fill out the Wells Fargo incident reporting form. Mr. Rivera said that if Mr. Street feels that he was treated poorly, he was willing to apologize; but he did not feel that he needs to apologize.

On re-cross-examination by Mr. Street, Mr. Rivera did not recall Mr. Street using profanity; he said that he felt threatened when Mr. Street said that he was a powerful person in Delaware—he took that as a threat. Mr. Rivera did not know what he would have done if Mr. Street had not said that he was a powerful person nor did Mr. Rivera know whether he would have called the police if that was not said. Mr. Rivera admitted that he never called the police on any other customers.

Mr. Rivera also admitted that he had not told any other customers to leave and come back the next day; he only said that to Mr. Street. It was Wells Fargo's policy to wait on customers during business hours. These were 9:00 AM to 5:00 PM Monday through Thursday and 9:00 AM to 6:00 PM on Friday.

## **2. Witness Gloria McGregor**

Ms. Gloria McGregor, duly sworn, testified in response to questions from Mr. Niederman. She explained that she has worked for Wells Fargo for 20 years at several different locations. She currently works at the branch at 100 W. 10th Street in Wilmington. She is the service manager at Wells Fargo. She helps tellers with overrides; she is the supervisor of the tellers.

Ms. McGregor recalled working at the branch on February 22, 2018. She was at the teller station that was second from the front door. The bank was short staffed that day. There was one teller and one banker. Both Ms. McGregor and the customer service sales representative were working as tellers. The banking side was also busy.

Ms. McGregor recalled seeing Mr. Street enter the building. She was familiar with him and said "Hi" when he entered. She next recalled hearing a disruption from the banking side; there was loud shouting. It appeared to her that Mr. Street and Mr. Rivera were both yelling at each other.

Ms. McGregor left her teller customer and went to the banking side. Mr.

Street was there saying a previous customer had gone out several times and that Mr. Street needed to access his safe deposit box. Ms. McGregor helped Mr. Street access the safe deposit box. She estimated that it was about 10-15 minutes from when Mr. Street entered to when she helped him access his safe deposit box. She said another customer was waiting; Mr. Street was assisted before the other customer was waited on.

She did not recall any other interactions with Mr. Street.

Ms. McGregor did not see anything to indicate discrimination. She knew that Mr. Street was upset. He said he wanted to close out his safe deposit box. She could not do this at the time, it needed to be done through a banker. She said that she did not believe that Mr. Street was being discriminated against because of his race or age; it just seemed that Mr. Street was upset.

Upon cross-examination by Mr. Street, Ms. McGregor said that she had been working at the branch for some time; she was personally familiar with Mr. Street. She admitted that she had never known Mr. Street to ask for special treatment. She did not know of Mr. Street ever treating anyone in the bank with disrespect. Nor did she know of Mr. Street having any altercations with anyone in the bank.

She said that people are not told they need to come back another day to conduct their business with the bank. It was Wells Fargo policy to allow customers to stay after close to complete their business if the customer arrived prior to close.



The bank's policy is to give service. She did not recall ever denying a customer access to their safe deposit box.

Mr. Street showed Ms. McGregor the "Statement of Gloria McGregor."<sup>9</sup> She signed the statement on October 25, 2018. She did not have any discussions with Wells Fargo prior to then regarding the incident. She said that she wrote the statement and that nobody else was present when it was written.

Ms. McGregor said that she had heard Mr. Street wanted to close out his safe deposit box. She did not hear Mr. Street ever say he was a "powerful" person in Delaware. She said that when she went over to the bankers' side on February 22, both men were arguing.

On redirect, Ms. McGregor said that she did not recall anything specific about what was being said by either Mr. Street or Mr. Rivera when they were arguing. She only heard an argument and then came over from the teller side. When she did, Mr. Rivera handed the safe deposit box keys to her.

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

In rebuttal, Mr. Street presented Ms. Michelle Williams to testify regarding the internet access within the branch.

#### **1. Witness Michelle Williams**

Ms. Michelle Williams, duly sworn, testified in response to questions from

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<sup>9</sup> Part of Ex. Complainant 2.

Mr. Street. She said that she has known Mr. Street for many years; they worked together and have become friends.

Ms. Williams testified that on Friday, March 22, 2019, she went into the Wells Fargo branch and sent Mr. Street an email from inside the building. Mr. Street asked her to do this. Mr. Street showed her a copy of the email sent and submitted it to the Panel.<sup>10</sup> Ms. Williams said she had no trouble sending the email from inside the building.

On cross-examination by Mr. Niederman, Ms. Williams said that she does not have an email sent from inside the branch on February 22, 2018. She was familiar with the allegations in this case and said that Mr. Street explained that he wanted her to establish that there was internet access inside the branch. She did not know if Mr. Street was disputing whether there was internet access inside the building. She did not know if the internet access was on the same network that existed as of February 22, 2018.

Upon questioning from the Panel, Ms. Williams explained that she used an iPhone to send the email.

#### **D. Closing Arguments**

In closing, Mr. Street argued that this case was his word against Wells Fargo's. The bank wants the Panel to believe that he started yelling for no reason.

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<sup>10</sup> Admitted as Ex. Complainant 3.

He argued that none of this would have happened if Mr. Rivera did not say: “You need to go sit down and wait your turn.” Mr. Street said that he could have tried to resolve the dispute in other ways.

He argued that both his statements and testimony match that of Ms. McGregor. Conversely, Mr. Rivera’s testimony and statement do not match that of Ms. McGregor. He questioned the veracity of Mr. Rivera’s statement that he was not yelling at Mr. Street; Ms. McGregor said Mr. Rivera was yelling.

Mr. Street denied ever saying he was an important person in Delaware. The only evidence of this is from Mr. Rivera.

Mr. Street argued that something needs to be done because this was a serious issue. Mr. Street sent Wells Fargo a letter, he closed his accounts, and he closed his safe deposit box. He argued that it seemed like because he was a public official, he could not make a complaint. He also argued that the delay in bringing this case to the Panel was because of Wells Fargo’s delay tactics.

He thanked the Panel for their time and argued that Wells Fargo denied him access to his safe deposit box against their policies and that this was not done for anyone else. He said that Mr. Rivera could have given him access to the safe deposit box in the time that the first customer was out of the building.

In response, Mr. Niederman argued that it was important for the Panel to consider the testimony presented. The testimony does not show that discrimination

based on race or age was the reason for Mr. Rivera's conduct; Mr. Street was asked to wait for his turn. There were no comments made about his race or age. The delay in serving Mr. Street was due to the branch being short staffed that day. Mr. Rivera was servicing the customers as they arrived and Mr. Street was behind two other customers. Mr. Street's complaint is that the first customer who was with Mr. Rivera left the building twice to send an email. This was not discrimination under the DEAL.

In rebuttal, Mr. Street argued that Mr. Rivera denied him access and lied in the process of doing it. He argued he had never been a disruption before. He complained that Mr. Rivera was lying about what Mr. Street said—a substantial mistruth. This case is about the credibility determination between Mr. Rivera and Mr. Street. Here, something did happen—Mr. Rivera denied Mr. Street access in violation of the DEAL.

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

Mr. Street alleges that Wells Fargo 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>11</sup> “The ultimate purpose [of the DEAL] is to eliminate the inconvenience, unfairness, and humiliation of...discrimination.”<sup>12</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 Corp. v. Green*.<sup>13,14</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>15</sup>

Here, to meet the initial burden of going forward and establishing a *prima facie* case of discrimination, Mr. Street must show: (a) that he is a member of a protected class, in this case, based on his race and age; (b) that he was denied access to the public accommodations at the Wells Fargo branch; and (c) that non-

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<sup>11</sup> 6 Del. C. §4501.

<sup>12</sup> *Uncle Willie’s Deli v. Whittington*, 1998 WL 960709 at \*4 (Del. Super. Dec. 31, 1998) (citations and internal quotations omitted).

<sup>13</sup> 411 U.S. 792 (1973).

<sup>14</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>15</sup> *Salty Sam’s Pier 13 v. Washam*, 2000 WL 1211227, at \*2 (Del. Super. Aug. 3, 2000) (citations omitted).

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>16</sup> "the burden of proof shall always be upon the applicant or proponent."<sup>17</sup>

Here, there is no dispute that Mr. Street, who is black and 65 years old, is a member of a protected class under the DEAL. Nor is there any dispute that the Wells Fargo branch is a place of public accommodation under the DEAL.

The dispositive issue here is whether Mr. Street was denied access to public accommodations at the branch. The Panel finds that the evidence unquestionably shows that Mr. Street was not denied access to any public accommodations. While Mr. Street has shown that Mr. Rivera did not give him access to the safe deposit box, Mr. Street admitted that Ms. McGregor did give him access. The Panel also finds that Ms. McGregor credibly testified that Mr. Street was given access to his safe deposit box about 10-15 minutes after he entered the branch on February 22, 2018 and that he was served before the waiting second customer.

The Panel also finds that Mr. Street failed to present evidence sufficient to show that he was treated differently from other non-members of his protected classes. Mr. Street did not present any evidence showing that Mr. Rivera's actions

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<sup>16</sup> 29 *Del. C.* Ch. 101.

<sup>17</sup> 29 *Del. C.* § 10125(c).

were in any way connected to Mr. Street's race or age. Nor did Mr. Street show sufficient evidence that non-members of the protected classes were treated differently.

Instead, the Panel finds that the evidence presented shows that the Wells Fargo branch was under staffed on February 22. The Panel found credible Mr. Rivera's testimony that it can take a long time to open a business account and that Mr. Rivera was working to do this with the first customer when Mr. Street came in and waited for service. While it is uncontested that Mr. Rivera got into an argument with Mr. Street and refused to give Mr. Street access to his safe deposit box, the Panel finds the evidence insufficient to conclude that this was due in any way to Mr. Street's race or age. Rather, the incident appears to be an example of poor customer service causing Mr. Street to become angry after being told to sit down and wait his turn. The Panel concludes that this is insufficient to establish a violation of the DEAL.

Accordingly, based on the evidence presented, the Panel cannot find, as a matter of fact or law, that Wells Fargo denied services or accommodations to Mr. Street on the basis of his race or age. Mr. Street has the burden of proof and the Panel concludes that Mr. Street failed to meet his burden to establish a case of discrimination. Specifically, Mr. Street has not proven by a preponderance of the evidence that he was denied access to his safe deposit box. Indeed, there is no

dispute that Mr. Street was in fact given access to his safe deposit box by a Wells Fargo employee. Nor has Mr. Street proven that Mr. Rivera's actions were in any way connected to Mr. Street's race or age. Because Mr. Street has not established a violation of the DEAL occurred, he cannot prevail on his complaint.

### **CONCLUSION**

After careful consideration of the evidence presented, the Panel, by unanimous vote, concludes that Mr. Street failed to show that Respondent Wells Fargo violated the DEAL.



**ORDER**

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

**IT IS SO ORDERED** this 8<sup>th</sup> day of MAY, 2019.



Nancy Maihoff, *Commissioner and Panel Chair*



Calvin Christopher, *Commissioner and Panel Member*



Olga Ramirez, *Commissioner and Panel Member*