

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

STEPHANIE WHITE)	
)	
Complainant,)	
)	
v.)	Case No. S-EA-2364-21
)	
M&T BANK, 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”) via videoconference on Tuesday, April 12, 2022 to determine whether a violation of the Delaware Equal Accommodations Law (“the DEAL”), codified at 6 *Del. C.* Ch. 45, had occurred.

Specifically, the Panel convened to determine whether M&T Bank, located in Seaford, Delaware (“MTB” or “Respondent”) violated 6 *Del. C.* § 4504 as alleged in the Complaint filed by Stephanie White (“Ms. White” or “Complainant”). Ms. White alleged Respondent discriminated against her on the bases of race/color (Black) and sex (female). Immediately after the hearing, the panel conducted its deliberations.

PRESENT:

Gail Tarlecki, *Commissioner and Panel Chairperson*
Olga Ramirez, *Commissioner and Panel Member*
Chok-Fun Chui, *Commissioner and Panel Member*

Kemba S. Lydia-Moore, Deputy Attorney General, *Counsel for the Commission and Panel*

APPEARANCES:

Stephanie White, *Complainant, pro se*

Renee C. Mattei Myers, *Counsel for Respondent M&T Bank*¹

SUMMARY OF THE COMPLAINT

In her Complaint, Ms. White alleged that she was refused, withheld, or denied accommodations, facilities, advantages, or privileges of a place of public accommodation because of her race/color (Black) and sex (female).

According to Ms. White, on May 11, 2021, she went to MTB to deposit a check in the amount of \$10,000. Ms. White utilized the drive through lane, made contact with the MTB teller, and provided the necessary items to accomplish this transaction. Ms. White contends MTB staff took an unnecessary amount of time to verify that the check was authentic and that was due to the fact that she is a Black woman.

According to Ms. White, she was very upset about the situation, and she was instructed to come inside the bank. Inside, after Ms. White received a receipt for her transaction, she was instructed to leave and come back to withdraw funds after she calmed down. Ms. White contends MTB discriminated against her by excessively questioning and harassing her because she is a Black woman.

¹ Consistent with Delaware Supreme Court Rule 72, Ms. Myers was admitted Pro Hac Vice to represent Respondent during this hearing.

OPENING STATEMENTS

Both parties presented opening statements which are part of the record but are not summarized here because such statements are not evidence to be considered by the Panel during deliberations.

SUMMARY OF THE EVIDENCE

A. Complainant's Case

1. Complainant Stephanie White

Stephanie White, duly sworn, testified that she went to MTB to deposit a check and it took 28 minutes to complete the transaction. Ms. White said the MTB teller informed her the transaction was taking a while because the teller needed to verify that the check was authentic. Ms. White questioned why the process took so long given that check verification only requires reviewing the payor name and address and if necessary, calling the payor's phone number identified on the check. Ms. White testified that the check did not look "funny" and in fact came from the type of company that she said. Ms. White had provided the MTB teller a letter which explained the source of the check.

Ms. White testified that the day prior to the hearing held in this matter she was able to quickly deposit a check for \$30,000 and the money was available for withdrawal the next day (i.e., the day of the hearing). Ms. White noted the MTB teller that assisted with the \$30,000 deposit was an elderly, gray haired, Caucasian woman who was very nice.

During her testimony, Ms. White questioned why MTB was suspicious of the check when she was depositing money into a business account versus a commercial account, and she was not requesting cash back. She said MTB could have just held the check until it was verified.

Ms. White testified that after waiting a while for the check to be verified and seeing the line of customers build up behind her, she was instructed to come inside but she did not want to do that because the teller had the check, the envelope it came in, and the letter explaining the source of the check. Ms. White felt if she left her place in the drive through line, she would not have any “proof” that she had presented a check to be deposited. Ms. White testified that she told the teller she preferred to stay in line and not go inside but the teller again told her to come inside. Ms. White testified she told the teller there would be a problem if she went inside and there was no check. Ms. White said she was irate because she had put all her trust in the teller by providing all her items to the teller.

Ms. White testified that when she went inside, she was told to come back to make a withdrawal after she calmed down. Ms. White said the police were called to respond to this situation.

During her testimony, Ms. White questioned how her check would have been verified if she had made the deposit via an ATM. She said the check would have just been deposited without undergoing the verification process. Ms. White testified she was treated with blatant disrespect, and she was not “looked at by the

content of my character.”

During cross examination, Ms. White testified she opened the MTB account on April 8, 2021 and the incident at issue occurred on May 11, 2021. She agreed that the account was approximately 30 days old at the time of the incident at issue here, but it had been open for about a year when she made the \$30,000 deposit one day prior to the hearing in this matter.

Ms. White testified she met with the bank branch manager, Laura Schuler, to open her MTB account. Ms. White described Ms. Schuler as a Caucasian woman and she said Ms. Schuler never mentioned race during their meeting. Ms. White said her conversation with Ms. Schuler was “lovely” and they later communicated via email about local restaurant recommendations.

Ms. White testified she did not recall Elizabeth Mahoney, who was present during the hearing, as being the MTB teller who assisted her on May 11, 2021, but Ms. White agreed that Ms. Mahoney is a person of color. Ms. White also agreed that the teller never mentioned Ms. White’s race on that date.

Ms. White testified she had a conversation with Robin Tull, who was present during the hearing, at MTB on May 11, 2021. Ms. White agreed that Ms. Tull is a person of color.

Ms. White testified she does not know if holding a check for 30 days is permissible, but she does know that checks can be held. She noted that sometimes checks are cleared immediately and sometimes it takes a few days before the funds

are available.

Ms. White admitted when she entered the bank she was upset and spoke with a raised voice. She explained that she was “pissed” after having waited for 25 minutes. Ms. White agreed that there were other customers present in the bank and that Ms. Tull asked her to lower her voice or leave. Ms. White also agreed that Ms. Tull never mentioned Ms. White’s race when she gave that instruction.

Ms. White testified Ms. Tull said she called the payor’s number identified on the check, spoke with Dave, and confirmed the funds were available. Ms. White testified that Ms. Tull wrote on the check who she spoke with and the time the check was verified. Ms. White confirmed that the notation on the check indicated a time of 9:26 A.M. which was 26 minutes after Ms. White arrived at the bank.

Ms. White testified there was a manager, not present during the hearing but present on May 11, 2021, that was rude. The manager was a White woman who told Ms. White to “get out of here and come back when you clam down and get your money out of here.”

Ms. White testified that the teller only needed to look into the information that was on the check and then deposit it. When asked if she has any evidence that MTB utilized the verification process because of her race, Ms. White said, “No, I have nothing other than my personal belief and the time it took for my deposit transaction to be completed.”

In response to Panel questions, Ms. White testified she was “raising cain”

and as a result the police were called. Ms. White said she was informed that the police would be called if she did not leave but she refused to leave at that time because her check had not been deposited and she had not been provided a receipt. Ms. White did eventually leave MTB after getting a receipt for her deposit.

Ms. White testified that police officers were coming in as she was leaving. She said she spoke with the officers who arrived in 4 police vehicles. Ms. White noted that the officers were courteous, sympathetic, and said they understood her concern.

During re-cross examination, Ms. White further explained she was exiting the bank and headed to another destination when the police officers arrived. Ms. White said she spoke with the officers in the bank vestibule.

B. Respondents' Case

1. Elizabeth Mahoney

Elizabeth Mahoney, duly sworn, testified that she has worked in the banking industry for more than 30 years, which includes over 20 years at MTB where she is currently employed as a Teller. Ms. Mahoney's responsibilities include cashing and depositing checks, ordering checks and debit cards, and answering the phone. Ms. Mahone is required to undergo annual training in numerous areas, including fair treatment of customers, recognizing financial crimes, and banking policies and procedures.

According to Ms. Mahoney, each day approximately 200 to 300 customers

use the MTB drive through lane to conduct transactions. Ms. Mahoney testified that MTB's customer demographics are as follows: 60 to 70 percent people of color and 30 to 40 percent Caucasian.

Ms. Mahoney identified a document marked for identification as Respondent's Exhibit A as containing information that is part of MTB's policy. The document is entitled "Sexual and Other Unlawful Harassment Policy."² Ms. Mahoney also identified a document marked for identification as Respondent's Exhibit B as containing information that is part of MTB's policy. This document consists of 37 pages and begins with the word "Overview" appearing at the top of the first page.³

Ms. Mahoney testified about some of the content in Respondent's Exhibit B. In relation to the "New vs. Existing" section on page 4 that pertains to classifying a customer as "new" or "existing," Ms. Mahoney testified that an account is "new" if it has been open for 30 days or less and an account is "existing" if it has been open for more than 30 days. Ms. Mahoney also testified that if an account is "new," funds are held and become available 5 days after deposit and if an account is "existing," funds are available the day after deposit. In relation to the "Guidelines" section on page 18 that pertains to classifying a customer as "known" or "unknown," Ms. Mahoney testified that if an account is open for 90 days or less

² This document was admitted into evidence as Respondent's Exhibit A without objection.

³ This document was admitted into evidence as Respondent's Exhibit B without objection.

the customer is “unknown.” In relation to the “Red Flags” section on pages 18 thru 19 that pertains to signs of possible fraud, Ms. Mahoney testified there are a number of “red flags” including the following: check amount, out of state check, date, payee bank, drawee bank, endorsement, misspelled words, and alterations.

Ms. Mahoney testified that the Customer Transaction Archives system (CTA) is utilized to help verify checks and alleviate fraud. She explained that CTA enables a teller to review archived check data to help determine if a check is authentic. According to Ms. Mahoney if a check with the same or similar features is not found in CTA that is a “red flag.” Ms. Mahoney testified that she utilizes CTA to verify checks 99 percent of the time that a customer presents an unfamiliar check, and she is unaware of any other customers having complained about the length of time that it takes to verify a check.

Ms. Mahoney testified that the COVID-19 pandemic has drastically changed the banking industry as there is much more fraud than prior to the pandemic. According to Ms. Mahoney, due to the increase in fraudulent activity MTB staff frequently receive communications related to that increase. Ms. Mahoney identified the document marked for identification as Respondent’s Exhibit C as an example of said communications.⁴ Ms. Mahoney has had experiences in which

⁴ Ms. White questioned the relevance of this exhibit given that it is an email dated February 28, 2022, which is after the incident at issue here. Ms. Myers explained that the document was provided for the purpose of showing an example of the types of communications that staff received related to the increase in fraud. This document was ultimately admitted into evidence as Respondent’s Exhibit C without objection.

customers have specifically requested that she determine if a check is fraudulent and during her career, she has identified fraudulent checks.

Ms. Mahoney testified MTB does not hold deposited funds for 30 days and she believes customers prefer that the verification process be completed at the time of the deposit versus holding the funds for 30 days.

Ms. Mahoney testified she was the teller working the MTB drive through lanes on May 11, 2021 and she was the teller that assisted Ms. White with her transaction. Upon review of the check at the time that Ms. White presented it for deposit, Ms. Mahoney noted that the amount was \$10,000, it was being deposited into a new account, she was not familiar with Ms. White, it was an out of state check, and the signature was “a little off.” Ms. Mahoney identified the document marked for identification as Respondent’s Exhibit D as the check that Ms. White presented for deposit.⁵

Ms. Mahoney testified she proceeded to verify the check and utilized CTA during this process, which took approximately 6 minutes. Ms. Mahoney did not find any information relevant to the check presented by Ms. White and she asked Ms. White where the check was from. According to Ms. Mahoney, Ms. White said she received it from a mortgage company, and it was an escrow refund. Ms. White also produced a letter communicating that information. Ms. Mahoney said the letter was a “red flag” and she needed to take additional steps to verify the check.

⁵ This document was admitted into evidence at Respondent’s Exhibit D without objection.

Ms. Mahoney testified she was following the same procedure that is followed with all customers and she did not do anything different because of Ms. White's race.

Ms. Mahoney said she informed Ms. White that she needed to take additional steps to verify the check before she could deposit it.

Ms. Mahoney testified she then sought assistance from Robin Tull who was a floater working at MTB on May 11, 2021. Ms. Mahoney asked Ms. Tull to assist because she could not find any information related to Ms. White's check in CTA. Ms. Mahoney said she did not mention Ms. White's race to Ms. Tull and, she has obtained Ms. Tull's assistance in the past for such matters. According to Ms. Mahoney, once Ms. Tull was done assisting the customers in her office, Ms. Tull checked CTA and also found no information. Ms. Tull then called the payor's phone number that appeared on the check. Ms. Mahoney testified that Ms. Tull was able to verify the check, so Ms. Mahoney completed the transaction and gave the receipt to Ms. Tull. Ms. Mahoney said she did not re-contact Ms. White at the drive through lane because another teller that was covering the drive through had instructed Ms. White to go inside.

During cross examination, Ms. Mahoney testified that CTA has archived data for checks that are processed through the entire M&T Bank system and not just the Seaford, DE branch. Ms. Mahoney said that based on her use of CTA, there was no indication that a check issued by the payor of Ms. White's check had been processed through the entire M&T Bank system.

Ms. Mahoney confirmed that Respondent's Exhibit C is an email dated February 28, 2022 and while it addressed fraud related to cashed checks there have been instances where checks presented for deposit were fraudulent. Ms. Mahoney said it could take weeks or months before determining that a check is fraudulent, but MTB does not simply place holds on checks that exhibit "red flags."

In response to Panel questions, Ms. Mahoney testified she was the teller for both drive through lanes on May 11, 2021 and she serviced customers in the order of their arrival. Ms. Mahoney said if the verification process is taking a while she apologizes to the customer and explains the reason for the delay. Ms. Mahoney testified she explained the delay to Ms. White before she stepped away to seek Ms. Tull's assistance. When Ms. Mahoney stepped away, another teller assumed responsibility for servicing the drive through customers.

Ms. Mahoney testified there have been prior irate customers and if their behavior disrupts business, the police may be called to assist. Ms. Mahoney does not know who called the police on this date because she had returned to the drive through window.

2. Robin Tull

Robin Tull, duly sworn, testified that she has worked in the banking industry since 1999, which includes her current position as a Universal Banker Floater for M&T Bank's Eastern Shore District. Ms. Tull has been in this position for almost 6 years. Ms. Tull explained that her schedules and assignments fluctuate between the

various branches in the Eastern Shore District, which includes the branch located in Seaford, DE. Ms. Tull said her duties include working as a teller or on the “desk side” and her duties include cashing checks, depositing checks, and ordering debit cards.

Ms. Tull said she is required to undergo annual training in numerous areas, including harassment and discrimination in the workplace, privacy, and financial crimes. Ms. Tull testified there have been changes in the banking industry since the COVID-19 pandemic due to an increase in fraudulent activity.

Ms. Tull testified she has many years of experience in verifying checks, which is done to help eliminate fraud and protect clients. Ms. Tull explained that the check verification process includes reviewing the font, amount, signature, date, spelling, address, and where the check is from. She said this process takes a couple of minutes and includes utilizing CTA. Ms. Tull explained that the check verification process may also include calling a bank or payor. Ms. Tull said customers sometimes get upset with the time it takes to verify a check, but she believes customers prefer on the spot verification because the customer may be negatively impacted if a fraudulent check is deposited in their account. Ms. Tull said she has successfully identified fraudulent checks and recently saved a business \$50,000.

Ms. Tull testified she was working at MTB on May 11, 2021, but not as a teller. She said Ms. Mahoney asked for her assistance with verifying a check

presented by Ms. White in the drive through lane, and Ms. Mahoney never informed Ms. Tull of Ms. White's race. Ms. Tull said she finished assisting the customers that were already in her office, and then she checked CTA but did not find information relevant to Ms. White's check. Ms. Tull testified she then called the payor's phone number identified on the check and spoke with an individual who said he did not see any record of the check. Ms. Tull then spoke with a supervisor, David, who was familiar with the check and said Ms. White had sold her home and the check was her escrow payment. After speaking with David, Ms. Tull notated his name, the date, and the time on the back of Ms. White's check. Ms. Tull verified it is her handwriting that appears on the back of Ms. White's check found at Respondent's Exhibit D.

Ms. Tull testified she returned the check to Ms. Mahoney who completed the transaction and then provided Ms. Tull the receipt. Ms. Tull agreed to speak with Ms. White to provide the receipt, explain the delay, and try to calm Ms. White. Ms. Tull testified she gave the receipt to Ms. White who was upset when she entered the branch. Ms. Tull tried to explain what occurred and informed Ms. White that MTB does not hold checks for 30 days. According to Ms. Tull, Ms. White did not want to listen, and Ms. White said the verification process occurred because she is Black. In response, Ms. Tull informed Ms. White that she is also Black and that all customers are treated the same regardless of color. According to Ms. Tull, Ms. White then said the process was used because she is a Black person with money.

Ms. Tull testified she did not know Ms. White's race when she was attempting to verify the check.

According to Ms. Tull other customers were present when this occurred, and Ms. Tull informed Ms. White she would call the police. Ms. Tull said she called the police via a non-emergency phone number and when the police arrived Ms. White was not in the building, but she later returned. When Ms. White returned, they all went to Ms. Tull's office to talk.

During cross examination, Ms. White questioned Ms. Tull about the verification process for checks that are deposited via an ATM. Ms. Tull testified she is not an ATM custodian and is not involved in the process of retrieving checks from the ATM. Ms. Tull also testified that tellers and floaters are not involved in ATM transactions.⁶

In response to Panel questions, Ms. Tull stated she called the police for the purpose of diffusing the situation. Ms. Tull confirmed that she called the police via a non-emergency phone number.

C. Complainant's Closing Arguments

In closing, Ms. White stated MTB staff treated her unfairly and poorly. She said she has prior experience with being treated this way and it happens a lot to Black people. Ms. White said she was offended by the treatment she received at

⁶ Ms. White attempted to further question Ms. Tull on this topic, but Respondent's objection was sustained. The Panel Chair determined that Ms. Tull lacked personal knowledge given her testimony that her duties do not include handling ATM transactions.

MTB.

Ms. White requested that MTB be ordered to pay her restitution for the unjust treatment and that MTB staff receive training in how to treat customers - especially people of color (i.e., diversity training).

D. Respondent's Closing Arguments

In closing, MTB argued that Ms. White has failed to meet her burden of proof. She has failed to show that she was treated unfairly by MTB staff or that she was denied benefits and privileges because of her race.

MTB argued that it provided evidence of a legitimate, non-discriminatory reason for the actions it took to verify Ms. White's check, but Ms. White's evidence only consisted of her personal beliefs and speculation. MTB argued that its two witnesses, who collectively have over 50 years of banking experience, testified about the check verification process for unknown/unfamiliar checks and clients with new accounts. They utilize CTA and if the check cannot be verified through that system, they make a phone call. MTB argued that while this process may have upset Ms. White, there is no evidence that the process had anything to do with her race.

E. Complainant's Rebuttal Arguments

Ms. White stated she was treated unfairly, and her complaint against MTB is based upon how she felt due to that unfair treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ms. White alleges Respondent violated the DEAL and denied her access to public accommodation because of her race/color (Black) and sex (female). Section 4504(a)(1) of the DEAL provides that “no person being the owner...manager...agent or employee of any place of public accommodation, may 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 to a place of public accommodation 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*.^{9,10} This analysis requires the following steps:

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

⁷ 6 Del. C. § 4501.

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

⁹ 411 U.S. 792 (1973).

¹⁰ See, e.g., *DP, Inc. v. Harris*, 2000 WL 1211151 at *6 (Del. Super.) (“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 (Del. Super.) (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.¹¹

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

The first question for the Panel to decide is whether Ms. White is a member of a protected class. This Panel finds that Ms. White is a member of the race/color and sex protected classes because she is a Black woman. The Panel notes that throughout the hearing Ms. White only offered testimony related to her complaint that MTB discriminated against her because of her race/color. Given that Ms. White limited her case to that allegation and given that Ms. White bears the burden of proof, only her complaint related to her protected class of race/color was considered during deliberations.

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

¹² 29 Del. C. Ch. 101.

¹³ 29 Del. C. § 10125(c).

The next question for the Panel to decide is whether Ms. White was denied access to a public accommodation. As a bank that provides services to the general public, MTB is a place of public accommodation which is defined as “...any establishment which caters to or offers goods or services or facilities to, or solicits patronage from, the general public....”¹⁴ Nevertheless, MTB did not deny access (i.e., accommodations, facilities, advantages, or privileges) to Ms. White on May 11, 2021. Ms. White went to MTB to deposit a \$10,000 check and she in fact deposited that check.

The Delaware courts have recognized that “a denial of access may take the form of something less than an outright denial of service”¹⁵ but there is not “a precise legal rule which articulates what does or does not constitute a denial of access.”¹⁶ The “question may be fact-intensive, depending upon the circumstances of a particular case.”¹⁷ While the caselaw is not extensively developed, courts discussing this alternate analysis have explained that **mere delay** is not denial of access.¹⁸ But when the delay is used to frustrate the customer in a hostile way, and the customer rebuffs the delay tactic, there could be a denial of service.¹⁹

Under this alternate analysis, the Panel reaches the same conclusion—there

¹⁴ 6 *Del. C.* § 4502(14).

¹⁵ *Stewart v. Human Relations Commission*, 2010 WL 2653453, at *3 (Del. Super.) (citing *Hadfield’s Seafood v. Rouser*, 2001 WL 1456795, at *4 (Del. Super.)).

¹⁶ *Stewart*, 2010 WL 2653453, at *6.

¹⁷ *Id.*

¹⁸ *See, e.g., Witcher v. Breeding*, 2012 WL 3518079, at *3 (Del. Super.) (citing *Hadfield’s Seafood*, 2001 WL 1456795 (Del. Super.)).

¹⁹ *Witcher*, 2012 WL 3518079, at *3 (citations omitted).

was not a denial of access here. The evidence is clear that it took approximately 26 minutes to complete Ms. White's transaction. While that is significantly longer than the couple of minutes that Ms. Tull said it usually takes to verify a check, the Panel finds that there was a **mere delay** in completing Ms. White's transaction.

According to Ms. Mahoney, upon initial review of the check, there were a number of "red flags" (i.e., the check was for \$10,000, it was an out of state check, the check was being deposited into a new account, the signature on the check was "a little off," and Ms. Mahoney was unfamiliar with Ms. White). Then, there were additional "red flags" when Ms. Mahoney could not find information about the check in CTA and when Ms. White provided a letter to explain the source of the check. As a result, Ms. Mahoney sought Ms. Tull's assistance. Ms. Tull was not immediately available because she was working with other customers, but Ms. Tull did eventually help Ms. Mahoney. Ms. Tull utilized CTA and she also could not find any relevant information, so she called the payor's phone number that was identified on the check. Ms. Tull had to speak with two different people to determine that the check was authentic. With all the steps taken by Ms. Mahoney and Ms. Tull to verify the check, as well as the delay while Ms. Tull completed assisting other customers, it definitely took a significant amount of time to complete Ms. White's transaction, but there is no evidence that either Ms. Mahoney or Ms. Tull took these steps because Ms. White is Black. Instead, the evidence is clear that they took the steps necessary to ensure that the check was

authentic. Moreover, even if some of their actions can be classified as “additional,” their actions conformed to MTB’s policy to take additional steps prior to completing the transaction when there are multiple “red flags.”²⁰

There is also no evidence that the delay was for the purpose of frustrating the customer in a hostile way. The Panel finds that the delay was solely for the purpose of verifying the authenticity of Ms. White’s check in an effort to prevent fraudulent activity. And while the delay clearly frustrated²¹ Ms. White, the delay was not for the purpose of being hostile towards Ms. White.²² Merriam-Webster dictionary defines “hostile” as “marked by malevolence: having or showing unfriendly feelings,” “openly opposed or resisting,” “not hospitable,” and “having an intimidating, antagonistic, or offensive nature”²³

The Panel notes that prior to stepping away from the drive through window, Ms. Mahoney informed Ms. White that she needed to take additional steps to verify the check, but Ms. Mahoney did not later re-contact Ms. White. While Ms. Mahoney’s failure to re-contact Ms. White may have been discourteous, such behavior does not rise to the level of hostile. Furthermore, having Ms. White exit the drive through lane and enter the building was certainly an inconvenience but it

²⁰ See Respondent’s Exhibit B, page 19.

²¹ Similarly, while Ms. White rebuffed the delay, the delay was not a tactic. Instead, as discussed herein, the delay was the result of carrying out MTB’s policy.

²² *Compare Hadfield’s Seafood v. Rouser*, 2001 WL 1456795 (Del. Super.) (cashier forced a customer to wait for her food while the cashier explained the delay in service despite that the customer expressed disinterest in the explanation and repeatedly requested that her food be provided).

²³ See www.merriam-webster.com/dictionary/hostile.

seems that was an effort to have a more personable conversation with Ms. White as well as an effort to assist other customers in line behind Ms. White. Lastly, the fact that Ms. Tull requested police assistance is not indicative of a hostile environment. Ms. White was admittedly irate and “raising cain” when she entered MTB and Ms. Tull’s testimony that she called the police using a non-emergency phone number in an effort to diffuse the situation is credible.

Ms. White’s failure to prove that she was denied access to public accommodation precludes her from establishing a *prima facie* case of discrimination and therefore she cannot prevail on her Complaint. Nevertheless, the Panel will address the third element necessary to establishing a *prima facie* case - whether non-members of Ms. White’s protected class were treated more favorably than her. This element can be proven if Ms. White “...can show either that [she] was deprived of services while similarly situated persons outside [her] protected class were not or that [she] received services in a markedly hostile manner.”²⁴ Ms. White did not present any evidence that non-members of the protected class (i.e., race/color) were treated more favorably and as previously discussed she did not present any evidence that the services were rendered in a hostile manner. Ms. White’s failure to prove this third element further precludes her from prevailing on her Complaint.

²⁴ *Witcher*, 2012 WL 3518079, at *3 (citations omitted).


CONCLUSION

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

ORDER

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

IS SO ORDERED this 10th day of June, 2022.


Gail Tarlecki (Jun 7, 2022 21:10 EDT)

Gail Tarlecki, *Commissioner and Panel Chair*


Chok-Fun Chui (Jun 10, 2022 11:20 EDT)

Chok-Fun Chui, *Commissioner and Panel Member*



Olga Ramirez, *Commissioner and Panel Member*