

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

PETER C. RUSSO and)
J.P. s WHARF, LTD., d/b/a)
J.P. s WHARF,)
)
Defendants Below-)
Appellants,)
)
v.) C.A. No. 01A-07-001 HDR
)
MICHAEL CORBIN, ROGELLE)
CORBIN, AMIR GHANNAD,)
CONNIE GHANNAD, LOUISE)
LASHER, JOHN WEBB, individually,)
and the HUMAN RELATIONS)
COMMISSION OF DELAWARE, AN)
ADMINISTRATIVE AGENCY OF)
OF THE STATE OF DELAWARE,)
)
Plaintiffs Below-)
Appellees.)

Submitted: October 12, 2001

Decided: January 8, 2002

Bradley S. Eaby, Esq., of Barros, McNamara, Scanlon, Malkiewicz & Taylor, P.A.,
Dover, Delaware, for Appellants.

Joanne C. Springer-Messick, Esq., of Young, Conaway, Stargatt & Taylor, LLP,
Wilmington, Delaware, for Appellees Michael and Rogelle Corbin, Amir and Connie
Ghannad, Louise Lasher and John Webb.

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O P I N I O N

Upon Appeal from a Decision of the
State Human Relations Commission
AFFIRMED

Ridgely, President Judge

This is an appeal of a decision of the State Human Relations Commission (“Commission”) which awarded damages for discrimination based upon an unlawful denial of service at a restaurant. Appellees, (hereinafter “Complainants”), filed a complaint along with seven other individuals with the Commission against J.P.’s Wharf, Ltd., d/b/a J.P.’s Wharf, and Peter C. Russo (“Russo”) alleging a violation of Delaware’s Equal Accommodations Law.¹ Russo was charged with refusing to serve the Complainants because of their race, then ejecting them from the restaurant known as J.P.’s Wharf. A Panel of the State Human Relations Commission held a hearing, determined that Russo discriminated against six of the thirteen Complainants in violation of 6 *Del. C.* § 4504(a), and awarded damages. Appellants in this case are J.P.’s Wharf, Ltd. and Russo. They argue that the Commission’s decision must be reversed because it is not supported by substantial evidence and because there was evidence of legitimate, non-discriminatory reasons for their actions. I find that the decision of the Commission is supported by

¹ 6 Del. C. § 4504.

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substantial evidence and that it is free of legal error. Accordingly, the decision of the Commission is affirmed.

I. BACKGROUND

Russo is the owner of J.P.'s Wharf, Ltd. a corporation doing business as J.P.'s Wharf, a bar and restaurant located in Bowers Beach, Delaware. On August 11, 2000, Russo refused service to a group of approximately thirteen patrons and had them ejected from the property. The group of patrons consisted of eight employees of Proctor & Gamble ("P&G"), and several of their family members. A portion of the total group of Complainants were seated inside the restaurant and dined without incident ("inside group"). Later that evening a larger group assembled on the outside deck ("outside group"). The outside group consisted of some individuals that had dined inside then relocated to the outside deck, plus additional members who had recently arrived. As the events of the evening transpired a conflict arose between the outside group and Russo culminating in the ejection of both the outside and inside groups. First to testify was Daniel W. Reitmeyer, Jr., a white male, employed as a school teacher for almost thirty years. He testified that he and his wife Patricia took his mother to J.P.'s Wharf for dinner around 5:30 p.m. They entered from the parking lot opposite the deck doors. Mr. Reitmeyer testified that he did notice the hours posted on the door and that J.P.'s Wharf took credit cards. He specifically looked because he intended to pay with a credit card. He stated that he did not observe any other signs on the door. Once inside Mr. Reitmeyer observed a hostess sign, but not a hostess at the station. He

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inquired of a waitress and was told to just be seated. He, his wife, and his mother were finishing their meals when additional employees from P&G joined them. Assisted by their waitress, they pulled together additional tables to accommodate the recent arrivals. Mr. Reitmeyer left before most of the additional people had been served and took his mother home.

Next to testify was Patricia Reitmeyer, a white female and a Complainant. The testimony provided by Mrs. Reitmeyer was consistent with that of her husband, Mr. Reitmeyer. Mrs. Reitmeyer acknowledged that she remained seated inside the restaurant until she was asked to leave, the same time the outside group was being ejected. From her inside seat, Mrs. Reitmeyer could see the outside group. Joy Campbell, an African American female and a Complainant was next to testify. Ms. Campbell testified that she is a manager at P&G and has been employed there for over ten years. Ms. Campbell arrived before 6:00 p.m. and entered through the side of the restaurant by going immediately onto the deck. She did not see any of her party on the deck. She then entered the restaurant through the deck doors and joined the inside group until she was asked to leave at the same time as Mrs. Reitmeyer. She did not see a hostess sign on a pedestal or on the doors as she came through the deck entrance. Ms. Campbell testified that she was present when additional tables were added to the inside group to accommodate the growing size of the party. Ms. Campbell believed that at one point the inside group had grown to about ten people, however, at the point they were asked to leave the inside group consisted of Donna Shaw, Ruth Rudloff, Pat Reitmeyer,

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another person and herself. From her seat, she could observe the group on the deck. She stated that no one from the P&G outside group appeared rowdy or disorderly. She also noticed another non-P&G group on the deck with two tables that were seated and eating. Ms. Campbell testified that her waitress was very pleasant, but she was uncomfortable because of the way other patrons stared at her.

Morley Shaw, a white male and a Complainant, testified that he is a manager at P&G and has been with the company twenty-five years. Similar to Ms. Campbell, Mr. Shaw entered the restaurant through the deck and joined the inside group when he noticed that no other members of his party were outside on the deck. Mr. Shaw was finishing his meal when John Webb and Louise Lasher arrived through the front door and were seated outside on the deck. When Amir Ghannad and his family arrived, Mr. Shaw followed them to the outside deck. At this point there were about five or six in the outside group. Mr. Shaw proceeded to pull two tables together. Mr. Shaw testified that an employee informed them that they were not allowed to pull tables together. Mr. Shaw stated that he separated the tables without making any comments. Mr. Shaw observed another non-P&G group on the deck that had two tables pushed together, and therefore had assumed it was okay to pull the tables together. Mr. Shaw acknowledged that on a prior occasion he was part of a group of about eight that dined at J.P.'s Wharf, where the entire group sat around one table without adding additional tables. Matthew Donthnier, a white male and a Complainant, testified that he is the information technologies manager at P&G's Dover plant. He entered J.P.'s Wharf by going up

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the ramp onto the deck around 6:20-30 p.m. He and his wife then entered the restaurant through the deck doors and joined the inside party. He did not notice any hostess signs. Mr. Donthnier asked the waitress whether they could order and go out onto the deck. She replied that she would prefer them to stay there and eat. He and his wife went outside onto the deck after finishing their meals. They remained there until they were asked to leave.

Rogelle Corbin, an African American female and a Complainant is a production manager with P&G. Ms. Corbin testified that she and her husband entered J.P.'s Wharf from the parking lot entrance between 7:00-15 p.m. She did observe a hostess sign. She went over to Joy Campbell and Pat Reitmeyer sitting at the inside table. They told her that some of the group was out on the deck. Ms. Corbin proceeded to the deck and joined the outside group. She observed Mr. Ghannad speaking to a waitress but could not hear the conversation. She observed Mr. Ghannad follow the waitress into the restaurant. Mr. Ghannad returned a few minutes later and informed the group they had been told to leave. Rogelle Corbin's husband, Michael Corbin, also a P&G employee testified that he has extensive diversity training and in the past operated a consulting business where he provided diversity leadership training to businesses, including restaurants. Mr. Corbin observed Mr. Ghannad ask a waitress what they needed to do to get served. The waitress responded that you have to be seated before you can be served. Mr. Ghannad then asked whether the whole party had to get up or whether just he could take care of it. The waitress replied that just Mr. Ghannad would be sufficient.

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Mr. Ghannad followed the waitress inside and returned some time later and said, “we’ve been kicked out.” Mr. Corbin and his wife then went inside to speak to the manager. He testified that Mr. Russo then came out and asked him where the “spokesperson” was. Mr. Russo refused to give a reason why they were being kicked out and said, “because I said you are kicked out.” Mr. Corbin informed Mr. Russo that he believed the group was being asked to leave because of race. Mr. Corbin then stated that Mr. Russo physically pushed in between he and his wife, pushing them apart. He also stated that during this time there was a bouncer present that made him feel threatened. Mr. Corbin acknowledged that the group eventually went to another restaurant for dinner.

John W. Webb, a white male and a Complainant was next to testify. Mr. Webb is the Chief of Police in Cheswold, Delaware and has been in law enforcement for thirty-three years. He testified that he and his wife Louise Lasher entered the restaurant through the parking lot entrance between 6:00 and 7:00 p.m. He testified that he did not see a hostess sign and that he and his wife went directly to the deck and were the first to be seated outside. Mr. Webb’s testimony regarding the group’s expulsion was consistent with all previous testimony. Louise Lasher, a white female and a Complainant, testified that she had recently retired from P&G after twenty-nine years of service. She testified that she did not recall seeing a hostess sign. She and her husband, John Webb, went directly to the deck. When they reached the door Mr. Morley Shaw came over and stated that some people were eating inside. Ms. Lasher wanted to eat outside so they proceeded to

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the deck. A waitress was outside and asked if they wanted to be seated. Ms. Lasher acknowledged that she indicated the table she wanted to sit at by pointing to it, but it did not appear to be a problem for the waitress. Ms. Lasher's testimony then describes the group's failed attempt to pull the tables together. Additionally, she testified regarding the actions taken by Mr. Ghannad and Mr. Corbin. The last two Complainants to testify were Mr. Amir Ghannad and his wife Connie Ghannad. Mr. Ghannad is an Iranian American and his wife is African American. Mr. Ghannad is an employee of P&G and is the organizational effectiveness leader of the Dover plant. They arrived with their children and after talking with the inside group decided to go outside and eat because the inside group had almost completed their meals. Mr. Ghannad recounted that the group unsuccessfully attempted to pull some tables together. He also testified that the other non-P&G group on the deck pulled additional tables together after witnessing the P&G group's actions. However this other group was rude and refused to separate the tables, and threatened to leave if forced to do so. After the table altercation and a long wait, Mr. Ghannad asked a person cleaning one of the tables what it would take to get some service. He was told the group did not follow the procedures. She told him that the group had failed to sign in. Mr. Ghannad acknowledged that he asked whether they all needed to go back up front or whether just he could go and sign in. She replied that just he could do it. He testified that he followed her into the restaurant without talking to her. Mr. Ghannad believed she began to check the group in when she again stated that the group did not follow the

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procedures. Mr. Russo then joined the conversation. Mr. Russo said that the group did not follow the procedures for checking in and inappropriately pulled tables together. Mr. Russo announced that he had made a decision and instructed his staff to ignore the group. Mr. Ghannad testified that he did not have an opportunity to respond before Mr. Russo informed him that they were being ejected from the premises. Mr. Ghannad also testified regarding Mr. Corbin's attempts to reconcile the situation. All witnesses for the Complainants stated that during the entire time of the incident the group was not loud, rowdy or rude. The first witness for the Respondents was Shannon Carter the hostess on duty on August 11, 2000. Ms. Carter testified it was her job to post the hostess signs, which she did that night.² She testified that the only individuals in the outside P&G group that she seated was John Webb and Louise Lasher. She stated that there was no discussion of the number in the party and Ms. Lasher rudely selected the table by pointing to it. Ms. Carter testified that she observed additional members of the group enter the deck from the side of the building which is not an entrance. She informed Mr. Russo, then in the kitchen, and he stated that if they have not been seated by the hostess then they were not to be served. Ms. Carter asserted that Mr. Russo had not seen the group and they did not discuss race or

² The record reflects that on cross examination Ms. Carter was asked, "Did you put the signs up on the door?" Her response was not loud enough to be transcribed into the record, however the Commission's opinion reflects that she answered in the affirmative. Appellants' attempt to supplement the record with an affidavit by Ms. Carter has been disregarded by this Court. Appellants are bound by the record of the administrative hearing, and may not enlarge it upon appeal. See *Petty v. University of Delaware*, Del. Supr., 450 A.2d 392, 396 (1982).

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national origin. Ms. Carter acknowledged that she did not see the party pull the tables together and was not the person who instructed them that they may not do so. Ms. Carter acknowledged the dialogue between her and Mr. Ghannad, however, she felt that his tone was very disrespectful and rude.

Second to testify for the defense was Winifred Temel, a patron that was dining on the deck when these events transpired. Her testimony discussed the tables being pushed together and the demeanor of both the P&G and non-P&G groups on the deck. Ms. Temel described the groups as loud and boisterous, causing her and her husband to move inside.

Additionally, Deborah Proteack testified regarding the events of that evening. Deborah was the waitress that waited on the inside table. She testified that the inside group was served without incident, and described how she assisted them in pulling the tables together to accommodate the group as it grew. She also testified that it is her responsibility to post the hostess signs on Fridays around 4:00 p.m. and they remain up until Tuesday. Ms. Proteack acknowledged posting the hostess signs on the evening of August 11, 2000.

The bouncer that night, Phillip Russell was next to testify. Mr. Russell arrived for work in the middle of the events in question. He assisted in escorting the P&G group from the restaurant. Mr. Russell testified that the group made several rude comments and inappropriate hand gestures towards him. Mr. Peter Russo was the last to testify for the defense. On August 11, 2000, he was in the kitchen cooking. He testified that Ms. Carter indicated that she was having trouble

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seating a couple of groups on the deck. He told her not to serve them. Mr. Russo testified that another waitress told him he should come out and assist with the situation. After leaving the kitchen, Mr. Russo observed an upset Mr. Ghannad following Ms. Carter from the deck. He believed that Mr. Ghannad was being rude to Ms. Carter based on the way he was talking to her. Mr. Russo approached Mr. Ghannad and a heated discussion ensued. Mr. Russo then informed Mr. Ghannad that it was time to leave. Mr. Russo acknowledged that he said "how do you like that" upon dispatching Mr. Ghannad. Several moments later Mr. Russo was informed that the group was not going to leave until they spoke with him again. He testified that about eight members of the group gathered around him as the dialogue with Mr. Corbin occurred. The conversation was loud, intense and drew the attention of many patrons. Based on the evidence presented, the Commission dismissed the Complaints of Joy Campbell, Matthew Donthnier, Vicki Donthnier, Patricia Reitmeyer, Ruth M. Rudloff, Morley Shaw, and Donna Shaw. The Commission found that Louise Lasher, John Webb, Rogelle Corbin, Michael Corbin, Connie Ghannad and Amir Ghannad met their burden of establishing a prima facie case. It found that these individuals were members of a protected class and were denied a public accommodation where other persons were given the accommodation. Also, it found that the non-P&G group, non-members of the protected class, were served even though they failed to check-in with the hostess, and pulled their tables together. Even so, the Commission found that Russo put forth a non-discriminatory reason for refusing service to the P&G group,

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specifically the failure to check in with a hostess, pushing tables together, and the conduct of Mr. Ghannad.

The Commission ruled that the ultimate burden of showing that the non-discriminatory reason was a pretext rested with the Complainants. The Commission then found that the Respondents were more likely motivated by a discriminatory reason and that the Respondents' proffered explanation for refusing service was not credible. The Commission found that the Complainants carried this burden, in part, due to several inconsistencies in the evidence. These inconsistencies convinced the Commission that the Appellants' explanation for refusing service to the P&G group was not credible. In summary, the Commission was persuaded that the Respondents' refusal to provide service to the successful Complainants was more likely motivated by race rather than by the group's failure to check in with a hostess, pushing tables together, or the conduct of Mr. Ghannad.

The Commission awarded actual damages in the following amounts: \$500.00 to Louise Lasher, \$500.00 to John Webb, \$1,000.00 to Rogelle Corbin, \$1,000.00 to Michael Corbin, \$1,500.00 to Connie Ghannad and \$1,500.00 to Amir Ghannad. The Commission ordered Russo to issue a written letter of apology to the successful Complainants. Russo and the staff of J.P.'s Wharf, Ltd. were ordered to take diversity training within 120 days of the Order. Additionally, the Commission awarded attorneys' fees and assessed a civil penalty in the amount of \$5,000.00.

II. THE CONTENTIONS ON APPEAL
On appeal, the Appellants allege that there are questions of whether or not the successful Complainants made out a prima facie case of unlawful

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racial discrimination, and whether they sustained their burden of proving by a preponderance of the evidence that the Appellants' stated reason for refusing service was pretext. The Appellants contend that the Commission's decision is not supported by substantial evidence in that the Appellants presented evidence showing that non-members of the protected class were not treated more favorably than the Complainants. The Appellants rely upon two assertions, first, there is no evidence that the non-P&G group failed to sign in with the hostess before being served and secondly, the evidence establishes that the non-P&G group pulled their tables together only after observing the Complainants doing so. The non-P&G group had already been served thereby threatening a significant financial loss, so the non-P&G group was not treated more favorable, but were treated in a business like manner given the problem caused by the Complainants.

Also, the Appellants argue that even if the burden shifts to them to present evidence of a legitimate nondiscriminatory reason for refusing service there are three reasons their actions were not pretext. First, the Complainants did not check in with the hostess. Two witnesses Daniel Reitmeyer and Rogelle Corbin admitted seeing a hostess seating sign. Secondly, the group moved tables together on the deck without asking the staff for permission. The inside group had asked permission to take the same action. Lastly, the Complainants were rude to Ms. Carter. Appellants argue Louise Lasher rudely pointed to a table without allowing the hostess to assign it, there was no apology for moving the tables together and Mr. Ghannad was rude to Ms. Carter. In response, the Appellees argue there was substantial evidence to support the

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Commissioner's findings. The Commissioner's finding that non-members did not check in prior to being served is supported by Ms. Carter's testimony that she told Mr. Russo she was having trouble with a couple of groups that were up on the deck that night. Alternatively, the Appellees claim even if no evidence exists it is harmless error in light of the other factors relied upon by the Commission. Also, they maintain there is substantial evidence that the non-P&G group pulled their tables together prior to the Complainants. The Appellees further argue that even without the evidence in the record of who pulled their table together first, the order does not matter just that one party was ejected and the other was not for doing the same act.

The Appellees maintain that the Commissioner's finding that the Respondents' proffered reasons for ejecting the Complainants were pretexts to mask discrimination is supported by substantial evidence. They point out that the inside group composed of mostly Caucasian individuals did not check in and nevertheless were served. The Appellees respond to the second proffered explanation by stating the outside P&G group was justified in assuming it was acceptable behavior to pull tables together outside since they had just done the same inside. Finally, the Appellees point out that the record below is full of examples describing the P&G group as quiet and orderly, and any connotation that they were rude is merely pretext to mask unlawful discrimination.

III. STANDARD OF REVIEW This Court has emphasized the limited appellate review of decisions from the State Human Relations Commission.³ Review is limited to whether the decision is supported by substantial evidence and free from legal error.⁴ Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁵ This Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.⁶ It merely determines if the evidence is legally adequate to support the agency's factual findings.⁷

IV. DISCUSSION 6 Del. C. § 4504(a) states "[n]o person being the owner, lessee, proprietor, manager, superintendent, 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. . . . With certain exceptions not applicable here, a " place of public accommodation " is " any establishment which caters to or offers goods or services or facilities to, or solicits patronage from, the

³ Quaker Hill Place v. State Human Relations Commission, Del. Super., 498 A.2d 175, 178 (1985).

⁴ General Motors v. Freeman, Del. Supr., 164 A.2d 686, 688 (1960); Johnson v. Chrysler Corp., Del. Supr., 213 A.2d 64, 66-67 (1965).

⁵ Oceanport Ind. v. Wilmington Stevedores, Del. Supr., 636 A.2d 892, 899 (1994); Battisti v. Chrysler Corp., Del. Super., 517 A.2d 295, 297 (1986), appeal dismissed, Del. Supr., 515 A.2d 397 (1986).

⁶ Johnson v. Chrysler Corp., 213 A.2d at 66.

⁷ 29 Del. C. § 10142(d).

general public. ¶⁸ Delaware Courts have applied the standard articulated in McDonnell Douglas Corporation v. Green⁹ for cases alleging unlawful discrimination.¹⁰ For a plaintiff to successfully litigate under this standard, she must set forth a prima facie case for discrimination, and if the defendant states some non-discriminatory reason for the denial of the public accommodation, the plaintiff must prove by a preponderance of the evidence that the proffered reason for the denial was a pretext.¹¹

¶ [A] plaintiff can establish a prima facie case by showing that he is a member of a protected class, that he was denied access to a public accommodation, and that non-members of the protected class were treated more favorably. ¶¹² Section 4504(a) prohibits discrimination against any person and claims of racial discrimination directed at a person based upon the race or national origin of those whom the person chooses to associate are permitted under the statute.¹³ In this case, there is no dispute between the

⁸ 6 Del. C. § 4502(1).

⁹ 411 U.S. 792 (1973).

¹⁰ Quaker Hill Place v. State Human Relations Commission, Del. Super., 498 A.2d 175 (1985); Riner v. National Cash Register, Del. Supr., 434 A.2d 375 (1981); and Uncle Willie's Deli v. Whittington, Del. Super., C.A. No. 98A-04-006, 1998 WL 960709, Lee, J. (Dec. 31, 1998).

¹¹ Quaker Hill Place, at 183.

¹² Uncle Willie's Deli, at *4.

¹³ It is generally well established that claims of discrimination may be based on association pursuant to anti-discrimination statutes. See, e.g., Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 n.5 (1970) (recognizing that an allegation regarding refusal to serve ¶ by reason of association ¶ might support a claim under Title II, the Public Accommodations provisions of the 1964 Civil Rights Act); Winchell v. English, Cal. Ct. App., 133 Cal. Rptr. 20, 21-22 (1976) (holding that ¶ discrimination by a

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parties that the successful Complainants were members of a protected class and that they were denied goods or services offered to the general public. However, the Appellants contest the Commission's finding that the non-P&G group, composed of all Caucasians, were treated more favorably. The Commission determined that both the P&G group and the non-P&G group did not initially sign in with the hostess, based on Ms. Carter's testimony that she was having trouble seating a couple groups. Additionally, the Commission found that both groups pushed tables together, however, only the P&G group complied after being instructed that the tables may not be put together. The non-P&G group left their tables together and were served. The Commission concluded that there was a disparity in the treatment of the non-P&G group and the P&G group, and only the P&G group was denied service. Consequently, substantial evidence exists to support the finding that the successful Complainants made out a prima facie case.

business establishment against persons on account of their association with others of the black race is actionable under the [Unruh Civil Rights Act] ; *McGill v. 830 S. Michigan Hotel*, Ill. App. Ct., 216 N.E.2d 273, 276-77 (1966) (finding that the complaint alleging that a white woman faced rent increases because of black guests alleged a violation of the civil rights act because they were based on race and the general purpose of the act would be severely limited if it held otherwise).

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The Commission also assumed that the Appellants had met their burden to produce evidence of a legitimate, nondiscriminatory motive.¹⁴ It found that the Appellants' proffered explanation was that the Complainants did not follow procedures by failing to check in with the hostess and by pushing tables together. Also, Russo proffered that Mr. Ghannad's conduct towards Ms. Carter and himself was a basis for denial of service to the P&G group. This Court has previously stated that at this stage, it is unnecessary for the Commission to determine whether it was actually persuaded by the Appellants' proffered explanation, so long as the Appellants have set forth some evidence to support their assertions of a non-discriminatory reason.¹⁵

¹⁴ The Commission actually found that Appellants' failure to establish a clear policy with respect to the procedures allowed for discriminatory practices. Notwithstanding this finding, the Commission assumed Appellants had met their burden. Commission's Decision and Order at p. 49-50.

¹⁵ DP, Inc. v. Harris, Del. Super., C.A. No. 99A-12-003, 2000 WL 1211151, at *7, Ridgely, P.J. (July 31, 2000) (citing Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981)).

Once a non-discriminatory reason was produced, the Commission correctly shifted the burden to the Complainants to show that the Appellants' proffered reason was a mere pretext.¹⁶ [They] may succeed in this either directly by persuading the [Commission] that a discriminatory reason more likely motivated the [Appellants] or indirectly by showing that [Appellants'] proffered explanation is unworthy of credence.¹⁷ Here the Commission found that the Respondents' proffered reasons, specifically the failure to check in with a hostess, pushing tables together, and the conduct of Mr. Ghannad, singly and/or in combination are unworthy of credence and served as a pretext for discrimination as a discriminatory reason more likely motivated the Respondents' actions.¹⁸ Additionally, the Commission found that the Respondents' reason for refusing service to the successful Complainants was not credible in light of several inconsistencies.¹⁹ Motivation, intention, and credibility are

¹⁶ Riner, at 377.

¹⁷ Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981) (citing McDonnell Douglas, 411 U.S., at 804-805).

¹⁸ Commission's Decision and Order at p. 54.

¹⁹ The Commission accepted the testimony that eleven witnesses failed to check in because they did not observe any hostess signs posted on the door, and they did not notice a hostess inside the restaurant prior to being seated. This testimony was inconsistent with the testimony of two employees of J.P.'s Wharf, who both claim to have personally placed the signs on the doors of the restaurant that evening. Additional evidence existed that on prior visits these same patrons had not checked in or seen a hostess sign. Secondly, the Commission found the proffered reason based upon the Complainants pushing tables together unworthy of credence because credible testimony established that the non-P&G group refused to pull the tables apart after they were instructed to do so, and after the P&G group had complied with the same instruction. Lastly, the Commission found that the testimony by Mr. Russo and Ms. Carter, regarding Mr. Ghannad's offensive behavior, was inconsistent with each other and against

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intensely factual determinations influenced by various factors including reasonableness, consistency, contradictions and demeanor which are appropriately assessed by the finder of facts. ²⁰ Although the evidence was contested, there is sufficient evidence in the record here to fully support the factual findings of the Commission.

V. CONCLUSION

Because the decision below is supported by substantial evidence and is free from legal error, it is AFFIRMED.

IT IS SO ORDERED.

/s/ Henry duPont Ridgely
President Judge

cmh
oc: Prothonotary
xc: Order distribution

the testimony of several other credible witnesses. Commission's Decision and Order at p. 50-4.

²⁰ DP, Inc. at *7.