Comm'n on Human Rights ex rel. De La Rosa v. Manhattan and Bronx Surface Transportation Operating Auth.

OATH Index No. 1141/04 (Dec. 30, 2004)*, aff'd,* Comm'n Dec. (Mar. 11, 2005), ***appended***

Complainants, two individuals who travel by wheelchair, alleged that they were discriminated against on the basis of disability when a bus driver refused to assist them so that they could disembark from a public bus at their requested stop, and did not permit them to disembark from the bus until some sixty-five blocks later. Respondent bus company did not contest the allegations of the complaint as to liability and agreed that the hearing would go forward on the issue of damages only. Respondent asserted that complainants did not establish that they suffered any emotional distress as a result of the incident. ALJ found to the contrary, and recommended a damage award in the amount of $10,000 for one complainant and $12,000 for the other.

NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
COMMISSION ON HUMAN RIGHTS EX REL.
JOYCE DE LA ROSA AND ANGELO DE LA ROSA,
Petitioner
- against -
MANHATTAN AND BRONX SURFACE TRANSPORTATION OPERATING AUTHORITY, THE CITY OF NEW YORK, and "JANE DOE"
Respondents

REPORT AND RECOMMENDATION

FAYE LEWIS, *Administrative Law Judge*

This is a proceeding commenced by the petitioner, the New York City Commission on Human Rights, pursuant to section 8-105(4) of the Administrative Code and section 1-71(a) of the Commission's rules (47 RCNY § 1-71(a)). The proceeding involves a discrimination complaint filed by Joyce and Angelo De La Rosa with the New York City Commission on Human Rights on June 16, 1994. The complainants seek compensatory damages based on their allegation that on October

3, 1993, respondents, Manhattan and Bronx Surface Transportation Operating Authority (MaBSTOA), *et al.*,[1] discriminated against them on the basis of disability (CHR Compl. No. M-P-D-94-1012210). At trial respondent MaBSTOA entered into a stipulation representing that it did not contest the allegations of the complaint as to liability and agreeing that the hearing would go forward on the issue of damages only (Resp. Ex. U).

This matter was first referred to OATH in February 2004. After a period of discovery and pretrial motion practice, *see Comm'n on Human Rights v. Manhattan and Bronx Surface Transportation Operating Auth.*, OATH Index No. 1141/04, mem. dec. (July 9, 2004), trial was held on September 9, 2004 and September 14, 2004. Complainants each testified in their own behalf. Rubin Salz, the labor/employee relations officer for the New York City Transit Authority, testified for respondent MaBSTOA. Following trial, post-trial briefs were submitted on September 17 and September 24, 2004.

As discussed below, I find that complainants suffered emotional distress as a result of the incident outlined in their complaint, and I recommend that compensatory damages be awarded in the amount of $12,000 to Joyce De La Rosa and the amount of $10,000 to Angelo De La Rosa.

ANALYSIS

The allegations in the complaint as to liability were established as a result of MaBSTOA's decision not to contest liability. In sum, the complaint provides as follows. On October 3, 1993, Joyce De La Rosa and Angelo DeLaRosa,[2] who are both disabled by *osteogenesis imperfecta* and rely upon a motorized scooter and a wheelchair for mobility, attempted to travel from Manhattan to Blythedale Hospital in Valhalla, New York, via public transportation. They wanted to chart a route from to and from the hospital because their daughter was expected to receive rehabilitation treatment there. At about 2:30 p.m. on October 3, they attempted to board a MaBSTOA bus at the bus stop on First Avenue and 42nd Street, in Manhattan, intending to take it to Grand Central Station, from

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[1] Also named in the complaint are the City of New York and Jane Doe, "a bus driver whose name is unknown but who was wearing a badge with the number 9588." At the hearing, testimony revealed that the bus driver's name is Muriel Frazer (Tr. 214).

[2] The De La Rosas are Manhattan residents who are currently divorced (J. De La Rosa: Tr. 114).

which they planned to take the train to Valhalla. Both were able to board the bus, although not without difficulty. Ms. De La Rosa was the first of the two complainants to arrive at the bus stop. When she told the bus driver that she would need to use the wheelchair lift, the driver replied, "Oh shit, you want me to take you one stop." Ms. De La Rosa replied that it was three stops and that there was another passenger coming who also used a wheelchair. The driver then asked why she needed to stop the bus to pick up two passengers with wheelchairs who only wanted to go three stops. She also made statements indicating that she hoped the lift would not collapse and cause an accident (Complaint, ¶¶ 1-13).

Ms. De La Rosa was permitted to use the wheelchair lift to board. However, when she told the driver that she needed to sit in the wheelchair seating area nearest the front of the bus, to allow room for Mr. De La Rosa to board, the driver told her to "shut up" and would not permit her to sit there. The driver continued to complain about using the lift and made reference to its dangerousness. When Ms. De La Rosa asked for the driver's badge number, the driver said, "I don't give a shit what you do" (Complaint, ¶ 14-15).

When the bus arrived at Grand Central Station, the driver refused to assist the complainants in disembarking from the bus. Mr. DeLa Rosa asked to speak to a dispatcher, who was available across 42nd Street at the time, but the driver replied, "I don't give a fuck what you do." The driver then left the bus and spoke to the dispatcher, returned to the bus without the dispatcher, and continued driving. She drove to 107th Street and Broadway before dispatchers arrived and allowed the complainants to get off the bus. During the drive, she made insulting remarks about complainants to other passengers on the bus that characterized complainants as incompetent and childish. The complainants were eventually transported back to Grand Central Station by another public bus, dispatched solely for their use, but they did not reach Grand Central until approximately 5:15 p.m., too late to travel to Valhalla (Complaint, ¶¶ 16-18, 20-21).

Testimony given by both complainants also supported the allegations in the complaint. Both complainants testified that they had tried to file a complaint with the police upon arrival at 107th Street and Broadway, but that the police refused to take their complaint (A. De La Rosa: Tr. 14, 41; J. De La Rosa: Tr. 135).

The complainants testified that, as a result of the incident, they feel anxious about taking public buses and avoid taking public buses for short trips. Mr. De La Rosa indicated that the incident was frightening and that taking public buses evokes flashbacks or memories of the incident (Tr. 16, 20, 34). On an almost daily basis, for shopping, visiting his mother, and the like, he will use his wheelchair to travel up to 40 blocks rather than taking a bus (Tr. 17-18). He thinks about the incident at night, which disturbs him and keeps him awake. Sometimes he does not fall asleep until 3:00 a.m. (Tr. 18). He never had difficulty sleeping or anxiety or fear relating to taking a bus prior to this incident (Tr. 20).

Ms. De La Rosa testified that she did not feel anger or fear during the incident, but was "dazed" and "shocked" and in disbelief that the driver would not let them off (Tr. 76, 81). She, too, thinks about the incident every time she takes a bus, unless she knows the driver already and knows him to be helpful. She takes a bus approximately 12 to 18 times a week. Thinking about what happened makes her feel tense and anxious, so that she tries to avoid taking a bus for distances under 20 blocks (Tr. 72, 156). This is the case even if she is traveling with her daughter, who is currently 15 years old, and is also disabled and dependent upon a motorized chair for locomotion. In the past, her daughter used a manual wheelchair, which Ms. De La Rosa used to push from her own motorized chair rather than take a bus for distances under 20 blocks (Tr. 72).

Because Ms. De La Rosa is the sole caretaker for her daughter, she feels particularly anxious about depending on the bus to transport or visit her daughter. She feels "helplessness" about the possibility of not being able to get to her daughter, who suffers from asthma. She also feels anxious if she has a family event to go to with her daughter (Tr. 76, 82). She has taken Access-A-Ride only once because she finds that they are "totally disorganized and undependable," even though they provide door-to-door service for the same price as the bus (Tr. 138). She owns a 1995 car, which is modified so it can be driven with hand controls, but she rarely drives it (Tr. 139).

Complainants acknowledged that they did not sustain any physical injuries as a result of the incident. Neither has sought any medical or psychological treatment or counseling (A. De La Rosa: Tr. 21, 24-25; J. De La Rosa: Tr. 98). Ms. De La Rosa asserted that she has no time to see a psychologist or therapist, that Medicaid only covers ten visits per year, which she shares with her daughter, and that the therapists she has contacted do not have expertise in disability issues (Tr.

98,100-103). She also testified that Mr. De La Rosa continues to be upset about the incident, particularly when he has a run-in with a bus driver that reminds him of what happened: "when he has an incident with a driver his face swells up, he's angry at everybody, and he curses everybody out" (Tr. 153).

Although it does not contest liability, MaBSTOA asserts that complainants have not proven that they are entitled to recover any compensatory damages. MaBSTOA argues in the alternative that any award should not exceed $5000 per complainant (Post-hearing brief, September 23, 2004). Respondent's primary argument in support of their position appears to be that complainants have not proven that they suffered emotional damage as a result of this incident, as opposed to other incidents about which they testified and which have been the subject of several prior lawsuits.

There is some merit to respondent's argument, because although the complainants testified that they suffer flashbacks and anxiety relating to this incident, their testimony established that they suffer anxiety on a day to day basis relating to a myriad of other situations. For example, in testifying that he currently avoids taking a bus because it gives him flashbacks of October 1993, Mr. De La Rosa commented that he does not like to think about "how they treated us then and how they treat us now" (Tr. 16). Additionally, when asked to what he attributes his inability to sleep, Mr. De La Rosa responded, "Knowing what I have to go through every day, to get up and to deal with the people who are out there who . . . just refuse . . . to give me access for the simplest things sometimes" (Tr. 19). Just previously, he had testified about being refused access to stores (Tr. 19). Only when asked if there was a relationship between his inability to sleep at night and the October 1993 incident did Mr. De La Rosa testify, "Prior to that I . . . never had that problem" (Tr. 20). Mr. De La Rosa also acknowledged sustaining an injury on a public bus in 1987, which led to both complainants filing a lawsuit and reaching a settlement with the Transit Authority in April 1994, six weeks prior to the filing of the instant human rights action. While asserting that the injury had not caused him any anxiety, he acknowledged that it had caused him some pain, and some fear about riding public buses (Tr. 26).

Ms. De La Rosa's testimony made even clearer that her anxiety was motivated by many incidents other than that of October 1993. She indicated that many drivers still hesitate to take wheelchair passengers, and that this "creates anxiety, knowing that whenever you get on a bus you're

going to . . . experience a hostile situation" (Tr. 73). Many family occasions have been ruined as a result of problems with bus service: ". . . I can't even count on my fingers how many days they have ruined" (Tr. 83). She claimed to have filed more than 100 complaints with the Transit Authority about discrimination by bus drivers, as well as complaints with various advocacy groups and the bus depot (Tr. 83, 84). She made "quite a few complaints" prior to 1993 about drivers who would not take her in her wheelchair, but nothing ever came of them (Tr. 85, 86). She explained that she is angry, because she feels that although the rules prohibiting discrimination by the bus company are good, in practice they are often not followed and nothing happens to the drivers who discriminate (Tr. 82, 88). She described her anger as follows: "if I wasn't in this wheelchair, even though I'm a female, I would kick ass. You would have to arrest me or I would get killed . . . these drivers know no shame . . . years go by . . . and you see no one has ever gotten in trouble. Nothing happens" (Tr. 89).

Ms. De La Rosa was also affected by an incident on a public bus in 2000 where a bus driver was rough in moving her daughter's wheelchair, and in the process rammed her daughter's leg with the wheelchair, causing injury (Tr. 79, 111).[3] Ms. De La Rosa testified that this made her so angry that she wanted to "knock the mess out of" the bus driver (Tr. 80). A lawsuit was filed against MaBSTOA as a result, in which Ms. De La Rosa contended that she suffered permanent emotional damages. The status of the lawsuit was unclear from Ms. De La Rosa's testimony (Tr. 111-12).

Notwithstanding the many incidents, both past and continuing, which have made the complainants anxious and upset, it was plain that their treatment on October 3, 1993, caused them emotional distress. On that date, after a series of demeaning comments, the bus driver in question refused to provide them assistance so they could get off the bus at their requested stop at 42nd Street. As a result of these actions, they were in effect trapped on the bus until 107th Street and Broadway, when a dispatcher intervened. Anyone in this situation would no doubt be upset and disheartened. It is reasonable to believe that a person with a disability, who had suffered prior discrimination, might be even more upset based upon the cumulative effect of discriminatory conduct. Thus, I

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[3] The extent of the injury was debated: the hospital records indicated that her daughter suffered contusions to the foot, but Ms. De La Rosa testified that X-rays taken some time subsequently showed evidence of a hairline fracture that had healed (Tr. 79, 111).

credited complainants' testimony that the incident made them anxious, and that, as a result, they continue to experience some anxiety relating to taking public transportation. I also credited Ms. De La Rosa's testimony that memories of the incident make her anxious because she is the sole caregiver for her daughter and depends on public transportation both to transport her daughter and to reach her daughter in the event of an emergency.

Thus, based upon the uncontested allegations in the complaint as well as the testimony of the complainants, I find that both Joyce De La Rosa and Angelo De La Rosa suffered some emotional distress resulting from the October 3, 1993 incident and that both are therefore entitled to recover compensatory damages pursuant to Section 8-120(a)(8) of the New York City Administrative Code. *See New York City Transit Auth. v. State Div. of Human Rights*, 78 N.Y.2d 207, 216 (N.Y. 1991)("Mental injury may be proved by the complainant's own testimony, corroborated by reference to the circumstances of the alleged misconduct"); *DaSilva v. New York Racing Ass'n*, CHR Decision & Order (June 25, 1996), *aff'd. sub nom. New York Racing Ass'n v. New York City Comm'n on Human Rights*, N.Y.L.J., Jan. 10, 1997, at 28, col. 4 (S.Ct. Queens Co.) (credible testimony by complainant concerning mental anguish can be sufficient to sustain an award for pain and suffering).

In making this finding, I have considered and rejected the various arguments made by MaBSTOA asserting that respondents are not credible in claiming emotional distress, because, *inter alia,* the testimony of Rubin Salz arguably demonstrated that they did not file a complaint promptly with the Mayor's Office, an advocacy group, or MaBSTOA, as Ms. De La Rosa claimed (*see* J. De La Rosa: Tr. 73, 124, 126, 147 131, 150, 226; Salz: Tr.168, 169, 170, 171, 175, 176-179, 187-188), or because the De La Rosas have filed and settled two lawsuits against stores for disability discrimination as well as two lawsuits against the Transit Authority. One of these lawsuits involved the injury suffered by their daughter in 1990 and one involved personal injury to the De La Rosas in 1987, which settled in April 1994 for $65,000 for Mr. De La Rosa, and $30,000 for Ms. De La Rosa (A. De La Rosa: Tr. 30, 31, 42; J. De La Rosa: Tr. 108, 140).[4] Whatever the history of prior

[4] Their lawsuits have also included a defamation suit against Watchtower Bible and Tract Society, based upon "a very personal incident" that was not based upon disability, which settled for a total of $38,000 (A. De La Rosa: Tr. 31; J. De La Rosa: Tr. 108), and a lawsuit against Rite-Aid which was dropped after Rite Aid made some concessions (J. De La Rosa: Tr. 108-110).

litigation, or whether or not the complainants made prompt complaints to an advocacy group or to MaBSTOA, the fact remains that liability for that October 3, 1993 incident is conceded. It can not seriously be urged that the complainants "instigated" an incident where the bus driver, from the first time she saw Ms. DeLaRosa, tried to dissuade her from boarding the bus and made comments indicating that she hoped the lift would not collapse.

MaBSTOA also contends that the complainants "sandbagged" them by signing a general release with the Transit Authority in April 1994, in settlement of their 1987 personal injury claim, a month and a half prior to filing their human rights complaint involving the October 1993 incident (Tr. 233).[5] However, the complainants' decision to do so rather than incorporate the October 1993 incident in the settlement of the prior claim does not obviate the fact that liability is conceded as to the October 1993 incident. As stated above, to believe that complainants did not suffer any emotional injury as a result of that incident would be unreasonable.

The question becomes the amount of damages to be awarded the complainants. The complainants contend that an award between $62,100 and $69,000 for each complainant is appropriate (Complainant's second amended post-hearing brief, September 23, 2004). MaBSTOA, while asserting that an award is not warranted, asserts in the alternative that any award should not exceed $5000 per complainant (Respondent's post-hearing brief, September 23, 2004).

For a number of reasons, I conclude that an award of the magnitude sought by complainants is not justified. As discussed above, although I have found that complainants have suffered some anxiety because of this incident, both at the time it occurred and continuing to the present, the record establishes that the distress complainants experience derives from a variety of sources. Thus, I do not find that the anxiety which complainants experience about taking public transportation derives solely from this incident. Nor do I find that Mr. De La Rosa suffers from insomnia solely because of this incident. Further, I conclude that the complainants' decision to avoid public transportation when possible was largely influenced by the October 1993 incident, but was also motivated by other unpleasant incidents on public buses about which they, particularly Ms. De La Rosa, testified.

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[5] MaBSTOA, although a subsidiary of the Transit Authority, is a separate corporation, so that the release (Pet. Ex. E) is not dispositive of any claim against MaBSTOA relating to the October 1993 incident. *See* N.Y. Pub. Auth. L. § 1203(a); *Application of Crespo*, 123 Misc.2d 862, 475 N.Y.S.2d 319 (S.Ct. N.Y. Co. 1984).

In this regard, I note that the complainants' testimony regarding their emotional distress was uncorroborated, apart from Ms. De La Rosa testifying about how upset Mr. De La Rosa was. Both admitted never seeking medical assistance or counseling with regard to their anxiety or purported inability to sleep. Thus, on this record, there is nothing to support Mr. De La Rosa's testimony that he continues to have difficulty sleeping as a result of an eleven-year old incident, or Ms. De La Rosa's testimony that she thinks about the incident every single time that she goes for a bus, as she testified.

Additionally, although complainants contend that their emotional suffering is compounded by the fact that the driver in question is still employed by MaBSTOA and has not been disciplined as a result of the incident (Tr. 192), the compensatory damages being sought are predicated on what happened on October 3, 1993, not thereafter.

Finally, complainants contend that any damage award should contain an adjustment for pre-judgment interest, and should also consider the "present value" of awards involving similar fact patterns (post-trial brief, September 21, 2004). Complainants' assertions are incorrect. The Public Authorities Law provides that the rate of interest to be paid by the Transit Authority, or any of its subsidiaries, upon any judgment, shall not exceed three percent (NY Pub Auth, §§ 1212 (6), 1203-a(6)). However, the governing statute is the New York City Human Rights Law. Although it provides for the payment of compensatory damages to any person aggrieved by a discriminatory act, the law does not provide for pre-judgment interest. N.Y.C. Admin. Code §8-120(a). Complainants have failed to cite any authority for the proposition that pre-judgment interest may be awarded in a case involving only compensatory damages for emotional distress. The cases they cite are employment discrimination cases involving back pay issues. *See, e.g., Leventhal v. Louis Harris and Associates,* CHR Decision & Order (Dec. 10, 1991), *aff'd sub nom. Harris and Associates v. DeLeon et al.,* 84 N.Y.2d 69, 622 NYS2d 217 (1994); *Aurrechione v. New York State Division of Human Rights,* 98 N.Y.2d 21, 744 N.Y.S.2d 349 (2002). In *Aurrechione,* the Court emphasized that an award of pre-judgment interest was appropriate in the employment context to "compensate" complainants who had been deprived of wages at the time of discrimination, and went on to "reject petitioner's argument that pre-determination interest must in every case be awarded as a matter of law." 98 N.Y.2d at 27, 744 N.Y.S. 2d at 352. The rationale articulated in *Aurrechione* does not

apply to this case, where complainants alleged discrimination in a public accommodation, and sought damages based solely on emotional distress.

Complainants' argument that the "present value" of awards cited in their brief must be calculated misses the mark because the fact pattern in this case is distinct from those those involved in the cases they cite. Those cases involved, *inter alia,* an employer's denial of access to a handicapped parking space over the course of four years, which involved both emotional distress and physical suffering, *DaSilva*, CHR Decision & Order (June 25, 1996) ($20,000 recommended), or denial of a wheelchair accessible ramp to a building over the course of two years, *Torres v. Price Management Corp*., OATH Index No. 301/98 (Aug. 14, 1997), *aff'd,* CHR Decision & Order (Oct. 27, 1999), *aff'd,* N.Y.L.J., July 29, 1998, at 22, col. 5 (Sup. Ct. N.Y. Co.) ($10,000, $20,000, and $40,000 recommended), or wrongful detention by security personnel inside a department store, *Keefe v. Gimbel's,* 124 Misc.2d 658, 478 N.Y.S.2d 745 (Civ. Ct. N.Y.Co. 1984)($100,000 jury verdict). This case, by contrast, involves an incident, that however frightening or unpleasant, occurred over the course of several hours, not several years. Moreover, the bus drivers refusal to permit complainants from disembarking from the bus was not tantamount to the forcible detention imposed by security personnel in the *Gimbel's* case.

In general, compensatory damages awards based on emotional harm should be consistent with past awards for similar injuries. *School Bd. of Educ. of Chapel of Redeemer Lutheran Church v. New York City Comm'n on Human Rights*, 188 A.D.2d 653, 654, 591 N.Y.S.2d 531 (2d Dep't 1992). Past awards for similar instances of disability discrimination in public accommodations range from $5,000 to $15,000. In *Peters v. Cunningham's Florist*, CHR Decision & Order (Oct. 27, 1993), the Commission awarded $5,000 to a man who attempted to enter a flower shop but was denied access because he was using a wheelchair. The ALJ noted that the incident occurred on Mother's Day, when petitioner was seeking to buy flowers for his deceased mother. This circumstance exacerbated petitioner's emotional damages, to which he, his sister, and his wife testified.

In *Blair v. White Top Car Service et al*., CHR Decision & Order (Nov. 14, 1991), petitioner, a blind man using a guide dog, was refused transportation by respondent, a car service company. The Commission awarded petitioner $5,000 plus 50 free car rides. In *Campanella v. Hurwitz*, CHR Decision & Order (June 30, 1993), petitioner was denied service at a dentist's office because he had

AIDS. The Commission awarded petitioner $7,500 in emotional damages. In *Molony v. All County Transportation*, CHR Decision & Order (July 26, 1991), a man who used a wheelchair and had AIDS was denied assistance by his ambulette driver in ascending a staircase to his doctor's office, because the driver did not want to touch a person with AIDS. There, petitioner presented the testimony of his psychologist, who corroborated his testimony that he became suicidal and severely depressed because of the discriminatory treatment he suffered. The Commission awarded petitioner $15,000 in emotional damages.

Considering all the circumstances of this case -- the humiliating nature of the October 3, 1993 incident, the anxiety and other emotional distress that it caused the complainants to experience, as well as the evidence that complainants' current sleep difficulties and anxiety are related to other incidents in addition -- I recommend that the Commission award $10,000 in compensatory damages to Mr. De La Rosa and $12,000 in compensatory damages to Ms. De La Rosa.[6] The higher award to Ms. De La Rosa takes into account her testimony that she feels helpless and unable to care for her daughter because she is dependent upon public transportation to travel with or to transport her daughter.

Faye Lewis
Administrative Law Judge

December 30, 2004

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[6] In making this recommendation, I note that respondents elicited testimony at the hearing pertaining to MaBSTOA's customer complaint procedure and disability accommodation policy to mitigate any damages award (Salz: Tr. 168-184; Resp. Exs. A-D). Under the Human Rights Law, section 8-107(13)(d)(1), an employer held liable for violating the Human Rights Law because of the acts of its employee may present evidence that it had "established and complied with policies, programs and procedures for the prevention and detection of unlawful discriminatory practices by employees." Such evidence may be considered in mitigation of civil penalties or punitive damages. NYC Admin. Code § 8-107(13)(e). However, the Commission is not seeking civil penalties or punitive damages here; petitioners seek only compensatory damages. Thus, respondents' mitigation evidence is of little value.

SUBMITTED TO:

PATRICIA GATTLING
Commissioner/Chair

APPEARANCES:

GARFIELD WILLIS, ESQ.
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KIPP WATSON, ESQ.
Attorney for Complainants

RANDI MAY, ESQ.
Attorney for Respondent

The City Commission on Human Rights' Decision and Order, March 11, 2005

THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

In the Matter of
JOYCE AND ANGELO DE LA ROSA
Complainants
- against -
MANHATTAN & BRONX SURFACE
TRANSIT OPERATING AUTHORITY
Respondent

Complaint # M-P-D-94-1012210

DECISION AND ORDER

On June 16, 1994, the complainants filed a Verified Complaint with the New York City Commission on Human Rights (hereafter referred to as the "Commission") alleging violations of the Administrative Code of the City of New York. The complainants (who are both disabled and require the assistance of a wheelchair for mobility) testified that on October 3, 1993, at approximately 2:30

p.m., they boarded a bus operated by the respondents at 42nd Street and First Avenue and were met with hostility when the driver learned that they only intended to take the bus a few blocks to Grand Central Station. The complainants testified that the driver's hostility included; vulgarity, the wish that physical harm befall them, demeaning them in front of the other passengers and refusing to assist them off the bus at Grand Central Station; resulting in the complainants being trapped on the bus for three hours while it continued on its route. The complainants were finally assisted off the bus at 107th Street and Broadway, several miles from their intended destination, and as indicated above, three hours after boarding the bus.

The respondent's stipulated to their liability and a trial was conducted before Administrative Law Judge Faye Lewis at the Office of Administrative Trials and Hearings on September 9, 2004 and September 24, 2004 to determine the amount of damages, if any, to which the complainants were entitled. Privately retained counsel represented the complainants at the trial. The Administrative Law Judge issued a Report and Recommendation on December 30, 2004. The Administrative Law Judge recommended that Mr. De La Rosa be awarded $10,000 in compensatory damages and Ms. De La Rosa be awarded $12,000 in compensatory damages. The Administrative Law Judge determined the amount of the damages after a thorough review of past awards by the Commission in disability discrimination cases, particularly those involving public accommodations, and the testimony of the complainants regarding the anxiety they felt during and since the incident. In accordance with Commission rules, all parties were provided with an opportunity to comment on the Report and Recommendation prior to the issuance of this Decision and Order.

Based upon the testimony of the complainants about how this incident has affected their lives, the Commission adopts the Administrative Law Judge's recommendation in all respects and commends her for her thorough review of both the facts and the law.

The Commission recognizes that these complainants face many challenges and that this incident was one of many that create anxiety and frustration in their daily lives; however, their inability to point to this as the sole cause of that anxiety and frustration is not fatal to their claim for damages. Any reasonable individual would feel anxiety and frustration after being held prisoner on a bus for three hours, especially when the cause of the problem is utter ignorance and laziness. That frustration and anxiety is further compounded when it requires one to face the reality that the ignorance of one individual may render them helpless with regard to their ability to care for and

protect their child (The reason the recommendation appropriately awards Ms. De La Rosa an extra $2,000).

Though the Commission understands the complainants' argument regarding the respondent's failure to terminate the driver, whose ignorance and callousness gave rise to this ordeal, we agree with the Report and Recommendation that such failure has no measurable impact on the anxiety and frustration faced by the complainants; therefore, should have no impact on the amount of damages awarded. Similarly, we agree with the Administrative Law Judge's denial of pre-judgment interest on the damages. The cases cited by the complainants involve employment discrimination and awards of lost wages. Though courts have recognized pre-judgment interest on awards of lost wages, they have not granted pre-judgment interest on pain and suffering awards. Since an award for lost wages in an employment discrimination case is based upon money that a complainant would have earned from the employer but for the discrimination, this result is logical. In the case at hand, the complainants are being awarded damages for pain and suffering, not lost wages; therefore, the denial of pre-judgment interest is appropriate.

The Administrative Law Judge's recommendation of $12,000 in compensatory damages to Ms. De La Rosa and $10,000 in compensatory damages to Mr. De La Rosa is consistent with prior Commission awards and appropriate under these circumstances. It is hereby :

ORDERED, that the respondent pay Ms. De La Rosa $12,000 and Mr. De La Rosa $10,000 in compensatory damages for the emotional distress cause by an employee of the respondent.

Failure to abide by this Order may result in penalties authorized by section 8-124 of the Administrative Code of the City of New York.

SO ORDERED:
New York Commission on Human Rights

OMAR T. MOHAMMEDI, *Commissioner*

DR. DEREK B. PARK, *Commissioner*

BRYAN PU FOLKES, *Commissioner*

Dated: New York, New York
March 11, 2005