

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

<p>Charles Allison 2305 South Park Street, Apt. 6 Madison, WI 53713</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Golden Pheasant 2109 South Park Street Madison, WI 53713</p> <p style="text-align: center;">Respondent</p>	<p>RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</p> <p>Case No. 3196</p>
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BACKGROUND

On March 2, 1988, Charles Allison (Complainant) filed a complaint of discrimination with the Equal Opportunities Commission alleging that the Respondent, the Golden Pheasant, discriminated against him on account of his race in denying him the full and equal enjoyment of a place of public accommodation. The complaint was investigated by Madison Equal Opportunities Investigator Mary Pierce. Following the investigation, Pierce issued an Initial Determination finding probable cause to believe Respondent had discriminated against Complainant on the basis of his race.

Conciliation failed and the case was certified to a public hearing on June 16, 1988. A hearing was held on December 20, 1988. Complainant appeared in person, without a representative. Respondent failed to appear. Pursuant to MEOC Rule 9.4, the hearing was commenced at 9:30 a.m., one half hour after the scheduled hearing time.

Based on the record of the hearing, the hearing examiner now makes the following Recommended Findings of Fact, Conclusions of Law and Order.

RECOMMENDED FINDINGS OF FACT

1. The Complainant, Charles Allison, is an adult black male residing in the City of Madison.
2. The Respondent, Golden Pheasant, is a bar or tavern open to the general public, and is located on South Park Street in the City of Madison.
3. On February 26, 1988, Complainant visited the Golden Pheasant. While there, he purchased drinks for three black female patrons in the bar from a white female bartender.
4. Later on February 26, 1988, Complainant purchased a drink for Lawrence Walker, a black male, from the same white female bartender.
5. Complainant then attempted to purchase a drink for himself. He was refused service by the same white female bartender from whom Complainant had earlier purchased drinks for other individuals. When Complainant protested to the bartender, she told him to shut up and referred to him as "nigger lips".
6. Complainant became angry and made further protests.

7. A short while later, several City of Madison police officers arrived at the Golden Pheasant. The bartender pointed Complainant out to the police officers, who then held a brief conversation with the Complainant, suggested to him that he patronize another bar across the street, and escorted him out of the Golden Pheasant.
8. Complainant was embarrassed and upset by the manner in which he was treated by the bartender at the Golden Pheasant on February 26, 1988. Complainant remained upset and embarrassed for about a day.
9. Complainant has not patronized the Golden Pheasant since February 26, 1988 because he fears he will be arrested if he does.

RECOMMENDED CONCLUSIONS OF LAW

10. Complainant is a member of a protected class, race, within the meaning of the Madison Equal Opportunities Ordinance, Sec. 3.23, Mad. Gen. Ord.
11. Respondent is a public place of accommodation or amusement within the meaning of Sec. 3.23 (2) (e), Mad. Gen. Ord.
12. The Equal Opportunities Commission has jurisdiction over the subject matter of the complaint herein.
13. The Equal Opportunities Commission has jurisdiction over the parties to this proceeding.
14. Respondent, the Golden Pheasant, has discriminated against the Complainant in violation of Sec. 3.23 (5), Mad. Gen. Ord. by refusing to serve him and by subjecting him to verbal abuse and racially derogatory remarks, all on account of his race, while the Complainant was a patron at the Golden Pheasant. In so doing, Respondent denied Complainant the full and equal enjoyment of a public place of accommodation or amusement on the basis of his race.

RECOMMENDED ORDER

15. Respondent shall cease and desist from denying Complainant full and equal enjoyment of its facilities and services on the basis of his race.

MEMORANDUM DECISION

MEOC Rule 9.4 provides that in the event the Respondent fails to appear within one-half hour of the scheduled time for a hearing and the Complainant makes out a prima facie case showing a violation of the ordinance, the hearing examiner shall find that a violation of the ordinance has occurred and shall order such relief as is appropriate. The record herein reveals that Respondent was present at the pre-hearing conference when the date and time of the hearing were designated, and that a Notice of Hearing was issued and mailed to Respondent, and to the individual designated by Respondent as its representative, by certified mail. The file also contains certified mail return receipts indicating the Notice of Hearing was received at Respondent's place of business. Respondent failed to appear at the hearing within one-half hour of the scheduled hearing time. Thus, MEOC Rule 9.4 is applicable in this proceeding.

Complainant presented only his own testimony which established that he was referred to as "nigger lips" by a bartender in Respondent's establishment. Such direct evidence of racial discrimination is sufficient to make out a prima facie case of discrimination with respect to the enjoyment of a public accommodation and warrants a finding that Respondent discriminated against Complainant. Sec. 3.23 (5), Mad. Gen. Ord; MEOC Rule 9.4.

Complainant, however, has failed to demonstrate that any relief beyond a cease and desist order is warranted in this case. The relief awarded in this case must, therefore, be similar to that awarded in Willie Joe, Jr. v. Sunny Knoll Liquor, Inc., et al., MEOC Case No. 3070, Ex. Dec., Sep. 18, 1981. In that case, Complainant was subjected to racially abusive remarks by the owner and staff of a liquor store. Respondent was ordered to cease and desist from further discriminating on the basis of race, but no other relief was awarded. When, as here, Complainant fails to establish that he has suffered any compensable harm, the only appropriate relief is an order prohibiting Respondent from engaging in similar conduct again.

Dated at Madison this 30th day of December, 1988.

EQUAL OPPORTUNITIES COMMISSION

Harold Menendez
Hearing Examiner