

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MONONA AVENUE
MADISON, WISCONSIN**

<p>Evelio Duarte 1124 Jenifer Street, Apt. 1R Madison, Wisconsin 53703</p> <p style="text-align: center;">Complainant</p> <p style="text-align: center;">vs.</p> <p>Silver Dollar Bar 117 West Mifflin Street Madison, Wisconsin 53703</p> <p style="text-align: center;">Respondent</p>	<p>RECOMMENDED DECISION - DEFAULT ORDER</p> <p>Case No. 3091</p>
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A complaint was filed with the Madison Equal Opportunities Commission (MEOC) on March 19, 1982, alleging discrimination on the basis of national origin/ancestry in regard to public accommodations.

Said complaint was investigated by MEOC Investigator/Conciliator Mary Pierce and an Initial Determination dated November 19, 1982 was issued concluding that no probable cause existed to believe that discrimination was occurring or had occurred as alleged.

Subsequent to an appeal by the Complainant of said Initial Determination, an "Order from Examiner's Review of Initial Determination" dated January 27, 1983 was issued reversing the conclusion of no probable cause and entering a conclusion of probable cause.

The case was then referred to conciliation and Acting Conciliator James C. Wright. Conciliation failed or was waived and the case was next certified to hearing.

A prehearing conference was scheduled for April 28, 1983 at 2:00 p.m. (see the "Scheduling Order" dated April 14, 1983). The Complainant appeared in person at said prehearing conference. The Respondent did not appear (by its attorney or otherwise). After determining that the Respondent had received proper and adequate notice of said prehearing conference, and based upon the sufficiency of the Complainant's allegations to state a violation under Sec. 3.23, Madison General Ordinances, the Examiner enters the following Recommended Decision - Default:

RECOMMENDED FINDINGS OF FACT - DEFAULT

1. The Complainant, Evelio Duarte, is an adult male residing in the State of Wisconsin.
2. The Respondent, Silver Dollar Bar, is a tavern doing business in the City of Madison, State of Wisconsin held out to be open to the common and general use, participation and enjoyment of the public.
3. The Complainant is of Cuban national origin.
4. On or about January 19, 1982, the Complainant and a white female companion entered the Respondent's establishment.

5. The Complainant ordered two beers. The bartender on duty refused to serve the Complainant and his companion, at some point called the Complainant a "fucking Cuban" and made other derogatory ethnic slurs to the Complainant.
6. The Complainant at some point attempted to call police and was physically removed from the Respondent's establishment by the bartender.
7. A fight ensued outside the Respondent's establishment between the Complainant, the bartender and several other persons. After being struck by the bartender, the Complainant landed a blow to the bartender's nose. At some time during the altercation the Complainant was struck by others in addition to the bartender, including being hit on the head with a bottle.

RECOMMENDED CONCLUSIONS OF LAW - DEFAULT

1. That the Complainant is a member of the protected class of national origin within the meaning of Sec. 3.23, Madison General Ordinances.
2. That Respondent is a public place of accommodation or amusement within the meaning of Sec. 3.23, Madison General Ordinances.
3. That the Respondent discriminated against the Complainant on the basis of the Complainant's national origin by denying to the Complainant the full and equal enjoyment of the Respondent's public place of accommodation or amusement within the meaning of Sec. 3.23, Madison General Ordinances.

RECOMMENDED ORDER - DEFAULT

1. That the Respondent shall cease and desist from discriminating against the Complainant in violation of Sec. 3.23, Madison General Ordinances.
2. That the Respondent shall write a letter of apology to the Complainant as follows:

Dear Mr. Duarte:

On behalf of the Silver Dollar Bar, we apologize for the discriminatory treatment you have received here in the past. We further assure you that we will in the future comply with the provisions of the Madison Equal Opportunity Ordinance (Sec. 3.23, Madison General Ordinances) and will treat persons of Cuban and all other national origins in a fair and non-discriminatory manner.

Respectfully yours,

(Signed)

William Teasdale and all employees who work at the Silver Dollar Bar

3. That said letter of apology be submitted to the Equal Opportunities Commission Hearing Examiner within fifteen days of the date this Order is received by the Respondent. Said letter of apology shall be reviewed by the Examiner to determine that its text complies with Order #2 and said letter will then be forwarded by the EOC to the Complainant.

MEMORANDUM OPINION

The Respondent's failure to attend the prehearing scheduled for April 29, 1983 was inexcusable and contemptuous behavior in light of the following information present in the Commission case file:

1. A certified receipt for mail sent to the Silver Dollar Bar on April 14, 1983 which is signed by (apparently) one Joseph T. Teasdale on April 15, 1983, indicating that the Respondent received a copy of a "Scheduling Order" which gave notice that the prehearing conference in this matter was scheduled for April 28, 1983 at 2:00 p.m. and includes the location of said prehearing conference;
2. An Affidavit of Mailing indicating that a copy of said "Scheduling Order" was sent on April 14, 1983 by an EOC Secretary (Mary Edwards, a coop student) to the Complainant, the Respondent (Silver Dollar Bar) and to Attorney Dan Einum who represents the Respondent.

Further, an EOC Secretary (Cordia Taylor) telephoned Attorney Einum at approximately 2:30 p.m. on April 28, 1983 (which was approximately one-half hour after the prehearing conference had been scheduled to begin) and was informed by Attorney Einum that he would not be attending the prehearing conference.

The Examiner finds that the Respondent received proper and adequate notice of the prehearing conference,¹ and that the failure of the Respondent to attend (by representative or otherwise) entitles the Complainant (based on the sufficiency of the Complainant's allegations to state a violation under Section 3.23, Madison General Ordinances) to a default order in the Complainant's favor.

Signed and dated this 10th day of May, 1983.

EQUAL OPPORTUNITIES COMMISSION

Allen T. Lawent
Hearing Examiner

1. The certified receipt alone is usually sufficient to establish proper and adequate notice to a party.