



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

ABDUR -RAQIB MUHAMMAD,

Complainant,

v.

**BARKING DOG NYC, SOKOL KACI, KASTRIOP
TOPALLI, PHILLIPOS RESTAURANT INC.,
D/B/A BARKING DOG,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10162583

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on October 16, 2015, by Lilliana Estrella-Castillo, an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE HELEN DIANE FOSTER, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One

Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: **DEC 10 2015**
Bronx, New York


HELEN DIANE FOSTER
COMMISSIONER

State Division of Human Rights

Robert Goldstein, Director of Prosecutions

Luwick Francois, Senior Attorney

Lilliana Estrella-Castillo, Chief Administrative Law Judge

Lilliana Estrella-Castillo, Administrative Law Judge

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Caroline J. Downey, General Counsel

Melissa Franco, Deputy Commissioner for Enforcement

Peter G. Buchenholz, Adjudication Counsel

Matthew Menes, Adjudication Counsel



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**BARKING DOG NYC, SOKOL KACI,
KASTRIOP TOPALLI, PHILLIPOS
RESTAURANT INC., D/B/A BARKING DOG,**
Respondents.

**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. **10162583**

SUMMARY

Complainant alleged that Respondents unlawfully discriminated against him when he was assaulted and racial epithets were used against him because he is Black. The complaint is dismissed because Complainant failed to sustain his burden of proof.

PROCEEDINGS IN THE CASE

On June 11, 2013, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent Barking Dog NYC with unlawful discriminatory practices relating to public accommodation in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

On December 3, 2013, the Division amended the complaint to add Sokol Kaci and Kastriop Topalli as Respondents. (ALJ's Exhibit 2)

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Lilliana Estrella-Castillo, an Administrative Law Judge ("ALJ") of the Division.

On March 13, 2015, the complaint was amended, on the record, to correctly name Respondent restaurant as Phillipos Restaurant Inc., d/b/a Barking Dog. (Tr. 15)

A public hearing session was held on June 5, 2015. Complainant and Respondents appeared at the hearing. The Division was represented by Luwick Francois, Esq., Senior Attorney. Respondents appeared *pro se*.

FINDINGS OF FACT

1. Complainant is Black. (ALJ Exhibit 2; Tr. 56)
2. Respondent Phillipos Restaurant Inc., d/b/a Barking Dog (Barking Dog) is located at 1678 Third Avenue, New York, New York. (Tr. 283; ALJ Exhibit 2)
3. Barking Dog has a female bartender. (Tr. 286)
4. Barking Dog has a surveillance system which is designed to loop and override every three weeks. (Tr. 286-290)
5. A review of Respondents' surveillance tapes did not reveal any arms on the chairs in Respondents' restaurant. (Tr. 33)
6. Respondent Sokol Kaci is the general manager of Barking Dog. (Tr. 15, 276)

7. Respondent Kastriop Topalli is the owner of Barking Dog. (Tr. 15, 34, 48)
8. Respondents Kaci and Topalli are Caucasians of Albanian national origin. (Tr. 306)
9. On May 27, 2013, after being discharged from the hospital, Complainant dropped off his prescriptions to be filled at a CVS Pharmacy located at 1622 Third Avenue, New York, New York. (ALJ Exhibit 2; Tr. 56-57, 77, 79-80)
10. Complainant left the CVS Pharmacy looking for a restaurant, and after walking about one and one half blocks found one. (Tr. 58)
11. Complainant identified the restaurant as Barking Dog, because, according to Complainant, it is the only restaurant on the block, and the only restaurant with an outdoor terrace. (83-84)
12. At the time relevant to the complaint, Fetch Bar and Grill was located at 1649 Third Avenue, New York, New York. Fetch Bar and Grill was in closer proximity to the CVS Pharmacy than Barking Dog, and had outdoor seating. (Respondents' Exhibit 2)
13. I do not credit Complainant's testimony that he entered the restaurant around 7:00 p.m., because in his initial statement to the Division he informed the Division that he entered the restaurant between 5:00 p.m. and 6:00 p.m. (Tr. 57; Complainant's Exhibit 2) Complainant later told the Division that he entered the restaurant around 6:00 p.m., and then at another conference stated that it was closer to 7:00 p.m. (Complainant's Exhibit 2)
14. When Respondents were informed of the date and the hours that Complainant alleged that he was in the restaurant, they saved those surveillance tapes. (Tr. 286-290)
15. The surveillance tapes did not capture Complainant in Respondents' premises between 4:00 p.m. and 6:00 p.m. (Tr. 33)

16. When Complainant attempted to enter the restaurant he was approached by a male who put his hands on Complainant's chest to stop him from entering the restaurant. (Tr. 58)

17. Complainant pushed the male's hands off his chest and proceeded to enter the restaurant. (Tr. 58)

18. When Complainant entered the restaurant he was surrounded by three Caucasian males. (Tr. 59)

19. The leader of the three Caucasian males walked up to Complainant and said to him, "We don't allow Niggers in here. Every time you Niggers come in here you're - - you're begging. And always stealing stuff." (Tr. 59)

20. As Complainant turned to leave the restaurant, two of the Caucasian males held his arms as Complainant fell onto a chair that was being held by a third Caucasian male, who then held Complainant down on the chair by his shoulders. (Tr. 59-60)

21. The two Caucasian males "tied" Complainant's arms down with their hands on the arms of the chair while he was being held down by a third Caucasian male by his shoulders. (Tr. 104-05, 107)

22. While Complainant was being held down, a Caucasian male, the one who pushed him into the chair, proceeded to take Complainant's wallet out of Complainant's pants' back pocket while Complainant remained seated. (Tr. 61, 70) He pulled out three \$50 bills from Complainant's wallet and waving it at the bartender said, "This Nigger has some money. Hey boy, you want a drink?" (Tr. 61)

23. Complainant responded that he did not drink, to which the Caucasian male responded, "Us Irish don't drink alone, we love to drink." (Tr. 61, 119)

24. Complainant then snatched the wallet from the table, and the money out of the Caucasian male's hand and ran out of the restaurant. (Tr. 61)

25. Once outside, Complainant fell down on one knee and realized that no one was chasing him out of the restaurant. (Tr. 61-62) Complainant then proceeded to the CVS Pharmacy to get his medication. (Tr. 63)

26. On cross-examination Complainant was not able to describe the bartender, and could not even say whether the bartender was male or female. (Tr. 117, 119)

27. When Complainant arrived at the CVS Pharmacy he recounted what happened to him at the restaurant, but refused to call the police or an ambulance. (Tr. 64)

28. On cross-examination, Complainant testified that he did not call the police or file a complaint the night of the incident because there is "a time and place for everything." (Tr. 135) However, during the Division's investigation, he told the Division that that same night he went to the 23rd police precinct to file a complaint, but was told that he had to file the complaint at the 19th police precinct. (Complainant's Exhibit 2)

29. Complainant testified that the day after the incident he attempted to file a police complaint at his local police precinct, but was told that he had to go to the 24th police precinct where the incident occurred. (Tr. 67, 136, 139-40)

30. Complainant testified that he filed a police complaint the following day, May 28, 2013, at the 24th precinct. (Tr. 67, 140-41) However, Complainant filed a police complaint on July 13, 2013, with the 19th police precinct, after the Division requested a copy of the police complaint which he alleged he filed the day after the incident. (ALJ's Exhibit 5; Complainant's Exhibit 2)

31. Complainant was not credible when he identified Respondent Kaci as the leader of the events that unfolded on May 27, 2013. Complainant had not previously been able to describe

any of the Caucasian males in his police complaint or to the Division, but at the public hearing, after Respondent Kaci's third appearance at the Division, Complainant pointed to Respondent Kaci as the leader. (Tr. 97-98, 105; ALJ's Exhibit 5).

OPINION AND DECISION

N.Y. Executive Law, art. 15 ("Human Rights Law"), in pertinent part, makes it an unlawful discriminatory practice for "...any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation...because of the...race...of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof...or that the patronage or custom thereof of any person of or purporting to be of any particular...race...is unwelcome, objectionable or not acceptable, desired or solicited." Human Rights Law §296.2(a).

Respondent Phillipos Restaurant Inc., d/b/a Barking Dog is a place of public accommodation under the Human Rights Law. Human Rights Law § 292.9. As a place of public accommodation, Respondent Phillipos Restaurant Inc., d/b/a Barking Dog may not discriminate on the basis of race. Human Rights Law § 296.2(a).

Complainant alleged that on May 27, 2013 he attempted to enter a restaurant where he was stopped, physically restrained and racial epithets used against him by three Caucasian males. Complainant further alleged that Barking Dog is the restaurant where this occurred. He is sure of this because Barking Dog is the only restaurant on the block and the only restaurant with outdoor seating. However, at that time, there was another restaurant in closer proximity to the CVS Pharmacy than Barking Dog, and it also had outdoor seating. Complainant testified that the restaurant had chairs with arms, to which he was "tied" down. However, Barking Dog does not

have chairs with arms. Furthermore, Complainant could not identify the bartender as male or female, or in any way identify the persons who assaulted him other than state that they were Caucasian males and Irish. Respondents Kaci and Topalli are Caucasians of Albanian national origin. Complainant also initially told the Division that the events that lead to the filing of this complaint occurred between the hours of 5:00 p.m. and 6:00 p.m.; Respondents saved the surveillance tapes for that time period. The surveillance tapes did not capture Complainant in Respondents' premises. Complainant then told the Division that the incident occurred closer to 7:00 p.m. Respondents only saved the surveillance tapes for the 4:00 p.m. to 6:00 p.m. time period, and by the time the Division told them that Complainant alleged it was closer to 7:00 p.m., it was over three weeks later and those tapes had already been recorded over.


Complainant has failed to sustain his burden that Respondents unlawfully discriminated against him, because he has failed to prove that it was Respondents' business that he entered on May 27, 2013. Therefore, the complaint must be dismissed.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that the complaint is dismissed.

DATED: October 16, 2015
Bronx, New York



Lilliana Estrella-Castillo
Chief Administrative Law Judge