



CHARGE OF DISCRIMINATION

Department of Human Rights
Sibley Square at Mears Park
190 5th St E, Suite 700
Saint Paul, MN 55101
651/296-5663
Toll-Free 1-800/657-3704
TTY 651/296-1283

DEPARTMENT OF HUMAN RIGHTS USE ONLY

Case Number: 52188

Acknowledged by: [Signature]

Date Filed: _____ Date Docketed: AUG 18 2008

AUG 15 2008

Any person claiming to have been discriminated against because of race, color, creed, religion, national origin, sex, sexual orientation, marital status, disability, age, public assistance status or familial status, as provided for in Chapter 363A of the Minnesota Statutes in the areas of employment, real property, public accommodations, public services, education, credit or business contracts may file a charge within one year after the alleged discriminatory act with the Minnesota Department of Human Rights at the above address.

1. CHARGING PARTY

Kevin Phillips
7700 Penn Avenue South #224
Richfield, MN 55423

2. RESPONDENT

Speedway Super America
539 South Main Street
Findlay, OH 45840-3295

3. The discrimination was because of:

Race

4. The discrimination was in the area of:

Public Accommodations

5. Describe the discriminatory act, setting forth in statutory language the violation of Minnesota Statutes, Section 363A:

I am a black male who patronized the above-named Respondent's convenience store on August 15, 2007. I visited the store located at 7720 Nicollet Avenue South, Richfield, MN 55423.

On August 15, 2007 at approximately 8:50 p.m., I visited the Respondent's store in order to buy Tylenol. I had recently had surgery on my ankle and needed a pain reliever. When I was at the store, I did not find the Tylenol, but I purchased some other items and then exited the store. Moments after I left the store, one of the Respondent's clerks grabbed my right shoulder and forced me to the ground. During my fall to the ground, my injured ankle buckled. The clerk then told me, "Come with me because you are going to jail." When I asked why, he said, "Because you are a thief." Another clerk then approached and said, "Empty your pockets. I know how you black guys from Chicago are." I then emptied my pockets, at which time the clerks were shown that I had not stolen anything from the store.

I believe that my race was a factor in the Respondent's actions. I visited the Respondent's store in order to make a small purchase. Immediately after I exited the store, the Respondent's clerks grabbed me and forced me to the ground and causing my injured ankle to buckle. I was accused of theft and told, "I know how you black guys from Chicago are." I had not stolen anything from the Respondent, and I had displayed no behaviors to raise any legitimate suspicion about my activities.



Minnesota Department of
HUMAN RIGHTS

July 7, 2009

Ref: 52188
Kevin J Phillips
vs.
Speedway Super America

Kevin J Phillips
7700 Penn Ave S #224
Richfield, MN 55423

Dear Kevin J Phillips:

This letter is to inform you that your appeal of the No Probable Cause issued in this case has been completed. Enclosed is the order affirming the prior determination.

In the appeal, no new information was provided or identified which would justify a reversal of the Department's determination, or show sufficient reason to reinvestigate the case.

Thank you for your patience and cooperation.

Sincerely,



Velma J. Korb
Commissioner

Enclosure

AN EQUAL OPPORTUNITY EMPLOYER

Sibley Square at Mears Park • 190 East 5th Street, Suite 700 • Saint Paul, Minnesota 55101
Tel 651.296.5663 • TTY 651.296.1283 • TF 800.657.3704 • Fax 651.296.9042 • www.humanrights.state.mn.us

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6/07

**BEFORE THE HUMAN RIGHTS DEPARTMENT
OF THE STATE OF MINNESOTA**

In the Matter of a Charge filed by

Kevin Phillips
Charging Party,

against

Speedway Super America
Respondent,

Pursuant to Minnesota Statutes Chapter 363A.

ORDER

Case No. 52188

Having duly considered the arguments made by the Charging Party in the appeal of the prior No Probable Cause determination made in the above-captioned charge, I hereby affirm the prior determination, pursuant to provisions of Section §363A.28, subd. 6(c) of the Minnesota Statutes.

Upon review and consideration, I conclude:

1. The charging party, an African-American male, requests review of the Minnesota Department of Human Rights' ("Department") No Probable Cause finding of his race discrimination charge dated August 15, 2008 against the respondent. In that charge, he alleged that the respondent engaged in an act contrary to the provisions of the Minnesota Human Rights Act ("MHRA") – public accommodation discrimination – when it accosted him, accused him of stealing, and said "I know how you black guys from Chicago are (sic)."
2. In its answer, the respondent denied the allegation of discrimination and submitted supporting evidence. The charging party submitted a comprehensive rebuttal to the respondent's answer including additional statements of his position, a Digital Video Recording (DVR), explicative illustrations of the alleged incident, and identified witnesses for the Department to consider.

3. After review of the documentation, the Department determined that there was NO PROBABLE CAUSE to credit the charging party's allegations, in part, because:

The investigation found that there is insufficient evidence to support charging party's claim that his race was a factor in any adverse treatment by the respondent. The evidence found that the charging party was not the only African-American in the store the day of the incident. Other African-American customers were also in the store at that same time as the charging party and were able to make purchases and leave the respondent's store without incident. Additionally, one witness provided inconsistent information to corroborate the charging party's claim. Another identified witness could not specifically recall the event or the charging party. No other information was made available during the investigation which would corroborate the charging party's claim that the respondent was motivated by racial animus.

4. Pursuant to Minnesota Rules, part 5000.0700, subp. 9, a request for reconsideration shall contain or identify and describe the relevance of one or more of the following:
 - a. Evidence that was not available during the investigation;
 - b. Evidence that was available in the investigation but not properly weighed in reaching the determination; or
 - c. Statutory or case law indicating that the determination is erroneous.
5. On May 29, 2009, the charging party administratively appealed the Commissioner's NO PROBABLE CAUSE determination. Specifically, the charging party asserts:
 - a. The charging party's witness has corroborated the charging party's account of the incident;
 - b. the discriminatory acts took place after the charging party made his purchase; and
 - c. the charging party was discriminated against on the basis of race and gender.
6. On appeal, the charging party submitted new evidence in the form of several documents pertaining to a previous Human Rights charge he filed with the Department (MDHR File No. 35202). The charging party also submitted newspaper articles, a communication from the Minnesota Department of Public Safety from charge no. 35202, as well as two pages from an order regarding his federal claim against the Minnesota Department of Public Safety.
7. After a thorough review of the documents the charging party submitted on appeal, the Commissioner declines the charging party's invitation to incorporate them into the present case simply because they lack information that could reasonably lead to evidence relevant in the pending matter. For this reason, the charging party's appeal cannot be successful based on Minnesota Rules, part 5000.0700, subp. 9 (a).

8. Since the charging party did not submit any statutory or case law indicating that the Department's determination was erroneous, his appeal cannot be successful based on Minnesota Rules, part 5000.0700, subp. 9 (c).
9. Thus, the Department will interpret the charging party's appeal to be a request to reweigh the evidence per Minnesota Rules, part 5000.0700, subp. 9 (b), and turn the discussion to the evidence that was available during the investigation. As noted in the Department's memorandum, the investigator contacted witnesses before making a finding in this case, including the charging party's witness (hereinafter W). In an interview conducted on March 19, 2009, W stated that he did not hear any words or exchanges between the store clerk and the charging party during the incident, and indicated that "I would've heard something, but didn't." W also stated that he was not able to recall the store clerk making any reference to the charging party's race. Lastly, W testified that he did not notice anyone blocking the entry and exit door while the charging party was in the store.
10. For these reasons, the Department did not find that the charging party's witness corroborated the charging party's claim. Thus, after having thoroughly examined the witness information gathered by the investigator, I conclude that relevant witnesses were contacted, appropriate questions were asked, and proper conclusions were drawn from the witnesses' statements.
11. In its review, the Department also viewed the DVR proffered by the charging party. The video entitled "Checkout" clearly shows the charging party and a respondent employee exchanging words; however, the video did not capture audio data. Therefore, the Department is unable to discern whether the dialogue between the parties was discriminatory against the charging party. Without audio data or other evidence, the Department is unable to infer a discriminatory motive based on race. The evidence reviewed did not substantiate the charging party's allegations of discrimination.
12. The charging party asserts that the alleged discriminatory act occurred *after* he made a purchase from the respondent store and restates that he was not prohibited from making a purchase. Nevertheless, the analysis for a claim governed by Minn. Stat. §363A.11 subd. 1 is the same. The Minnesota Supreme Court has determined that the elements of a disparate-treatment claim in public accommodations include: (1) the charging party is a member of a protected class; (2) the respondent discriminated against the charging party regarding the availability of its goods or services; and (3) the discrimination was because of the charging party's membership in the protected class.
13. The charging party also claims that he was discriminated against because of both his race *and* gender identities. In other words, his particular status as an African-American male was the basis of his discrimination. Moreover, the charging party argues that to analyze these identity categories separately is inadequate because they do not fully articulate his experience, which was different than men of other races and of African-American women at the respondent store during the time of the alleged incident. Although the Department acknowledges the attempted distinction asserted by charging party, alas, such a multifaceted analysis is not recognizable within the legal meaning of the MHRA.

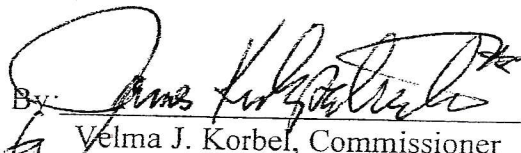
14. After a re-weighing of the evidence, pursuant to Minnesota Rules, part 5000.0700, subp. 9 (b), the investigation does not support the charging party's assertion that the respondent violated the Minnesota Human Rights Act. The investigation supports the determination of NO PROBABLE CAUSE to support the charging party's reprisal claim.
15. Since the review finds that there is not a reasonable expectation that evidence exists to substantiate that discrimination occurred, the findings of fact and law submitted in the May 18, 2009 Memorandum in this case are re-adopted and AFFIRMED.
16. Although the Department will not pursue this charge further, the charging party may bring (or amend) a private civil action against the respondent in state district court within 45-days after this Order, pursuant to Minn. Stat. § 363A.33, subd. 1 (1).

Minnesota Department of Human Rights

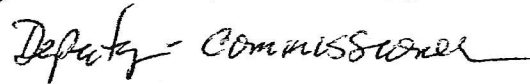
FOR THE DEPARTMENT:

Dated:

July 2, 2009

By: 

Velma J. Korbel, Commissioner


Deputy - Commissioner

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Kevin J. Phillips,

Plaintiff,

Civ. No. 09-2447 (RHK/FLN)
**MEMORANDUM OPINION
AND ORDER**

v.

Speedway SuperAmerica LLC, a wholly
owned subsidiary of Marathon
Petroleum Company, LLC,

Defendant.

Jesse Gant, III, Jesse Gant, III, Attorney at Law, P.A., Blaine, Minnesota, for Plaintiff.

Stephanie D. Sarantopoulos, Jeffrey A. Timmerman, Littler Mendelson, P.C.,
Minneapolis, Minnesota, for Defendant.

INTRODUCTION

This action arises out of an August 15, 2007, incident at Defendant Speedway SuperAmerica LLC's ("Speedway") Richfield, Minnesota convenience store. Plaintiff Kevin Phillips alleges that the store's employees detained him and accused him of shoplifting because he is black. He asserts that these actions violated the Minnesota Human Rights Act ("MHRA"), Minnesota Statutes § 363A.01 *et seq.*, and constituted negligence. Speedway now moves for summary judgment. For the reasons that follow, the Court will grant its Motion.

Phillips also points out that Doni (1) has been disciplined for making discourteous comments to customers and (2) dislikes "Blacks and Whites born and raised in America" and has a "great[] disdain for White people." (Mem. in Opp'n at 14-15.) But these facts do not help his cause. If anything, they show that Doni treats all Americans equally rudely; they do not indicate he is more likely to harbor animus towards blacks or that his conduct here occurred because Phillips is black.⁷ Phillips also points out that he was unable to locate Thomas to question him about the incident, and he suggests that the Court should infer discrimination from Thomas's absence. (See Mem. in Opp'n at 14.) The Court declines this irrational invitation.

At bottom, Phillips has failed to proffer sufficient evidence to suggest that Doni's or Thomas's conduct occurred because of his race. Accordingly, he has failed to establish a *prima facie* case of discrimination under the MHRA, and the claim must be dismissed.

II. The negligence claims

The two remaining claims in the Amended Complaint sound in negligence.

Neither passes muster.

Phillips first alleges that Speedway negligently supervised Doni and Thomas.

Speedway argues *inter alia* that this claim is subject to a two-year statute of limitations

⁷ Once again (see *supra* note 3), Phillips attempts to alter the nature of his claim by suggesting that Doni discriminated against him because he is American, *i.e.*, on the basis of his national origin. Yet, he did not allege national-origin discrimination in his Complaint or in his discrimination charge.

BRICK COVER SAYS IT ALL
FANCY WORDS BUT

CONCLUSION

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** that (1) the Court's Order to Show Cause (Doc. No. 68) is **DISCHARGED**, (2) Defendant's Motion for Summary Judgment (Doc. No. 57) is **GRANTED**, and (3) Plaintiff's Amended Complaint (Doc. No. 50) is **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: October 22, 2010

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge