

STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. PL11RB-64454

Felix Osorio, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 Lucas Maximum Sales, LLC, )  
 )  
 Respondent. )

Administrative Action

**PARTIAL FINDING OF PROBABLE CAUSE**

On March 17, 2014, Trenton resident Felix Osorio (Complainant), who is African-American, filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that a Ewing used car dealership, Lucas Maximum Sales, LLC (Respondent), subjected him to race discrimination in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR investigated the matter and now finds—for purposes of this disposition only—as follows.

On or about September 5, 2013, Complainant purchased a 2004 Infiniti from Respondent. Complainant told DCR that he shopped at Respondent because his mother and grandmother previously purchased cars there. In addition to buying the car, Complainant purchased a limited warranty/service contract for \$699, for a term of 24 months or 30,000 miles. The service contract lists the specific components that are covered during the warranty period.

Complainant told DCR that he had problems with the car and brought it back to the dealership several times. He said that each time, Manager Pat Chiacchio (Pat) told him to bring the car back the following week rather than fix the problem.

On March 11, 2014, Complainant returned to the dealership and told Pat and salesperson Orlando “Earl” Chiacchio (Earl) that he wanted his car fixed that day. Pat told Complainant to take the car to Respondent’s repair shop, located down the street from the

dealership, and said that he would let the owner know that Complainant would be arriving shortly.

Complainant told DCR that when he arrived at the repair shop, a woman refused to help him and told him to leave her office. Complainant returned to the dealership and told Earl that the woman at the repair shop denied him service. Complainant told DCR that Earl told him to lower his voice and he replied that someone needed to repair his car. Complainant alleges that Earl asked if he wanted to go outside to fight and "belly bumped" him. Complainant alleges that he asked Earl, "What the fuck are you doing?" and that Earl replied, "I'm gonna get your black ass locked up," and "Get out of here, you nigger." Complainant told DCR that someone called the police and that an African-American employee, Grady Blue, approached him and said, "We don't do that here," referring to Earl's comments.

On June 20, 2014, a DCR investigator visited the site and interviewed Pat and Earl Chiacchio and the woman from the repair shop, Joy Lucas. All three are Caucasian.

Pat told the investigator that on March 11, 2014, Complainant came to the dealership and said that he needed his radio fixed but did not mention any problem with his brakes. Pat said that he told Complainant to take the car to Respondent's repair facility at 56 Troy Avenue in Ewing. He told Complainant that he would let Lucas know that Complainant was on his way. Pat told DCR that he called Lucas and because she did not answer, he left a message that Complainant was on his way to the shop.

Lucas told DCR that when Complainant arrived at the repair shop, she was on the phone and told him that she would be with him shortly. She said that she ended her call within a few minutes and went to speak to Complainant who told her that his car's stereo and brakes needed to be fixed that day. Lucas told DCR that all vehicles come with a 30-day warranty and Complainant purchased an extended warranty, but stereos and brakes are not covered under the extended warranty. DCR reviewed the service contract signed by the parties. It does not list repairs to stereos or brakes as covered services.

Lucas stated that she told Complainant that brakes and stereos were not covered under his warranty but nevertheless offered to replace Complainant's stereo with another Infiniti radio that was on the lot, free of charge. She told him that they could look at his brakes but would have to charge him for any repair work. Lucas claimed that Complainant began yelling things like, "You people are no fucking good!" "You're going to fix my fucking car!" and "You don't know who you're dealing with." Lucas told DCR that because Complainant is a big, muscular man and she was alone with him inside the building, she felt threatened and asked him to leave.

Pat told DCR that Complainant returned to the dealership and asked why he had not called Lucas, and Pat explained that he called, but she did not answer, so he left her a message. Pat said that he told Complainant that if he would have a little patience, they would help him. He stated that Complainant started yelling and cursing in the showroom, saying things like, "I'm the man. You don't know who you're messing with!" and "I don't care what you gotta do, you're gonna fix this mother-fucking car!"

Pat said that one of the owners, Glenn Perantoni, asked Complainant to calm down and assured him that someone would look at his car. Pat said Complainant replied, "Don't tell me how to speak, I am a grown man." Pat stated that Perantoni told Complainant that if he continued to yell, he would have to leave the premises, and Complainant said that he would not leave until his car was fixed. Pat said that Complainant then "got in Perantoni's face" and said, "Let's go outside, I'll show you who I am." Pat stated that when Perantoni would not go outside, Complainant grabbed Perantoni by the sweater and "chest-bumped" him. Pat said that his brother Earl rushed to Perantoni's aid and tried to pull Complainant away from Perantoni.<sup>1</sup> Pat told DCR that he heard Complainant say, "You don't know what nigga you're dealing with," and saw Complainant push Earl into the wall, and saw Earl fall to the floor. Pat denied calling Complainant a "nigger," and denied hearing anyone other than Complainant use that word.

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<sup>1</sup> DCR could not interview Perantoni because he has passed away.

Earl told DCR that he was sitting in his cubicle across from Perantoni's office. He heard Perantoni and Complainant arguing, and understood from what he heard that Complainant was upset that he would have to pay for repairs. When he saw Complainant get close to Perantoni's face, Earl got up from his seat to separate them. Earl said that Complainant pushed him against the wall, and he fell to the floor. He said that Pat then called the Ewing Township Police. Earl maintained that he never called Complainant a "nigger," and that no one else used the word except Complainant. He said that 90% of Respondent's customers are African-American.

The police report indicates that several officers arrived at the dealership a little before 1 p.m. An officer spoke to Pat, who said that Complainant came to the dealership and threatened employees by repeatedly saying, "You don't know who you're messing with," and telling employees that he would "take care of them" if they messed with him.

According to the police report, Complainant told an officer that when he bought his car, the salesman said that the dealership would make repairs free of charge, but the dealership was refusing to make repairs. The report notes that the officer advised Complainant that it was a civil matter rather than a criminal matter. Complainant told DCR that he reported to the officer that he had been referred to as "nigger." The police report does not indicate that Complainant reported any racial slurs. Nor does the report contain allegations of pushing or physical contact.<sup>2</sup>

On June 30, 2014, Grady Blue, who was employed by Respondent as a "runner," called DCR and said that it was his last day working for Respondent because he had been fired. He told DCR that Respondent generally refuses to fix cars for dealership customers but that

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<sup>2</sup> Earl filed a criminal complaint against Complainant on May 23, 2014, alleging that Complainant pushed him into a glass partition during the incident. The Ewing Township Municipal Prosecutor told DCR that Complainant filed a cross complaint against Earl for assault arising from the same incident. The Prosecutor stated that both parties voluntarily withdrew their complaints on July 14, 2015, without a trial.

Perantoni was going to fix Complainant's car and was discussing it with Complainant when Earl intervened and said, "You nigga, you" to Complainant. Blue told DCR that he said to Earl, "You don't have to use those words," and took Complainant outside and told him to call DCR.<sup>3</sup> Blue stated that when the altercation occurred, he was inside the showroom near the entrance door, near a motorcycle display. In his first interview with DCR, Blue said that Earl did not tell Complainant to leave. However, in a subsequent interview, Blue stated that Earl said, "You get out of here, you nigger." Blue said that he spoke to the police while they were at the dealership, and told them what was said. Blue told DCR that 90% of Respondent's customers are African-American, and that they have very few Caucasian customers.

Pat told DCR that Blue was not in the showroom when the altercation occurred. He stated that Blue was outside the building at the time.

The DCR investigator returned to the dealership on August 8, 2014, and interviewed three more employees—Pamela Lewis, Bert Flowers, and Theodore McBride—who are African-American. All said that they were not in the showroom area at the time of the March 11, 2014 incident. All said that they did not see or hear any of the interactions between Complainant and Respondent's staff that day. McBride works for Respondent as a "lot man." He stated that he was outside in the lot at the time of the incident. He said that he saw Blue walk over to the showroom building when the police arrived.

The investigation identified no other employees or witnesses who saw or heard the incident. Lewis, Flowers, and McBride all stated that they had never heard complaints about African-American customers being refused service.

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<sup>3</sup> The police report states that the first officer arrived at 12:51 p.m., and the last officer left at 1:18 p.m. Complainant arrived at DCR's office at 1:50 p.m. the same day, and completed a questionnaire in which he wrote that one of Respondent's employees told him to "get out of here nigger," and that another employee said, "get his black ass out of here." Complainant indicated that he heard about DCR by "word of mouth." In an interview with a DCR investigator the following week, he identified Grady Blue as someone who was present during the incident.

## Analysis

At the conclusion of an investigation, the DCR is required to determine whether “probable cause” exists to credit a complainant’s allegation of discrimination. Probable cause for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” N.J.A.C. 13:4-10.2. A finding of probable cause is not an adjudication on the merits, but merely an initial “culling-out process” whereby the DCR makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

The LAD makes it unlawful for a place of public accommodation to “refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof,” based on that person’s race. N.J.S.A. 10:5-12(f). The LAD defines “place of public accommodation” broadly to include a “retail shop, store, establishment, or concession dealing with goods or services of any kind.” N.J.S.A. 10:5-5(l). Thus, Respondent is clearly a place of public accommodation for purposes of this analysis.

Complainant alleges that he was denied repairs to his brakes and stereo based on his race. Respondent argues that the repairs demanded by Complainant were not covered by his extended warranty, and that Lucas nevertheless offered to replace the radio.<sup>4</sup> The investigation found no evidence that Respondent provided out-of-warranty repairs free of charge to

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<sup>4</sup> This decision makes no determination as to whether Respondent is liable for any defects in the car under other state or federal laws, or whether Respondent has any sort of contractual obligation to repair the radio and brakes.

customers of other races. In fact, Complainant's only witness, Grady Blue, told DCR that Respondent generally refused to make repairs for its dealership customers but that in this case, Perantoni was going to fix Complainant's car. Thus, the investigation found no persuasive evidence that Respondent refused to repair Complainant's stereo and brakes on March 11, 2013, because of a racial animus.

Complainant alleges that one of Respondent's representatives, Earl Chiacchio, said, "I'm gonna get your black ass locked up," and "Get out of here, you nigger." In analyzing alleged LAD violations, New Jersey courts have held that the "focal issue" is whether "defendants acted with an actual or apparent design to discourage present or future use of their public accommodation." See, e.g., Franek v. Tomahawk Lake Resort, 754 A.2d 1247, 1242-43 (App. Div. 2000), certif. denied, 161 A.2d 484 (2000). Here, there was no evidence that Respondent has a policy or practice of discouraging African-American from patronizing its business. To the contrary, the uncontradicted evidence is that the large majority of Respondent's customers are African-American. Complainant notes that Respondent sold cars to him, his mother, and his grandmother who are presumably African-American.

On the other hand, if a business resorts to hostile, offensive, and unwelcome racial slurs when speaking with a customer during the course of a commercial transaction, including a discussion about the scope and quality of the services, it could amount to "discriminat[ion] against any person in the furnishing" of the "accommodations, advantages, facilities or privileges thereof," N.J.S.A. 10:5-12(f), and in this case could reasonably be viewed as an "apparent design to discourage [Complainant's] present or future use of their public accommodation." Ibid.

Respondent does not appear to take issue with that position. Instead, it insists that Chiacchio made no such remarks and that it was an out-of-control Complainant who said, "You don't know what nigga you're dealing with."

The fact that there is a purported eye-witness who corroborated Complainant's allegations is sufficient to support a reasonable suspicion that the incident occurred as alleged. That witness, Grady Blue, may ultimately be found to harbor a bias or prejudice against Respondent. He contacted DCR only after he was fired. Moreover, there is some question as to whether Blue was even in the showroom when the incident occurred. Still, the evidence that Blue referred Complainant to DCR on the day of the incident (i.e., while he was still employed by Respondent), lends some credence to his claim that he heard Earl direct racial slurs to Complainant that day. And Complainant's arrival at DCR about an hour after his alleged conversation with Blue supports the assertion that Blue referred Complainant to DCR. Moreover, the objectivity of Respondent's witnesses may similarly be called into question as they are all current employees and thus may have their own implicit biases or external pressures. Accordingly, DCR believes that at this threshold stage in the process, the matter should "proceed to the next step," Frank, supra, 228 N.J. Super. at 56, where an administrative law judge can observe the parties and witnesses testify, assess their respective credibility, and reach a conclusion as to which party is telling the truth as to the claim of racial harassment.

DATE: 8-13-15



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Craig Sashihara, Director  
NJ DIVISION ON CIVIL RIGHTS