



**CITY OF ATLANTA
MAYOR'S OFFICE OF CONSTITUENT SERVICES**

City Hall 55 Trinity Avenue, SW Suite 1920
Atlanta, GA 30303
404.330.6023 ~ 404.658.7088
BPORCHE@ATLANTAGA.GOV

SHIRLEY FRANKLIN
MAYOR

October 10, 2007

BOBBIE PORCHE
MANAGER

To: Mr. Joseph Carroll
Mr. Joseph Shaw
Bradley Adler, Attorney (Tavern)

Re: Human Relations Commission Case # 2006-10-01
J. Carroll/ J. Shaw vs. Tavern at Phipps

In the matter re Joseph B. Carroll & Joseph Shaw (together, the "Complainants") v. The Tavern at Phipps ("The Tavern at Phipps") and Heather Dennis (together with the Tavern at Phipps, the "Tavern"), the Human Relations Commission (the "Commission") has determined that The Tavern violated Article III, Sections 94-66, 94-67 and 94-68, Non-Discrimination in Public Accommodations, of the City Code of Atlanta (the "Ordinance"). Specifically, the Tavern has denied the Complainants the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the Tavern on the basis of their sex and, arguably, their race.

It is not in dispute that the Tavern has an unwritten policy of requesting males who are seated at the Tavern bar to relinquish their seats to females who are standing in or near the bar area (the "Policy"). In fact, representatives of the Tavern testified that the Tavern has engaged in this Policy for years and, further, that the Policy is orally conveyed to new employees. Specifically, the Commission understands the Tavern Policy to mean that once a female is sighted in or near the Tavern bar area, any seated male individual is requested to relinquish his seat to the female in exchange for a complimentary cocktail or complimentary food. Beyond the foregoing verbal instruction to its employees, the Tavern provides no additional instruction regarding the administration of the Policy. As a result, in the event a customer refuses to participate in the Policy, a manager is summoned and said manager is left with the subjective decision whether to pursue enforcement of the Policy, make exceptions to the Policy, or otherwise pursue some alternate course of action. We note that the Tavern contends that this is a practice rather than a policy. The Commission makes no distinction between whether this is a policy or a practice as it is clear that this practice has been in effect for several years and is therefore a de facto policy.

In the instant case, the Complainants were seated at the Tavern bar when two females entered the Tavern bar area. Upon the bartenders request that the Complainants

relinquish their seats to the two females, the Complainants declined to do so. The Tavern bartender then advised the current Operating Partner, Ms. Dennis, who along with other Tavern employees including, the manager of the Tavern made at least 5 requests that the Complainants relinquish their seats. Ultimately, Ms. Dennis called the Tavern security, an off-duty, uniformed, police officer to make a final request that the Complainants relinquish their seats.

While the Commission would not find fault with a voluntary policy that permitted males and females alike to elect whether to participate in the Tavern's bar policy, it is the belief of the Commission that the Tavern's bar policy, as administered, is devoid of formal parameters and violation of the Ordinance. It is the non-voluntary, arbitrary nature of the Policy that resulted in the circumscription of the Complainants' full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the Tavern. Barring conduct unrelated to the race or gender of the Complainants, at the moment the Complainants indicated to the Tavern employee that they did not wish to participate in any aspect of the Tavern's Policy, the Tavern should have continued to serve the Complainants in exchange for payment. While representatives of the Tavern insist that the Policy was in fact voluntary, the fact that in this case, the Complainants were repeatedly asked to relinquish their seats at the bar and then ultimately approached by a summoned off-duty, uniformed, police officer, suggests otherwise. In fact, the appearance of the police officer, after being summoned by Ms. Dennis, in her capacity as Operating Partner of the Tavern, was reasonably interpreted by the Complainants as the Tavern's attempt to enforce its Policy, and a demand that the Complainants exit the Tavern premises. The Tavern does not deny that it summoned the police officer after the Complainants expressed their desire not to participate in the Tavern's bar policy.

While it is not clear whether other male patrons of the Tavern have been similarly required to participate in the Tavern policy, the Commission believes that, at least in the present instance, the Policy has a discriminatory effect of denying a privilege based on sex. While the Commission recognizes differences between males and females and could envision policies that called for different or separate treatment of the sexes, the Commission believes that requiring a male to relinquish his seat to a female certainly runs afoul of the Ordinance.

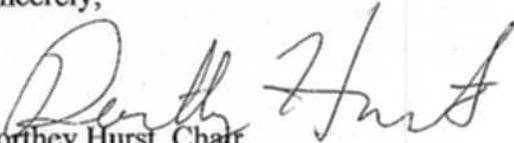
Finally, the Commission believes it would be remiss not to discuss the full allegation of the Complainants that the Tavern's Policy as administered to them, is not only discriminatory on the basis of gender but also race. In light of the long racial history between white and black, the Commission can't help but to wince at the notion of expressly sanctioning a practice that would have the effect of requiring an African American to relinquish his or her seat to a Caucasian patron. The Commission could well expect an African American individual finding himself in such a situation to believe he or she is being singled out for hurtful, disparate treatment, especially given the fact that the Tavern has no formal policy and therefore nothing posted regarding the policy in public view. We are divided as a Commission, however, as to whether race played an integral role in this matter. Nonetheless, given the aggressive manner in which the Tavern sought

to compel the Complainants to relinquish their seats, we believe that race was a factor in the escalation of the situation.

Based on the foregoing, the City of Atlanta hereby finds that the Tavern's Policy violates the Ordinance and hereby requests that the Tavern terminate its practice of requesting that males seated at the Tavern bar relinquish their seats to females.

If you have any further questions, please contact me directly.

Sincerely,


Dorthey Hurst, Chair
City of Atlanta Human Relations Commission

cc: The Honorable Mayor Shirley Franklin
Greg Pridgeon
Joe Morris
Beverly Isom
Dorthey Hurst, Chair – HRC
Aba Yankah
Andrea Palmer
Kathy Ware
Kyle Bailey
Antavius Weems
Sangeetha Rao
Roger Bhandari
HRC File