



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON I. BROWN
DIRECTOR

IN THE MATTER OF:

MOAHR Docket No.: 23-007846

**Michigan Department of Civil Rights,
Petitioner**

Agency Case No.: 0

v

Case Type: Civil Rights

**Studio 8 Hair Lab, LLC,
Respondent**

**Issued and entered
this 26th day of September 2024
by: Robert J. Meade
Administrative Law Judge**

PROPOSAL FOR DECISION

APPEARANCES

Alannah M. Buford-Kamerman, Staff Attorney, and Marcelina Trevino, Attorney and Director of Enforcement appeared on behalf of Petitioner Michigan Department of Civil Rights and Claimants L.M., H.S., and M.H. Attorney Michael C. Naughton appeared on behalf of Claimants H.S. and M.H. Attorney Bailor Bell appeared on behalf of Claimant L.M.

David M. Delaney, Attorney, and Christine Geiger, Owner, appeared on behalf of Respondent, Studio 8 Hair Lab, LLC throughout these proceedings but chose not to appear for the administrative hearing on August 22, 2024. (See Exhibit HO 2.)

PROCEDURAL SUMMARY

Petitioner, Michigan Department of Civil Rights (Petitioner, MDCR, or Department) issued a charge of discrimination on behalf of Claimants L.M., H.S., and M.H., against Respondent, Studio 8 Hair Lab, LLC (Respondent or Studio 8) under its authority from the Michigan Constitution (MI Const Art. V, §29), the Elliott-Larsen Civil Rights Act (ELCRA, MCL 37.2101 *et.seq.*), and the Michigan Administrative Code (MAC R 37.1 *et.seq.*).

Hearing

On November 15, 2023, Petitioner submitted a Request for Hearing. A telephone prehearing conference was held on December 7, 2023, followed by a status conference on February 15, 2024. At the status conference, a hearing was scheduled for April 3, 2024. The April 3, 2024, hearing was adjourned per Petitioner's request and rescheduled for August 22, 2024. On August 22, 2024, Respondent's attorney submitted a Notice indicating that both he and his client were choosing not to participate in the hearing. (See Exhibit HO 2.) The August 22, 2024, hearing then proceeded as scheduled and the record was held open for the preparation of a hearing transcript.

Motions

On December 6, 2023, Respondent filed a Motion for Summary Disposition; To Dismiss in Lieu of Answer MCR 2.116; and For Declaratory Relief. On January 5, 2024, Petitioner MDCR filed a Response pursuant to a December 8, 2023, Prehearing Summary and Order and Briefing Schedule.

On January 11, 2024, this Administrative Law Judge (ALJ) issued an Order Denying Respondent's Motions.

On January 26, 2024, Respondent filed a Motion for Relief from ALJ Order Denying Summary Disposition, Request for Oral Argument, and Demand for Jury Trial.

On February 27, 2024, this ALJ issued an Order Denying Respondent's Motions.

On August 8, 2024, Respondent filed a Motion to Dismiss and a Motion for Stay. On August 15, 2024, Petitioner filed Responses. On August 15, 2024, Respondent filed a Reply.

On August 19, 2024, this ALJ issued an Order Denying Respondent's Motions.

EXHIBITS

Petitioner's Exhibits: Exhibits 1-15, pp 1-253

Hearing Officer (HO) Exhibits: HO 1 – Request for Hearing

HO 2 – Respondent's Notice

ISSUE

Did the Respondent publish or cause to be published a statement, advertisement, notice, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual because of an individual's sex (gender identity) or that an individual's patronage of, or presence, at a place of public

accommodation is objectionable, unwelcome, unacceptable, or undesirable because of an individual's sex (gender identity)? (Exhibit HO 1.)

FINDINGS OF FACT

The Administrative law Judge, based upon the competent, material, and substantial evidence on the whole record finds, as material fact:

1. Respondent Studio 8 is a place of public accommodation (hair salon) operating in Michigan whose services, facilities, privileges, advantages, goods, or accommodations are extended, offered, or otherwise made available to the public in the State of Michigan pursuant to the ELCRA. (Exhibit 1; Answer to Amended Charge, ¶ 4, 12, 13, and 44; Testimony.)
2. Christine Geiger is the owner and agent of Studio 8. (Exhibit 1; Testimony.)
3. On July 7, 2023, Christine Geiger, owner of Studio 8, published the following statement to Respondent's Facebook page:

If a human identifies as anything other than a man/woman please seek services at a local pet groomer. You are not welcome at this salon.

Period.

Should you request to have a particular pronoun used please note we may simply refer to you as "hey you". . . .

This small business has the right to refuse services. We are not bound to any oaths as realtors are regarding discrimination. My recent airport experience validates this. (smile emoji)

(Exhibit 5; Answer to Amended Charge, ¶ 18, 19.)

4. On July 9, 2023, Christine Geiger, owner of Studio 8, made another post to Respondent's business Facebook page, responding to a one-star rating a user submitted in response to Ms. Geiger's July 7, 2023 post. (Exhibit 6; Testimony.) Specifically, the post indicated:

This individual has never had a service done by this establishment. The review was left in response to a Fakebook (sic) post where I stated that this salon is not LGBTQ+ friendly. LGB are more than welcome however the rest of it is not something I support. This stance was taken to insure (sic) that clients have the best experience and I am admitting that since I am not willing to play the pronoun game or cater to requests outside of what I perceive as normal this probably isn't the best option for that type of client.

There are over 800 licensed stylists in the County. There are plenty of salon/stylists willing to cater to what I will not. This is a free country and I am not a slave to any narrative. (*Id.*)

5. On July 20, 2023, Claimant L.M. filed a certified complaint with MDCR alleging that she was subjected to discriminatory advertising by viewing Respondent's Facebook posts, due to Claimant's sex (gender identity.) (Exhibit 9; Testimony.)
6. On July 28, 2023, Claimant M.H. filed a certified complaint with MDCR alleging that she was subjected to discriminatory advertising by viewing Respondent's Facebook posts, due to Claimant's sex (gender identity.) (Exhibit 11; Testimony.)
7. On August 13, 2023, Christine Geiger, owner of Studio 8, posted a photograph to its business Facebook page that stated, "there are only two genders" followed by a photograph with the statement "anything else is a mental health issue." (Exhibit 7; Testimony.)
8. On August 18, 2023, Christine Geiger, owner of Studio 8, posted a photograph to its business Facebook page that stated "The truth is the truth. There are 2 genders; anything more is a mental health issue" above a meme that indicated, "WHERE TRANSGENDER PEOPLE USED THE BATHROOM BEFORE THE 1970'S" over a cartoon picture of a building with the sign "MENTAL INSTITUTION" in the front. (Exhibit 8; Testimony.)
9. On September 8, 2023, Claimant H.S. filed a certified complaint with MDCR alleging that she was subjected to discriminatory advertising by viewing Respondent's Facebook posts, due to Claimant's sex (Gender Identity.) (Exhibit 10; Testimony.)
10. On July 20, 2023, July 28, 2023, and September 8, 2023, respectively, MDCR served Claimants' complaints on Respondent Studio 8.
11. On October 25, 2023, Respondent Studio 8 filed a 386 paragraph Complaint for Declaratory and Injunctive Relief against Claimants, L.M, M.H, and H.S. in the Circuit Court for Grand Traverse County. (Exhibit 2; Testimony.) In the Complaint, Respondent used Claimants' full names, not their initials. (*Id.*)
12. On December 11, 2023, Respondent Studio 8 filed a First Amended Complaint for Declaratory and Injunctive Relief against Claimants, L.M, M.H, and H.S. in the Grand Traverse County Circuit Court which included 453 paragraphs. (Exhibit 3; Testimony.) In the Complaint, Respondent used Claimants' full names, not their initials. (*Id.*)
13. On March 20, 2024, the Grand Traverse County Circuit Court dismissed Respondent's suit against the Claimants, finding that Respondent's claim was frivolous and filed with the primary purpose of harassing the Claimants for having

engaged in the protected activity of filing a complaint with Petitioner, MDCR. (Exhibit 4; Testimony.) Specifically, the Court held:

An action is frivolous if the party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the opposing party; the party had no reasonable basis to believe that the facts underlying the party's legal position were in fact true or the party's legal position was devoid of arguable merit. . .

As discussed above, the law is clear that the prescription of equal protection and due process clauses only apply to the actions of this state, not to private conduct, making constitutionally guaranteed protections applicable only against the government not private individuals. [Respondent's] claims against the individual [Claimants] are entirely premised on alleged violations of constitutional equal protection and due process, without any contention that said [Claimants] were/are state actors. In this matter [LM, MH, and HS] seek sanctions as the claims brought in [Respondent's] complaint are devoid of arguable legal merit and appear to be aimed principally at retaliating against the individual [Claimants] for filing complaints with the MDCR. It does appear that the [Respondent's] primary purpose and initiating the action against [LM, MH, and HS] was to harass, intimidate, threaten, and/or retaliate against the individual [Claimants] as complainants in the MDCR's matter. Further, the constitutional claims made against the individual [Claimants] were devoid of arguable legal merit as there is no question [LM, MH, and HS] were not state actors. As such, the civil action against [LM, MH, and HS] was frivolous. (*Id.*, pp 125-126.)

14. On November 2, 2023, Claimant L.M. filed a certified complaint with MDCR alleging that she was subjected to a hostile environment – retaliation, for engaging in protected activity, i.e., filing the first complaint with MDCR against Studio 8. (Exhibit 12; Testimony.)
15. On November 2, 2023, Claimant M.H. filed a certified complaint with MDCR alleging that she was subjected to a hostile environment – retaliation, for engaging in protected activity, i.e., filing the first complaint with MDCR against Studio 8. (Exhibit 14; Testimony.)
16. On November 2, 2023, Claimant H.S. filed a certified complaint with MDCR alleging that she was subjected to a hostile environment – retaliation, for engaging in protected activity, i.e., filing the first complaint with MDCR against Studio 8. (Exhibit 13; Testimony.)
17. On April 5, 2024, Petitioner issued a First Amended Charge of Discrimination against Respondent, Studio 8.

CONCLUSIONS OF LAW

The Michigan Department of Civil Rights (MDCR) is the operational arm of the Michigan Civil Rights Commission (Commission).¹ The MDCR investigates and resolves complaints of discrimination, while promoting voluntary compliance with civil rights laws, such as the ELCRA.² The ELCRA is an act to define civil rights, to prohibit discriminatory practices, policies, and customs in the exercise of those rights based upon religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, familial status, or marital status; to proscribe the powers and duties of the civil rights commission and the department of civil rights; and to provide remedies and penalties.³ On March 16, 2023, the ELCRA was amended to add sexual orientation and gender identity or expression as protected classifications.⁴ The changes became effective February 13, 2024.⁵ If the Commission, after a hearing on a charge issued by MDCR determines that the ELCRA has been violated, the Commission shall state its findings of fact and conclusions of law and shall issue a final order requiring respondent to cease and desist from the discriminatory practice and to take such other action as it deems necessary to secure equal enjoyment and protection of civil rights.⁶

Here, on April 5, 2024, MDCR issued a First Amended Charge of Discrimination against Respondent, Studio 8, alleging discrimination against Claimants based on sex (gender identity) and hostile environment (retaliation).

I. Gender identity discrimination was a form of sex-based discrimination under the ELCRA prior to the 2024 amendments.

Under the ELCRA, a place of public accommodation may not discriminate based on sex.⁷ As indicated above, gender identity or expression were added to the ELCRA as a protected basis on February 13, 2024, but the amendment was not in effect at the time these charges were brought. However, prior to the 2024 amendments, protections for discrimination based on gender identity fell within the protected basis of “sex”.

On May 21, 2018, the Michigan Civil Rights Commission adopted Interpretive Statement 2018-1, which expressly states that “sexual orientation” and “gender identity/expression” fall within the protected basis of “sex” as used in the ELCRA.⁸

Interpretive Statement 2018-1 was upheld by the Court of Claims in *Rouch World, LLC v Dept of Civ Rights* in an Opinion and Order issued December 7, 2020.⁹ The Court of Claims held that gender identity is a protected class: “[I]f defendants determine that a person treated someone who “identifies” with a gender different than the gender that he

¹ See <http://www.michigan.gov/mdcr>.

² *Id.*

³ MCL §37.2101 *et seq.*

⁴ See Act 6 of 2023

⁵ *Id.*

⁶ MCL 37.2605

⁷ MCL 37.2302.

⁸ See Petitioner’s Trial Brief, Exhibit 1.

⁹ See Petitioner’s Trial Brief, Exhibit 2.

or she was born as, then that is dissimilar treatment on the basis of sex, and they are entitled to redress that violation through the existing MDCR procedures.”¹⁰ The Michigan Supreme Court then upheld the Court of Claims interpretation of “sex”.¹¹

As such, at the time the charges were issued in this matter, gender identity was a form of sex based discrimination under the ELCRA.

II. Respondent Studio 8 is a place of public accommodation subject to the ELCRA.

A place of public accommodation is defined as “a business, or an educational, refreshment, entertainment, recreation, health, or transportation facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.”¹² A place of public accommodation shall not:

Print, circulate, post, mail, or otherwise cause to be published a statement, advertisement, notice, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service will be refused, withheld from, or denied an individual because of religion, race, color, national origin, age, sex, or marital status, or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because of religion, race, color, national origin, age, sex, or marital status.¹³

Here, Studio 8 is a business (hair salon) whose goods and services are available to the public. As such, Studio 8 is a place of public accommodation under the ELCRA and may not discriminate against individuals based on sex.¹⁴

III. Discriminatory advertisements are evaluated under the Ordinary Reader Test.

As Petitioner points out, Michigan courts have recognized that the ELCRA is modeled after the US Civil Rights Act of 1964,¹⁵ and have looked to federal caselaw when interpreting the ELCRA.¹⁶

Title VIII, more commonly known as the Fair Housing Act (FHA), at 42 USC 3604(c), is the most analogous provision to MCL 37.2302(b) in the Civil Rights Act. The FHA advertising provision states in relevant part:

¹⁰ *Id* at 7

¹¹ *Rouch World, LLC v Dept of Civ Rights*, 510 Mich 398, 409 (2022).

¹² MCL 37.2301(a)

¹³ MCL 37.2302(b)

¹⁴ *Id.*

¹⁵ 42 U.S.C. § 1971 et seq.

¹⁶ See *Miller v Dept of Corr, No. 164862, 2024 WL 2109772, at *5 (Mich, May 10, 2024)*.

It shall be unlawful. . . [t]o make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

When an advertisement is alleged to have violated 42 USC 3604(c), Federal Courts, apply the “ordinary reader” test.¹⁷ Under the ordinary reader test, a petitioner must show that the respondent’s statement suggested to an ordinary reader that a particular protected class was preferred or dispreferred regardless of the respondent’s intent.¹⁸ To establish that an advertisement violates 42 USC 3604(c) under the ordinary reader test a petitioner need only establish three simple elements (1) the respondent made a statement, (2) the statement was made with respect to the rental of a dwelling, and (3) the statement indicated a preference, limitation, or discrimination based on a protected class status.¹⁹

Federal court have also held that petitioners need not be members of the protected class at issue in the statement to bring forth claims under the FHA.²⁰

Applying the ordinary reader test to MCL 37.2302(b), the relevant elements would be: (1) the respondent, a place of public accommodation, made a statement; (2) the statement was made regarding a place of public accommodation providing goods and services, and (3) the statement indicated that the goods and services would be refused to an individual based on a protected class.

IV. Respondent, Studio 8 discriminated against Claimants under the ELCRA on the basis of sex.

Here, Respondent published a statement, advertisement, notice, or post to its Facebook business page that, to any ordinary reader, can only be read to mean that individuals who do not identify as male or female are not welcome to receive goods or services offered by Respondent.²¹ Again, this post reads:

If a human identifies as anything other than a man/woman please seek services at a local pet groomer. You are not welcome at this salon.

Period.

¹⁷ *Rodriguez v Village Green Realty, Inc.*, 788 F.3d 31, ** (2d Cir. 2015) (quoting *Ragin v Harry Macklowe Real Estate Co.*, 6 F.3d 898, 905 (2d Cir. 1993)). (See Petitioner’s Trial Brief, Exhibit 3).

¹⁸ *Id.*

¹⁹ See *Watson v Vici Community Dev. Corp.*, No. CIV-20-1011-F at *2 (W.D. Okla Mar. 28, 2022), See Petitioner’s Trial Brief, Exhibit 4.

²⁰ See *Trafficante v Metropolitan Life Ins. Co.*, 409 US 205, 208-212 (1972).

²¹ Exhibit 5.

Should you request to have a particular pronoun used please note we may simply refer to you as “hey you”. . . .

This small business has the right to refuse services. We are not bound to any oaths as realtors are regarding discrimination. My recent airport experience validates this. (smile emoji).²²

Two days later, Respondent doubled down on the first post and made another post to Studio 8’s business Facebook page that left no doubt of Respondent’s intent to deny goods and services to individuals who do not identify as male or female. That post reads, in part:

This individual has never had a service done by this establishment. The review was left in response to a Fakebook (sic) post where I stated that this salon is not LGBTQ+ friendly. LGB are more than welcome however the rest of it is not something I support.²³

On August 13, 2023, after Respondent had been served with two of Claimants’ complaints, Respondent made another post to its business Facebook page that made clear Respondent was not going to back down from its discriminatory position. That post indicated, “there are only two genders” followed by a photograph with the statement “anything else is a mental health issue.”²⁴

Five days later, Respondent took things even further by posting a photograph to its business Facebook page that stated “The truth is the truth. There are 2 genders; anything more is a mental health issue” above a meme that indicated, “WHERE TRANSGENDER PEOPLE USED THE BATHROOM BEFORE THE 1970’S” over a cartoon picture of a building with the sign “MENTAL INSTITUTION” in the front.²⁵

As a place of public accommodation, Respondent is prohibited under the ELCRA from such discriminatory practices.²⁶ Respondent does not deny making the above posts and again the posts makes clear on their face that individuals who do not identify as male or female are not welcome to receive goods or services offered by Respondent. As such, Petitioner’s charges with respect to Claimants’ discrimination complaints based on sex must be upheld.

²² *Id.*

²³ Exhibit 6

²⁴ Exhibit 7

²⁵ Exhibit 8

²⁶ MCL 37.2302.

V. After discriminating against Claimants, Respondent retaliated against Claimants for filing their complaints.

Under ELCRA a person shall not:

- a. Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act. . . .
- c. Attempt directly or indirectly to commit an act prohibited by this act. . . .
- e. Willfully obstruct or prevent a person from complying with this act or an order issued or rule promulgated under this act.. . .
- f. Coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.²⁷

As Petitioner points out, to prove a claim of retaliation a petitioner needs to establish the following elements:

- (1) Petitioner engaged in protected activity under ELCRA
- (2) That Respondent knew of Petitioner's activity under ELCRA
- (3) That Respondent took an adverse action against the Petitioner and
- (4) That there was a causal connection between the protected activity and the adverse action.²⁸

Here, after being served with charges by Petitioner based on Claimants' complaints, Respondent Studio 8 filed a 386-paragraph lawsuit against Claimants in Grand Traverse County.²⁹ In the Complaint, Respondent used Claimants' full names, not their initials.³⁰ Respondent then filed an amended lawsuit against Claimants in Grand Traverse County, which included 453 paragraphs, and again used Claimants full names.³¹

²⁷ MCL 37.2701.

²⁸ See *Garg v Macomb Cnty. Cmty Mental Health Servs.*, 472 Mich 263, 273; 696 NW2d 646 (2005), opinion amended on denial of reh (July 18, 2005).

²⁹ Exhibit 2; Testimony.

³⁰ *Id.*

³¹ Exhibit 3; Testimony.

On March 20, 2024, the Grand Traverse County Circuit Court dismissed Respondent's lawsuit against the Claimants, finding that Respondent's claim was frivolous and filed with the primary purpose of harassing the Claimants for having engaged in the protected activity of filing a complaint with Petitioner, MDCR.³²

As such, Petitioner has proven that Respondent retaliated against Claimants under MCL 37.2701:

- (1) Claimants engaged in protected activity under ELCRA by filing Complaints against Respondent for discrimination based on sex;
- (2) Respondent knew of Claimant's activity under ELCRA as Petitioner served Respondent with the Complaints and issued charges of discrimination;
- (3) Respondent took an adverse action against the Petitioner and Claimants by filing a frivolous lawsuit against Petitioner and Claimants for the primary purpose of harassing Claimants;
- (4) There was a causal connection between the protected activity (filing the Complaints with MDCR) and the adverse action (filing a frivolous lawsuit in Grand Traverse County).

Having met the elements of retaliation under MCL 37.2701, MDCR's charges of retaliation against Respondent for actions taken against Claimants should be upheld.

CONCLUSION

Based on the above Findings of Fact and Conclusions of Law, Petitioner has proven by a preponderance of the evidence that Respondent discriminated against Claimants L.M., H.S., and M.H. on the basis of sex contrary to MCL 37.2302. Respondent then retaliated against Claimants by filing a frivolous lawsuit against them contrary to MCL 37.2701. Therefore, MDCR's charges against Respondent Studio should be upheld.

PROPOSED DECISION

For the reasons stated above, this Administrative Law Judge **PROPOSES** that:³³

1. The allegations against Respondent in MDCR's First Amended Charge of Discrimination dated April 5, 2024 be **UPHELD**.
2. Respondent be ordered to remove the unlawful discriminatory posts from its business Facebook page.

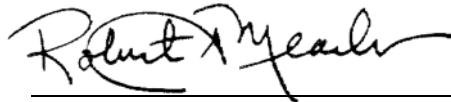
³² Exhibit 4; Testimony.

³³ Neither the Claimants nor the Department are seeking monetary damages.

3. Respondent be ordered to complete trainings regarding civil rights laws applicable to places of public accommodation.
4. Respondent be ordered to post notices in a conspicuous place within their place of business regarding civil rights law or other relevant information the Commission determines necessary to explain those laws.
5. Respondent be ordered to pay Claimants' reasonable attorney fees pursuant to MCL 27.2605(2)(j).
6. The Commission certify to the relevant licensing authorities with the Licensing and Regulatory Affairs (LARA) that Respondent's violation of ELCRA is grounds for suspension or revocation of Respondent's license(s).

EXCEPTIONS

Pursuant to 2015 AACS R 792.10132, the parties may file exceptions to this proposal for decision within 21 days after the proposal for decision is issued and entered. An opposing party may file a response to exceptions within 14 days after exceptions are filed. All exceptions and responses must be filed with the Michigan Office of Administrative Hearings and Rules, LARA-MOHR-DCH@michigan.gov or P.O. Box 30695, Lansing, Michigan 48909-8195, and served on all parties to the proceeding.



Robert J. Meade
Administrative Law Judge

RM/sj

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 26th day of September 2024.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

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