



**HUMAN RIGHTS COMMISSION**  
**Monday September 27, 2010**  
**REGULAR MEETING**  
**City Hall, Bull Pen Room 1029**  
**First Floor, 301 W. Second Street, Austin, TX 78701**

**MEETING MINUTES**

Chair Judy Cortez called the Board Meeting to order at 5:35 p.m.

**Board Members in Attendance:**

Judy Cortez - Chair  
Lisa Scheps - Vice-Chair  
Elizabeth Brenner  
Tom Davis  
Delia Perez Meyer

**Human Resources Staff Present:**

Yamile M. Ortiz, EE/FHO Admin. Support  
Janice Yarbrough, EE/FHO Acting Administrator

**APPROVAL OF MINUTES**

The minutes from the meeting of August 23, 2010 were approved; Commissioner Scheps motion, Commissioner Meyer second on a 5-0 vote.

**CITIZENS COMMUNICATIONS**

Mr. Steve Swanson: spoke about the Community for Youth and the joint sub-committees with the City, the County, and the Austin School District with elective officials since June of this year who participated in a working committee that will focus on changing Youth Justice.

Mr. Swanson: passed to the Commissioners three hand-outs about Austin Human Rights Commission Opportunity for Community-Based Leadership, Community for Youth, and Community's Youth Justice. He explained that these flyers are given to school staff, students, parents, teachers, community and elected officials to communicate the steps for action, the process, and tools.

**ITEM I**

Approval of a Joint Resolution with the Women's Commission on the issue for adding more beds for single homeless women; on urging City Council to move on the Joint Resolution.

Commissioner Scheps read the resolution; she added that the Women's Commission adopted this resolution on September 1, 2010 with the strong support from Councilmember Shade. Commissioner Davis motion, Commissioner Scheps second on a 5-0 vote.

## **ITEM II**

### **Discussion of sponsorship of the Transgender Day of Remembrance.**

Commissioner Scheps: mentioned that the Transgender Day of Remembrance is observed on November 20<sup>th</sup> of each year. This year is the 9<sup>th</sup> year that the City of Austin observed this day and on November 13 is the International celebration to honor transgender women who have been murdered because of their gender identity and gender expression. She added that the numbers are not exact but they indicated that in our country one woman is dead every month.

Commissioner Scheps: told to the Commissioners that they can lend the Human Rights Commission to support this organization as a co-sponsor. This is a big issue to the community and the City of Austin Mayor has done a proclamation each year. Commissioner Scheps read the motion: "Motion is for the City of Austin Human Rights Commission to sign on as a co-sponsor to Transgender Education Network of Texas event on November 20, 2010 Transgender International Day of Remembrance". Commissioner Scheps motion, Commissioner Brenner second on a vote 5-0 vote, the motion carried.

## **ITEM III**

### **Hearing per City Code 5-2-6 for Marcus Marshall regarding Six Lounge.**

Sabine Romero, Assistant City Attorney for the City of Austin; facilitated the hearing. Ms. Romero handled out and reviewed a document to overview the process for a Human Rights Commission request for review hearing under Section 5-2-6 for the City of Austin Code. Ms. Romero said that it was her understanding that Commissioners completed and signed a no conflict of interest statement.

Ms. Romero: explained the hearing before the Commission proceeds as followed:

- Overview the charge for considering and the hearing process.
- Opening statement; a brief uninterrupted presentation from each party.
- Closing statement from each party.

### **Overview the charge for considering and the hearing process**

Ms. Romero: overviewed the legal consideration with a hand out of the City Code 5-2-4 - Prohibited Practices of the Discrimination in Public Accommodations. Ms. Romero reviewed a charge of discrimination from Mr. Marcus Marshall which stated he experienced discrimination and was refused access into the Six Lounge Bar, co-owned by Mr. John Koriath. The City of Austin Equal Employment/Fair Housing (EE/FHO) office determined that there was insufficient evidence to show that discrimination occurred and issued a no cause finding.

The City Code allowed Mr. Marshall to appeal the decision of the EE/FHO to the Commission to for reconsideration. The Commission was provided a chance to affirm, reverse, or modify the EE/FHO's determination. The Commission will base their determination only on the information presented during the hearing and have the opportunity to ask questions after both parties involved make their presentation and exhibits.

### **Opening Statements:**

Mr. Wayne Krause, Mr. Marcus Marshall's (Charging Party) attorney: Mr. Marshall's was denied access at the door of the Six Lounge by a Bouncer because of his race and color on July 25, 2009.

Mr. Mark Walker, Mr. John Koriath's (Respondent) attorney: Six Lounge did not have any information about the night of July 25, 2009 and no one remembered the incident. The Six Lounge has a diverse ethnic staff, and a dress code which is strictly enforced. Mr. Walker brought two witnesses to testify.

Mr. Marshall's statement: the Six Lounge stereotyped him because of his Race & Color, Black, grill and baseball hat. Mr. Marshall and his girlfriend Lisa Saldana (Hispanic) were stopped at the door to show IDs; the Bouncer (White) allegedly told Mr. Marshall that due to his grill, backwards hat and Race & Color Black, he was not allowed access into the club, but Bouncer (White) allowed his girlfriend to enter. Mr. Marshall states he offered to remedy situation by removing the bottom grill and hat but could not change his Race and Color, Black. Mr. Marshall further stated he could not remove the top grill as it was permanent.

Following opening statements both parties pointed out issues as:

- Mr. Walker: stated Ms. Saldana was not present and did not provide an affidavit.
- Mr. Marshall provided a description of the bouncer as Caucasian, 6' 3" or 6' 4", and bald. Mr. Walker and Mr. Koriath stated that no one on staff fit the description of the bouncer provided by Mr. Marshall.
- Mr. Koriath: confirmed having cameras inside the establishment not outside. The dress code memo is not posted out side by the door; however a sign that states dress code is enforced. A list of the employees on staff at the Six Lounge that night was provided.

Mr. Walker called his first witness - Mr. Roderick Woodard, (Black) Manager and employee for five years. Mr. Woodard stated the Six Lounge has a diverse staff and the bouncer Mr. Marshall described does not match the description of any member on staff. He added; he never met Mr. Marshall before the hearing.

Mr. Walker called his second witness - Mr. Phil Vuong, (Asian) Manager and employee for seven years. Mr. Vuong stated he's never seen anyone on staff discriminating against anybody and added that the bar is one of the most diverse staff in the City of Austin. He talked about the dress code being enforced at all times and the fact that he is a trainer who trains staff on how to enforce the bars policies. Mr. Vuong confirmed he was working at the Six Lounge on July 25, 2009 and was not aware of the incident Mr. Marshall described.

#### Closing Statements:

Mr. Krause: stated his client, Mr. Marshall was wearing a baseball hat and grill; in the end, he was able to remove them, but the fact that he is Black was something that Mr. Marshall could not change. There is one person who believes he was discriminated against based on his Race & Color Black on the night of July 25, 2009, Mr. Marshall.

Mr. Krause: ended his statement saying if the Commissioners find reasonable cause, it does not mean that Respondent is guilty. Mr. Krause stated his client, Mr. Marshall was asking to attempt to resolve the matter and to have a conversation, conciliation or persuasion. Mr. Krause said his client had the courage to come and give a testimony in front of every one, and deserves to have a chance to talk with the staff of the bar to hear what happen during the night in question.

Mr. Walker: stated he as a Black man he too had been discriminated against on many occasions growing up and understood what it felt like. Mr. Walker stated that Mr. Marshall was unable to provide sufficient evidence to better understand the details of what happened on July 25, 2009 by not having Ms. Saldana's presence and or affidavit.

Mr. Walker: stated that it was important to hear testimony from Mr. Koriath (Respondent) and his two managers. Even though it was not direct evidence, it was circumstantial evidence because there was not a person who fit the description Mr. Marshall provided on staff.

Mr. Walker: ended his statement to the Commissioners saying Mr. Marshall was unable to demonstrate that the Bouncer really existed, so to believe that Ms. Saldana was not even there on July 25, 2009. Mr. Walker stated if the person Mr. Marshall described exists, then Mr. Marshall wins, otherwise there is not reasonable cause of discrimination because there is no proof.

Following closing statements Commissioners were provided and opportunity for clarification and asked questions of each party.

Ms. Romero: concluded the presentations and provided Commissioners an opportunity to discuss among themselves in whether they would vote to affirm, reverse, or modify the EE/FHO's determination. Ms. Romero explained the process and stated that if the Commissioners agreed with the EE/FHO's determinations then the process ends and Mr. Marshall has what ever private options he will decide.

Ms. Romero: explained if Commissioners disagree with EE/FHO's decision then the process will return to staff for an informal resolution process and the case will be submitted to the City Attorney for appropriate persecution. Ms. Romero reviewed the informal resolution process described in the city code 5-2-7 and 5-2-8 to the Commissioners for clarification.

Commissioners' determination in open session was as follows:

- Commissioner Meyer voted Affirm, Commissioner retracted her vote because she wanted both parties to resolve the issues and mediate, and voted to Reverse
- Commissioner Brenner voted Reverse
- Commissioner Cortez voted Affirm, Commissioner retracted her vote because a majority vote of 4 or more was needed to change the determination, and voted to Reverse
- Commissioner Scheps voted Reverse
- Commissioner Davis voted Affirm

The final vote was 4 to Reverse and 1 to Affirm. EE/FHO's determination of no cause was reversed by the Commissioners so both parties could come together and resolve issues through means of mediation.

## **ANNOUNCEMENTS**

Commissioner Meyer informed: Journey of Hope group is coming to Texas in October 15 through 31, 2010; the group will bring 15 people who will be traveling all across the state talking about issues against the death penalty. Also she invited every one to the October 30, 2010 march here in Austin.

## **ADJOURN**

Chair Judy Cortez adjourned the meeting at 8:46 pm without objection.