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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1352**

In re the Discrimination Complaint of:  
Anthony Ricci, complainant,  
Respondent,

vs.

Minneapolis Police Department,  
Relator,

City of Minneapolis Commission on Civil Rights,  
Respondent.

**Filed June 15, 2010  
Affirmed as modified  
Collins, Judge\***

Minneapolis Commission on Civil Rights  
File No. A5047-PS-1A

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Minneapolis, Minnesota (for relator)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Collins,  
Judge.

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**COLLINS**, Judge

Relator Minneapolis Police Department (MPD) challenges a determination by respondent City of Minneapolis Commission on Civil Rights (commission) that MPD engaged in racial discrimination. MPD argues that (1) the determination was not supported by substantial evidence; (2) the determination was arbitrary and capricious; and (3) the damages award was not supported by the record and was inconsistent with relevant law. We affirm but modify the damages award.

### FACTS

MPD officers executed a no-knock search warrant at respondent Anthony Ricci's apartment. When the six-officer search team entered the apartment Ricci and three other men were present, listening to hip hop music. All four men are African American. After ordering Ricci and his guests to the floor at gunpoint and securing their hands, the officers conducted the search and recovered a box of firearm ammunition and miscellaneous drug paraphernalia. Ricci was issued a citation for disorderly house and released at the scene; the citation was thereafter dismissed.

Alleging that the search-team officers had yelled racial epithets at him and his guests and threatened to shoot them, Ricci submitted a discrimination complaint to the Minneapolis Department of Civil Rights, which found the complaint supported by probable cause and referred the matter to the commission. After a hearing, the commission determined that MPD had engaged in racial discrimination, awarded Ricci damages, and imposed a civil penalty. This certiorari appeal followed.

## DECISION

This court reviews a decision of the commission on a charge of discrimination pursuant to Minn. Stat. § 14.69 (2008). *Minneapolis Police Dep't v. Kelly*, 776 N.W.2d 760, 765 (Minn. App. 2010) (citing Minneapolis, Minn., Code of Ordinances §§ 141.50(i), (k), .60(b) (2008)), *review denied* (Minn. Mar. 30, 2010). We review the record to determine whether the decision was made upon unlawful procedure, affected by error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 14.69.

The commission determined that MPD violated Minneapolis, Minn., Code of Ordinances § 139.40(j)(1) (2008), which prohibits “any person engaged in the provision of public services” from discriminating against any person on the basis of “race, color, creed, religion, ancestry, national origin, sex, sexual orientation, disability, marital status, or status with regard to public assistance.” To establish a prima facie case of discrimination under section 139.40(j)(1), a claimant “must introduce evidence showing that (1) the claimant is a member of a protected class; (2) the claimant was subjected to adverse and unreasonable treatment; and (3) the treatment was caused by a discriminatory consideration of race.” *Kelly*, 776 N.W.2d at 766 (citing *City of Minneapolis v. Richardson*, 307 Minn. 80, 86-87, 239 N.W.2d 197, 202 (1976)). “Once discrimination is established, the accused may assert a nondiscriminatory reason for the conduct, which the claimant has the burden to disprove as pretextual.” *Id.* (citing *Richardson*, 307 Minn. at 87, 239 N.W.2d at 202). Discrimination may be demonstrated by direct evidence, such as use of a racial epithet, or indirect evidence that shows a “difference in treatment with

individuals similarly situated who are of a different racial origin than the complainant” or “that the treatment of the complainant was so at variance with what would reasonably be anticipated absent discrimination that discrimination is the probable explanation.” *Id.* at 766-67.

## I.

MPD contends that the record lacks substantial evidence to support the commission’s determination that MPD engaged in racial discrimination. Substantial evidence is “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Minn. Ctr. for Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). We generally will sustain an agency’s decision if it is supported by substantial evidence. *In re Claim for Benefits by Meuleners*, 725 N.W.2d 121, 123 (Minn. App. 2006).

Ricci testified at the commission’s hearing that, after entering his apartment, one of the MPD officers in the search team shouted, “Turn this n---er sh-t off,” and, while attempting to kick Ricci’s stereo, kicked one of Ricci’s guests in the head. The officer also “called [them] all a bunch of n---ers.” Shortly thereafter, at least one of the officers threatened to shoot Ricci and his guests, saying that the officers should “just throw white sheets over these motherf---er’s heads and shoot them.” Ricci also testified that he complained of the use of the racial epithet to an MPD investigator who searched the apartment after it was secured and was told that nothing could be done. Several of the search-team officers testified at the hearing, and Ricci told the commission that he

recognized some of their voices but that the officer who had used the racial epithet must not have testified because he did not hear that officer's voice. The commission explicitly credited Ricci's testimony.

MPD argues that Ricci's testimony is insufficient to sustain the commission's discrimination determination because the officers who testified refuted Ricci's testimony in important respects. But this argument attributes credit to the officers' testimony when the record does not provide a basis for such attribution. Indeed, in addition to explicitly crediting Ricci's testimony, the commission found that "[e]ven taking into consideration the significant passage of time between the raid and the hearing . . . much of the testimony offered by . . . MPD seemed deliberately vague or lacking in detail." *See Vang v. A-1 Maint. Serv.*, 376 N.W.2d 479, 482 (Minn. 1985) (stating that an actual determination regarding credibility is necessarily implicit in a fact-finder's decision when there is conflicting witness testimony). That the commission, which routinely must resolve discrimination complaints against public entities in Minneapolis, declined to explicitly discredit the officers' testimony should not be interpreted to undermine the discrimination determination here. The commission may have elected to cast its decision in terms of Ricci's credibility, rather than explicitly discrediting the officers, to avoid affecting future cases involving the same officers. Regardless of its motivation for crafting the decision as it did, the commission's acceptance of Ricci's testimony provided substantial support for its determination that on this occasion MPD engaged in racial discrimination.

MPD also argues that, even if a racial epithet was used, that alone is insufficient to demonstrate discrimination. However, the commission found that MPD's discriminatory conduct included "use of racial epithets *and* threats directed at [Ricci] and his guests while they were bound, face down on the ground." (Emphasis added.) Coupled with Ricci's testimony, this finding is supported by police testimony confirming that, while some threats or aggressive behavior toward individuals present during execution of a search warrant may be necessary, threatening to cover the heads of Ricci and his guests and shoot them would have been "something different." Because racial epithets combined with threats of violence clearly establish racial discrimination, the commission's discrimination determination is supported by substantial evidence. *See Richardson*, 307 Minn. at 83, 88-89, 239 N.W.2d at 200, 203 (holding that police officers' use of racial epithet, in connection with threatening claimant with police dog, "constituted discrimination because of race").

## II.

"An agency decision is arbitrary and capricious when the decision represents the agency's will rather than its judgment." *In re Max Schwartzman & Sons, Inc.*, 670 N.W.2d 746, 753 (Minn. App. 2003). Indications of arbitrary and capricious decision-making include the agency (1) relying on factors not intended by the legislature; (2) failing to consider an important aspect of the problem; (3) offering an explanation that runs counter to the evidence; or (4) making a decision so implausible that it could not be explained as a divergent view or due to agency expertise. *Citizens Advocating*

*Responsible Dev. v. Kandiyohi County Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006).

MPD first contends that the discrimination determination was an arbitrary and capricious extension of the commissioner's bias against MPD. We disagree. To support its contention of inherent bias against MPD on the part of the commission, MPD focuses on the commission's stated reason for denying punitive damages. The commission wrote that it declined to award punitive damages because it doubted their deterrent value in light of MPD's apparent "willingness to insulate bad actors from the consequences of their actions." But the decision to not award punitive damages accrued to MPD's benefit, and MPD has not demonstrated that bias affected the commission's discrimination determination. To the contrary, the commission's discrimination determination is thoroughly explained and substantially supported by the record evidence. In isolation, the commission's rationale for the denial of punitive damages does not demonstrate arbitrary and capricious decision-making impugning the discrimination determination.

MPD also contends that the commission's discrimination determination was arbitrary and capricious because it relied on evidence outside the record. We disagree. MPD asserts that the commission's finding that Ricci feared for his son's safety in addition to his own is without record support. But Ricci testified that the police conduct upon entry into his apartment and while executing the search warrant made him feel afraid, especially when he thought about what would have happened if his 13-year-old son had been present. He also testified that he lied to the officers about owning the ammunition that was seized because he was afraid and worried about his son. And Ricci

explained that the officers' conduct during the search made him feel afraid to go around in Minneapolis and that it impacted his ability to parent his son. The commission did not act arbitrarily or capriciously by inferring from this testimony that Ricci experienced concern or fear for his son as a result of MPD's discriminatory conduct.

### III.

The commission awarded Ricci \$10,000 for "past emotional harm" and \$10,000 for "future emotional harm," and doubled these "compensatory damages." MPD argues that the commission failed to adequately identify the basis for its damages award and exceeded its authority under Minneapolis, Minn., Code of Ordinances § 141.50(m) (2008). We accord deference to the commission's findings regarding an award of damages. *Kelly*, 776 N.W.2d at 771. But we review de novo the interpretation of the ordinance authorizing damages. *See Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 803 (Minn. 2004) (stating that issues of statutory interpretation are reviewed de novo).

Section 141.50(m) permits the commission to award an aggrieved party compensatory and punitive damages upon a finding of discrimination. Minneapolis, Minn., Code of Ordinances § 141.50(m). The commission may "order the respondent to pay an aggrieved party, who has suffered discrimination, compensatory damages in an amount up to three (3) times the actual damages sustained." *Id.* The commission also may "order the respondent to pay an aggrieved party, who has suffered discrimination, damages for mental anguish or suffering and reasonable attorneys fees in addition to

punitive damages in an amount not more than eight thousand five hundred dollars (\$8,500.00).” *Id.*

The commission’s findings are sufficient to support a damages award for mental anguish under section 141.50(m). Ricci testified that the conduct of MPD left him demoralized and fearful and worried about his son. Ricci also testified that he gained weight, left Minneapolis after the incident, and still felt afraid to be in Minneapolis years after the incident. The commission credited Ricci’s testimony and found that he had suffered and would continue to suffer emotional harm because of the discrimination. Ricci adequately established a basis for his claims of past and ongoing emotional distress, and the commission’s findings accepting that basis support its award of emotional-distress damages.

The commission exceeded its authority, however, by doubling the damages award. Under Minneapolis, Minn., Code of Ordinances § 141.50(m), damages for mental anguish are distinct from compensatory damages and, therefore, cannot be doubled. *Cannon v. Minneapolis Police Dep’t*, \_\_\_ N.W.2d \_\_\_, \_\_\_, A09-1154, slip op. at 17 (Minn. App. June 1, 2010). Although the commission characterized Ricci’s damages as compensatory damages, it also specifically described them as damages for “past and future mental anguish,” and that is what the record confirms them to be. Because section 141.50(m) does not permit mental-anguish damages to be doubled, *id.*, we reduce the commission’s damages award to \$20,000.

**Affirmed as modified.**