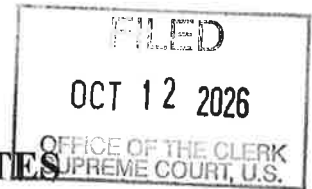


No. 25-7539



SUPREME COURT OF THE UNITED STATES

SEBASTIEN DJESSOUHO,

Petitioner,

v.

IHMS (BOSTON), LLC, dba TAJ BOSTON,

Respondent.

On Petition for a Writ of Certiorari to the

Appeals Court of Massachusetts

PETITION FOR REHEARING

Sebastien Djessouho

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I. ORDER PRESENTED AND LIMITED GROUND FOR REHEARING

Petitioner Sebastien Djessouho respectfully petitions under Supreme Court Rule 44.2 for rehearing of the October 5, 2026 order denying certiorari in No. 25-7539. The docket identifies the decision below as the Massachusetts Appeals Court's December 4, 2025 decision in No. 25-P-17. The Supreme Judicial Court denied further appellate review on February 12, 2026. Ex. A, pp. 2–3; Ex. C, p. 5.

Petitioner invokes the Rule 44.2 category of “other substantial grounds not previously presented.” He does not claim an intervening decision or newly occurring trial event. His ground is the specific comparison of the Hotel's own job descriptions and contemporaneous vacancy list: both positions required English literacy and regular communication, while the list separately advertised two reservations-agent openings and an accounting opening. Exs. E-1, E-2, E-3.

The original petition raised the broader qualification, pretext, jury-waiver, and witness issues. Pet. for Cert. 2, 9–14. It did not develop the matched communication-frequency entries or identify the two reservations-agent vacancies. Petitioner submits that this precise documentary comparison warrants renewed consideration of the previously asserted meaningful-hearing concern. The discussion of the trial below supplies context; it is not offered as newly arising evidence.

“Ex.” references identify the accompanying record exhibits. “Tr.” references identify the original volume, page, and line of the trial transcript. “R.A.” and “S.R.A.” refer to the state appellate record and supplemental record appendices. The documents are existing record materials, not a request to introduce new trial evidence.

II. THE HOTEL'S DOCUMENTS REQUIRE A CONCRETE COMPARISON

A. Both job descriptions required English literacy and regular communication.

Trial Exhibit 4 identifies the Storeroom Clerk position as a union, hourly non-exempt position in Purchasing. Its requirements include “Ability to communicate clearly both verbally and in writing.” Its language-skills section also requires English fluency and the “Ability to read, speak and write English.” Ex. E-1, pp. 1–2 (R.A. 36–37).

The Accounts Receivable Clerk description likewise requires English fluency and the ability to read, speak, and write English. Ex. E-2, p. 3 (S.R.A. 34). More particularly, both descriptions place “Talking/Communicating” in the “R” category, defined as regularly, 51%–100% of the time. Ex. E-1, pp. 3–4 (R.A. 38–39); Ex. E-2, p. 4 (S.R.A. 35). Both also identify proficiency in oral and written business communication. Ex. E-1, p. 5; Ex. E-2, p. 6.

These are the employer’s requirements for the job Petitioner held, not merely his assessment of his own ability. They supply a specific response to treating communication and English literacy as attributes absent from his existing position. The trial court described his storeroom duties principally as delivering supplies, while accepting the Hotel’s conclusion that his communication skills and English fluency were inadequate for the accounting opening. Ex. B, pp. 3, 9–10.

Petitioner does not equate identical baseline requirements with identical jobs. The accounting description additionally requires excellent English verbal skills and a pleasant telephone manner. Ex. E-2, p. 2. His point is that this claimed difference in degree must be evaluated against the shared requirements and his actual employment experience, rather than a categorical accounting-versus-communication distinction.

II. THE HOTEL'S DOCUMENTS REQUIRE A CONCRETE COMPARISON

B. The posting listed two reservations-agent vacancies, separately from accounting.

The relevant vacancy list is Trial Exhibit 7, not Exhibit 4 or 5. Dated October 12, 2015, it lists “Accounts Receivable Clerk” under “Accounting.” Under “Reservations,” it separately lists “Reservations Agent (x2)” and a Reservations Group Coordinator. Ex. E-3 (S.R.A. 44). Thus, the verified count is two reservations-agent openings; the document does not call them two “Customer Service” positions.

The A/R description places the job in Finance, reporting to the Credit Manager. Its duties include maintaining receivables aging, billing, invoices, posting payments, and reviewing charges, alongside responding to guests and travel agents. It also requires a solid understanding of accounting principles. Ex. E-2, pp. 1–2. The separate departmental listings reinforce Petitioner’s contention that the accounting content could not fairly be dismissed as incidental merely because the successful applicant had reservations experience.

The record does not support saying that guest-service requirements were invented at trial. They appear in the job description and in Asima Jones’s December 18, 2015 email, which distinguished ordinary coworker communication from the level sought for the opening. Ex. E-2, pp. 1–3; Ex. F-1, pp. 1–2. Petitioner’s narrower contention is that the Hotel’s emphasis must be tested against all of its contemporaneous documents, including their common communication-frequency classification.

The trial court credited Khandka’s assessment that guest-service experience outweighed Petitioner’s superior accounting skills. Ex. B, pp. 5–6, 9–10. The documentary comparison challenges that assessment’s factual foundation; it does not deny that an accounting position can legitimately include substantial customer service.

III. THE UNION EVIDENCE ESTABLISHES REPRESENTATION AND A DIFFERENT REASON FOR WITHDRAWAL

Exhibit 4 identifies Petitioner's storeroom position as union-covered. Laura Moye's affidavit identifies UNITE HERE Local 26 as representing Taj Hotel employees. Ex. E-1, p. 1; Ex. F-3, ¶ 1. The June 17, 2016 grievance challenges Petitioner's termination for unjust cause and bears union and employer acknowledgments. Ex. F-2.

The documents show union involvement in both the denied promotion and the termination. They do not independently establish that literally every event was reported. The claim relevant here is that the union was not a stranger to these disputes, notwithstanding the absence of its representative from the courtroom.

Moye stated: "Taj Hotel fails to promote or transfer Black Africans in the hotel." Ex. F-3, ¶ 4. She also expressed her belief that the denial of Petitioner's promotion reflected race and age discrimination. Id. ¶ 3. These are her sworn assertions, not findings adopted by a court. Their probative force remains for a proper factfinder.

Critically, Moye explained that the union withdrew the promotion grievance because the accounting position was outside the bargaining unit, not because she had concluded that the discrimination complaint lacked merit. Id. ¶ 5. The January 8, 2016 email similarly withdrew the grievance without prejudice while maintaining disagreement with the Hotel. Ex. F-1, p. 1.

Withdrawal thus did not concede the merits. Moye's affidavit was admitted over the Hotel's objection. Tr. IV:9:1–4 (Ex. G-5). Petitioner relies on its contents, not a claim that it was ultimately excluded.

IV. THE JURY-TRIAL CHRONOLOGY REQUIRES THE ENTIRE RECORD

A. A jury trial remained contemplated before the trial began.

Petitioner's statement that a jury trial had already been arranged has record support. The August 15, 2024 pretrial order addressed the parties' proposed voir dire and the questions the court intended to use during jury empanelment. Ex. D, p. 2, § 6. At the start of proceedings on August 19, the judge explained that the case was fifth in line for prospective jurors and might not receive them that day. Tr. I:6:8–20 (Ex. G-1).

The judge then revisited whether the parties wished to wait for jurors or proceed immediately before the court. Tr. I:7:1–18. The discussion was therefore a change from the then-contemplated jury setting on the day set for trial, not proof that Petitioner had always sought a bench trial.

Petitioner linked his willingness to proceed without a jury to the court hearing witnesses, particularly Moye. Tr. I:9:3–11; 11:12–17. The judge explained that, with a jury, evidentiary rules would require greater strictness, while a judge could hear material and disregard what should not be considered. Tr. I:10:12–24. Later, the judge contrasted a bench trial's scheduling flexibility with the difficulty of interrupting a sitting jury's trial to await a witness. Tr. I:18:11–22; 21:15–25.

That combination—immediate availability of a bench trial, anticipated evidentiary flexibility, and time to locate a significant witness—is the basis for Petitioner's contention that his decision reflected practical pressure rather than a simple, preexisting preference for a judge. It remains a contention about the circumstances of consent, not proof of an express judicial promise that Moye would appear.

IV. THE JURY-TRIAL CHRONOLOGY REQUIRES THE ENTIRE RECORD

B. The signed waiver and later acceptance of the affidavit must also be addressed.

Massachusetts Rule of Civil Procedure 38(d) protects a jury demand from withdrawal without the parties' consent, while Rule 39(a)(1) permits written or on-the-record oral consent to a bench trial. The judge expressly told Petitioner: "If you want a jury trial, I will give you a jury trial." Tr. I:11:6–11. The judge also disclaimed an ability to guarantee Moye's attendance. Tr. I:12:1–7; 17:2–18 (Ex. G-1).

Petitioner ultimately stated: "A bench trial. I'm for a bench trial." Tr. I:22:1–6. The court directed that an interpreter read the waiver form before signature. Tr. I:22:11–21. The Appeals Court relied on the oral and written waiver and these explanations in rejecting coercion. Ex. C, pp. 2–3. Petitioner does not deny those portions of the record or contend that the judge simply eliminated a jury over an uninterrupted objection.

On the final day, the court considered Moye's recent subpoena and her previously scheduled collective bargaining negotiations. Tr. IV:4:10–5:16. Asked whether he still wanted Moye to appear if her affidavit were admitted, Petitioner answered, "No, Your Honor." Tr. IV:7:21–23. He later stated that admission of the affidavit was good enough. Tr. IV:9:20–24 (Ex. G-5).

Those statements prevent characterization of the final ruling as exclusion of Moye's live testimony over a continuing express demand. Petitioner's narrower argument concerns the process leading to the initial waiver and the meaning of the accommodations offered, evaluated with the documentary evidence that explains why he considered the union representative important. Her eventual absence alone is not asserted to invalidate the waiver automatically.

V. THE WITNESS RECORD DISTINGUISHES LIVE TESTIMONY FROM DOCUMENTARY CORROBORATION

Petitioner and April Avras, formerly April Geyer, were the two in-person trial witnesses. But the court also received Director of Finance Dinesh Khandka's audiovisual deposition, including Petitioner's questioning through an interpreter. Tr. II:4:2–19 (Ex. G-3); Ex. B, p. 5. Thus, the record supports the absence of an in-person management witness, not the broader claim that no manager testified at all.

Asima Jones, Richard Brideau, Laura Moye, and Lucia Arango did not testify in person. The judge explained that the Hotel was not required to call Jones or Brideau, that Petitioner had not called them, and that the evidence would not be reopened to add witnesses. Petitioner accepted that disposition. Tr. IV:9:9–10:3 (Ex. G-5). MacLellan's proposed repetition of Moye's statements also presented the hearsay problem addressed during trial. Tr. III:9–12 (Ex. G-4).

Avras identified Lucia as the other person present during the incident, but Lucia was not called for examination at trial. Tr. I:65:15–18; 70:12–21 (Ex. G-2). Avras repeatedly could not recall details and relied on her earlier signed statement. Tr. I:63:12–65:9; 71–74. Those limits explain Petitioner's challenge to the account, but do not, standing alone, establish perjury.

The trial court relied on Avras's testimony, her contemporaneous statement, and the investigative records, including Arango's written statements. Ex. B, pp. 6–8; Ex. H. That was documentary corroboration, not live testimony from an additional eyewitness. Petitioner asks that the distinction be maintained when assessing his opportunity to test the evidence. He does not claim that an absent witness or a memory lapse necessarily makes otherwise admitted evidence legally insufficient.

VI. THE FEDERAL QUESTION CONCERNS MEANINGFUL ADJUDICATION, NOT AUTOMATIC INCORPORATION OF A CIVIL JURY RIGHT

The asserted federal concern is the Fourteenth Amendment’s protection of meaningful adjudication of a state-created claim. In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982), the Court recognized that “a cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause.” *Logan* also permits reasonable procedural and evidentiary requirements. *Id.* at 437. Unlike *Logan*, this case proceeded through a trial and an appeal. Petitioner relies on its meaningful-hearing principle, not a claim that the cases share the same procedural facts.

Nor does Petitioner assert that the Seventh Amendment itself required a jury in this state-court civil action. *Minneapolis & St. Louis R.R. Co. v. Bombolis*, 241 U.S. 211, 217 (1916), states that the Amendment “does not in any manner whatever govern or regulate trials by jury in state courts.” The requested inquiry is whether the particular procedure afforded a meaningful opportunity to present the claim, including a genuine choice concerning an existing state-law jury entitlement.

In *D. H. Overmyer Co. Inc. of Ohio v. Frick Co.*, 405 U.S. 174, 185–188 (1972), the Court examined a civil waiver of notice and hearing and emphasized the circumstances surrounding the agreement. It stated: “Our holding, of course, is not controlling precedent for other facts of other cases.” *Id.* at 188. *Overmyer* assumed, without deciding, a criminal-law waiver standard; it did not impose a criminal jury-waiver colloquy in every civil action. *Id.* at 185–186.

Petitioner submits that the specific job-document comparison makes the previously asserted procedural concern concrete. It identifies evidence potentially important to rebuttal and explains why the opportunity to develop and present that rebuttal mattered. It does not convert every disagreement with a credibility finding into a constitutional violation.

VII. FEDERAL JURISDICTION AND THE PRIOR PRESENTATION OF THE CLAIM

This Court's authority to review the state judgment is governed by 28 U.S.C. § 1257(a). The original certiorari petition expressly invoked that provision and Fourteenth Amendment due process at page 8. Its mistaken reference there to seeking review by the Supreme Judicial Court does not describe the relief now requested: this petition seeks rehearing of this Court's October 5 order concerning the Massachusetts Appeals Court judgment.

Federal presentation in the state proceedings is a separate requirement. *Howell v. Mississippi*, 543 U.S. 440, 443–444 (2005) (per curiam), explains that the federal claim must have been addressed by or properly presented to the relevant state court; merely tracing state-law citations to a federal case is insufficient. Petitioner relies on the challenge to the fairness of the waiver and witness procedure raised below, rather than a new substantive federal employment claim.

The state opening brief argued deprivation of a fair trial in connection with the jury waiver. Informal Appellant Br. 9. The Supreme Judicial Court reconsideration petition expressly discussed “due process considerations regarding the right of cross-examination.” Pet. for Reconsideration 8. Petitioner identifies those passages so that the Court may assess what was actually presented and when; he does not suggest that citing the Fourteenth Amendment for the first time in this Court would itself satisfy *Howell*.

This petition does not challenge the constitutionality of Massachusetts's discrimination statute, add a collective-bargaining or union-liability claim, or demand application of a criminal confrontation right. Its requested federal review remains confined to the procedural issue identified in the original certiorari presentation and whatever preservation the state record establishes.

VIII. THE REQUEST IS FOR RECONSIDERATION ON THE IDENTIFIED DOCUMENTARY GROUND

The Hotel prevailed because the judge credited its comparative-qualification explanation and its good-faith investigation of the workplace incident. The Appeals Court affirmed on that record, expressly considering the merits after the Hotel supplied necessary materials in its supplemental appendix. Ex. B, pp. 5–12; Ex. C, pp. 2–5. Petitioner does not contend that the appellate judges lacked the job exhibits or that the mere absence of an express discussion proves the exhibits were ignored.

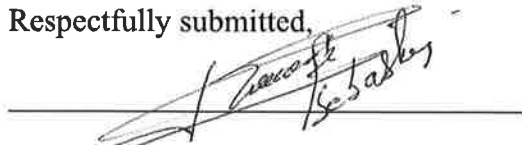
The point now tendered is more specific: the existing-job and proposed-job descriptions contain matching baseline language and regular-communication categories, while the contemporaneous vacancy list distinguishes the accounting opening from two reservations-agent openings. The union’s documented reason for withdrawing its grievance likewise differs from an assessment that the discrimination claim lacked merit. These details supply the factual basis for the asserted importance of a meaningful opportunity to present Petitioner’s position.

Supreme Court Rule 10 does not ordinarily call for correction of factfinding errors. Rule 44.2 is narrower still. Petitioner submits the identified documentary ground for consideration under that rule, while acknowledging that the underlying exhibits existed earlier and that the broader pretext and waiver arguments appeared in his original petition. He requests consideration of the specific ground, not an unrestricted second merits appeal.

CONCLUSION

Petitioner respectfully requests that the Court grant rehearing of its October 5, 2026 order and restore the petition for a writ of certiorari for further consideration. The request is subject to the response procedure in Supreme Court Rule 44.3.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Sebastien Djessouho", is written over a horizontal line.

Sebastien Djessouho, Petitioner, pro se

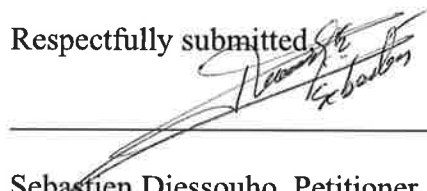
Date: 10/9/26

CERTIFICATION REQUIRED BY SUPREME COURT RULE 44.2

I, Sebastien Djessouho, Petitioner proceeding without counsel, certify that the accompanying Petition for Rehearing is restricted to the grounds specified in Supreme Court Rule 44.2 and is presented in good faith and not for delay.

The ground I submit is the specific documentary comparison identified in Sections I–III and VIII. I do not represent that the underlying exhibits were created or discovered after the denial of certiorari, and I do not rely on an intervening decision. The discussion of the earlier trial and appellate proceedings provides context for the asserted substantial ground not previously presented in that form.

Respectfully submitted


Sebastien Djessouho, Petitioner, pro se

Date:

10/9/26

SUPREME COURT OF THE UNITED STATES

No. 25-7539

Sebastien Djessouho v. IHMS (Boston), LLC, dba Taj Boston

DECLARATION OF SERVICE

I, Sebastien Djessouho, declare that on 10/9/, 2026, I served a true and correct copy of the Petition for Rehearing, including its Rule 44.2 certification, and the Appendix of Record Exhibits on all parties required to be served. I deposited copies in the United States mail, first-class postage prepaid, addressed to the following attorneys for Respondent IHMS (Boston), LLC, dba Taj Boston:

Terence P. McCourt, Esq. — (617) 310-6246

Angela C. Bunnell, Esq. — (617) 310-5202

Greenberg Traurig, LLP

One International Place, Suite 2000

Boston, MA 02110

mccourt@gtlaw.com; bunnella@gtlaw.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 10/9/, 2026.



Sebastien Djessouho



SUPREME COURT OF THE UNITED STATES

SEBASTIEN DJESSOUHO, Petitioner,

v.

IHMS (BOSTON), LLC, dba TAJ BOSTON, Respondent.

On Petition for a Writ of Certiorari to the
Appeals Court of Massachusetts

APPENDIX OF RECORD EXHIBITS
IN SUPPORT OF PETITION FOR REHEARING

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No. 25-7539

SUPREME COURT OF THE UNITED STATES

EXHIBIT B

Superior Court findings, rulings, and order for judgment

September 9, 2024

Complete order; S.R.A. 320-332 (original pages 1-13)

NOTIFY

85

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
Civil Nos. 1884CV03261

SEBASTIEN DJESSOUHO

v.

IHMS (BOSTON), LLC d/b/a TAJ BOSTON, and Others¹

**FINDINGS OF FACT, RULINGS OF LAW,
AND ORDER FOR JUDGMENT**

This employment case centers on allegations by plaintiff Sebastian Djessouho (“Djessouho”) that the Taj Hotel in Boston (the “Hotel”)² discriminated against him on the basis of his age, race, color, and national origin while he was an employee of the Hotel, and then terminated him in retaliation after he complained. Specifically, in October 2015, Djessouho sought but did not receive a transfer to an open Accounts Receivable Clerk position at the Hotel (the “A/R Clerk Position”). Djessouho subsequently filed a charge of discrimination with the Massachusetts Commission Against Discrimination (“MCAD”) alleging that the Hotel did not hire him for the A/R Clerk Position because of his age, race, color, and national origin.

Several months later, on or about June 17, 2016, the Hotel terminated Djessouho’s employment following an incident between him and another employee in which Djessouho allegedly yelled, screamed, and physically intimidated the other worker. Djessouho denies that

¹Asima Jones, Richard Brideau, and Dinesh Khandka. A fifth defendant, IHMS, LLC, was dismissed without opposition on June 27, 2023. *See* Dkt. 51.

² At all times relevant to this action, the Hotel was owned and operated by IHMS (Boston) LLC, the named corporate defendant in this matter.

he engaged in such conduct and alleges that the Hotel fired him in retaliation for the charge of discrimination he had filed with the MCAD.

The Hotel denies that it discriminated or retaliated against Djessouho. The Hotel asserts that its decision not to hire Djessouho for the A/R Clerk Position was based on legitimate non-discriminatory reasons, including the Hotel's determination that Djessouho did not possess the required qualifications for the position and that the applicant ultimately selected was more qualified. The Hotel also states that it terminated Djessouho's employment after he lost his temper and verbally abused and intimidated a co-worker, not because he had filed a charge of discrimination with the MCAD.

With the assent of both parties, the Court conducted a jury-waived trial in this matter. The trial began on August 19, 2024 and concluded on August 23, 2024. The Court heard testimony from three witnesses, including Djessouho, and received 21 exhibits into evidence. Djessouho represented himself throughout the trial, with assistance from a French language interpreter.³

Based on the credible evidence presented during trial, together with the reasonable inferences it has drawn from that evidence, the Court issues the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

A. Djessouho's Employment at the Hotel

In or about January 2007, Djessouho was hired by the Hotel as a steward. Trial Exhibits ("Ex.") 1, 3. Approximately two years later, Djessouho transferred to the position of storeroom

³ Djessouho testified in French and addressed the Court almost exclusively in French during all court proceedings.

clerk. Djessouho's duties as storeroom clerk included, among other things, delivering supplies to various departments within the Hotel in response to orders they submitted. Ex. 4.

B. The A/R Clerk Position

On or about October 12, 2015, the Hotel's Accounting Department posted an opening for the position of Accounts Receivable Clerk (the "A/R Clerk Position"). Ex. 7.

The job description for the A/R Clerk Position stated that the essential job functions, responsibilities, requirements, and skills for the position included, among other things, excellent verbal skills in English and a pleasant telephone voice and manner; previous experience with hotel property management systems; proficiency in spreadsheets and a solid understanding of Accounting principles; customer service appreciation and awareness and a strong desire to want to help Hotel guests fulfill their needs; strong interpersonal skills, and the ability to communicate effectively, with fluency in English required, including the ability to read, speak and write English. Ex. 5.

On or about October 14, 2015, Djessouho completed and submitted an Internal Transfer Request form applying for the A/R Clerk Position. Ex. 8. At the time he applied for the A/R Clerk Position, Djessouho's educational background included a Diploma in Accounting from Issa Korombe Technical College in Niamey, Niger (1985); an Associate of Science in Business Administration (Emphasis: Accounting) from Fisher College (2011); and a Bachelor of Science in Management (Emphasis: Accounting) also from Fisher College (2015). Exs. 1, 13, 14.

In addition to the foregoing educational background, Djessouho's professional experience at the time of his application for the A/R Clerk Position included approximately 20 years of employment at the United States Embassy in Niger during the period 1985 to 2006, at which point Djessouho immigrated to the United States. Djessouho's positions at the Embassy

included approximately 4 years as a shipping and mail department clerk; approximately 3 years as a purchasing agent; approximately 8 years as an accounts payable clerk in the Embassy's budget and financial office; and approximately 5½ years as an accounts receivable clerk in the same office. Ex. 1.

Djessouho was interviewed for the A/R Clerk Position on or about October 21, 2015. The interview was conducted in English by Dinesh Khandka ("Khandka"), the Hotel's Director of Finance. Khandka was responsible for making the hiring decision for the position.

Following the interview, Khandka made handwritten comments in Section IV of Djessouho's Internal Transfer Request form to reflect his assessment of Djessouho. Khandka's comments concerning Djessouho stated: "Lacks the very basic understanding of A/R Clerk Position" and "Poor Communication." Ex. 8.

Khandka did not offer the A/R Clerk Position to Djessouho. Instead, Khandka offered the position to another internal candidate named Raquel Calvello ("Calvello"). At the time of her application, Calvello worked at the Hotel as a Reservations Agent. She had held that position for approximately 11½ months. Ex. 9. Calvello's Internal Transfer Request form did not mention any prior educational background or experience in Accounting. In response to the question "What qualifies you for this position?", Calvello wrote: "Detailed oriented and am good with basic mathematical calculations." *Id.*

Khandka interviewed Calvello as well. Khandka's handwritten comments about Calvello following the interview stated: "Positive attitude, Seems focus [sic?],⁴ good communication, technically somewhat sound." Ex. 9.

⁴ This word is not completely legible.

The Hotel presented Khandka's testimony at trial in the form of an audiovisual deposition conducted pursuant to Mass. R. Civ. P. 30(l). Djessouho attended Khandka's trial deposition (via a videoconferencing platform) and had an opportunity to cross-examine Khandka. Both the direct examination and the cross-examination of Khandka were presented to the Court and admitted into evidence at the trial. Exs. 16, 17.

Khandka testified, in substance, that he considered the A/R Clerk Position to be more of a customer service position than a technical accounting position, principally because one of the primary responsibilities of the position was to respond to inquiries from Hotel guests (or their agents) concerning their bills. Accordingly, in evaluating the applicants for the A/R Clerk Position, Khandka stated that he placed more importance on communication skills, fluency in English, and previous experience dealing with Hotel guests. Khandka placed less importance on technical accounting skills. The Court found Khandka to be a credible witness and fully credits his testimony regarding the criteria Khandka prioritized in assessing the candidates for the A/R Clerk Position.

Pursuant to those criteria, Khandka concluded that Calvello was a stronger candidate for the A/R Clerk Position than Djessouho. Khandka testified that his assessment of Djessouho was that Djessouho had weak communication skills, lacked the necessary fluency in English, and appeared to lack an understanding of the duties of the A/R Clerk Position. By contrast, Khandka concluded that Calvello possessed good communications skills, was fluent in English, and had experience interacting with Hotel guests in connection with her duties as a reservations agent. For these reasons, Khandka decided to offer the A/R Clerk Position to Calvello rather than to Djessouho.

The Court found Khandka's explanation of his reasons for hiring Calvello rather than Djessouho to be credible. Although unlike Djessouho, no evidence was introduced to indicate that Calvello had any formal education or experience in Accounting, the Court fully credits Khandka's testimony that Calvello's experience as a reservations agent, combined with her communications skills and fluency in English, made her a stronger candidate than Djessouho for the A/R Clerk Position due to the extent to which the position requires frequent verbal interactions with Hotel guests. Notwithstanding Djessouho's allegations of discrimination, the Court found no evidence to suggest that Djessouho's age, race, color, or national origin played a role in Khandka's decision to offer the A/R Clerk Position to Calvello rather than Djessouho.

On January 13, 2016, Djessouho filed a charge of discrimination with the Massachusetts Commission against Discrimination (the "Charge"). In the Charge, Djessouho alleged that the Hotel had discriminated against him based on his age, race, color, and national origin in failing to select him for the A/R Clerk Position and instead offering the position to Calvello.

C. Djessouho's Termination

On or about May 27, 2016, Djessouho had an altercation at work with a fellow employee named April Geyer. Geyer worked as a cook in the Hotel's Pastry Shop. Ex. 12.

According to Djessouho's trial testimony, he went to the Pastry Shop on that date to deliver certain supplies. After Djessouho had delivered the supplies to an employee named Lucia Arango ("Arango") and was in the process of leaving the Pastry Shop, Geyer called out to him and told him the Shop had not ordered the supplies he had delivered. Djessouho disagreed and suggested that Geyer speak to her co-worker.

Geyer also testified at trial about the incident. Although eight years had passed and there were details that she no longer recalled, Geyer stated that she had told Djessouho that the

supplies he delivered were from an older order. Upon hearing this, Djessouho had become agitated, yelled and screamed at her, put his finger in her face, and physically blocked her in a corner. Following the incident, Geyer submitted an internal complaint and signed a written statement (the "Statement"). Ex. 12, at 6. At trial, she identified the Statement and said it contained her memory of the incident at that time. Consistent with Geyer's trial testimony, the Statement described Djessouho as having yelled and screamed at her while pointing his finger in her face. It further stated that Geyer had felt trapped in a corner by the Chef's table and that she had been concerned that Djessouho was going to hit her based on his aggressiveness and anger. *Id.*

The Hotel conducted an investigation into Geyer's complaint. As reflected in a Security Report prepared in connection with the investigation, Ex. 12 at 3-8, the investigation included interviews of other employees, including Arango, who had been present in the Pastry Shop at the time of the altercation. Arango substantially corroborated Geyer's account. In signed statements dated May 28 and June 15, 2016, Arango described Djessouho as having yelled and screamed at Geyer and been so angry that he was shaking and at times couldn't speak. Ex. 12, at 5, 8. Arango stated that Djessouho "went crazy," and gestured and pointed his finger at Geyer. Arango described Geyer as having looked scared and she stated that she (Arango) was scared too. *Id.*

Following the completion of its investigation, the Hotel determined that Djessouho's conduct towards Geyer during the altercation had violated several provisions of the Hotel's Code of Conduct, including provisions that forbid: (1) behavior that creates an intimidating, hostile, offensive, or inappropriate work environment; (2) inappropriate verbal or physical behavior towards another employee; and (3) use of threatening or abusive language towards a fellow

employee. *Id.*, at 1. Violation of any of the foregoing provisions is considered misconduct that may constitute grounds for immediate termination. *Id.*

Based on the results of its investigation, and after providing Djessouho with an opportunity to explain his side of the incident, the Hotel decided to terminate Djessouho's employment effective June 17, 2016. *Id.* at 1-2.

Although the Court acknowledges the sincerity of Djessouho's *belief* that he was terminated in retaliation for having filed an MCAD charge, the Hotel introduced evidence showing its termination decision was based on substantial, legitimate, non-retaliatory reasons. Other than Djessouho's contrary belief, there is no evidence before the Court to suggest that the Hotel's investigation was a sham; that the conclusions reached following that investigation were contrived; or that the reasons put forward by the Hotel for its termination decision – namely, Djessouho's conduct towards Geyer – were pretextual. Instead, the Court accepts and credits the reasons given by the Hotel for its decision to terminate Djessouho's employment. Specifically, and with full acknowledgment that Djessouho disagrees that his conduct warranted termination, the Court finds that the Hotel terminated Djessouho based on its good faith conclusion that his behavior towards Geyer was sufficiently egregious and unacceptable to warrant immediate termination. The Court finds no basis in the record to conclude that retaliatory motives played any role in the Hotel's termination decision.

RULINGS OF LAW

A. Djessouho's Discrimination Claim

To establish a *prima facie* case of discrimination, Djessouho bears the burden of showing: (1) that he is a member of one or more protected classes; (2) that he applied for and was qualified for the position that the Hotel was seeking to fill; (3) that despite Djessouho's

qualifications, he was not hired for the position; and (4) that the Hotel hired someone to fill the position whose qualifications were similar or inferior to Djessouho's. *See, e.g., Somers v. Converged Access, Inc.*, 454 Mass. 582, 595 (2009).

If Djessouho makes a *prima facie* showing, the burden shifts to the Hotel to articulate a legitimate, non-discriminatory reason for its hiring decision and introduce credible evidence showing that the stated reason was the real reason. *See, e.g., Abramian v. President and Fellows of Harvard Coll.*, 432 Mass. 107, 116-17 (2000).

If the Hotel meets its burden, Djessouho must then show that, notwithstanding the Hotel's proffered justification for its decision, the actual reason for the decision was unlawful discrimination. *Id.* at 117-18. Djessouho may accomplish this by showing that the Hotel's stated reason was pretextual. Such a showing would support an inference that the Hotel's decision, in fact, was motivated by unlawful discrimination. *Id.*

Applying the foregoing framework, the Court concludes that Djessouho failed to make out a *prima facie* case. Specifically, the Court finds, first, that Djessouho did not establish that he was qualified for the A/R Clerk Position. Although the Court has no reason to doubt Djessouho's knowledge or experience in accounting, the A/R Clerk Position was not a technical accounting position. Rather, as set forth in the Court's Findings of Fact above, the Court credits Khandka's testimony that the position was more oriented towards customer service. For that reason, the job requirements set forth in the description for the A/R Clerk Position included, among other things, excellent verbal communications skills, fluency in English, and an appreciation and awareness of customer service and the importance of fulfilling the needs of Hotel guests.

Djessouho failed to establish at trial that he possessed the latter set of skills. None of his positions at the Hotel had encompassed interacting with or assisting guests with their needs. Further, the evidence supported Khandka's determination that Djessouho lacked the requisite verbal communication skills and was not sufficiently fluent in English.

The Court also finds that Djessouho failed to establish that he possessed qualifications similar (or superior) to those possessed by Calvello. Although the Court is persuaded that Djessouho's *accounting* skills were superior, for reasons set forth in its Findings of Fact, the Court accepts and credits Khandka's testimony that it was more important to the performance of the A/R Clerk Position that the successful candidate possess strong communication skills, fluency in English, and experience working with Hotel guests. With respect to all of the latter attributes, the Court credits Khandka's determination that Calvello's skills and experience were materially superior to those of Djessouho.

Even assuming that Djessouho had established a *prima facie* case, the Court concludes that the Hotel met its burden of showing that its decision was predicated on a legitimate nondiscriminatory reason. Specifically, as noted above, the Court credits Khandka's testimony that he hired Calvello rather than Djessouho for the A/R Clerk Position because of her significantly stronger communication skills, fluency in English, and experience working with Hotel guests.

In light of the evidence supporting the existence of a legitimate nondiscriminatory reason for the Hotel's decision, the burden shifts back to Djessouho to show that the Hotel's proffered reason was not the actual reason for its decision, but rather a pretext. The Court concludes that Djessouho failed to do so. Rather, the Court finds that the Hotel's hiring decision was based on a determination – supported by the evidence – that Calvello was a stronger candidate for the A/R

Clerk Position than Djessouho. The Hotel made that determination after conducting interviews of both individuals and concluding, in good faith, that Calvello possessed stronger verbal communications skills than Djessouho, was fluent in English, and had specific experience dealing with Hotel guests, which was one of the central responsibilities of the job.

B. Djessouho's Retaliation Claim

To prove retaliation, Djessouho must establish the following by a preponderance of the evidence: (1) that he engaged in protected activity; (2) that he thereafter suffered an adverse employment action; and (3) that but for his protected activity, the Hotel would not have taken the adverse action. *See, e.g., Green v. Harvard Vanguard Medical Associates, Inc.*, 79 Mass. App. Ct. 1, 14 (2011); *Mole v. University of Massachusetts*, 442 Mass. 582, 591-92 (2004).

There is no dispute that Djessouho established the first two elements. His filing of a charge of discrimination with the MCAD constituted protected activity. And the termination of his employment in June 2016 unquestionably constituted an adverse employment action.

The Court concludes, however, that Djessouho failed to prove the final element – that a causal connection existed between his protected activity and the adverse action taken against him. *Mole*, 442 Mass. at 592. Put somewhat differently, the Court finds that Djessouho has not proven by a preponderance of the evidence that he was terminated *because* of his MCAD charge – i.e., that the desire to retaliate was a determinative factor in the Hotel's decision to fire him. Rather, as noted above, the Court credits the Hotel's explanation that it terminated Djessouho due to his misconduct during his altercation with Geyer in the Hotel's Pastry Shop, *not* because Djessouho had filed a charge of discrimination with the MCAD. The Court will not repeat all of the facts that underpin its determination that the Hotel's stated reasons for terminating Djessouho were, in fact, its true reasons and *not* pretextual. It suffices simply to note that for the reasons the

Court set forth in its Findings of Fact, the Court has determined that the Hotel's stated justification for terminating Djessouho is amply supported by the results of the investigation the Hotel conducted into Geyer's complaint. Although Djessouho disputes the accounts of the incident that were provided by the other employees who were present, no evidence was introduced at trial to suggest that the Hotel did not believe these witnesses were telling the truth or that it otherwise doubted the conclusions the investigation reached regarding the nature of Djessouho's behavior during the altercation. Further, no evidence was introduced to suggest that other Hotel employees had engaged in similar conduct towards co-workers and were treated more leniently. *See, e.g., Matthews v. Ocean Spray Cranberries, Inc.*, 426 Mass. 122, 129 (1997).

The Court accordingly finds that Djessouho has failed to prove by a preponderance of the evidence that the Hotel terminated his employment *in retaliation for* the charge of discrimination Djessouho had filed with the MCAD or for any other protected activity in which he engaged.⁵

⁵ Djessouho focused his attention and evidence at trial on his discrimination and retaliation claims against the Hotel. With the exception of the evidence regarding Khandka's decision making role in selecting the successful candidate for the A/R Clerk Position, Djessouho did not introduce evidence against the three current or former supervisory employees whom he named as individual defendants alongside the Hotel. *See* note 1, above (listing the three individual defendants). To the extent that Djessouho's operative complaint at the time of trial (Dkt. 38) asserted discrimination and retaliation claims against "All Defendants", including the three individuals, the Court's determination in this decision that Djessouho failed to prove those claims extends to the individual defendants as well.

CONCLUSION AND ORDER

In accordance with the foregoing Findings of Fact and Rulings of Law, it is hereby **ORDERED** that judgment enter in favor of the Defendants on all counts of Djessouho's complaint.

SO ORDERED.

Dated: September 9, 2024

A handwritten signature in black ink, appearing to read "Michael J. Pineault", written over a horizontal line.

Michael J. Pineault
Associate Justice of the Superior Court

No. 25-7539

SUPREME COURT OF THE UNITED STATES

EXHIBIT C

Appeals Court Rule 23.0 memorandum and order

December 4, 2025; No. 25-P-17

Complete five-page memorandum and order

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

25-P-17

SEBASTIEN DJESSOUHO

vs.

ASIMA JONES & others.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The plaintiff brought the underlying suit under G. L. c. 151B, § 4, claiming employment discrimination and retaliation. While working as a storeroom clerk for the Taj Hotel in Boston,² the plaintiff applied for an open position for an accounts receivable clerk, but the hotel hired another applicant. The plaintiff claims that this decision was

¹ Richard Brideau, Dinesh Khandka, and IHMS (Boston) LLC, doing business as Taj Boston.

² Defendant IMHS (Boston) LLC owns the Taj Hotel. For convenience we will refer to this defendant as "the hotel." The complaint also names three hotel employees as defendants, although only the hotel is named in the judgment and has filed a brief on appeal. A fifth defendant, IHMS, LLC, was dismissed from the case without opposition.

unlawfully based on his age, race, color, and national origin. He further claims that the hotel later terminated his employment in retaliation for his filing a charge with the Massachusetts Commission Against Discrimination (MCAD). After a jury-waived trial, a Superior Court judge found that the plaintiff failed to prove his claims, and judgment entered in favor of the defendants. The plaintiff appeals, arguing that he did not validly waive his right to a jury trial and that the judge made clearly erroneous factual findings. We affirm.

1. Adequacy of the record. We note at the outset that the plaintiff failed to provide us with a complete trial transcript and copies of the trial exhibits, without which we cannot review his arguments on appeal. It was the plaintiff's "responsibility to ensure that the record is adequate for appellate review," and "his failure to do so is fatal to his appeal" (citation omitted). Roby v. Superintendent, Mass. Correctional Inst., Concord, 94 Mass. App. Ct. 410, 412 (2018). Although we could affirm on this basis alone, we will exercise our discretion to address the plaintiff's arguments, as the hotel has submitted the materials necessary for our review in a supplemental appendix.

2. Jury trial waiver. Parties in a civil case may waive a jury trial "by written stipulation filed with the court or by an

oral stipulation made in open court and entered in the record." Mass. R. Civ. P. 39 (a) (1), as amended, 450 Mass. 1403 (2008). We review a judge's finding of waiver for clear error. See Northeast Line Constr. Corp. v. J.E. Guertin Co., 80 Mass. App. Ct. 646, 650 (2011). Here, the plaintiff stated in open court that he was "for a bench trial," and the parties then signed a jury waiver form. We see no support for the plaintiff's claim that the judge "coerced him into a bench trial." To the contrary, the judge carefully explained to the plaintiff the differences between a jury trial and a bench trial and then allowed him to review the jury waiver form with the assistance of an interpreter before he signed it. The plaintiff cites no authority for his contention that the requirement of a colloquy, which applies in criminal cases, is "equally applicable in civil cases." The judge complied with the requirements of rule 39 (a) (1) and did not commit clear error in finding that the parties waived their jury trial rights. See Northeast Line Constr. Corp., supra at 652-653.

3. Merits. We review a judge's findings of fact in a bench trial for clear error. See H1 Lincoln, Inc. v. South Washington St., LLC, 489 Mass. 1, 13 (2022). A finding is only clearly erroneous if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has

been committed." Id., quoting Demoulas v. Demoulas Super Mkts., Inc., 424 Mass. 501, 509 (1997).

The judge did not clearly err in finding that the plaintiff failed to prove that the hotel unlawfully discriminated against him by selecting the other applicant for the open position. The decisionmaker, Dinesh Khandka, testified that the job of accounts receivable clerk is more oriented toward customer service and that the other applicant was superior to the plaintiff in terms of communication skills, fluency in English, and experience working with hotel guests. Assessing the credibility of witnesses is within the purview of the trial judge. See Robert & Ardis James Found. v. Meyers, 474 Mass. 181, 186 (2016). Here, the judge expressly credited Khandka's testimony, which supports the judge's findings that the hotel had legitimate nondiscriminatory reasons for hiring the other applicant and that those reasons were not pretextual.

Nor did the judge clearly err by finding that the plaintiff failed to prove retaliation. The hotel presented evidence showing that it terminated the plaintiff's employment because of an altercation he had with a coworker, April Geyer, and not because he filed a charge with the MCAD. According to Geyer's testimony, which the judge credited, after she questioned the plaintiff about an order, he yelled and screamed at her, put his

finger in her face, and blocked her in a corner. Although the plaintiff contends that Geyer was not credible because of her inability to recall certain facts, again, it was for the judge to assess witness credibility. See Robert & Ardis James Found., 474 Mass. at 186. Moreover, as the judge observed, Geyer's testimony was corroborated by an internal complaint she filed at the time of the incident and by the hotel's investigative reports. The judge found that there was no evidence to suggest that the investigation was a sham or that the reason put forth by the hotel for its termination decision was pretextual. We discern no clear error in the judge's findings and thus no reason to disturb the judgment.³

Judgment affirmed.

By the Court (Desmond, Shin &
Walsh, JJ.⁴),

A handwritten signature in dark ink, appearing to read "Paul Little". The signature is fluid and cursive, with the first name "Paul" being more legible than the last name "Little".

Clerk

Entered: December 4, 2025.

³ We deny the hotel's request for appellate attorney's fees. The hotel is entitled to the costs of the appeal in the ordinary course. See Mass. R. A. P. 26 (a), as appearing in 481 Mass. 1655 (2019).

⁴ The panelists are listed in order of seniority.

No. 25-7539

SUPREME COURT OF THE UNITED STATES

EXHIBIT D

Omnibus Order on Parties' Pre-Trial Motions

August 15, 2024

Complete order; S.R.A. 16-18 (original pages 1-3)

NOTIFY

81

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
Civil Nos. 1884CV03261

SEBASTIEN DJESSOUHO

v.

IHMS (BOSTON), LLC d/b/a TAJ HOTEL

OMNIBUS ORDER ON PARTIES' PRE-TRIAL MOTIONS

After hearing, and following review of the parties' written submissions, the Court issues the following rulings on the pre-trial motions listed below:¹

1. **Defendant's Motion in Limine to Preclude Evidence Related to the Affidavit of Laura Moya (Dkt. 61)**

ALLOWED. The Court allows this motion to the extent it seeks to bar the Plaintiff from introducing the Affidavit of Laura Moya (the "Moya Affidavit") into evidence at trial. The Plaintiff has proffered no basis that would warrant or permit admission of the Moya Affidavit in lieu of live testimony. This ruling is without prejudice to the Plaintiff's right to call Moya as a witness at trial for the purpose of eliciting relevant, admissible testimony.

2. **Defendant's Motion in Limine To Preclude Opinion Testimony from Lay Witness (Dkt. 63)**

DENIED. On its face, this motion appears to seek to constrain how the Plaintiff will be permitted to describe and characterize the emotional distress (and associated physical symptoms) he claims to have experienced as a result of the Defendant's allegedly discriminatory and retaliatory acts. The Defendant has proffered no authority that would support the imposition of the requested constraints on how the Plaintiff will be permitted to describe his own mental health. This ruling is without prejudice to the Defendant's right to object to testimony that the Plaintiff might seek to elicit from other witnesses concerning his emotional distress if such witnesses lack the knowledge or qualifications to give such testimony.

¹ All rulings set forth in this Order are based on pleadings submitted and arguments made to the Court to date. To the extent warranted, the Court's pretrial rulings are subject to reassessment in view of developments that may occur, or issues that might become more apparent, after trial begins.

3. **Defendant's Motion in Limine to Preclude Evidence Regarding Claims Outside of the Applicable Statute of Limitations Period and Failure to File MCAD Charge (Dkt. 65)**

ALLOWED IN PART/OTHERWISE RESERVED. To the extent this motion seeks to preclude the Plaintiff from asking the jury to award him damages for conduct that was not the subject of any MCAD charge or timely-filed claim, the motion is **ALLOWED**. This ruling is without prejudice, however, to the Plaintiff's right to seek to introduce evidence concerning Defendant's historical treatment of him to the extent such evidence is relevant and admissible to the discrimination and retaliation claims asserted in the operative complaint, including the Defendant's state of mind at the time it took the actions that underpin those claims. The Court will address and rule upon any objections to the latter type of evidence as and when such objections are asserted during trial.

4. **Defendant's Motion in Limine to Exclude, Prohibit, and/or Restrict Evidence Pertaining to Plaintiff's Speculation (Dkt. 67)**

ALLOWED IN PART/OTHERWISE RESERVED. To the extent this motion seeks to preclude the Plaintiff – as a trial witness – from offering speculative testimony about matters that lie outside his personal knowledge, the motion is **ALLOWED**. This ruling is without prejudice, however, to Plaintiff's right when he is acting as his own attorney – i.e., not providing sworn testimony from the witness stand – to comment on evidence (either admitted or anticipated) regarding which he might lack firsthand knowledge. The Court will address and rule upon any objections to comments by the Plaintiff that fall into the latter category as and when such objections are asserted during trial.

5. **Defendant's Motion in Limine to Preclude Evidence Regarding Settlement Negotiations or Communications (Dkt. 69)**

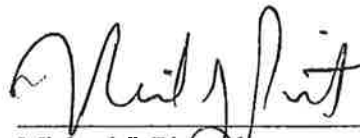
ALLOWED. Settlement discussions and offers to compromise (if any) are not admissible.

6. **The Parties' Proposed Voir Dire Questions**

The Court has considered the parties' submissions with respect to proposed voir dire questions and the empanelment process. The Court will separately circulate to the parties the questions it has approved for use during empanelment. To the extent the parties have proposed voir dire questions that go beyond the questions on the Court's approved list, or propose a process that deviates from the voir dire method the Court has stated it intends to utilize, such requests are **DENIED.**

SO ORDERED.

Dated: August 15, 2024



Michael J. Pineault
Associate Justice of the Superior Court

**Additional material
from this filing is
available in the
Clerk's Office.**