

April 29, 2024

By Email Only (jrosin@ohaganmeyer.com)

Jeffrey M. Rosin
O'Hagan Meyer
111 Huntington Ave, Ste. 719
Boston, MA 02199

Re: Your Letter Dated April 23, 2024

Dear Mr. Rosin,

This Office is Town Counsel in Hopkinton. I am in receipt of your demand letter, dated April 23, 2024, to Select Board Vice Chair Shahidul Mannan. This letter is the Town's response to the same.

Before responding to your client's claim of defamation in detail, I begin with a general point about the tone and tenor of your demand. Much of what you wrote is gratuitous or *ad hominem* attacks on Vice Chair Mannan. Those statements are also irrelevant to your client's claims. That invective is unnecessary to a legal discussion and reflects poorly on all involved. We will not respond to it, and we ask that you refrain from that commentary in the future. It serves no useful purpose.

Your letter alleges that Vice Chair Mannan has 1) defamed your client, and 2) violated the provisions of G.L. c. 93A. You demand that Mr. Mannan “immediately make a public statement retracting your accusations of racism” or you “will be forced to involve the courts to rectify your wrongs.”

I see no merit to your client's claims.

First, you premise your demand on mistaken facts. In your letter you say that “in the course of a speech at a Select Board Meeting on Tuesday April 16, 2024” that Select Board Member Mannan “claim[s] that HopNews, and Mr. Thomas ... are racist.” Vice Chair Mannan did not say this. He in fact said, in the context of enduring threats, harassment, and racial profiling directed to him and his family, that “These actions have been made all the more poignant by their visibility in local media - a town newspaper and solidified or normalized by the silence against such injustices.” Once again, Vice Chair Mannan never said that HopNews or Mr. Thomas are racist.

His actual statement concerned commentary on HopNews' Facebook page, posted by third parties, which were indisputably racist. In at least one instance, such a comment remained on the Facebook page for approximately two weeks.



I'm confident that we can all agree that portions of this comment are racist. Racism has no place in the Town's discourse. Your client agrees, as he noted in an April 19 updated to an April 18 article in HopNews, where he acknowledges the offending comment and announced that he would delete the comment, 15 days after it was posted.

As a Hopkinton-specific media source, allowing that comment to remain posted for an extended time indisputably made it "more visible" to the community. Mr. Mannan's statements were accurate. While HopNews may have no legal obligation to more quickly moderate its Facebook page commentary, Mr. Mannan was fully in the right to suggest that it *should* do so because neglecting to do it provides a platform for racism in Hopkinton. Again, and to be clear: this does not mean that HopNews or Mr. Thomas are racist, nor did Vice Chair Mannan say such. It simply means Mr. Thomas and HopNews should take more care, as a visible, local media platform, to act swiftly in the face of hateful speech that violates community norms.

Second, and even putting aside your letter's mistaken facts, the Vice Chair's statement was an opinion. Massachusetts courts have repeatedly said that "[s]tatements of pure opinion are constitutionally protected."¹ Those same courts have said -- when confronted with defamation claims based on accusations of racism -- that such words are non-actionable, constitutionally protected expressions of opinion.² But, again, Vice Chair Mannan's expression of his

¹ *E.g., King v. Globe Newspaper Co.*, 400 Mass. 705, 708 (1987).

² *See e.g., Santosus v. Valley Free Radio, Inc.*, 2011 Mass. App. Div. 120 (Dist. Ct. 2011) (email describing Defendant as having "Racist Attitudes [sic] and Behavior" and "alarmingly successful RACIST words and actions"); *Puccio v. Edwards*, No. 98-00065, 1999 WL 513895 (Mass. Super. Apr. 28, 1999) (described defendant as "a racist and a harasser" at a press conference); *Pircio v. Toland*, 53 Mass. App. Ct. 1101 (2001) (comments of the defendants interpreting the plaintiff's letter as racially insensitive or racist).

constitutionally-protected opinions did not even include an accusation that HopNews or Mr. Thomas are racist in the first place.

Third, you do not acknowledge in your letter that public officials like Vice Chair Mannan enjoy a conditional privilege for their statements.³ Public policy recognizes this privilege because public officials must be able to comment on important public issues without the threat of defamation suits. As you acknowledge in your letter, the Vice Chair's statements made his statement at a Select Board meeting in his official capacity, meaning that those statements are subject to this conditional privilege. Because of that conditional privilege, your client would need prove "actual malice" to succeed on a defamation claim against Vice Chair Mannan.⁴ Your letter states no basis and there is none to succeed in proving actual malice.⁵

Fourth, your letter fails also to allege a plausible claim under G.L. c. 93A, the Massachusetts Consumer Protection Act. "It is well established that governmental entities are not amenable to suit under c. 93A when they have engaged in governmental activity rather than trade or commerce."⁶ As the Vice Chair of the Town of Hopkinton Select Board, making statements at a Select Board meeting in his official capacity (all of which you have acknowledged), Vice Chair Mannan was indisputably engaged in governmental activity, not trade or commerce. Chapter 93A therefore does not apply to your client's claims.⁷

In sum and in short, your letter asserts *no plausible basis* for any actionable claim against Vice Chair Mannan or the Town. Not only did the Vice Chair not say what you allege, but his opinions are Constitutionally protected speech subject to a conditional privilege. And as government speech, Chapter 93A doesn't apply.

Finally, it is important to point out the most important item your letter overlooked. Mr. Mannan's comments about local media were an exceedingly small part of broader comments to the Hopkinton community about his personal experience and those of his family experiencing harassment and racial profiling. That message is critical. No one, including public officials or their families, should ever be subjected to those types of threats, harassment, or intimidation. The Vice Chair's message on this point *must not be overshadowed* by your client's misunderstanding concerning the nature of the Vice Chair's statement.

It is the Vice Chair's hope that this matter will end with your letter and this response. There is important work to be done on creating an anti-racist movement in our community. Vice Chair Mannan's statements are an important part of giving a governmental platform to this discussion. HopNews, as a media source for the community, is also a contributor to this discussion. It is the Vice Chair's hope that all parties can let this matter end and direct our collective energies – as

³ See, e.g., *Mulgrew v. City of Taunton*, 410 Mass. 631, 635, (1991) (citations omitted) ("Statements made by public officials while performing their official duties are conditionally privileged.").

⁴ *Mulgrew*, 410 Mass. at 636; *Tosti v. Ayik*, 386 Mass. 721, 723 (1982).

⁵ Apart from the conditional privilege, your client's claims would further be subjected to an "actual malice" requirement because, HopNews and Peter Thomas are limited public figures under these particular circumstances.

⁶ *M. O'Connor Contracting, Inc. v. City of Brockton*, 61 Mass. App. Ct. 278, 284 (2004).

⁷ There are other deficiencies to your Chapter 93A claims. But there is no reason to discuss them given the clearly established caselaw that government activity is not trade or commerce.

members of the Hopkinton community – to ensuring that hate and racism are eradicated from our community.

Sincerely,

A handwritten signature in black ink that reads "Bryan Bertram". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bryan Bertram
Andrew Bettinelli

cc: E. Lazarus
Select Board