

City of Chicago
COMMISSION ON HUMAN RELATIONS

ADJUDICATION DIVISION

2006 Activity
Concerning Discrimination Cases
filed under the
Chicago Human Rights Ordinance
and
Chicago Fair Housing Ordinance



Chicago Commission on Human Relations
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City of Chicago
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Adjudication of Discrimination Complaints

The Enabling Ordinance of 1990 gave the reorganized Commission on Human Relations powers to enforce the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance. These powers are exercised through the Adjudication Division. The work of the Division is:

- To receive and investigate complaints of discrimination in violation of the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance.
- To facilitate the settlement of cases, where possible.
- To determine, after investigation and hearing, whether discrimination occurred in violation of the City of Chicago ordinances.
- To order remedies if the complainant proves at a hearing that discrimination has occurred.

The orders of the Commission's Adjudication Division carry the force of law. The cooperation of the alleged violator in any case where discrimination has been alleged is mandatory, and the Commission has powers of subpoena, default, and negative inference to support its investigations. If the Commission rules, after an administrative hearing, that discrimination occurred, it has the power to order injunctive relief as well as the payment of out-of-pocket damages, emotional distress damages, punitive damages, attorney's fees and costs, and fines.

The role of the Adjudication Division is neutral. It does not serve as either side's lawyer, advisor, or advocate. It is not a prosecutor of the case. It does not take the side of either the complainant (the person who filed the complaint) or the respondent (the alleged violator).

Adjudication on the Web

See the Commission on Human Relations web site at www.cityofchicago.org/humanrelations for more information about the discrimination ordinances and their enforcement, including –

- The Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance
- The Commission on Human Relations Enabling Ordinance
- The Rules and Regulations governing enforcement of these ordinances
- Information on how to research Commission case law
- *A Board Rulings Digest* summarizing decisions about violations and remedies ordered
- A complaint form and other frequently-used forms for complainants and respondents
- *A Guide to Discrimination Complaints* in English and Spanish
- Tips to help complainants prepare and file a complaint
- Tips to help respondents respond to a complaint
- Information about other discrimination laws and enforcement agencies

What is Discrimination?

In general, to prevail in a discrimination case under the City of Chicago ordinances, a complainant must be able to prove by a preponderance of the evidence that:

- The complainant was subjected to adverse treatment by a covered individual, business, or government entity (the respondent).
- This conduct was based on the complainant's status in one or more of these protected categories:

| | | |
|-----------------|--------------------|---------------------------|
| Race | Sex | Age |
| Color | Sexual Orientation | Disability |
| National Origin | Gender Identity | Source of Income |
| Ancestry | Marital Status | Military Discharge Status |
| Religion | Parental Status | |

- The conduct was in one of the following covered areas:

| | |
|------------|--------------------------------|
| Housing | Public Accommodations |
| Employment | Credit or Bonding Transactions |

- The adverse action took place in the City of Chicago.
- The complainant filed the complaint within 180 days of the alleged discriminatory action.
- The complainant was treated differently *because of* his or her protected status, and not for other legitimate, non-discriminatory reasons.

Filing a Discrimination Complaint

Adjudication intake staff are available during business hours to answer inquiries about filing a complaint under the Chicago Human Rights Ordinance or Chicago Fair Housing Ordinance. Those interested should telephone 312/344-4111. Intake staff assist the public with preparation of complaints on a walk-in basis or provide forms for self-preparation of complaints and filing by mail. There is no filing fee.

A complaint form, along with additional information about the ordinances and the adjudication process, can be found on the Commission's web site: www.cityofchicago.org/humanrelations.

How Cases Proceed

People who believe they have been subjected to discrimination as defined in the City of Chicago ordinances must file written complaints with the Commission following a prescribed form. Once they do so, the Commission requires each respondent to provide a written response and to submit requested documents and information. A Commission investigator then gathers any additional evidence which may be needed to assess whether there is substantial evidence of an ordinance violation. This is typically accomplished by interviewing the parties and any pertinent witnesses, and by examining relevant documents or sites. The investigator may seek information about the experiences of other people whose situations are comparable to the complainant's. The Commission has subpoena power as well as default, dismissal, and negative inference sanctions which enable it to obtain evidence at the investigation stage.

The investigator will also talk with the parties about whether they wish to try to settle the case before the investigation is completed. Settlement is voluntary. The investigator does not propose or advocate particular settlement terms, but may write up the agreed terms of settlement for the parties' signature.

If the case does not settle or otherwise close at the pleading stage, the investigator completes any additional evidence-gathering that may be needed and writes a report summarizing the evidence.

Commission senior staff then determine whether or not there is substantial evidence of discrimination. A finding of "substantial evidence" does not mean that the complainant has won the case, only that there is enough evidence of a violation for the case to go forward. If the Commission finds that there is not substantial evidence of an ordinance violation, it dismisses the case. The complainant may request a review of the dismissal.

If the Commission finds that there is substantial evidence of discrimination (or retaliation of applicable), it holds a mandatory conciliation conference in a further effort to promote voluntary settlement. If the parties do not reach a settlement, the Commission holds an administrative hearing.

The administrative hearing is a trial, but somewhat less formal than in a court. A hearing officer, who is an attorney appointed by the Commission, presides over the hearing and manages the hearing process. The Commission does not prosecute the case or represent the complainant at this hearing. It is entirely the complainant's responsibility to prove the case and to prove entitlement to injunctive and monetary relief as well as attorney fees and costs. Pre-hearing discovery and subpoena procedures are available to the parties to aid in obtaining evidence to support their positions.

Based on the Hearing Officer's recommendation and the hearing record, the Board of Commissioners makes the final determination as to whether the complainant has proved that the respondent has violated the Chicago Human Rights Ordinance or Chicago Fair Housing Ordinance. If the Board rules that there has been a violation, it also determines what relief will be awarded to the complainant.

Commission final orders awarding or denying relief have the force of law, can be appealed to the state court on a common law *certiorari* petition, and are enforceable by obtaining a state court judgment.

Annual Summary of Adjudication Division Activity

| | Housing | Employment | Public Accommodation | Credit | TOTAL |
|--|---------|------------|-------------------------|--------|-------|
| COMPLAINTS FILED | 54 | 93 | 73 | 1 | 221 |
| Staff-Assisted | 24 | 70 | 59 | 0 | 153 |
| Self-Prepared | 30 | 23 | 14 | 1 | 68 |
| | | | | | |
| CASES FORWARDED TO HEARING STAGE | 29 | 12 | 22 | 0 | 63 |
| Substantial Evidence | 27 | 11 | 16 | 0 | 54 |
| Default (at investigation stage) | 2 | 1 | 6 | 0 | 9 |
| | | | | | |
| CASES CLOSED | 104 | 185 | 141 | 3 | 431 |
| Settled | 33 | 47 | 56 | 0 | 136 |
| Complainant Withdrew Case | 12 | 14 | 14 | 1 | 41 |
| Complainant Failed to Cooperate | 26 | 38 | 10 | 0 | 74 |
| Lack of Jurisdiction | 2 | 3 | 2 | 0 | 7 |
| No Substantial Evidence | 28 | 78 | 55 | 2 | 163 |
| Ruling After Hearing | 2 | 4 | 4 | 0 | 10 |
| | | | | | |
| REQUESTS FOR REVIEW after involuntary dismissal | 7 | 11 | 1 | | 19 |
| Denied | 5 | 10 | 1 | | 16 |
| Granted | 2 | 1 | 0 | | 3 |

Although the number of new discrimination complaints filed in 2006 was relatively low compared to previous years, the number of cases completed remained strong and resulted in a significant reduction of average investigator caseloads and the number of delayed investigations. As detailed below, more full investigations were completed in 2006 than in previous, which resulted in more substantial evidence findings and hence more cases going forward to the hearing stage. With settlement levels also remaining strong, overall 2006 was a year of intensive, effective ordinance enforcement activity.

Discrimination Bases Claimed in Complaints Filed

| PROTECTED CLASSES | Hsng. | % | Empl. | % | Public Accom. | % | Credit | % | Total Claims | % |
|--------------------------|-------|-----|-------|-----|---------------|-----|--------|------|--------------|-----|
| Race | 19 | 35% | 35 | 38% | 32 | 44% | 1 | 100% | 87 | 39% |
| Color | 6 | 11% | | | 7 | 10% | 1 | 100% | 14 | 6% |
| National Origin | 6 | 11% | 19 | 20% | 1 | 1% | | | 16 | 7% |
| Ancestry | | | 14 | 15% | | | 1 | 100% | 14 | 6% |
| Religion | 3 | 6% | 2 | 2% | | | | | 5 | 2% |
| Sex | 5 | 9% | 29 | 31% | 7 | 10% | | | 41 | 19% |
| Sexual Orientation | 2 | 4% | 10 | 11% | 3 | 4% | | | 15 | 7% |
| Gender Identity | | | | | 5 | 7% | | | 5 | 2% |
| Marital Status | 4 | 7% | 2 | 2% | | | | | 6 | 3% |
| Parental Status | 2 | 4% | 3 | 3% | | | | | 5 | 2% |
| Age | 5 | 9% | 27 | 29% | 3 | 4% | | | 35 | 16% |
| Disability | 13 | 24% | 15 | 16% | 29 | 40% | 1 | | 58 | 26% |
| Source of Income | 28 | 52% | 1 | 1% | 2 | 3% | 1 | | 32 | 14% |
| Military Discharge | | | | | | | | | 0 | 0% |
| Retaliation ¹ | 2 | 4% | 4 | 4% | 2 | 3% | | | 8 | 4% |
| TOTAL COMPLAINTS | 54 | X | 93 | X | 73 | X | 1 | X | 221 | X |

The percentage figures in the chart above show the percentage of *complaints* containing a *claim* of discrimination on the basis named. A complaint may claim discrimination on more than one basis (e.g. sex and age) arising out of the facts alleged.

As in prior years, race was the discrimination basis most frequently claimed (in 39% of all new complaints), followed by disability (26%), sex (19%), and age (16%). Sexual orientation discrimination claims declined somewhat (in 7% of all new complaints compared to 13% in 2005).

Source of income was again the most frequently-named basis in housing discrimination complaints (in 52% of new complaints, and usually involving Section 8 vouchers), followed by race (35%) and disability (24%). Fewer marital and parental status housing discrimination claims were received in 2006 compared

¹Retaliation is prohibited in the Chicago Human Rights Ordinance but not in the Chicago Fair Housing Ordinance. Therefore, retaliation claims in housing discrimination cases are dismissed without investigation.

to 2005, (2% and 3% compared to 11% and 9% in 2005), as well as fewer sexual orientation discrimination claims involving housing (4% compared to 25% in 2005).

In public accommodation discrimination complaints, race discrimination claims (in 44% of new complaints) slightly exceeded disability discrimination claims (40%), the latter of which most often involve wheelchair accessibility of retail businesses. These two bases remained predominant for public accommodation cases.

In new employment discrimination complaints, race (in 38% of new complaints), sex (31%), and age (29%) were the bases most frequently named, with national origin (20%), disability (16%), ancestry (15%), and sexual orientation following.

Gender identity discrimination, the most recently added basis, was claimed in five public accommodation discrimination complaints filed in 2006. That basis was named mainly in the public accommodation area in 2005 as well, at four complaints with one complaint each in housing and employment discrimination.

Substantial Evidence Determinations

The data below covers only those cases in which a determination of either “substantial evidence” or “no substantial evidence” of discrimination (or retaliation) was made after a full investigation. A finding of substantial evidence means there is sufficient evidence, if believed, to support a finding that an ordinance violation. Such a finding allows the case to go forward to mandatory conciliation, then to an administrative hearing and Board of Commissioners ruling if the case does not settle.

| | Housing | Employment | Public Accommodation | Credit | TOTAL |
|---------------------------|---------|------------|----------------------|--------|-------|
| Substantial Evidence | 27 | 11 | 16 | 0 | 54 |
| No Substantial Evidence | 28 | 78 | 55 | 2 | 163 |
| TOTAL FULL INVESTIGATIONS | 55 | 89 | 71 | 2 | 217 |

The total number of completed full investigations nearly doubled in 2006, to 217 compared to 130 in 2005. The proportion of them which resulted in a substantial evidence finding remained stable at 25%. With another 9 cases moving to hearing based on an order of default, this means that 15% of dispositions of the investigation stage resulted in the case going forward to the hearing stage.

These figures do not cover all cases which the Commission completed in 2006. The majority of cases are settled, withdrawn, or dismissed for other reasons before completion of a full investigation. However, in 2006, 47% of dispositions of the investigation stage were based on a completed investigation and determination, compared to 30% in 2005 and 20% in 2004.

Settlements

A high percentage of discrimination cases conclude by means of settlements between the parties. Complainants as a group obtain a great deal more monetary and other relief through settlements than through orders issued after administrative hearings. In 2006, 32% of closed cases were resolved by settlement, compared to 1% concluded with liability findings and orders for relief.

Settlement is voluntary between the parties and may occur at any stage of the investigation and hearing process. In 2006, 77% of settlements occurred at the investigation stage and 23% at the hearing stage (that is, after a finding of substantial evidence or order of default). When cases settle, the respondents do not admit liability and the Commission makes no determination as to whether a violation occurred. The Commission is not a party to the settlement and does not require or advocate particular settlement terms. However, Commission staff, conciliators, and hearing officers do encourage and facilitate settlement.

Individual settlement terms vary and, because many cases settle privately between the parties, the Commission often does not know the terms of settlements including their monetary value to complainants. In the interest of promoting settlement in the future, the Commission does not announce or publicize the terms of particular settlements, although parties may choose to do so if they have not agreed to the contrary as part of the settlement terms.

Rulings After Administrative Hearings

The Board of Commissioners issued ten rulings in discrimination cases in 2006, based on an administrative hearing conducted by an independent hearing officer who issued a recommended decision. The rulings are summarized below. Six were in favor of Complainants and four were in favor of Respondents. In the rulings for Complainants, the Board ordered a total of \$15,802 in damages and \$2,500 in fines.

Employment Discrimination Cases

Jackson v. MYS Development, Inc. et al., CCHR No. 01-E-41 (Jan. 18, 2006)
Discrimination Claimed: Race

The Board found no race discrimination where an African-American construction worker claimed he was not recalled from layoff because of his race but failed to establish a *prima facie* case of discrimination including that he was not recalled, that there was an open position for which he qualified when he sought re-employment, that at layoff his performance met the employer's legitimate expectations, or that similarly situated non-African-American employees were rehired.

Poole v. Perry & Associates, CCHR No. 02-E-161 (Feb. 15, 2006)
Discrimination Claimed: Sex (Pregnancy)

The Board found no pregnancy-related sex discrimination where no evidence established that Respondent knew Complainant was pregnant when it decided to discharge her. Complainant's corroborating witness was found not credible and Respondent documented that it began a search for Complainant's replacement before she became pregnant, due to dissatisfaction with her work

performance. There was no evidence Respondent treated Complainant differently or intensified its search for her replacement after allegedly being informed of the pregnancy.

Hampton v. Financial Strategy Network, LLC, CCHR No. 01-E-2 (Apr. 19, 2006)
Violation Found: Retaliation

The Board ruled that Complainant's former employer retaliated against her for filing a discrimination complaint at the Commission by refusing to pay the severance unconditionally offered when her employment was terminated and directly stating as the reason that Complainant had filed discrimination complaints about the termination so they had to go through their insurance company and attorney. However, the Board found no denial or miscalculation of a second bonus payment as Complainant claimed. The Board awarded the unpaid severance pay of \$1,042 plus interest from the next regular pay date after termination, and imposed a \$500 fine.

Ingram v. Got Pizza, CCHR No. 05-E-94 (Oct. 18, 2006)
Discrimination Claimed: Race, Age

After an order of default, the Board found that a 45-year-old African-American pizza delivery driver did not establish a *prima facie* case of discrimination because he failed to prove his discharged was due to either his race or his age. After Complainant's car broke down while making deliveries, the white manager became angry and did not pay Complainant the extra money he had promised for working that day, then failed to respond to Complainant's calls seeking to be returned to the work schedule. Complainant acknowledged that other delivery drivers were of all ages and provided no evidence to show that he was treated less favorably than other drivers in similar circumstances due to his race or age.

Housing Discrimination Cases

Torres v. Gonzales, CCHR No. 01-H-46 (Jan. 18, 2006)
Discrimination Found: Source of Income

After an order of default, the Board ruled that Complainant established a *prima facie* case of discrimination based on source of income where a landlord accepted her security deposit and signed her Section 8 moving papers, then failed to appear for four scheduled inspection appointments, rented to others, and told Complainant he did not want to deal with Section 8 "mumbo jumbo." Recognizing the Complainant's vulnerability as a low-income single parent with young children and her visible distress at the hearing over what had occurred, the Board awarded \$5,000 for emotional distress and \$5,000 in punitive damages, plus out-of-pocket damages of \$567.60 for furniture storage, \$128 for rental of a post office box, \$200 for travel expenses while Complainant and her three children lived out of town with her father and searched for other housing, \$310 for moving expenses because the discrimination required Complainant to move twice, \$50 for the higher security deposit paid for the housing she found, and \$404 as rent differential. Compensation for property damage during the extra move was denied for lack of evidence linking it to the discrimination, and compensation for work days missed for hearings was denied for lack of evidence to support the amount requested. The Board also imposed a fine of \$500.

Marshall v. Borouch, CCHR No. 05-H-39 (Aug. 16, 2006)
Discrimination Found: Race

After an order of default, the Board ruled that Complainant established a *prima facie* case of race discrimination where her former landlord refused to return her security deposit as promised. Complainant, who is African-American, testified that the landlord had returned security deposits of white tenants and during her tenancy had referred to Complainant and her children as “you people” and also accused them of bringing bugs into the building. When Complainant telephoned several times about her security deposit refund, the landlord spoke to her only in Polish, although she could speak English, and hung up on her. The Board awarded \$1,100 in out-of-pocket damages, the amount of the security deposit, and imposed a fine of \$500.

Public Accommodation Discrimination Cases

Long v. Chicago Public Library et al., CCHR No. 00-PA-13 (Jan. 18, 2006)
Discrimination Claimed: Religion

The Board found no discrimination based on religion where Complainant was ejected from a branch library after being discovered sleeping, contrary to posted rules. Complainant's testimony that the head librarian told him, "We don't want any Jews like you in the library" was found not credible and no other evidence established that Respondents knew Complainant to be Jewish.

Maat v. Villareal Agencia de Viajes, CCHR No. 05-P-28 (Aug. 16, 2006)
Discrimination Found: Disability

After an order of default, the Board found that a wheelchair user established a *prima facie* case of disability discrimination through testimony that she sought to enter the storefront travel agency to utilize its services after hearing it had good rates, but could not enter due to steps at the entrance. She had traveled there via a paratransit service that was not due to pick her up for two hours, and 90-degree heat that day aggravated a respiratory condition. The Board awarded \$1,000 as emotional distress damages and levied a fine of \$500. As injunctive relief, the Board ordered Respondent to eliminate physical barriers to access to its business premises or, if unable due to undue hardship, to provide alternative reasonable accommodations and a conspicuous notice at its entrance informing wheelchair users how to access the same services.

Maat v. El Novillo Steak House, CCHR No. 05-P-31 (Aug. 16, 2006)
Discrimination Found: Disability

After an order of default, the Board found that a wheelchair user established a *prima facie* case of disability discrimination through testimony that she sought to enter the storefront restaurant to eat while waiting for a ride home but could not do so due to a step at the entrance. The Board awarded \$1,000 as emotional distress damages and imposed a fine of \$500. As injunctive relief, the Board ordered Respondent to eliminate physical barriers to access to its business premises or, if unable due to undue hardship, to provide alternative reasonable accommodations and a conspicuous notice at its entrance informing wheelchair users how to access the same services.

Blakemore v. Dominick's Finer Foods, CCHR No. 01-P-51 (Oct. 18, 2006)
Discrimination Found: Race (Decision on relief is pending)

The Board found race discrimination where an African-American supermarket customer was closely followed by a security guard as he shopped, even though store policy required the guard to use a video surveillance system to monitor customer activity and prohibited following customers. The Board found the store failed to articulate a legitimate, non-discriminatory reason for the guard's conduct, supporting an inference that Complainant's race was a factor.

Other Hearing Stage Activity

Post-investigation adjudication activity increased in 2006. At year-end, the Commission's docket included 23 cases scheduled for a mandatory conciliation conference plus 27 cases in the administrative hearing or ruling process, for a total of 50 cases pending in post-investigation proceedings compared to 34 such cases at the end of 2005.

In addition to the Board rulings described above, 21 cases were resolved by settlement in the context of the mandatory conciliation conference which is held if a Commission's investigation results in a finding of substantial evidence of an ordinance violation. These settlements made it unnecessary to schedule an administrative hearing. There were six such settlements at conciliation in 2005.

Another 12 cases were settled during the administrative hearing or pre-hearing process in 2006, compared to 8 in 2005. As a result of these settlements, full administrative hearings and Board rulings were not necessary. Four more cases which had been sent forward to the hearing stage were dismissed due to complainant withdrawal or failure to appear for scheduled proceedings.

Reduction of Investigation Backlog

The Commission remains concerned about the length of time it has taken to complete most full investigations of complaints in recent years. Fortunately, in 2005 and 2006 the Adjudication Division made substantial progress in reducing both the volume of pending investigations and the size of investigator caseloads. By the end of 2006 the number of pending investigations was reduced to 464, compared to 796 at the end of 2004. The number of investigations pending for more than one year fell from 528 to 318. With the filling of vacant positions, average investigator caseloads dropped from 72 to 46 during the two-year period. Although these reduced levels are still too high, such progress means that control of the backlog by the end of 2007 is a target within reach if present conditions continue. The Commission is continuing its intensive efforts to complete older investigations and prevent future buildup, with the goal that most investigations are completed within a few months of complaint filing.