City of Chicago
COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF:

Robert Lanham
Complainant,
v.

Logan Square Chamber of Commerce
Respondent.

Case No.: 16-P-12

Date of Ruling: June 8, 2017

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On March 9, 2016, Complainant Robert Lanham (hereinafter "Complainant" or "Lanham") filed a *pro se* complaint against Respondent Logan Square Chamber of Commerce (hereinafter "Respondent" or "Chamber of Commerce") alleging the Respondent had discriminated against him in the use of a public accommodation. Specifically, Complainant alleged that he has a disability (post-traumatic stress disorder or "PTSD") and uses a service animal. C., par. 1.[1] Complainant alleged that on February 28, 2016, he had attempted to enter Respondent's indoor farmers' market located at 2755 N. Milwaukee Avenue, Chicago, Illinois. C., par. 2. However, upon arriving at the farmers' market, Complainant alleged that he and his service animal were blocked from entering the farmers' market by Paul Levin, the executive director of the chamber of commerce. C. par. 4. Complainant did not specify the kind of relief he sought in his Complaint.

On April 27, 2016, the Commission sent Respondent an Order to Respond to the Complaint and a Notice of Potential Default; Respondent was to respond by May 11, 2016, or face an Order of Default. Respondent filed its Answer to the Complaint and Affirmative Defenses on April 27, 2016.

In its Amended Response, Respondent admitted that Complainant came to the farmers' market on February 28, 2016, and that a dog accompanied Complainant. R., par. 2.[2] Respondent admitted that Executive Director Paul Levin "confronted" Complainant about bringing a dog on the premises and asked Complainant and his dog to leave the farmers' market. R., par. 4 and 5. Respondent said Complainant was asked to leave because Complainant had become loud and belligerent. R., par. 5. Respondent admitted that Complainant was accompanied to the farmers' market by his wife, who sought out another Chamber of Commerce employee, told the employee that Complainant was a veteran who was allowed to have his dog with him at the farmers' market, and asked that the employee look up the law on veterans and dogs. R. pars. 8-11

[1] "C" refers to Complainant's Complaint.
[2] "R." refers to Respondent's Answer and Affirmative Defenses.

Respondent claimed affirmative defenses, including: Complainant failed to claim facts sufficient to state a cause of action or to support damages or attorney's fees; Respondent acted in good faith and with reasonable grounds for believing it had not violated federal, Illinois or local laws; Complainant's claim is barred under the doctrines of ratification, acquiescence or unclean hands; the claim is barred because Complainant failed to inform Respondent of the statutory violations at the time the alleged violations occurred; Complainant failed to mitigate damages; and Respondent did not act with discriminatory motivation and/or actions were taken against Complainant for independent lawful reasons.

On June 30, 2016, the Commission issued an Order Finding Substantial Evidence, and ordered the matter to proceed to an administrative hearing. On July 11, 2016, the Commission issued an Order Appointing Hearing Officer and Commencing Hearing Process. The pre-hearing conference was scheduled for August 11, 2016. The Order specified that requests for production of documents were due on September 12, 2016.

No requests for documents were filed by either party. No subpoena requests were filed by either party.

After Complainant was granted continuances of the pre-hearing conference because he would be out of town on business, a pre-hearing conference was held on October 21, 2016. Complainant appeared *pro se*. Respondent was represented by counsel. Both parties filed pre-hearing memoranda.

On January 19, 2017, an administrative hearing was held in this matter. Complainant appeared *pro se* with his dog. Complainant's wife was unable to attend the hearing due to a death in the family. Complainant was told he could ask for a continuance, but declined. Respondent appeared and was represented by an attorney. At the close of the hearing, the hearing officer determined that no post-hearing briefs would be allowed.

On March 9, 2017, the hearing officer issued a Recommended Ruling on Liability and Relief. Respondent filed objections to the Recommended Ruling, which were considered in reaching this Final Ruling.

II. FINDINGS OF FACT

Complainant Robert Lanham

1. Complainant has post-traumatic stress disorder ("PTSD"). C., par. 1, Tr., p. 19. Complainant also has bad knees due to injuries while in the military. Tr. pp. 17, 19. Complainant was in the military from 1981 to 1990; his unit was sent overseas but he could not reveal the location or whether he was in combat. Tr. pp. 26-27. He was diagnosed with PTSD after his discharge from the military. Tr. p. 27.

2. Complainant is an electrical engineer. Tr. pp. 20, 24. He obtained his B.S. degree in electrical engineering in 1990 from DeVry University. Tr. p. 24. He worked for himself, doing

contract work. Tr. pp. 22, 25. He did contract work because it allowed him to work from home which was easier for him. Tr. p. 22. He wrote programs and did automation. Tr. p. 22.

3. Complainant and his wife also are developing a business selling products, including a spice-infused Himalayan salt which is used for cooking. Tr. pp. 14, 25.

4. Complainant has an animal, an Alaskan Malamute dog named Ruby, to act as his service animal and to assist him with dealing with the effects of PTSD and the knee injuries. Tr. pp. 17 -19. Ruby has been Complainant's service dog for the past few years. Tr. p. 25-26. Prior to that time, Complainant had another service dog for 14-15 years. Tr. p. 29.

5. Complainant and Ruby were both trained in the use of a service animal. Tr. p. 17-19. Ruby was trained to respond to key factors she senses in Complainant. Tr. p. 17. Ruby also acted as a brace for Complainant's knee injuries. Tr. p. 17. If Complainant were to lose his balance, Ruby was trained to sit in a certain way to allow Complainant to balance on the dog and get up. Tr. p. 18. Ruby was trained to touch Complainant if Complainant is under stress; if Complainant is overwhelmed, Ruby was trained to touch his face. Tr. p. 18. On the street, Ruby acted as a barrier and cover between Complainant and other people. Tr. p. 19. Ruby was trained to pull Complainant out of situations the dog feels are stressful. Tr. p. 22.

6. All of Ruby's licenses as a service dog are from private organizations. Tr. p. 73. The U. S. Department of Veteran's Affairs does not license service animals. Tr. p. 73.

7. Ruby wore the same vest on February 28, 2016, and at the hearing. Tr. pp. 15, 36. At the hearing, the Complainant described the dog's equipment in response to questions from Respondent's attorney. The vest was red. The vest had tags or identification on it. Tr. p. 36. One tag said, "U.S. Army." Tr. p. 36. On the right shoulder, the vest said, "service dog, access required," and had a plastic or metal tag pinned to it that said, "access is required." Tr. p. 36. The vest also stated, "Service dog must be permitted by federal law. For access problems, contact the U.S. Department of Justice at 1-800-524-0301." The dog had a regular dog collar and another collar inscribed with "service dog" on the left and "ask to pet" on the right. Tr. p. 36. The dog had a short harness and a long cloth leash. Tr. 36. Complainant noted that the Department of Justice tag was new; it had been ordered before the February 28, 2016, incident and received afterward. Tr. p. 35. The "ask to pet" collar was new; Complainant had added it to prevent people from petting without asking when the dog was working. Tr. p. 37. Complainant noted that the picture he submitted with his pre-hearing memorandum showed Ruby with an airline tag which was usually removed when Complainant was not flying. Tr. p. 40. Ruby was not wearing the airline tag on the day of the hearing, but had been wearing it on February 28, 2016. Tr. p. 40. The harness had a new loop on the date of the hearing. Tr. p. 41. Resp. Exh. 1.[3]

8. Ruby was present throughout the hearing. The hearing officer observed that whenever Complainant needed time to gather himself to answer questions (deep breathing at some points), Ruby would react. Sometimes Ruby would move near Complainant's face. Sometimes the dog would lick Complainant's face repeatedly until Complainant said he was okay. The face licking occurred at least three times. Otherwise, Ruby sat on the floor by Complainant's side.

[3] "Resp. Exh." refers to exhibits introduced by Respondent.

9. On February 28, 2016, Complainant and his wife went to Respondent's indoor farmers' market to see if the market was an appropriate place to sell the products he and his wife were selling as part of their business; they carried some of the product with them. Tr. pp. 20, 25, 45. It was the Complainant's first visit to this farmers' market. Tr. p. 44. Complainant did not know that the farmers' market offered prepared food. Tr. p. 49. Complainant and his wife were determining how many farmers' markets they could get involved with to promote their product. Tr. pp. 25, 45. Complainant's wife had called the day prior to determine what was required to become a vendor at the farmers' market. Tr. 45. Ruby was with Complainant and his wife on February 28, 2016. Tr. p. 15.

10. When Complainant entered the farmers' market, he saw a sign that said, "No dogs allowed." Tr. p. 51. Complainant said he did not understand that sign to apply to Ruby because it meant no pets and he had a service dog. Tr. p. 52.

11. As Complainant, his wife, and Ruby entered, the security guard at the door (later identified by Complainant as Eric Cruz), said no dogs were allowed. Tr. p. 15. Complainant pointed to the dog's vest, and Mr. Cruz allowed them to enter; no words were spoken. Tr. p. 15.

12. Complainant was wearing his glasses on February 28, 2016; the glasses have photogray, so they turn dark when Complainant is outside. Tr. p. 48.

13. After Complainant, his wife, and Ruby were about four steps into the farmers' market, they were approached by Paul Levin, the executive director of the Chamber of Commerce. Tr. pp. 15, 50; C. par. 4. Levin told Complainant no dogs were allowed and that the City of Chicago did not allow dogs in the farmers' market. Tr. pp. 15, 50. Complainant pointed to the dog's vest as he had at the front door, said "service," and proceeded to continue to walk into the market, thinking it was okay. Tr. pp. 15-16, 50, 51. Complainant characterized the initial encounter as "friendly," but said it "turned bad." Tr. p. 49. Levin once again blocked Complainant's path, standing with crossed arms, not allowing Complainant to move forward. Tr. p. 16, 54. Levin kept saying that Complainant could not enter, and Complainant kept saying he had a right to enter with his service animal. Tr. p. 54. Levin and Complainant exchanged "very colorful" words. Tr. p. 16. Complainant admitted that he probably used the work "fuck" in a conversation with Levin, but said it would not have been loud because he is never loud. Tr. 32-33, 52. Complainant asked Levin if he is a veteran because he thought if Levin is a veteran he would understand and relate to Complainant better. Tr. p. 34. Complainant recalled Levin using the work "fuck" as well. Tr. p. 35.

14. Levin refused to accept Complainant's explanation that Complainant needed a service animal and insisted "roughly" that Complainant leave. Tr. p. 16. Complainant's wife explained that Complainant is a veteran and that he needed a service animal who goes everywhere with him, but Levin did not accept that answer. Tr. p. 16. Complainant was irritated and left. Tr. p. 16.

15. Complainant said that Ruby goes everywhere with him. Tr. p. 20. Ruby accompanied Complainant to a Time Out Chicago event where toasted cheese sandwiches were being prepared the weekend prior to the hearing. Tr. p. 20. The security guards there were off-duty Chicago

Police; they looked at Ruby's vest and let them in. Tr. pp. 20-21. Complainant and Ruby have gone to many farmers' markets, the Ferris Wheel at Navy Pier, restaurants, a Disney theme park, and airplane rides. Tr. pp. 21, 45. Employers have allowed Complainant to have his service dog with him at the job. Tr. pp. 27-28.

16. Sometimes when Complainant enters an establishment with his dog, the establishment does not know how to respond. Tr. p. 30-31. If the employees of the establishment are open to being educated, Complainant will try to educate them on service animals. Tr. p. 30-31. If an employee does not understand, Complainant will ask for the manager, who usually understands his right to enter with a service animal. Tr. p. 31. Sometimes the establishment does not want to be educated, but Complainant has never been refused entry. Tr. p. 31. Usually Complainant's wife explains about Complainant using a service animal and why he should be allowed to enter. Tr. p. 32.

17. Complainant and his wife took the City of Chicago training for a food preparation license for their business. As part of that training, Complainant learned that pets are not allowed around food preparation, but service and emotional support animals are allowed. Tr. p. 144.

18. Complainant has gone to nine other farmers' markets with Ruby and has not had any problems entering into those markets with the dog. Tr. p. 46-47. Someone at the door of those farmers' markets would look at Ruby's vest and tell him to go ahead in. Tr. p. 46. In response to Respondent's question, Complainant said he had never used the work "fuck" in those markets. Tr. p. 48.

19. For a few days after the incident, which occurred on a Sunday, Complainant refused to do anything; his wife had to force him to go outside. Tr. p. 56. He was supposed to be at a customer's site. Tr. p. 57. He did not report to that contract site and then had to find another job. Tr. p. 58. He did not get another contract until March or April, 2016. Tr. p. 58. He normally makes $50 and $70 an hour for his contract work. Tr. p. 58. Complainant did not submit any documentary evidence to support lost work. Tr. p. 59.

20. Complainant based his claim for $25,000 in damages on what lawyers told him was fair and reasonable. Tr. p. 60.

21. Complainant had been seeing two psychiatrists; these medical visits began before the February 28, 2016, incident. Tr. p. 62-64.

22. On July 28, 2016, and September 9, 2016, Complainant submitted two requests for continuances for the same date based on work commitments. Tr. pp. 67-70. In both he stated that he had a contract job and needed to be out of town on the date set for the pre-hearing conference. Tr. p. 70.

23. At the hearing, Complainant said he was working on contracts and was resolving the issues from the February 28, 2016, incident. Tr. p. 71.

Respondent

Eric Cruz

24. On February 28, 2016, Eric Cruz was at Respondent's indoor farmers' market. Tr. p. 76. On February 28, 2016, he was a volunteer; he was an employee at the time of the hearing. Tr. p. 76-77. At the time of the incident, Cruz was unaware of any policy issued by Respondent about pets being allowed into the farmers' market, and did not have any conversations with any of Respondent's employees about such a policy. Tr. p. 77.

25. When Cruz saw Complainant, Complainant was with his wife and dog. Complainant was wearing dark glasses that appeared mirrored and Cruz could not see his eyes. Tr. p. 78. Cruz thought Complainant was blind and that Ruby was a seeing-eye dog. Tr. p. 79.

26. When Complainant, his wife and dog entered, his wife entered first. Cruz said to Complainant that the farmers' market did not allow dogs. Cruz cannot remember if Complainant said anything verbal or just pointed to the dog. Tr. p. 81. Cruz then acknowledged by viewing the dog that the animal was an "assisted" dog; that satisfied Cruz and he asked no follow-up questions. Tr. pp. 81, 82. The dog was wearing a red vest and had a tag on it. Tr. p. 81, 88. Cruz could not remember if the dog had a short or long leash on the day in question. Tr. p. 82.

27. Cruz was aware there was a sign on the door saying "no dogs allowed" and that food was being prepared at Respondent's farmers' market. Tr. p. 83-84.

28. After Cruz allowed Complainant, his wife and the dog in, Cruz observed that Complainant went 10-15 feet into the market when Levin approached Complainant. Tr. p. 84. Cruz could not hear their voices or the content of their conversation. Tr. p. 85. The conversation lasted about five minutes, maybe less. Tr. p. 86. Complainant then exited. Tr. p. 86. As Complainant and his wife exited, they said, "This is an outrage. This is wrong. This is a service dog." Tr. p. 86. Cruz stated that Complainant might have said he was a Vietnam veteran. Tr. p. 86. The hearing officer found that Complainant did not say he was a "Vietnam veteran," as Complainant served in the military from 1980 to 1991, long after the Vietnam War ended in 1975. Cruz thanked Complainant for his service and told Complainant that he was just a volunteer at the market and had no say in what was going on. Tr. p. 86.

29. Cruz followed Complainant and his wife outside and heard them telling patrons what had happened. He said nothing further to Complainant and his wife. Tr. p. 87. Complainant's wife reentered and went right to the desk; Cruz did not talk to her. Tr. p. 87-88.

Whitney Richardson

30. Whitney Richardson is a manager of Respondent Logan Square Chamber of Commerce. On February 28, 2016, she was the manager of the farmers' market. Tr. p. 94. She is still one of two managers of the farmers' market. Tr. p. 94.

31. On February 28, 2016, Richardson was seated alone at a table with chairs. The table was the Logan Square Chamber of Commerce table, which operated as an information booth and a place to process credit cards and SNAP (food stamps) transactions. Tr. p. 95. Because the entrance to the farmers' market is made of glass, Richardson could see people entering, although there were some obstructions. Tr. p. 95. She was focused on the vendors and did not see Complainant's initial interactions with Cruz and Levin. Tr. p. 96.

32. Richardson became aware that Complainant and Levin were having a conversation; a woman was also present. Tr. p. 97-98. She could not hear any words, nor could she hear what they were talking about or the tone of their conversation. Tr. pp. 96-97. She believed that their body language looked a little tense, but said it was not an "aggressive fight." Tr. p. 97. Complainant and Levin may have been a little closer in each other's personal space than usual. Tr. p. 97. The conversation lasted about five minutes. Tr. p. 98. She knew that Complainant left after this. Tr. p. 98.

33. Subsequently, the woman reentered the market by herself and approached Richardson's table. The woman asked Richardson if she was the manager, and Richardson said, "Yes." The woman told Richardson, "My husband is a veteran and he is allowed to have a dog." Then, the woman asked Richardson to look it up. Tr. p. 100. Richardson used a search engine and typed in "veteran permission dog." Tr. p. 100. The search engine result included information about service animals, but Richardson said the information was not "terribly conclusive." Tr. p. 101. Richardson remembered the search had information about "emotional support animals." Tr. p. 103. Richardson never saw the dog. Tr. p. 100. Then Levin came over and asked Richardson to stop looking for information. Tr. 101. The woman said, "You don't care"; Richardson responded, "This is not about me caring." Tr. 101.

34. The woman returned to Richardson's table about 20 minutes later and told Richardson that she had reported the incident to a "Department." Tr. p. 102. Richardson told Levin and Cruz that a report had been filed later. Tr. p. 104.

35. Some date after the February 28, 2016, incident, Richardson said she received materials and orders from what Richardson identified as the State's Attorney's Office. Tr. 104. In those materials was a pamphlet that discussed service animals. Richardson learned that there were two questions one was allowed to ask about a service animal: "Is that a service animal?" and "What functions is the animal trained to perform?" In addition, she learned that service animals are permitted in all public places. Tr. p. 104. She did not know that information prior to receiving that material. Tr. p. 105.

Paul Levin

36. Paul Levin is the executive director of Respondent Logan Square Chamber of Commerce. The indoor farmers' market falls under his oversight. Tr. p. 106.

37. On February 28, 2016, he was overseeing the indoor farmers' market and was at the market. Whitney Richardson was acting as part-time manager and Eric Cruz was a volunteer on that date. Tr. p. 107.

38. In 2007, Respondent took over operation of the open air market at that location from the City of Chicago; the indoor farmers' market was opened in 2009. In 2009, Respondent was required to apply for a City of Chicago special event permit. Levin was the person who applied for the permit, and was required to learn the rules and regulations. Tr. p. 108. His understanding of those regulations was that animals, dogs specifically, were not permitted in areas where food was being prepared or sold. There were two vendors preparing food at the indoor farmers' market. Either he asked, or the manager on his or her own volition put up a "no pets" notice on the door. Tr. p. 109.

39. Levin did not recall any time he had to intervene to tell someone about the no pets policy. He did recall seeing visitors' dogs tied up outside the market. Tr. p. 110. Prior to the incident with Complainant, there was never an incident involving someone walking in with a dog in a vest. Tr. p. 111.

40. On February 28, 2016, Levin was 20-25 feet away when he first saw Complainant with his dog. Levin determined that someone was in the market with a dog and they were not supposed to be in the market. He walked toward Complainant. Tr. pp. 111-112.

41. Levin spoke first to Complainant, telling him that he was sorry, but dogs were not allowed in the market. Complainant responded that he was a veteran and allowed. Levin said they were five or six feet apart when this conversation occurred. Tr. pp. 112-113. Levin did not remember Complainant pointing to the dog or saying the dog was a service animal. His effort was solely to communicate that Respondent could not have dogs in the farmers' market. Tr. p. 113.

42. Levin saw the dog near Complainant. He saw that it had a vest. Levin said the dog did not have a harness, but had a loose leash attached. Tr. p. 113.

43. The conversation continued back and forth several times, with Complainant saying he was a veteran and they had to let him in, and Levin saying dogs were not allowed in the market due to the City of Chicago rules. Tr. p. 114. Complainant and Levin were within one foot of one another at this time and at one point the dog licked Levin's hand. Levin's hand was down at his side at this time. Tr. pp. 114-115. Complainant was wearing blue-tinted glasses, but Levin could see his eyes. Tr. p. 115. Levin said he was deliberately standing in front of Complainant so that he could not enter any further; he would not get out of Complainant's way. Tr. p. 115.

44. Eventually, after Complainant and Levin had repeated the same comments back and forth several times, Levin said he "guessed" that Complainant realized Levin was not going to let him in. Complainant backed off and said, "Fuck you." Levin said that Complainant also said, "fuck your mother" and "fuck your father." Levin said he was speechless because farmers' markets are places of "good karma" and no one had ever spoken to him like that. Tr. pp. 116-117.

45. After explaining that he is a veteran several times, Complainant also asked Levin if he is a veteran. Tr. p. 116. When Levin said that he was not a veteran, Complainant said that

Levin was probably a draft dodger. Complainant denied that he called Levin a draft dodger, testifying that it was not a concern of his generation. Tr. p. 35. The hearing officer determined that no statement about draft dodging was made.

46. Levin said that Complainant's wife came over, and then Complainant backed off and left. Tr. pp. 118-119. Levin had no conversation with Complainant's wife. Tr. p. 119.

47. Levin then observed Complainant's wife return to the market and go to the table where Whitney Richardson was sitting. Tr. p. 120. Levin went over to see what was going on; he thought her presence meant that the incident was not over and he wanted to end the incident. Tr. pp. 121-122. He was the person in charge. Tr. p. 122.

48. While at the table, Levin asked Richardson what she was doing with her smart phone. Tr. pp. 120-121. Richardson said she was looking up dogs and veterans. Levin thought it highly unlikely that anything resulting from the research on the smart phone would be of any use under the circumstances given Complainant's behavior. He also said it was not the time to be doing research when Richardson had other responsibilities. Levin told Richardson to stop doing the smart phone research. Tr. pp. 123-124. Levin gave his card to Complainant's wife and told her to deal with him, and then he left without speaking to her further. Tr. p. 124. Complainant's wife then left. Tr. p. 124.

49. Levin did not remember hearing Complainant use the term "service dog." Tr. p. 125. Levin did not remember Complainant pointing to his dog. Tr. p. 128. Levin remembered that that Complainant's dog was wearing a vest, but did not remember that the vest was red. Tr. p. 128. Levin said that Complainant's dog was not wearing a harness. Levin was looking for a rigid harness because in "his limited experience" often service dogs for the blind have rigid harnesses. Tr. p. 129. Levin agreed that not all physical or mental disabilities are noticeable. Tr. p. 130.

50. In his statement to investigators, Levin said that Complainant was "yelling and shouting." When asked how that could be when people standing relatively close could not hear the conversation, Levin said his testimony at the hearing should be that from his perspective Complainant was yelling and shouting because Complainant was so close to him. Tr. p. 132.

51. Levin said he saw the dog's vest but did not inquire about it because he believed that the City of Chicago ordinance did not allow any exceptions to the no dogs rule. Tr. pp. 137-138.[4] He did not ask any questions at all about the dog. Tr. p. 139.

52. At the hearing, the hearing officer observed that Levin was visibly upset and very tense. At one point, Complainant asked Levin to respond to a question which was answerable with a "yes" or "no" answer. When Levin did not respond with a *yes* or *no*, Complainant asked

[4] Levin testified that at some unidentified date he received training and information from the Illinois Attorney General's Office and Equip for Equality, an advocacy group for people with disabilities. Because it is unclear when that training took place, it is not relevant to this opinion. The hearing officer noted, however, that several "facts" testified to by Levin about service animals are inaccurate and his memory of the facts learned in his training are limited.

Levin to answer in a *yes* or *no*. Levin responded in a very loud voice, suddenly thrusting his upper body aggressively across the table separating him from Complainant.

53. Complainant did not raise his voice at any time during the hearing.

IV. CONCLUSIONS OF LAW

1. Section 2-160-070 of the Chicago Human Rights Ordinance states that:

> No person that owns, leases, rents, operates or manages or in any manner controls a public accommodation shall withhold, deny, curtail, limit or discriminate concerning the full use of such public accommodation by any individual because of the individual's...disability.....

Section 2-160-020(c) of the Chicago Human Rights Ordinance defines "disability" in part as "a determinable physical or mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder ...."

Complainant has disabilities (PTSD and mobility impairments due to his knee injuries), Complainant uses a service animal to assist him with those disabilities, and Complainant is protected against discrimination based on his disabilities and use of a service animal.

2. Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination in a public accommodation operating in the City of Chicago. "Public accommodation" includes a place or business establishment located in the City of Chicago that sells, provides, or offers to the general public products and services. Section 2-160-020(i).

Respondent is a covered public accommodation because it operates a retail establishment that is open to the general public in the City of Chicago.

3. Section 2-160-070 provides that a public accommodation must not "deny, curtail, limit or discriminate concerning the full use of such public accommodation." "Full use" is defined by CCHR Reg. 520.110 to mean:

> ... all parts of the premises open to the public shall be available to persons who are members of a Protected Class [including persons with disabilities] at all times and under the same conditions as the premises are available to all other persons and that the services offered to persons who are members of a Protected Class shall be offered under the same terms and conditions as are applied to all other persons.

On February 28, 2016, Respondent curtailed the full use of its services and offered those services in a discriminatory manner to Complainant because of Complainant's disabilities and use of a service animal in that Respondent barred the entry to and use of the premises to Complainant in contrast to other customers without disabilities.

4. Regulation 520.105 provides:

> No person who owns, leases, rents, operates, or in any manner controls a public accommodation shall fail to fully accommodate a person with a disability unless such person can prove that the facilities or services cannot be made fully accessible without undue hardship. In such a case, the owner, lessor, renter, operator, manager or other person in control must reasonably accommodate persons with disabilities unless such person in control can prove that he or she cannot reasonably accommodate the person with a disability without undue hardship.

"Reasonable Accommodation" is defined as "... accommodations (physical changes or changes in rules, policies, practices or procedures) which provide persons with a disability access to the same services, in the same manner as are provided to persons without a disability." CCHR Reg. 520.110. " 'Undue hardship' will be proven if the financial costs or administrative changes that are demonstrably attributable to the accommodation of the needs of persons with disabilities would be prohibitively expensive or would unduly affect the nature of the public accommodation." CCHR Reg. 520.130.

Respondent did not provide a reasonable accommodation to Complainant in that it did not alter its rules against pets on the premises, according to the testimony of Complainant and Respondent's executive director, to allow Complainant to enter Respondent's premises accompanied by his service animal in the same manner as other customers without disabilities. Additionally, Respondent offered no evidence that undue hardship would have been caused by offering the reasonable accommodation of altering its no pets rule for Complainant and his service animal.

V. DISCUSSION

In weighing evidence where parties have strongly held and sometimes contradictory statements, such as this case, the hearing officer must determine the credibility of witnesses and is free to disregard, in whole or in part, the testimony of witnesses found to lack credibility. *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006); *Claudio v. Chicago Baking Company,* CCHR No. 99-E-76 (July 17, 2002); *Sanders v. Onnezi,* CCHR No. 93-H-32, (Mar. 16, 1994). In assessing credibility, a hearing officer may consider, among other things, the bias and demeanor of a witness. *Poole v. Perry & Assoc.*, *supra.*

Complainant established a prima facie case

In order to prove a *prima facie* case of discrimination based on disability, Complainant must prove that: 1) he is a person with a disability within the meaning of the CHRO, 2) he is a qualified individual who has established all of the non-discriminatory requirements for service, and 3) he did not have full use of the public accommodation as other patrons without disabilities. *Marshall v. Feed Restaurant,* CCHR No. 15-P-26 (July 14, 2016), *Mahmoud v. Chipotle Mexican Grill Service Co., LLC d/b/a/ Chipotle Mexican Grill*, CCHR No. 12-P-25 (June 18, 2014); *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010); *Maat v. String-A-Strand*, CCHR No. 05-P-05 (Feb. 20, 2008).

Complainant has provided credible proof of the elements of a *prima facie* case. He is a person with mental and physical impairments that impedes his ability to travel, to work, and to interact with the public independently without the use of a service animal. Complainant established with credible and uncontradicted testimony that he is a military veteran who has PTSD and injured knees as a result of his service.

Complainant is a qualified individual; qualification to enter a farmers' market is minimal and requires generally the desire to utilize and pay for the services offered to the public for a fee. *Marshall v. Feed Restaurant, supra.*

Complainant proved that he had a service animal with him on the day in question. He testified credibly that both he and Ruby, his current service animal, were trained in the use of a service animal. Complainant testified to the services Ruby provided and how those services assisted Complainant while he was out in public. During the hearing, Ruby demonstrated the services that she provided to Complainant by licking his face when Complainant was visibly stressed and by sitting near to Complainant throughout the hearing.

Respondent's executive director had argued that he was "confused" because Complainant did not act as if he were blind and testified that Complainant's dog was not wearing a rigid harness as he thought service animals were required to have. As the United States Department of Justice has noted in its "Frequently Asked Questions about Service Animals and the ADA [Americans with Disabilities Act]"[5], service animals are not required to "wear a vest, ID tag, or specific harness." Complainant did have a vest and ID tags for his dog to assist others identify the dog as a service animal. Indeed, Eric Cruz, Respondent's employee at the entrance to the market, readily identified Complainant's dog as a service animal and allowed Complainant and the dog to enter without any further questions.

Complainant proved that he did not have full use of the public accommodation because he was barred from entering Respondent's farmers' market which is open to the public because of Respondent's policy in existence at the time of forbidding any dogs on the premises, and due to the actions of Respondent's executive director. *Cotten v. La Luce, supra.* Respondent corroborated that Complainant was barred from full use of the indoor farmers' market by the testimony of its executive director and its manager.

Respondent's executive director testified that Complainant was only four to five steps into the facility when he barred further entry by blocking Complainant. Allowing Complainant to enter merely four to five steps did not allow for the full use of the public accommodation. Respondent's executive director was clear that he remembered Complainant stating several times

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[5] https://www.ada.gov/regs2010/service_animal_qa.html
See also "Service Animals," at https://www.cityofchicago.org/city/en/depts/mopd/supp_info/service_animals_.html The Illinois Attorney General has a similar site: http://www.ag.state.il.us/rights/servanimals.html The Commission is required to enforce its own Ordinance and Regulations, but may review federal and state laws for guidance. *Smith, Torres & Walker v. Wilmette Real Estate & Mgt. Co.*, CCHR No. 95-H-159 & 98-H-44/63 (Apr. 13, 1999) CHR shall look to decisions interpreting other laws for guidance where the language of those laws is not significantly different from that in the ordinance at issue before CHR.

that Complainant is a veteran and allowed to have his dog with him; Respondent's executive director testified that he responded each time with his statement that dogs were not allowed on the premises due to a City of Chicago ordinance. As the "Frequently Asked Questions about Service Animals and the ADA" notes, service animals may not be prohibited from communal food preparation areas, salad bars, or self-service food areas.

Accordingly, the Commission finds that Complainant has established the *prima facie* elements of his case.

Respondent Logan Square Chamber of Commerce Defenses

Once a complainant is found to have met the standards of establishing a *prima facie* case, the burden is then on the respondent to prove by a preponderance of the evidence that it provided full use of the public accommodation or that providing full use of its public accommodation would cause undue hardship. CCHR Reg. 520.105 and *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (June 4, 2009). Even if proof of undue hardship is established, a respondent must then prove that it either provided a reasonable accommodation to the complainant or that it could not provide a reasonable accommodation without undue hardship. *Id.*

As noted above, the testimony of Respondent's executive director and manager both established that Complainant was barred from entering Respondent's indoor farmers' market by Respondent's employees. Respondent did not provide any testimony or evidence that altering the "no pets" rule would cause undue hardship.

In its closing argument, Respondent argued that its staff was confused by conflicting laws and that the laws are not clear on the issue of dogs in retail food establishments. Tr. p. 150. That could not be further from the truth. The Chicago Human Rights Ordinance and Americans with Disabilities Act were enacted nearly three decades ago and there are numerous resources available to assist businesses understand their obligations under the CHRO and ADA. The "Frequently Asked Questions about Service Animals and the ADA" offers straightforward information about service animals; the Commission and the Illinois Attorney General also offer information about the rights of people with service animals. All of this information is readily available on the agencies' websites.

Respondent also argued that the laws require an interaction or discussion to inform people that the animal is a service animal, and that Complainant did not fulfill his obligations to do this. The hearing officer found that this is not what happened. Eric Cruz readily recognized that Complainant's dog is a service animal by viewing his vest and tags; no conversation was needed. Complainant attempted to inform Respondent's executive director about his service animal, but those efforts were rebuffed. The fact that the executive director thought Complainant did not look blind and that the dog did not have the "right" harness does not excuse an obvious violation of Complainant's rights.

Respondent repeatedly returned to the fact that Complainant was yelling and used profanity in responding to Respondent's executive director, Paul Levin, after he had repeatedly refused to let Complainant enter the market because of his service animal. Respondent argued

that Complainant's use of profanity was the reason why there was no interaction and that Levin was within his rights to end the conversation. As the testimony from both parties proved, that was not true. Complainant kept repeating his right to have his service animal and Levin kept repeating that the dog was not allowed due to a City of Chicago ordinance prior to any use of profanity. Complainant's wife attempted to direct the manager, Whitney Richardson, to information about the use of the dog, but Levin cut that effort short, told Complainant's wife to call him another day, and asked her to leave. Testimony from both Cruz and Richardson did not corroborate Levin's testimony that Complainant was loud and profane. From a distance of 10-15 feet from the conversation, Cruz and Richardson could not hear what was being said or any of the conversation, although Richardson said it appeared to be a tense conversation. Thus, whatever was said did not interfere with the market's operation and was over in less than five minutes.[6] The hearing officer determined that Levin's unwillingness to listen to Complainant or his wife was the reason the interaction was short.

In its closing argument, Respondent also argued that because Complainant did not walk the dog into the farmers' market, as "blind people do," that Levin could "have the mindset" that Complainant was not a "handicapped" person. In addition, Respondent argued that Complainant did not tell Levin he was "handicapped," or had "posttraumatic stress disorder," and that Complainant did not tell Respondent his diagnosis. Respondent argued, because Complainant's disability was not obvious, Levin could assume the animal was a "support dog type" rather than a "service animal." Again, had Respondent spent some time reviewing its responsibilities with regard to service animals, Respondent would know that Complainant is not required to reveal his "diagnosis" in order to use a service animal. As the "Frequently Asked Questions about Service Animals and the ADA" notes, staff of public accommodations "are not allowed to request any documentation for the dog, require that the dog demonstrate its task, or inquire about the nature of the person's disability."

As noted above, Respondent listed affirmative defenses in its Response. Each of them failed either on the law or by Respondent failing to support that defense with any evidence during the hearing. Complainant has established a *prima facie* case, so Respondent's defense that Complainant did not claim facts sufficient to state a cause of action fails.[7] Respondent's defense that it acted in good faith is belied by the fact that Respondent's executive director made no efforts to engage with Complainant or his wife on the date of the incident. Respondent's defense of "unclean hands" was not supported by any evidence at the hearing. Respondent's defense that Complainant failed to inform Respondent of statutory violations fails because Complainant indeed did inform Respondent's employees that the dog was allowed on the premises and Complainant's wife further attempted to educate the employees. Respondent's defense that Complainant failed to mitigate damages is not supported by any facts put forth at the hearing. And finally, Respondent's defense that it did not act with discriminatory motivation and/or actions were taken against Complainant for independent lawful reasons fails because

[6] Levin claimed to be shocked by the use of profanity. In this day and age, where profanity is used regularly in conversations, by entertainers and even presidential candidates, the hearing officer found that such language unfortunately has become a regular part of social interactions.

[7] Complainant did not claim attorney's fees; Respondent's defense that Complainant did not support a claim for attorney's fees is moot.

Complainant established his *prima facie* case of discrimination and there were no "independent lawful reasons" for Respondent's actions.

The Board of Commissioners agrees with the hearing officer's conclusion that Complainant established the *prima facie* elements of his case. Additionally, Respondent failed to establish that offering a reasonable accommodation would pose an undue hardship, nor has Respondent proved any other defenses. Accordingly, the evidence establishes that Respondent violated the Chicago Human Rights Ordinance.

VI. REMEDIES

Upon determining that a violation of the Chicago Human Rights Ordinance has occurred, the Commission may award relief as set forth in §2-120-510(1) of the Chicago Municipal Code:

> [A]n order ... to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant ... to admit the complainant to a public accommodation; to extend to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of the respondent; to pay to the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the commission ...; to take such action as may be necessary to make the individual complainant whole, including but not limited to, awards of interest on the complainant's actual damages ... from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed for violations of provisions of Chapter 2-160 and Chapter 5-8.

a. Actual Damages

In his Complaint, Complainant did not specify an amount to compensate him for actual damages. In his pre-hearing memorandum and at the hearing, Complainant asked for damages in the amount of $25,000 based on what attorneys he consulted with had told him was reasonable. He asked for damages for loss of income and for the stress caused by the incident.

Complainant testified that, after the incident, he was so upset that he was unable to leave the house and lost business opportunities due to this stress. However, he provided no documentary evidence of his monetary loss due to lack of employment for an unspecified period of time. His testimony on the loss of business opportunities lacked the detail required to provide a basis for awarding damages based on loss of income. Therefore, the hearing officer recommended that no damages be assessed against Respondent for loss of income.

The Commission has repeatedly held that damages for emotional harm can be awarded as part of an award of actual damages. *Jones v. Shaheed*, CCHR No. 00-H-82 (Mar. 17, 2004); *Nash/Demby v. Sallas & Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995). "Emotional distress damages are awarded in order to fully compensate a complainant for the emotional distress, humiliation, shame, embarrassment and mental anguish resulting from a respondent's

unlawful conduct." *Winter v. Chicago Park District, et al.*, CCHR Case No. 97-PA-55, at 16 (Oct. 18, 2000).

The amount of the award for emotional distress depends "on several factors, including but not limited to, the vulnerability of the complainant, the egregiousness of the discrimination, the severity of the mental distress and whether it was accompanied by physical manifestations and/or medical or psychiatric treatment, and the duration of the discriminatory conduct and the effect of the distress." *Steward v. Campbell's Cleaning, et al.*, CCHR No. 96-E-170, at 13 (June 18, 1997). A complainant's testimony standing alone may be sufficient to establish that he or she suffered compensable emotional distress damages. *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62 (Oct. 21, 1998). Respondents must take complainants as they are, even if they have pre-existing conditions which make the complainant more vulnerable, but Respondents are only liable for the increased level of distress for failure to accommodate. See *Winter v. Chicago Park District*, *supra*; *Hussian v. Decker*, CCHR No. 93-H-13 (Nov. 15, 1995).

Emotional distress damages awarded by the Commission have varied, from amounts such as $50,000, the amount ordered in *Winter*, to far smaller amounts. In *Winter*, the complainant was awarded substantial damages for emotional distress because she was forced to toilet herself in view of other people due to the inaccessibility of the respondent's facilities and, as a result, suffered on-going mental health consequences. In *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 (Aug. 16, 2006), the Commission awarded $1,000 in emotional distress damages to a complainant with a disability who was not able to access a restaurant although the complainant offered "sparse evidence" of inconvenience. In *Morrow v. Driver of Cab #1357 (Tumala)*, CCHR No. 03-P-02, pp. 5-6 (Apr. 18, 2007), the Commission found that the one incident of racial discrimination by a cab driver resulted in the complainant having ongoing emotional problems and thoughts of being viewed as a "lesser human" due to her race; the Commission awarded $5,000 in damages for emotional distress. In *Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012), the Commission awarded a complainant $3,500 for one incident of unequal access discrimination where the complainant was humiliated on the night of the incident and continued to feel the effects when recounting the discriminatory incident at her hearing. In *Hamilton and Hamilton v. Café Descartes*, CCHR No. 13-P-05/06 (June 18, 2015), a daughter and mother were awarded $5,500 and $3,000 respectively for emotional distress when they were ejected from a restaurant because the daughter, a very vulnerable individual, used a support animal; the daughter testified to continuing distress from the incident.

Due to his diagnosis of PTSD, Complainant is a vulnerable complainant for whom confrontations are particularly distressing as evident from his testimony and demeanor at the hearing. In its closing, Respondent argued that emotional distress damages for Complainant were not warranted because Complainant was already emotionally distressed and that is why Complainant had a dog. If that emotional distress became more severe, Respondent's counsel argued, then Complainant was required to bring in medical testimony to prove that increase in emotional distress.

The Commission's cases, including most recently *Hamilton and Hamilton*, above, contradict Respondent's damage theory. "The Commission does not require 'precise' proof of

damages for emotional distress. A complainant's testimony standing alone may be sufficient to establish that he or she suffered compensable distress." *Diaz v. Wykurz et al.*, CCHR No. 07-H-28 (Dec. 16, 2009); *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 18, 1995). A complainant need not provide medical evidence to support a claim of emotional distress. *Sellers v. Outland*, CCHR No. 02-11-73 (Oct. 15, 2003). aff'd in part and vacated in part on other grounds, Cir. Ct. Cook Co. No. 04 I 06429 (Sept. 22, 2004) and Ill.App.Ct. No. 1-04-3599 (Sept. 15, 2008). Medical documentation or testimony may add weight to a claim of emotional distress but is not strictly required to sustain a damages award.

Complainant testified that, after the incident, he was so upset that he was unable to leave the house and his wife had to force him to get out. He was unable to leave his house to complete work assignments. Even months later, testifying about the event at the hearing caused him obvious nervousness and stress. During his testimony, Complainant required frequent pauses for deep breathing and interactions with his service animal. He testified that it was still difficult to talk about the incident. When asked if he would like to continue the hearing or take a break, he responded that he wanted to get this finished and out of his life.

The hearing officer determined that Complainant is entitled to damages for emotional distress, but did not recommend $25,000, an amount which the Commission has only awarded in the most egregious of cases. Complainant is unusually vulnerable. Complainant testified to his perception of the treatment he received from Respondent's executive director and how that treatment made him feel. Complainant testified about and evidenced during the hearing the on-going ill effects to his mental health as a result of the event and his determination to complete the hearing. He testified that he was unable to leave his house after the incident until his wife forced him out. Based on Complainant's testimony, the hearing officer recommended awarding Complainant damages for emotional distress in the amount of $7,500.

In its objections, Respondent argues that the hearing officer's recommendation of $7,500 in emotional distress damages is excessive because Complainant had a previously existing mental condition and provided no documentary evidence regarding medical treatment for emotional distress. Respondent further argues that Complainant contributed to the "communication breakdown" which resulted in his removal from its premises.

As stated above, the Commission has long held that testimony alone may be sufficient to support such an award of emotional distress damages. In addition, if Respondent's theory was accepted, no complainant with pre-existing mental health conditions would be likely to be awarded any emotional distress damages for "additional trauma" without medical evidence. Indeed, at the hearing, Respondent argued that Complainant was required to offer medical testimony to prove the "increase" in emotional distress.

The Commission has found that a vulnerable complainant must be provided with full compensation for his or her losses. See *Griffiths v. DePaul Univ.*, CCHR No. 95-E-224 (Apr. 19, 2000) (pregnant woman awarded $8,000, not the $3,500 awarded by the hearing officer due to her increased vulnerability). See also *Mullins v. AP Enterprises, LLC et al.*, CCHR No. 03-E-164 (Jan. 19, 2005) (complainant was found to be particularly vulnerable due to pre-existing depression and awarded $20,000 due to discriminatory firing). In *Jones v. Shaheed*, CCHR No. 00-H-82 (Mar. 17, 2004), the complainant was awarded $3,000 for emotional distress after the

respondent refused to rent to her due to source of income and disability. The award was based on the complainant's testimony that she felt humiliated, helpless, and stressed. The complainant also testified that she had problems eating and sleeping followed by some recurring distress due to the respondent's refusal to admit to the discriminatory conduct. Here, the hearing officer made the recommendation based on the determination that Complainant was particularly vulnerable due to PTSD, and testified credibly to the effects this discriminatory action had on him.

Respondent further argues that the fact that Complainant was able to return to work in one or two months mitigated against the award of damages for emotional distress. This logic is difficult to understand, as one or two months of trauma seems to bolster rather than diminish Complainant's injury. The hearing officer noted that even months later, testifying about the events at the hearing was very difficult for Complainant.

The damages recommended by the hearing officer have already been significantly reduced from the amount sought by Complainant. The Board agrees that the recommended award of $7,500 in emotional distress damages is supported by Complainant's evidence and is in line with prior precedent, and therefore adopts the recommendation.

b. Punitive Damages

Punitive damages are appropriate when a respondent's action is shown to be a product of evil motives or intent or when it involves a reckless or callous indifference to the protected rights of others. *Houck v. Inner City Horticultural Foundation, supra,* quoting *Smith v. Wade,* 461 U.S. 30, 56 (1983), a case under 42 U.S.C. §1983. See also *Blucher v. Eugene Washington Youth & Family Svcs.,* CCHR No. 95-E-261 (Aug. 19, 1998), stating. "The purpose of an award of punitive damages in these kinds of cases is 'to punish [the respondent] for his outrageous conduct and to deter him and others like him from similar conduct in the future.'" See also *Restatement (Second) of Torts* §908(1) (1979). Punitive damages may be particularly necessary in cases where actual damages are modest, to ensure a meaningful deterrent. *Miller v. Drain Experts et al.,* CCHR No. 97-PA-29 (Apr. 15, 1998).

In determining the amount of punitive damages to be awarded, the "size and profitability of a respondent are factors that normally should be considered." *Soria v. Kern.* CCHR No. 95-H-13 (July 18, 1996) at 17, quoting *Ordon v. Al-Rahman Animal Hospital,* CCHR No. 92-E-139 (July 22, 1993) at 18. However, "neither Complainants nor the Commission have the burden of proving Respondent's net worth for purposes of deciding on a specific punitive damages award." *Soria, supra* at 17, quoting *Collins & Ali v. Mugdenovski,* CCHR No. 91-H-70 (Sep. 16, 1992) at 13. If respondent fails to produce credible evidence mitigating against the assessment of punitive damages, the penalty may be imposed without consideration of his/her financial circumstances. *Soria, supra.*

In considering how much to award in punitive damages where they are appropriate, the Commission also looks to a respondent's history of discrimination, any attempts to cover up the conduct, and the respondent's attitude towards the adjudication process including whether the respondent disregarded the Commission's procedures. *Brennan v. Zeman,* CCHR No. 00-H-5

(Feb. 19, 2003), quoting *Huff v. American Mgmt. & Rental Svc.,* CCHR No. 97-H-187 (Jan. 20, 1999).

Executive Director Paul Levin's actions toward Complainant showed a callous disregard toward Complainant and the rights of people with service animals generally. Levin was dismissive toward Complainant and his wife as they tried to explain their rights. On the day in question, Levin was not willing to listen to Complainant or his wife about the rights of individuals with service animals, saying he was in charge and wanted the incident to be over. He ordered Manager Whitney Richardson to stop any research into Complainant's rights on the day of the incident and told Complainant's wife to contact him another day. No evidence of any training or research into the rights of individuals with service animals prior to the incident on February 28, 2016, was produced at the hearing despite the fact that the Chicago Human Rights Ordinance (and the Americans with Disabilities Act) had been in effect for nearly three decades. Levin and Richardson did note that they had taken some training ***after*** they had received notice of Complainant's Complaint, although their testimony, particularly that of Levin, about the rights of individuals with service animals showed that some lack of knowledge remained. Levin's demeanor at the hearing showed his significant resentment about Complainant's claim and the Commission's process. Both Levin and Richardson admitted that Respondent still had not developed a written policy about service animals. For these reasons, the hearing officer determined that an award of punitive damages of $2,500 is warranted in this case.

Respondent objects to the recommendation of the hearing officer, arguing that such an award is improper because it is a non-profit organization and its employees acted upon the good faith belief that other laws prohibited Complainant from entering its premises with his dog. Respondent further argues that although it did not submit proof of its financial situation, neither Complainant nor the hearing officer asked questions about its financial status.

Respondent cannot avoid punitive damages due to the mistaken belief by its employees that they were acting properly. Punitive damages are appropriate when a respondent shows "reckless or callous indifference" to the protected rights of others. *Houck, supra.* As noted by the hearing officer, Respondent had offered no training on support animals to its employees prior to the incident, despite the fact that the Chicago Human Rights Ordinance and the Americans with Disabilities Act had been in effect for some time. In addition, on the day of the incident, Complainant attempted to educate Respondent's executive director, but the executive director, in his own words, did not wish to discuss this matter with Complainant at that time and told Complainant's wife to call him another day. During the hearing, the testimony of the witnesses clearly indicated that Respondent had no policy regarding service animals on the day of the incident. In addition, the executive director was clearly dismissive of both Complainant's claim and the Commission's processes.

Respondent did not provide any evidence of the size or profitability of its chamber of commerce at the hearing. Complainant nor the hearing officer has an obligation to elicit financial information to support an award of punitive damages. The mere fact that Respondent is a non-profit does not mean that punitive damages cannot be assessed against it. It is the obligation of a respondent that claims it does not have the financial ability to pay punitive damages to provide evidence of that fact.

The hearing officer found that the recommended award of $2,500 is warranted based on the facts of the case and the actions taken by Respondent's employees. The Commission agrees and adopts the hearing officer's recommendation.

c. Injunctive Relief

Section 2-120-510(l) authorizes the Commission to order injunctive relief to remedy a violation of the Chicago Human Rights Ordinance. The Commission is also authorized to order injunctive relief *sua sponte* in order to remedy and prevent future discrimination. *Cotten v. La Luce Restaurant*, *supra*. The Commission has ordered respondents found to have violated the CHRO to take specific steps to eliminate discriminatory practices and prevent future violations. Such steps have included training, notices, and structural changes. *See*, e.g., *Cotten v. La Luce Restaurant*, *supra* (respondent ordered to provide a permanent accessible entrance, or if installing a permanent ramp would impose an undue hardship, obtain an adequate portable ramp, buzzer and signage); *Cotten v. Eat-A-Pita*, *supra* (respondent ordered to provide a permanent accessible entrance, or if installing a permanent ramp would impose an undue hardship, obtain an adequate portable ramp, buzzer and signage); *Maat v. String-A-Strand*, *supra* (respondent ordered to provide accessible entrance and volunteer at agency that assisted people with disabilities). In *Roe v. Chicago Transit Authority et al.*, CCHR No. 05-E-115 (Oct 20, 2010), the respondent was ordered to provide mandatory training to employees on laws and internal policies prohibiting discrimination with a focus on workplace harassment. Proof of completion of these compliance activities was to be provided to the Commission according to a set time schedule.

Although Complainant, who appeared *pro se*, did not ask for any injunctive relief, the hearing officer recommended that Respondent adopt written policies regarding providing services to individuals with disabilities and train its employees regarding the policies.

In its objections, Respondent claims because it now has a policy about service animals allegedly adopted by its Board in August 2016, has posted some sign, and has completed some training that no injunctive relief is appropriate. Respondent further submitted a copy of the policy; however, this policy was not submitted by Respondent during the hearing of this matter. During the hearing which was held on January 19, 2017 (months after the policy was allegedly adopted), Respondent's volunteer, Eric Cruz, did not recall ever seeing such a policy. Tr. p. 77. The only policy mentioned was the posted policy not allowing pets in the market; no exception was noted. Tr. pp. 109-110. Additionally, Executive Director Paul Levin testified that he had only instructed employees on the "general no pets" policy. Tr. pp. 111-112. Manager Whitney Richardson testified that on the day of the incident, she had to look up the requirements for service animals. Tr. p. 100. Subsequently, Richardson received some information about service animals from the Illinois Attorney General's Office; she did not know about this information prior to receiving the materials. Tr. pp. 104-105.

In addition, Respondent submitted with its objections, a letter from the Illinois Attorney General's Office dated January 24, 2017, which stated that a service animal policy had been adopted, training had been organized for the executive director and office manager, and that signs had been posted. Rp Objections, Exhibit 7. Photographs of signs on doorways were

submitted with the objections, but were not readable. Rp. Objections, Exhibit 6. Again, no materials or photographs were introduced at the hearing to prove that training and posting had been completed by Respondent; Levin testified that the training was given, but did not testify that the training and information was given to all employees.

Injunctive relief is authorized by the Ordinance to remedy and prevent future discrimination. The Commission has long recognized that certain steps are required to fulfill that obligation. In this case, the service animal policy must not only be adopted in accordance with relevant law, but also members of the staff must be trained on its measures and how to address members of the public who arrive with service animals. All members of the staff must receive copies of the policy and requirements and notified that compliance is mandatory. Written and clear notices of that service animals will be admitted must be posted at all Respondent locations. Written proof of compliance with all of the requirements must be filed with the Commission.

The Board of Commissioners agrees with the hearing officer's recommendations for injunctive relief. The following injunctive relief is appropriate in order to further the Commission's goal of facilitating the integration of all protected classes into places of public accommodation. (CCHR Reg. 510.100). Accordingly, the Commission directs Respondent to take the following actions to remedy its past violation and prevent future violations:

1. **Respondent must develop a written policy which provides that the use of service animals should not be used as a basis for denying admission to or otherwise curtailing use of Respondent Logan Square indoor farmers' market, within 30 days of the date of the Commission's Order.** Respondent shall not require that service animals have any particularized identification as that is not required by local, state or federal laws. Respondent shall not require that service animals be relegated to only certain areas in Logan Square indoor farmers' market.

2. **Respondent must install written notices on all of the entrances to Respondent Logan Square indoor farmers' market that service animals are welcome,** within 30 days of the date of the Commission's Order.

3. **The written policy described in paragraph 1 above shall be distributed to all of Respondent's employees and management personnel within 45 days of the date of the Commission's order.** In the distribution Respondent shall note that following the policy is mandatory for all of Respondent's employees and administrative personnel.

4. **All employees and management personnel at Respondent Logan Square indoor farmers' market shall attend a mandatory training on the policy, and on the rights of people in all protected classes, including people who use service animals,** within 60 days of the date of the Commission's Order.

5. **Respondent shall provide the Commission with proof of its compliance** with each of these steps within two (2) weeks of the deadlines set forth above.

6. **Extension of time**. Respondent may seek a short extension of time to meet any deadline set with regard to this order for injunctive relief, by filing and serving a motion pursuant to the

procedures set forth in Regs 210.310 and 210.320. (The hearing officer need not be served.) The motion must establish good cause for the extension. The Compliance Committee of the Commission shall rule on the motion by mail.

7. **Effective period**. This injunctive relief shall remain in effect for *three years* from the date of mailing of this Final Ruling on Liability and Relief for the purpose of Complainant's seeking enforcement of it (by motion pursuant to Reg. 250.220).

d. Fine

Section 2-160-120 of the Chicago Human Rights Ordinance provides that any person who violates any provision of the ordinance as determined by the Commission shall be fined not less than $100 and not more than $1,000 for each offense. Every day that a violation shall continue constitutes a separate and distinct offense. Fines have been assessed for failing to participate in the Commission process (*Cotten v. Ochoa Sporting Goods*, CCHR No. 14-P-15 (Dec. 17, 2014)), or when respondents have harassed complainants or made derogatory comments (*Burford v. Complete Roofing and Tuck Pointing et al.*, CCHR No. 09-P-109 (Oct. 19, 2011)).

The hearing officer recommend a fine of $100 be assessed in this case against Respondent. In light of the facts of this case, the Commission believes that a higher fine is warranted. Accordingly, the Commission orders Respondent to pay a fine of $250.

e. Interest

Section 2-120-510(l), Chicago Municipal Code, allows an additional award of interest on damages ordered to remedy violations of the CHRO. Pursuant to Reg. 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly from the date of violation, and compounded annually from the date of the violation. The hearing officer recommended and award of pre- and post-judgment interest on all damages, starting from February 28, 2016, the date of the discriminatory act. The Commission agrees and adopts the recommendation.

f. Attorney Fees

Complainant appeared in this matter *pro se*, so attorney fees are not awarded.

VII. CONCLUSION

The Commission finds Respondent Logan Square Chamber of Commerce liable for public accommodations discrimination in violation of the Chicago Human Rights Ordinance and orders the following relief:

1. Payment to the City of Chicago of a fine of $250;
2. Payment to Complainant of emotional distress damages in the amount of $7,500;
3. Payment to Complainant of punitive damages in the amount of $2,500
4. Payment of interest on the foregoing damages from the date of violation on February 28, 2016;
5. Compliance with the order for injunctive relief as described above.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: Mona Noriega

Mona Noriega, Chair and Commissioner
Entered: June 8, 2017