



**City of Chicago**  
**COMMISSION ON HUMAN RELATIONS**  
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654  
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

**IN THE MATTER OF:**

Darryl Williams  
**Complainant,**  
v.  
Funky Buddha Lounge  
**Respondent.**

**Case No.:** 04-P-82

**Date Mailed:** August 26, 2008

**TO:**

Darryl Williams  
333 North Michigan Avenue, #932  
Chicago, IL 60601

Ryan B. Jacobson  
SmithAmundsen LLC  
150 North Michigan Avenue, Suite 3300  
Chicago, IL 60601

**(CORRECTED)**  
**FINAL ORDER**

YOU ARE HEREBY NOTIFIED that, on July 16, 2008, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission ORDERED Respondent to pay damages to Complainant in the amount of \$500 plus interest from November 16, 2004, and to pay to the City of Chicago a fine of \$500.<sup>1</sup>

This is a corrected Final Order, replacing the one mailed on August 22, 2008, which erroneously stated the damages awarded as \$1,000 when the correct amount is \$500, as stated in the enclosed ruling.

Pursuant to Commission Regulations 100(15) and 250.150, parties seeking a review of this decision may file a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law.

CHICAGO COMMISSION ON HUMAN RELATIONS  
Dana V. Starks, Chair and Commissioner

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<sup>1</sup>**COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. See Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

**Payments of damages and interest** are to be made directly to the Complainant. **Payments of fines** are to be made by check or money order payable to City of Chicago, delivered to the Commission at the above address, to the attention of the Deputy Commissioner for Adjudication and including a reference to this case name and number.

**Interest on damages** is calculated pursuant to Reg. 240.700, at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates." The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually.



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Case No.: 04-P-82

Date of Ruling: July 16, 2008

## FINAL RULING ON LIABILITY & RELIEF

### I PROCEDURAL HISTORY

Complainant Darryl Williams filed this Complaint against Respondent Funky Buddha Lounge alleging violations of the Chicago Human Right Ordinance. His Complaint alleges that Respondent denied him entry to its establishment because of his sex and sexual orientation. On June 14, 2007, the Commission mailed an Order Finding Substantial Evidence which mandated that the parties attend a Conciliation Conference on August 7, 2007. Respondent did not appear at the Conciliation Conference and on August 8, 2007, the Commission entered and served on both parties a Notice of Potential Default. After receiving no response, on September 6, 2007, the Commission entered an order finding Respondent in default. On September 25, 2007, Respondent filed a Motion to Vacate the default. On November 1, 2007, the Commission denied the Motion to Vacate. An administrative hearing was held on January 30, 2008, for the purposes of allowing Complainant to prove a *prima facie* case and establish damages. Complainant, appearing *pro se*, called himself as his only witness. Respondent called no witnesses.

On March 24, 2008, the Hearing Officer issued his First Recommended Decision. On April 23, 2008, Respondent filed objections to the First Recommended Decision. Complainant has not filed any objections and has not filed a response to Respondent's objections.

### II FINDINGS OF FACT

Adopting the Hearing Officer's recommendations, the Commission makes the following factual findings:

1. By virtue of the default, Respondent is deemed to have admitted the facts alleged in the complaint.
2. Complainant went to the Funky Buddha Lounge on November 16, 2004, and was denied entry by Respondent's security guard, who advised Complainant that the lounge had been reserved for a private party and that to enter he had to be a gay female or lesbian.
3. While Complainant engaged in conversation with the security guard, two women entered the lounge even though their names were not on the guest list. Complainant spoke to the manager, Rene Romero, who repeated that the lounge had been reserved and Complainant could not enter.

4. Complainant testified, reiterating the allegations of his Complaint. (Tr. 5-6) Complainant testified that he was denied entry even though he was willing to pay a cover charge. (Tr. 9)
5. Complainant testified that he had been to Respondent's facility on prior occasions and had never been denied entry. (Tr. 11) When asked on cross-examination whether he had been back to the lounge since the incident, Complainant replied that he could not recall. (Tr. 12-13)
6. Complainant testified that he was accompanied to the lounge by two acquaintances, who remained by Complainant's car during the incident. (Tr. 16-18) He further testified that he was able to observe male patrons in the club. (Tr. 21) After being denied entry, Complainant dropped off his companions near a train stop and went home. (Tr. 23)
7. Complainant testified (Tr. 9): "I was unable to gain entry. I usually go there -- I've been going there for years and, you know, for that to happen to me just puts me in a situation of not wanting to go there again. That's about it. I have nothing else to say."
8. Complainant testified that after the incident, he dropped his friends off at the "el." He further testified that the incident left him thinking maybe he should not return to Respondent's establishment. (Tr. 23).

### III CONCLUSIONS OF LAW

Section 2-160-070 of the Chicago Municipal Code prohibits discrimination in public accommodations on the basis of, *inter alia*, sex and sexual orientation. Respondent is covered by §2-160-070 because Respondent is a business establishment that sells, leases and offers to the general public products and services. See Chicago Human Rights Ordinance, §2-160-020(i) Chgo. Muni. Code.

Complainant may establish a *prima facie* case of public accommodation discrimination by proving that he is a member of a protected class; that he sought the use of a public accommodation; that Respondent denied, withheld, curtailed or limited Complainant's use of the accommodation or that he was otherwise discriminated against concerning use of the accommodation; and that similarly-situated persons not in Complainant's protected class were treated more favorably. See, e.g., *Trujillo v. Cuauhtemoc Restaurant*, CCHR Case No. 01-PA-52 (May 15, 2002); *Blakemore v. Inter-Parking, Inc.*, CCHR Case No. 99-PA-120 (Feb. 22, 2001); *Carter v. CV Snack Shop*, CCHR No. 98-PA-3 (Nov. 18, 1998).

The Hearing Officer found that Complainant met his burden to establish a *prima facie* case of sex discrimination. Complainant, through his testimony and the admitted allegations of the Complaint, has proven that he is a member of a protected class, namely, he is male. He sought to enter Respondent's establishment on November 16, 2004, but was denied entry on the ground that the club had been reserved for the night, yet women who were not on the guest list were admitted into the club.

The Hearing Officer also found that Complainant met his burden to establish a *prima facie* case of sexual orientation discrimination through his testimony and the admitted allegations of the Complaint that Respondent's security guard told him that he had to be a lesbian to gain entry to the club. Complainant's *prima facie* case, coupled with Respondent's admission of the allegations of the Complaint and waiver of any defenses by virtue of the Order of Default, prove that Respondent discriminated against Complainant on the basis of his sex and sexual orientation in violation of the Chicago Human Rights Ordinance, §2-160-070 Chgo. Muni. Code.

Respondent objected to the recommended finding that Complainant established a *prima facie* case of sex or sexual orientation discrimination. Respondent relies on Complainant's admission that at the time he was denied admission to the facility, he observed male patrons inside (Tr. 22). Complainant's admission does not defeat his *prima facie* case. Complainant's testimony and the allegations of the Complaint, which are deemed admitted by virtue of Respondent's default, established that women were admitted to the facility even though their names were not on the guest list while Complainant was denied entry on the ground that the facility had been reserved for a private party. There is no evidence that the men Complainant observed in the facility were not on the guest list. Denying entry to men who were not on the guest list but allowing women who were not on the guest list to enter is a violation of the Chicago Human Rights Ordinance. Therefore, the Commission rejects Respondent's objection and finds that Complainant established a *prima facie* case of discrimination.

Complainant suffered no out-of-pocket losses as a result of the discrimination. The sole remedy he seeks is damages for emotional distress. In *Nash/Demby v. Sallas and Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995), the Commission reviewed the factors to be considered in awarding damages for emotional distress. The Commission noted that relatively modest awards (under \$5,000) had been made where: (1) There was negligible or merely conclusive testimony about mental distress; (2) the discriminatory conduct took place over a brief period of time; (3) there were no prolonged effects of the conduct; (4) there was no medical treatment or a paucity of physical symptoms; (5) the conduct was not so egregious that one would expect a reasonable person to experience severe emotional distress; (6) the complainant was not unusually fragile due to past experience or a pre-existing condition; or (7) the conduct involved refusal to rent rather than harassment, an attempt to evict, or refusal to sell. On the other hand, substantial awards in excess of \$10,000 were made where detailed testimony revealed specific effects; the conduct took place or its effects were felt over a prolonged period of time; there were physical manifestations and/or medical or psychiatric treatment; the conduct was particularly egregious, accompanied by face-to-face conduct, racial or sexual epithets or actual malice; or the complainant was particularly vulnerable. *Winter v. Chicago Park District*, CCHR No. 97-PA-55 (Oct. 18, 2000).

This case clearly falls into the *Nash/Demby* classification of warranting a relatively modest award of emotional distress damages. Complainant testified that he had patronized Respondent's establishment previously and had never before been denied entry. Complainant suffered no physical symptoms as a result of the incident and saw no need to seek medical attention. Indeed, by Complainant's testimony, his reaction to the incident was simply to drop his friends at a train station and go home. He further stated he thought maybe he should not return to the lounge, but he could not testify with certainty that he never returned. The evidence establishes an isolated incident that lasted a few minutes, which had minimal effect on Complainant and no significant lasting effect whatsoever.

In several cases where complainants have suffered a one-time discriminatory denial of service, the Commission has awarded emotional distress damages of \$1,000. See, e.g., *Trujillo, supra*; *Blakemore, supra*; *Carter, supra*; *Horn v. A-Aero 24 Hour Locksmith*, CCHR No. 99-PA-32 (July 19, 2000); *Efstathiou v. Cafe Kallisto*, CCHR No. 95-PA-1 (May 21, 1997). However, an award of \$1,000 for emotional distress, while common, is not automatic. Although the Commission's decisions make clear that "some emotional distress flows from discrimination and can be inferred from the circumstances of the case, as well as proved by testimony," the amount awarded depends on the circumstances of the case. *Huff v. American Management and Rental Service*, CCHR No. 97-H-187 (Jan. 20, 1999). For example, in *Huff*, the Commission reduced a Hearing Officer's recommendation of \$1,500 in emotional distress damages to \$750, because the complainant never explained how her condition changed after the respondent's rejection of her inquiries about renting an apartment.

Similarly, in *Puryear v. Hank*, CCHR No. 98-H-139 (Sept. 15, 1999), the Commission awarded emotional distress damages of \$500 where the complainant's testimony was general, brief, and conclusory, plus the discrimination took place over a brief period of time and was not severe.

In this case, the discriminatory act was an isolated incident (as Complainant had previously patronized Respondent's establishment and had never been denied entry), took place over a very brief period of time, and was not severe. Complainant's sole specific testimony was that the treatment he received made him feel that he would not want to return to Respondent's establishment. The probative value of Complainant's testimony that he felt he would not want to return is lessened by his inability on cross-examination to state unequivocally that he has not been back to Respondent's establishment since the incident. All he could say was that he could not recall. Considering all of the evidence and inferences that may be drawn from the evidence, the Hearing Officer recommended an award to Complainant of \$500 in emotional distress damages.

Respondent objected to the recommendation, arguing that Complainant offered no evidence that he suffered any emotional distress. The Commission has consistently recognized that "some emotional distress flows from discrimination and can be inferred from the circumstances of the case, as well as proved by testimony," *Huff, supra*. Moreover, although the emotional distress to which Complainant testified was minor and of brief duration, the very modest recommended award of \$500 takes that into consideration. The recommended award is consistent with prior Commission rulings on emotional distress damages; therefore, the Commission hereby awards Complainant \$500 in emotional distress damages.

Chicago Municipal Code §2-120-510(1) provides for payment of interest on damages awarded to complainants. Pursuant to Commission Reg. 240.700, interest shall be awarded to Complainant at the prime rate, adjusted quarterly, compounded annually from November 16, 2004 (the date of the violation) until the damages are paid.

Section 2-160-120 of the Chicago Human Rights Ordinance provides for a maximum fine of \$500 for each violation. Accordingly, Respondent shall pay a fine of \$500 to the City of Chicago for its discriminatory conduct.

Respondent objects to the recommendation that it pay the maximum fine of \$500. Respondent urges that the appropriate fine is the minimum fine of \$100 as provided in the Ordinance. Respondent argues that there is no evidence to support the maximum fine where a default order prevented it from contesting the allegations of the Complaint. Respondent's reliance on the default to mitigate against the fine imposed is comparable to an individual convicted of murdering his or her parents seeking to mitigate the sentence on the ground of being an orphan. Indeed, Respondent's failure to comply with the Commission's Regulations which resulted in the default aggravates the finding of discrimination and justifies the imposition of a fine of \$500. See, e.g., *Walters and Leadership Council for Metropolitan Open Communities v. Koumbis*, CCHR No. 93-H-25 (May 18, 1994), *Reed v. Strange*, CCHR No. 92-H-139 (Oct. 19, 1994); *Claudio v. Chicago Baking Co.*, CCHR No. 99-E-76 (July 17, 2002); *Carroll v. Riley*, CCHR No. 03-E-172 (Nov. 17, 2004); *Edwards v. Larkin*, CCHR No. 01-H-35 (Feb. 16, 2005); *Torres v. Gonzales*, CCHR No. 01-H-46 (Jan. 18, 2006); *Marshall v. Borouch*, CCHR No. 05-H-39 (Aug. 16, 2006); *Maat v. Villareal Agencia de Viajes*, CCHR No. 05-P-28 (Aug. 16, 2006); and *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 (Aug. 16, 2006), all cases where \$500 fines were based in part on the respondent's disregard of Commission orders and procedure.

Finally, Respondent has objected to the entry of the Order of Default and to the Commission's

denial of its Motion to Vacate the default. Respondent's objections reiterate the arguments it made in its Motion to Vacate the default. For the reasons set forth in the Commission's Order of November 1, 2007, the Commission overrules the objections and affirms the Order of Default.

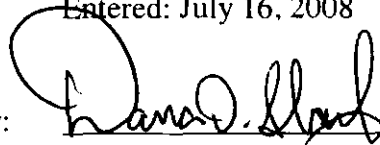
#### IV CONCLUSION

For all of the above reasons, the Commission finds in favor of Complainant Darryl Williams and against Respondent Funky Buddha Lounge, awards Complainant \$500 in emotional distress damages, and assesses a \$500 fine against Respondent on Complainant's sex and sexual orientation discrimination claim.

CHICAGO COMMISSION ON HUMAN RELATION

Entered: July 16, 2008

By:



Dana V. Starks, Chair and Commissioner