



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:

Anthony Cotten,
Complainant,
v.

Taylor Street Food and Liquor,
Respondent.

Case No.: 07-P-12

Date Mailed: August 22, 2008

TO:

Anthony Cotten
1212 S. Michigan Ave., #610
Chicago, IL 60605

Taylor Street Food & Liquor
Attn: Nasar Hasan
1152 W. Taylor St.
Chicago, IL 60607

FINAL ORDER ON LIABILITY AND RELIEF

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, Respondent is hereby ORDERED to pay damages to Complainant in the amount of \$1,000 plus interest commencing on January 31, 2007, and to pay to the City of Chicago a fine of \$500.¹ In addition, Respondent must comply with the order for injunctive relief set forth in the 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 at this time.

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

¹**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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IN THE MATTER OF:

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Case No.: 07-P-12

Date of Ruling: July 16, 2008

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On February 15, 2007, Complainant Anthony Cotten, who uses a wheelchair due to paraplegia, filed a Complaint alleging discrimination based on his disability when Respondent Taylor Street Food & Liquor, a convenience store, failed to accommodate his disability and denied him full access to its premises. In particular, Complainant alleged that he was unable to enter the store because it was accessible only by two steps that were each over six inches high. Complainant further alleged that he was unable to alert Respondent's employees to let them know he wanted to gain access to the store, so he thereafter left because he was unable to make his desired purchase. Complainant claims that he was denied full access to a public accommodation on account of his disability in violation of the Chicago Human Rights Ordinance, Chapter 2-160 of the Chicago Municipal Code.

II. PROCEDURAL HISTORY

Respondent filed a Verified Response to the Complaint on April 6, 2007. On May 17, 2007, after completing its investigation, the Commission determined that there was substantial evidence of the alleged ordinance violation. By order mailed June 18, 2007, the Commission directed the parties to attend a mandatory Conciliation Conference on August 14, 2007, and it warned the parties that the failure to attend without good cause could result in the dismissal of Complainant's Complaint or the entry of an order of default against Respondent. Despite this admonition, Respondent did not attend the Conciliation Conference. On September 5, 2007, the Commission mailed to Respondent a Notice of Potential Default requiring it to respond by September 19, 2007, with an explanation providing good cause for its failure to attend the Conciliation Conference and warning that the failure to do so could lead to the entry of an order of default. Respondent never provided any explanation for its failure to attend the Conciliation Conference.

On October 18, 2007, the Commission issued an Order of Default against Respondent on account of its failure to attend the Conciliation Conference without good cause. In its Order of Default (mailed to Respondent on October 24, 2007), the Commission notified Respondent that it was deemed to have admitted the allegations of the Complaint and to have waived its defenses to those allegations. In a separate order (also mailed to Respondent on October 24, 2007), the Commission notified Respondent of the scheduled dates for the Pre-Hearing Conference (January 17, 2008) and Administrative Hearing (January 31, 2008). Respondent failed to appear at the Pre-Hearing Conference on its initially scheduled date of January 17, 2008, and once again on the rescheduled date of January 25, 2008. The Administrative Hearing Officer had issued a Revised Scheduling Order (dated January 17, 2008) that advised the parties of the date for the rescheduled Pre-Hearing Conference and reiterated

that the Administrative Hearing was scheduled for January 31, 2008.¹

On January 31, 2008, Complainant--who proceeded without counsel--appeared at the Administrative Hearing and provided testimony regarding his *prima facie* case and damages. Respondent did not appear at the Administrative Hearing. The Administrative Hearing Officer issued his First Recommended Decision on March 17, 2008. Pursuant to Reg. 240.610(b), the parties had thirty days to serve any objections to the First Recommended Decision. Neither party filed an objection to the First Recommended Decision.

III. FINDINGS OF FACT

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

1. Complainant Anthony Cotten is a T-12 paraplegic who uses a power wheelchair for mobility. Transcript ("Tr."), at 5. Complainant cannot traverse stairs. Tr. 4-5; Complaint, ¶3.
2. Respondent Taylor Street Food and Liquor is a convenience store that is open for business to the general public. Complaint, ¶1.
3. On January 31, 2007, Complainant stopped by Taylor Street Food and Liquor to go inside and make a purchase. Tr. 4; Complaint, ¶2. After his arrival, Complainant noticed that Respondent's entrance was not accessible to him because it was necessary to traverse two big stairs to gain entrance into Respondent. Tr. 4; Complaint, ¶3. Each one of the stairs was over six inches high. Complaint, ¶3.
4. Complainant waited outside for five to ten minutes to see if one of Respondent's employees would notice him and come out to either assist him or let him know if there was another way into the store. Tr. 4-5; Complaint, ¶4. None of Respondent's employees came outside or to the window, and they did not notice that Complainant was waiting outside. *Id.*
5. Complainant experienced embarrassment and he felt "silly and stupid" waiting outside to see if he could get the attention of Respondent's employees. Tr. 4-5.

¹This Revised Scheduling Order (along with all other orders and notices) was served by regular mail on Respondent at its address of record (namely 1152 W. Taylor Street, Chicago, IL 60607). Each order served on Respondent in January 2008 has been returned to the Administrative Hearing Officer by the United States Postal Service with a sticker stating: "return to sender--vacant [or "not known"]--unable to forward." Respondent has failed to contact the Commission with updated contact information. Under Commission Regulation 210.270, Respondent has a continuing obligation to provide the Commission with contact information for its representative. The consequences for Respondent's apparent failure to comply with this requirement are clear under Reg. 210.270:

If a Respondent fails to update the Commission about its contact information . . . , the Commission shall send orders, notices and other documents to the most recent address the Commission has and that shall be deemed sufficient. When a Respondent does not update its contact information, it cannot rely on its failure to receive any order, notice or other document as a defense.

IV. CONCLUSIONS OF LAW

1. Complaint is a person with a disability within the meaning of the §2-160-020(c) of the Chicago Human Rights Ordinance in that he is a paraplegic who uses a wheelchair for mobility.
2. Respondent Taylor Street Food and Liquor is a public accommodation within the meaning of §2-160-020(j) of the Human Rights Ordinance and Reg. 510.110(f).
3. The Human Rights Ordinance, at §2-160-170, provides in pertinent part:

No person that owns, leases, rents, operates, 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. . . .

See also Reg. 520.100.

4. Because the Commission has entered an Order of Default against Respondent, the Commission finds that Respondent has admitted the allegations in the Complaint and waived defenses to the allegations including defenses concerning the Complaint's sufficiency. Further, Complainant is entitled to a liability finding in his favor and an award of relief so long as he establishes a *prima facie* case of disability discrimination. Reg. 235.320; *Maat v. Villareal Agencia de Viajes*, CCHR No. 05-P-28 (Aug 16, 2006), at 2 (citing cases).
5. To prove a *prima facie* case of disability discrimination with respect to a public accommodation, Complainant must show that (a) he is a person with a "disability" within the meaning of the Ordinance; (b) he is a qualified individual in that he satisfied all non-discriminatory standards for service; and (c) he did not have full use of the facility, as customers without disabilities did. *Maat, supra*, at 3; *Doering v. Zum Deutschen Eck*, CCHR, No. 94-PA-35 (Sept. 29, 1995), at 6. Once such a showing is made, the public accommodation has the burden of persuasion to show that the proposed accommodations would cause undue hardship. *Maat, supra*, at 3; *Doering, supra*, at 7.
6. Under Reg. 521.110, "Full use" of a public accommodation means that all parts of the premises open for public use shall be available to persons who are members of a Protected Class . . . 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."
7. Complainant has met his burden of establishing a *prima facie* case of disability discrimination by showing that he, as a person with a disability, attempted to make a purchase at Respondent Taylor Street Food and Liquor, a public accommodation, but was unable to make a purchase or obtain any service because (a) the only visible entrance was not wheelchair accessible due to the presence of two stairs, each of which was approximately six inches high; and (b) he was unable to gain the attention of a store employee to assist him. See, e.g., *Doering, supra*, at 7.
8. Accordingly, the Commission finds that Respondent has violated the Chicago Human Rights ordinance and Complainant is entitled to an order awarding relief.

V. RELIEF

a. Emotional Distress Damages

Complainant sought \$2,500 in damages to compensate him for the emotional distress caused by Respondent's discriminatory denial of access to its facility. Tr. 4-5. In particular, Complainant testified that he spent five to ten minutes outside of Respondent's establishment waiting to see if Respondent's employees would assist him in gaining access to the facility. Tr. 4-5. Complainant experienced embarrassment and he felt "silly and stupid" while he waited in vain for assistance to gain entry to the store and complete his purchase. Tr. 4-5. Complainant offered no further details as to the emotional distress he sustained.

The Commission does not require "precise proof" of damages for emotional distress. *Nash & Demby v. Sallas & Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995), at 20. Also, "[n]either expert testimony nor medical evidence is necessary" to establish such damages. *Ordon v. Al-Rahman Animal Hospital*, CCHR No. 92-E-139 (July 23, 1993), at 14-15; *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62 (Oct. 21, 1998), at 11. Rather, Complainant's testimony standing alone may be sufficient to establish that he suffered compensable emotional distress. *Hanson, supra*, at 11; *Ordon, supra*, at 14-15. The Commission also recognizes that "[p]utting a dollar value on emotional distress and suffering is unavoidably subjective and difficult." *Ordon, supra*, at 16; *Hanson, supra*, at 11. Under Commission precedent, "[t]he size of the damage award for emotional distress 'is determined by the egregiousness of the Respondent's behavior and the Complainant's reaction to the discriminatory conduct' as well as by a comparison with damages awarded in past Commission cases." *Hanson, supra*, at 11, quoting *Nash & Demby, supra*, at 21.

In this case, Respondent's conduct, while amounting to a discriminatory denial of access to Complainant on account of his disability, did not reflect any personalized hostility or actual malice toward Complainant based on his disability. See *Hanson, supra*, at 12; *Compare Nash & Demby, supra*, at 23. Indeed, Respondent and its personnel had no contact with Complainant during the incident. Complainant reacted to the discriminatory conduct by suffering embarrassment and public humiliation. Nonetheless, he does not appear to have suffered any severe or long-lasting emotional distress. He presented no evidence that his emotional distress was accompanied by any physical manifestations (such as sleeplessness), or that he required any medical or psychiatric treatment on account of Respondent's discrimination. See *Hanson, supra*, at 12. Finally, there is no evidence that Complainant was particularly vulnerable to the sort of discriminatory conduct that he experienced. *Id.*

The Commission has awarded \$1,000 in damages for emotional distress where, as here, complainants (a) were denied access to a respondent's facilities in an impersonal manner by physical barriers because of their status as persons with disabilities; and (b) offered "sparse testimony" regarding their emotional distress. See, e.g., *Maat, supra*, at 4 (awarding \$1,000 for emotional distress damages where the complainant "proved that she suffered physical pain and discomfort as a result of being deprived of access to the [r]espondent's place of business because of her disability"); *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 (Aug. 16, 2006), at 4 (awarding \$1,000 for emotional distress damages where the complainant was "hot and . . . had pain and breathing problems" while she attempted to gain access respondent's facility).

The Commission has also awarded \$1,000 in damages for emotional distress in seemingly more damaging situations where complainants were denied "full use" of a public accommodation by respondents' personnel who directly confronted complainants and were rude or even overtly hostile to

them. See, e.g., *Trujillo v. Cuauhtemoc Restaurant*, CCHR No. 01-PA-52 (May 15, 2002), at 2-3; *Horn v. A-Aero 24 Hour Locksmith & Garippo*, CCHR No. 99-PA-32 (July 19, 2000), at 2-4; *Carter v. CV Snack Shop*, CCHR No. 98-PA-3 (Nov. 18, 1998), at 2-3, 5-6; *Efstathiou v. Café Kallisto*, CCHR No. 95-PA-1 (May 21, 1997), at 8-10, 22-23; *Macklin v. F & R Concrete et al.*, CCHR No. 95-PA-35 (Nov. 20, 1996), at 2-3, 5-6; *Jenkins v. Artists' Restaurant*, CCHR No. 90-PA-14 (Aug. 14, 1991), at 3-4, 21.

In consideration of the nature of Respondent's discriminatory conduct, Complainant's reaction to that conduct, and Commission precedent, the Commission thus awards emotional distress damages in the amount of \$1,000, which is sufficient to compensate Complainant for his emotional distress.² Complainant failed to offer evidence that he suffered the level of emotional distress on account of Respondent's discriminatory conduct that would warrant a higher damages award. Compare *Hanson, supra*, at 12 (awarding \$3,500 in damages for emotional distress to a wheelchair-using complainant who became "very angry" and testified that respondent's failure to provide access to an event "was one of the most frustrating and humiliating experiences of his life"); *Miller v. Drain Experts and Derkits*, CCHR No. 97-PA-29 (Apr. 15, 1998), at 10-11 (awarding complainant \$2,750 in damages for his emotional distress where he was repeatedly subjected to "racially offensive language" and deprived of the use of his plumbing system on account of respondents' discrimination in the provision of services).

b. Lost Wages

Complainant also sought compensation for the wages he lost when he came to the Commission on three occasions when Respondent was did not appear. Tr. 5. Although the "law does not require that a party produce written documentation of out-of-pocket expenses as long as the party can testify to them with certainty," *Macklin, supra*, at 5, and the Commission sympathizes with Complainant regarding any missed work to attend the Commission's proceedings, there was simply no evidentiary basis upon which an award of damages for lost wages can be based. Complainant did not claim any specific amount of damages for lost wages, nor did he provide any details as to his occupation, how many hours of work he missed, and his hourly pay rate or salary. Without such evidence, an award of damages for lost wages would be sheerly speculative and as such impermissible. See *Griffiths v. DePaul University*, CCHR No. 95-E-224 (Apr. 19, 2000), at 24 ("damages that are too remote or speculative will not be awarded"); and compare *Macklin, supra*, at 5 (awarding damages for lost wages where complainant testified as to the hours of work he missed and his daily salary) with *Miller, supra*, at 9-10 (rejecting claim for lost wages where complainant offered a "conclusory statement" that he lost \$1,275 but provided no evidence as to his occupation, his average daily wages, or any other documentation as to his claimed loss).³

²This is not to say that \$1,000 represents an unchangeable ceiling on awards for emotional distress damages in this type of public accommodation case. At some point, with the passage of time, higher awards for comparable cases would be warranted to take into consideration the effects of inflation. The reasons for this is clear: the \$1,000 awarded in 1991 to the complainant in *Jenkins*, for example, is unquestionably worth more today as a consequence of inflation. See, e.g., *Lamley v. Onyx Acceptance Corp.*, 340 F.3d 478, 484 & n.10 (7th Cir. 2003)(noting the effects of inflation and that an award of \$50,000 in 1988 was worth approximately \$70,000 in 1999 according to a Statistical Abstract).

³Complainant did not request an award of punitive damages, and his failure to do so has arguably waived his right to seek such damages. See *Tate v. Bricia*, CCHR No. 94-H-46 (Jan. 10, 1996), at 21 ("It appears that Tate waived any right to seek punitive damages by never requesting them"). Even if waiver were not an issue, punitive damages—which are "awarded when a respondent's actions are wilful, wanton, or taken in reckless disregard of complainant's rights"—are not warranted under the facts in this case. *Miller, supra*, at 12. Respondent engaged in no conduct that was overtly intended to harm Complainant, and Respondent (which filed a Verified Response) did

c. Interest on Damages

Commission Regulation 240.700 provides for pre-judgment and post-judgment interest at the bank prime loan rate, adjusted quarterly, and compounded annually starting from the date of the violation, which in this case was January 31, 2007. Such interest is routinely awarded in Commission cases; see, e.g., *Torres v. Gonzales*, CCHR No. 01-H-46 (Jan. 18, 2006). Consequently, the Commission orders that Respondent pay pre-judgment and post-judgment interest on the \$1,000 emotional distress damages award starting on January 31, 2007, calculated pursuant to the methodology specified in Reg. 240.700.

d. Fine

Section 2-160-120 of the Chicago Human Rights Ordinance provides that “[a]ny person who violates any provision of this ordinance as determined by this Commission shall be fined not less than \$100.00 and not more \$500.00 for each offense. Every day that a violation shall continue shall constitute a separate and distinct offense.” Respondent has violated the Human Rights Ordinance; it also ignored the Commission’s procedures to the point of being defaulted, and it failed to attend both the Pre-Hearing Conference and the Administrative Hearing. Consistent with its precedent, the Commission finds that the maximum fine of \$500 is warranted in this case. See, e.g., *Maat v. El Novillo Steak House*, *supra*, at 5; *Maat v. Villareal Agencia de Viajes*, *supra*, at 4-5; and *Horn*, *supra*, at 13.

e. Injunctive Relief

Injunctive relief is specifically authorized by the Commission’s Enabling Ordinance at §2-120-510(1) (“Relief may include but is not limited to an order: to cease the illegal conduct complained of . . .”), and Reg. 235.320 makes no limitation on the nature or amount of relief that can be awarded following the entry of an order of default. See, e.g., *Maat v. El Novillo Steak House*, *supra*, at 5; *Maat v. Villareal Agencia de Viajes*, *supra*, at 4; see also *Winter v. Chicago Park District et al.*, CCHR No. 97-PA-55 (Oct. 18, 2000), at 42 n.39. Moreover, although Complainant did not request an order of injunctive relief, the Commission retains the power to enter such an award where injunctive relief is warranted by the record. See *Hanson*, *supra*, at 16 n.9 (“That Complainant did not specifically seek injunctive relief against Respondent is of no moment. The Commission can order injunctive relief even if it is not requested.”); and *Nash & Demby*, *supra*, at 33.

Commission precedent makes “clear that the Commission is authorized to grant injunctive relief to remedy past violations of the Ordinance and to prevent future violations.” *Maat v. El Novillo Steak House*, *supra*, at 5; and *Maat v. Villareal Agencia de Viajes*, *supra*, at 5 (both citing cases). In particular, the Commission has held that injunctive relief is appropriate where (a) a respondent is in violation of the Ordinance because persons using a wheelchair are deprived of the full use of the facility due to its inaccessibility; and (b) the discriminatory practice may continue unless action is taken to make the respondent facility fully accessible to persons with disabilities. *Id.* In this case, Respondent by virtue of the Order of Default is deemed to have admitted that the front entry to its premises is not wheelchair accessible and that there was no effective means to notify its personnel that a person using a wheelchair (or having a similar mobility impairment) was outside and needed assistance.

not completely fail to participate in the Commission’s proceedings. See *Trujillo*, *supra*, at 5-6 (denying an award of punitive damages under like circumstances).

Accordingly, the Commission finds that an order of injunctive relief is necessary to avert future Ordinance violations of a similar nature to the violation that occurred in this case. *Id.*; compare *Winters, supra*, at 2-3, 42 n.39 (no injunctive relief warranted in public accommodation case where the parties stipulated that the facility in question was wheelchair accessible at the time the Commission awarded relief).

The Commission therefore orders the following injunctive relief:

1. Within 31 days of the date of mailing of the Final Order based on this Ruling, the Respondent must eliminate all physical barriers to access by persons in a wheelchair at its storefront business location at 1152 West Taylor Street in Chicago. All modifications to the storefront shall, at a minimum, be in accordance with the Illinois Accessibility Code and the American National Standards Institute standards for persons with disabilities, ANSI.1-1986.
2. If due to undue hardship within the meaning of Commission Regulation 520.130, it is not feasible to eliminate any or all physical barriers to wheelchair access, Respondent must then (i) provide reasonable alternative accommodations within the meaning of Commission Regulation 520.120 (such as the installation of a bell outside of its front entrance so that its staff can be notified of the arrival of a wheelchair user who desires entry and the need to provide assistance) which enable wheelchair users to obtain access to the same services in the same manner as are provided to person without a disability, and (ii) provide a conspicuous notice to wheelchair users approaching the entrance from the sidewalk sufficient to inform them how to enter the premises and/or obtain access to the same services offered by Respondent to persons without a disability.

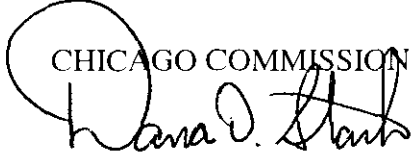
See *Maat v. Villareal Agencia de Viajes, supra*, at 6 and *Maat v. El Novillo Steak House, supra*, at 6 (both ordering similar injunctive relief)

VI. CONCLUSION

For all of the above reasons, the Commission hereby finds that Respondent violated the Chicago Human Rights Ordinance as alleged in the Complaint and orders the following relief:

1. Damages for emotional distress payable to Complainant in the amount of \$1,000.
2. Pre-judgment and post-judgment interest on the emotional distress damages award from January 31, 2007, payable to Complainant in accordance with Regulation 240.700.
3. A fine of \$500 payable to the City of Chicago.
4. Injunctive relief as specified above.

CHICAGO COMMISSION ON HUMAN RELATIONS


By: Dana V. Starks, Chair and Commissioner