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:

Jacqueline Johnson and Gregory Johnson
Complainants,
v.

Hyde Park Corporation d/b/a Hyde Park Citgo
Respondent.

Case No.: 08-P-95/96

Date of Ruling: February 15, 2012
Date Mailed: February 22, 2012

TO:

Jacqueline and Gregory Johnson
10305 S. Bensley Ave.
Chicago, IL 60617

Michael C. Moses
Attorney at Law
2335 W. Devon Ave., Suite 209
Chicago, IL 60659

FINAL ORDER

YOU ARE HEREBY NOTIFIED that, on February 15, 2012, the Chicago Commission on Human Relations issued a ruling in favor of Respondent in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby DISMISSED.

Pursuant to Commission Regulations 100(15) and 250.150, Complainant may seek a review of this Order by filing 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

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IN THE MATTER OF:	
Jacqueline Johnson and Gregory Johnson **Complainants,** **v.**	**Case No.:** 08-P-95/96
Hyde Park Corporation d/b/a Hyde Park Citgo **Respondent.**	**Date of Ruling:** February 15, 2012

FINAL RULING ON LIABILITY

I. PROCEDURAL HISTORY

On December 29, 2008, Complainant Jacqueline Johnson filed CCHR No. 08-P-95 and Complainant Gregory Johnson filed CCHR No. 08-P-96 with the Commission. Both Complainants alleged that Respondent Hyde Park Corporation, which operates the Hyde Park Citgo gasoline station, discriminated against them by refusing them the opportunity to purchase gasoline because of their race (African American). Respondent filed a written response, and after completing its investigation, the Commission found substantial evidence that Respondent violated the Chicago Human Rights Ordinance as alleged and consolidated the two cases for hearing pursuant to its authority under Reg. 210.810. Then the Commission appointed a hearing officer and set this matter for a pre-hearing conference.

At the pre-hearing conference, Complainants requested time to secure legal representation. Therefore, a long date was set for hearing and the parties were advised that there would be no continuance of the hearing date. Respondent requested that the Commission provide an Urdu interpreter at the hearing. The parties agreed to June 10, 2010, at 9:30 a.m. as the date for hearing and agreed to submit their pre-hearing memoranda on or before May 27, 2010.

The hearing officer issued on order to the parties on March 22, 2010, confirming these discussions and agreements. The order notified the parties of the penalties for noncompliance. Specifically, Complainants were placed on notice that, pursuant to Commission Regulation 240.398, if a complainant fails to appear at the administrative hearing, the hearing officer may dismiss the case without further notice. The parties were also advised that additional penalties for violations of Commission regulations or orders may include fines up to $500 per violation and payment of costs incurred by other parties, as described in Subpart 235 of the regulations.

Respondent filed its Pre-Hearing Memorandum with proof of service upon Complainants on March 2, 2010, well before the deadline. Complainants never submitted a Pre-Hearing Memorandum.

On June 10, 2010, Respondent appeared for the hearing with counsel and witnesses. An Urdu interpreter and court reporter, engaged by the Commission, appeared as well. The hearing was held open for 30 minutes beyond the scheduled time to provide Complainants a reasonable opportunity to appear. Complainants failed to appear for the hearing. The hearing officer was

informed by Commission staff that no phone call or other contact had been received from Complainants. The hearing officer thereafter dismissed Respondent, the court reporter, and the Urdu interpreter at 10:00 a.m.

On June 15, 2010, Complainants filed with the Commission and hearing officer a Request for Rehearing. The document stated that Complainant Jacqueline Johnson became ill the night before the hearing and visited her doctor on the day of hearing. It further stated that Complainant Gregory Johnson attempted to call the Commission between 8:50 a.m. and 9:00 a.m.[1] on the date of hearing, June 10, 2010, but received no answer. However, there was no objective evidence that the Complainants attempted to contact the Commission on the date of hearing.

The hearing officer found that this written explanation failed to establish any other attempt by Complainants to contact the Commission either prior to the hearing, at any time on the date of hearing, or prior to the filing of the explanation on June 15, 2010. The explanation further failed to show any good cause for the failure to contact the Commission for five days after the hearing. Further, the hearing officer noted that Complainants' submission failed to document that it was served on Respondent as required by Reg. 270.210(b).

Therefore, the hearing officer found that the Complainants failed to cooperate with Commission orders and procedures. As such, the hearing officer issued an order of dismissal on July 20, 2010. The order also imposed a fine of $250 against Complainants for their failure to cooperate with Commission orders and failure to attend the administrative hearing. Additionally, pursuant to Reg. 250.110, Complainants were informed of their right to request review of the dismissal.

Complainants filed a timely Request for Review, offering preliminary evidence supporting their contention that they made a diligent attempt to attend the hearing as scheduled but were prevented from doing so by exigent circumstances. The preliminary evidence consisted of a purported record of phone calls from a cell phone and an affidavit dated August 11, 2010, from Rochelle Smith. In the affidavit, Rochelle Smith stated that she accompanied Complainants to a doctor's office due to Complainant Jacqueline Johnson suffering pain. Smith stated that she witnessed Complainant Gregory Johnson attempt to make several calls which were disconnected. Smith further stated that she heard Mr. Johnson say, "Hello, this is Greg Johnson, we have a hearing today, but we won't be able to make it, because my wife is sick."

Complainants additionally requested more time within to provide medical and phone records in support of their Request for Review, stating that their doctor was out of town until August 18, 2010. No response to the Request for Review was received from the Respondent.

The hearing officer granted Complainants an extension of time, allowing them until September 8, 2010, to submit legible phone and/or medical records in support of their Request for Review. On September 8, 2010, Complainants submitted medical records indicating that Jacqueline Johnson was examined and treated by her doctor on June 10, 2010, for complaints of pain.

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[1] The Commission opens for business at 9:00 a.m., but it is possible to leave a voice mail message on the Commission's main incoming telephone line at any time and calls received close to 9:00 a.m. are often answered.

Complainants presented credible evidence that Mrs. Johnson was treated by her physician on the date of hearing, and therefore may have missed the hearing for good cause. However, Complainants' assertions that they attempted to contact the Commission on the date of hearing were deemed not credible by the hearing officer. Complainants requested and received an extension of time in which to present phone records evidencing their attempt to contact the Commission prior to the start of the hearing. Complainants failed to submit such evidence. The affidavit submitted by Smith was directly refuted by all available objective evidence. Specifically, although Smith allegedly heard Mr. Johnson stating to someone that Complainants could not attend the hearing, the Commission had no record of receiving such a call.

Although Complainant Jacqueline Johnson may have been ill on June 10, 2010, there was nothing in the medical records presented indicating that either of the Complainants was prevented from calling the Commission prior to the hearing, to prevent inconvenience and cost to the Commission and Respondent. As such, Complainants' action in failing to give notice of their inability to attend the scheduled hearing was found to be a failure to cooperate with Commission orders in violation of Reg. 235.210(a).

In view of the above, on October 16, 2010, the hearing officer issued an order rescinding the dismissal of the Complaints, finding that good cause was established for not attending the hearing, but affirming that Complainants were still ordered to pay the fine of $250 as imposed in the July 20, 2010, order. Complainants were ordered to pay the fine on or before November 10, 2010. (See Reg. 235.420). Finally, the order of October 16, 2010, set the hearing for November 17, 2010, at 9:30 a.m. at the office of the Commission. The hearing date was again re-scheduled to December 16, 2010, upon timely motion of the Respondent.

The hearing on this matter was held on December 16, 2010. Complainants Jacqueline and Gregory Johnson appeared and provided testimony. Respondent presented testimony of three witnesses and exhibits previously submitted through their Pre-Hearing Memorandum.

II. FINDINGS OF FACT

In reaching the following findings of fact, the hearing officer relied upon the testimony of Complainants Jacqueline and Gregory Johnson; the testimony of Respondent witnesses Mohammed Saghir, Mohammed Forooq Sattar, and Maqsood Hussain; and review of the Complaint, Response, and Respondent's Pre-Hearing Memorandum. Citations shall be designated "Tr." for the transcript, "J.C." for Jacqueline Johnson's Complaint, "G.C." for Gregory Johnson's Complaint, "R." for the Response and "Ex." for exhibits.

1. Complainants Jacqueline and Gregory Johnson are an African American married couple. (JC 1; GC 1);

2. At all times relevant to the Complaints in this matter, Hyde Park Corporation d/b/a Hyde Park Citgo was the owner of the Citgo gas station located at 123 East 51st Street, Chicago, Illinois (R);

3. The parties are in agreement that on or about November 22, 2008, Complainants attempted to purchase gas at the Citgo gas station located at 123 East 51st Street, Chicago, Illinois. (J.C. 1, G.C. 1 R);

4. Gregory Johnson testified that on or about November 22, 2008, he and his wife, Jacqueline Johnson, stopped at Respondent's Citgo gas station to purchase gas. He stated that

Complainant Jacqueline Johnson gave him a $100 bill to pay for the gas and he proceeded inside the gas station to pay. He stated that the person behind the counter placed a mark on the $100 bill that Mr. Johnson gave him, then stated that the bill was no good. Mr. Johnson gave the person behind the counter another $100 bill. Mr. Johnson did not see if the person used the marker on the second bill. However, the person informed Mr. Johnson that the second bill was no good. Mr. Johnson did not see if the mark on the bills was brown or black (TR 6-8).

5. Jacqueline Johnson testified that on the same day, November 22, 2008, she was in possession of approximately $1,000 (one thousand dollars) in $100 bills that she had received from her bank after cashing her paycheck (TR 13). She gave one of the $100 bills to Mr. Johnson to pay for gas when they stopped at Respondent's gas station. She stated that Mr. Johnson came back to the car a few minutes later and told her that the gas station employee inside had informed him the $100 bill was no good. She then gave Mr. Johnson a second $100 bill. He returned a few minutes later stating that he had been told the second bill was no good. Mr. Johnson showed her the mark that had been placed on the bills by the employee. She said the mark was brown (TR 13).

6. Mrs. Johnson entered the gas station and spoke with the employee whom she confirmed at the hearing to be Mohammed Saghir (TR 17). He informed her that the bills that had been given to him by Mr. Johnson were no good and refused to take them as payment. Therefore, she asked to speak with a manager. The manager, identified at hearing as Mohammed Farooq Sattar, also refused to accept the $100 bills after using the marker on them himself and consulting with employee Saghir. Mrs. Johnson testified she continued to insist the money was good and should be accepted by Respondent. She told the manager she would file a discrimination complaint against Respondent for failure to accept the money. During the exchange, Sattar called the police. The parties waited approximately 15 to 20 minutes for the arrival of the police. While the parties were waiting, the $100 bills proffered by Mr. and Mrs. Johnson remained on the counter behind the glass partition for a period but were returned to Mrs. Johnson before the arrival of the police (TR 14-21).

7. When the police arrived, Complainants and Farooq Sattar spoke to the police officer outside the station. Mrs. Johnson gave the $100 bills, including the ones she had proffered to Respondent, to the police officer. She testified that the officer confirmed that there was a brown mark on the bills she had proffered to Respondent (TR 21-23). Both Complainants testified the officer stated the brown mark meant the bills were authentic (TR 9-10, 21-23). Farooq Sattar testified the officer did not state the bills were authentic (TR 74). No arrests were made (TR 27, 74).

8. Respondents use a marker pen to authenticate paper money. The pen is obtained from Respondent's bank or from Office Depot by Maqsood Hussain, Respondent's General Secretary. Hussain then supplies the pen to the gas station for use by Respondent's employees. Only one pen is used at a time. Respondent had used the same type of pen for approximately 9-10 years. Regardless of whether the pen is obtained from Respondent's bank or from Office Depot, the instructions regarding color designations for authentication are the same: if the mark made by the pen on the money is yellow, the money is authentic; if the mark made by the pen on the money is brown or black, the money is considered suspect (TR 85-90).

9. Respondent presented credible testimony that Exhibit 2, a marker pen, is the same type of pen used by Respondent for 9-10 years and used on November 22, 2008, to mark the bills presented by Complainants (TR 41, 77-81, 85-87). The instructions on Exhibit 2 state that a yellow mark made by the pen indicates the money is authentic, while a brown or black mark

indicates the money is suspect (Ex. 2). Hussain testified that he gave Exhibit 2 to his lawyer on the Monday following the encounter with Complainants (TR 88).

10. All parties agree the mark made by the pen used by Respondents' employees on the bills offered by Complainants was a brown mark (TR 11-12, 43).

11. Respondent's witnesses testified that they have only used the type of pen represented by Exhibit 2 to authenticate paper money and have never engaged in holding the money up to the light to look for any type of government markings. Respondent presented testimony that Respondent believes using one approved method (the pen) to authenticate paper money is best for the convenience of Respondent's customers (TR 56, 76).

12. Mrs. Johnson testified that she later bought gas at another station using one of the bills that had been marked and rejected by Respondent's employees (TR 24).

III. APPLICABLE LEGAL STANDARDS

Discrimination by a person in control of a public accommodation on the basis of race and other protected categories is prohibited by the Chicago Human Rights Ordinance. Section 2-160-070 of the Chicago Municipal Code specifically states:

> 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 race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income.

Under the Human Rights Ordinance, a public accommodation includes a business that sells, provides or offers a product or service to the general public. Section 2-160-020(j), Chicago Muni. Code.

A complainant may prove discrimination by direct or indirect evidence of disparate treatment or under a theory of disparate impact. Under the direct evidence method, a complainant must present a *prima facie* case by showing that he or she is a member of a protected class and that the respondent directly stated or indicated that service was limited or denied because of the Complainant's race or other protected status. *Blakemore v. Kinko's,* CCHR Nol. 01-P-77 (Dec. 6, 2001); *Sturgies v. Target Department Store (Target Corporation),* CCHR No. 08-P-57 (Dec. 16, 2009).

The indirect evidence method requires that a complainant prove "by a preponderance of the evidence that sufficient facts exist to imply discrimination in the absence of a credible, nondiscriminatory explanation for the Respondent's actions." *Sohn and Cohen v. Costello and Horwich,* CCHR No. 91-PA-19 (Oct. 20, 1993). Under this method, a complainant has the initial burden of proving a *prima facie* case by establishing that he or she: (1) is a member of a protected class; (2) attempted to use the public accommodation at a time when it was open and available to the public; (3) met all legitimate non-discriminatory criteria for access to the public accommodation and (4) was denied full use of the public accommodation or was treated less favorably than others who are not in the same protected class. *Sturgies, supra.* If a complainant establishes a *prima facie* case under this method, the burden then shifts to the respondent to provide a legitimate, non-discriminatory reason for the actions complained of. If such a basis is established, the burden shifts back to the complainant to establish that the stated reason is

actually a pretext masking discriminatory intent. *Chimpoulis and Richardson v. J & O Corp. et. al.*, CCHR No 97-E-123/127 (Sept.20, 2000); *Sturgies, supra.*

Discrimination may also be established under a disparate impact theory of liability by showing that a challenged practice has a significant or substantial statistical disparate impact upon a protected class, which is not justified by business necessity. *Walton v. Chicago Dept. of Streets and Sanitation,* CCHR No. 95-E-271 (May 17, 2000).

IV. CONCLUSIONS OF LAW AND ANALYSIS

Complainants bear the burden of proof of discrimination, as noted above. Complainants have not met this burden under any available method of proof.

Complainants have shown that they are members of a protected class (African American) and that they attempted to use the public accommodation in question—the gas station—during a time when it was open to the public but were unable to do so. However, Complainants have not proved the remaining elements of a *prima facie* case under the indirect evidence method. Nor have they proved discrimination by direct evidence or by evidence of disparate impact.

It is evident from the testimony in this case that both Complainants and Respondent are sincere in their beliefs regarding the authenticity of the money offered by Complainants for payment. It is that sincerity which makes it unfortunate that the parties find themselves before the Commission. However, regardless of Complainants' sincere belief that the money they tendered to Respondent was authentic, the evidence shows that the money was suspect.

Complainants did not present any of the bills in question as evidence at the hearing. However, the parties agree in their testimony and documented statements that the color of the mark made on the bills presented for payment by Complainants was brown. As shown by Exhibit 2 and credible sworn testimony of witnesses, when the type of pen in question is used to mark bills, the color brown indicates that a bill is suspect and should not be accepted.

Credible witness testimony established that the use of pens represented by Exhibit 2 was a long-standing practice of Respondent to authenticate large bills and was used for all such bills.

Although Complainants maintain that the police officer called to the scene stated the brown mark meant the bills were authentic, their testimony is refuted by Respondent's witnesses and contradicts the evidence established by Exhibit 2. Complainants could have called the police officer as a witness but did not attempt to do so. They attempted to introduce a statement allegedly made by the officer that contradicts all other evidence. In this context, the police officer's statement amounts to inadmissible hearsay and cannot be relied upon for the truth of what the police officer stated.

In order for Complainants to meet the third element of proof by the indirect evidence method, that is, that they met all legitimate non-discriminatory criteria for use of the gas station, it would be necessary for them to show they had the ability to pay for the gas they wished to purchase. That element is not proved here, because the evidence (including Complainants' testimony) establishes that each bill presented by Complainants was shown to be suspect when tested. Without any evidence to prove Complainants' assertions that the money they presented was authentic (and that Respondent's employees should have known it was authentic), Complainants have failed to establish that they met this legitimate non-discriminatory criterion for service.

Most importantly, Complainants provided no evidence to prove that similarly situated customers who are not African American were treated more favorably with regard to acceptance of their cash payments. For example, Complainants were not able to point to any examples of another customer whose $100 bill was not tested for authenticity, or whose cash was accepted even through a brown mark appeared when it was tested with the pen Respondent used. Thus Complainants have not proved a *prima facie* case of race discrimination under the indirect method of proof.

Further, no evidence was presented to prove that Respondent's practice of testing large bills with a special pen and refusing to accept those with a brown mark has a disparate impact upon African Americans. Sattar credibly testified that Respondent's customer base is primarily African American but that other ethnic groups are served, that all large bills are tested regardless of the race of the customer, and that Respondent values all of its customers (TR 69-74).

Even assuming for the sake of argument that Complainants had established a *prima facie* case, Respondent established through credible evidence that they denied service to Complainants for the legitimate business reason that Complainants were unable to offer money as payment that was not suspect as established by Respondent's cash authentication practices. Complainants have not proved that this stated reason of Respondent was pretextual or that in any other respect Respondent's refusal to accept Complainants' cash payment was discriminatory based on Complainants' race.

Complainants' claims of race discrimination rests large on their testimony about a statement of Respondent's employee during the incident. Mrs. Johnson testified that the employee stated, "Your friends came in here earlier and they robbed me. Your friends gave me this bad money" (TR 18). Mr. Johnson testified that the employee, Saghir, told him, "[Your] brother came in last week and gave a phony $100 bill" (TR 6). Respondent's employees required the use of an Urdu translator during the hearing and, according to the hearing officer, exhibited some difficulties expressing themselves in English. The hearing officer took this into account in weighing the meaning of this testimony. Even assuming the testimony to be credible, the hearing officer found that the statements, without more, do not prove racial motivation.

Sattar testified that Mrs. Johnson called him "Osama Bin Laden" (TR 67). Mrs. Johnson testified that she did not recall the term Osama Bin Laden being used, but she did not deny using the term (TR 31-31). The hearing officer noted that the situation apparently became tense for all involved, but nevertheless found that there is no credible evidence that the actions or statement of Respondent's employees were racially motivated.

The Commission agrees with the hearing officer that, even if such a statement was made (which Respondent denied), an ambigious reference to "your friends" or "your brother" under these circumstances is insufficient to establish direct evidence of discriminatory intent or racial animus.

The Commission reviews a hearing officer's proposed findings of fact pursuant to Section 2-120-510(l) of the Chicago Municipal Code, which provides in pertinent part: "The commission shall adopt the findings of fact recommended by a hearing officer...if the recommended findings are not contrary to the evidence presented at the hearing." This standard of review takes into account that the hearing officer has had the opportunity to observe the testimony and demeanor of witnesses. *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006); see also *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997). The Commission will

not re-weigh a hearing officer's recommended findings of fact unless they are against the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996); *Wiles v. The Woodlawn Organization et al.*, CCHR No. 96-H-1 (Mar. 17, 1999).

Here, the Commission finds that the hearing officer's factual findings in this case are not against the manifest weight of the evidence, and the hearing officer's conclusions are consistent with applicable law. Complainants have not proved by a preponderance of the evidence that Respondents violated the Chicago Human Rights Ordinance by refusing to accept currency tendered by Complainant to purchase gasoline after a test indicated that it was not authentic.

V. CONCLUSION

Complainants Jacqueline and Gregory Johnson have not proved by a preponderance of the evidence that Respondent Hyde Park Corporation d/b/a Hyde Park Citgo discriminated against them in the use and enjoyment of a public accommodation based on their race. Accordingly, the Commission finds in favor of Respondent and the Complaints in this matter are DISMISSED.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: Mona Noriega, Chair and Commissioner
Entered: February 15, 2012