



**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:**

Jose "Arian" Ramirez Manzanares  
**Complainant,**  
 v.  
 Lalo's Restaurant  
**Respondents.**

**Case No.: 10-P-18**

**Date of Ruling:** May 16, 2012

**Date Mailed:** May 23, 2012

**TO:**

Jose "Arian" Ramirez Manzanares  
 2122 N. Pulaski, Basement Apt.  
 Chicago, IL 60639

Lalo's Restaurant  
 Attn: Maria Isabel Suarez-Melgar  
 Human Resource Manager  
 804 S. Oak Park Ave.  
 Oak Park, IL 60304

**FINAL ORDER ON LIABILITY AND RELIEF**

YOU ARE HEREBY NOTIFIED that, on May 16, 2012, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondent violated the Chicago Human Rights Ordinance. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission orders Respondent:

1. To pay to Complainant damages in the amount of \$6,000, plus interest on that amount from April 18, 2010, in accordance with Commission Regulation 240.700.
2. To pay a fine to the City of Chicago in the amount of \$500.<sup>1</sup>
3. To comply with the order for injunctive relief stated in the enclosed ruling.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain 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 at this time. Respondent must comply with this Final Order shall occur no later than 28 days from the date of mailing of the order. Reg. 250.210.

**CHICAGO COMMISSION ON HUMAN RELATIONS**

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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 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.

**CITY OF CHICAGO**  
**COMMISSION ON HUMAN RELATIONS**  
740 N. Sedgwick St., Chicago, IL 60654  
(312) 744-4111 (Voice), 312/744-1081 (Facsimile), (312) 744-1088 (TTY/TDD)

**IN THE MATTER OF:**

Jose "Arian" Ramirez Manzanares,  
**Complainant**  
v.

Lalo's Restaurant,  
**Respondent**

**CCHR No.** 10-P-18  
**Date Entered:** May 16, 2012

**FINAL RULING ON LIABILITY AND RELIEF**

**I. Procedural History**

On April 21, 2010, Complainant Jose "Arian" Ramirez Manzanares filed this Complaint alleging that the Respondent Lalo's Restaurant discriminated against her in violation of the Chicago Human Rights Ordinance ("Ordinance") by depriving Complainant of the full use and enjoyment of their place of public accommodation on April 18, 2010. On June 3, 2010, Respondent filed a Response to the Complaint, denying that it had engaged in any act of discrimination against the Complainant.

After investigation of the Complaint, the Commission on Human Relations entered an Order Finding Substantial Evidence on December 30, 2010, and the parties were ordered to attend a settlement conference scheduled for February 15, 2011. Respondent did not appear on February 15, 2010, and a Notice of Potential Default was issued. Respondent filed a response to the Notice, stating that the appropriate person did not receive notice that the settlement conference had been set. Believing good cause for the failure to attend had been established, the Commission ordered a new date for the settlement conference. The settlement conference took place on July 28, 2011, but the case was not resolved at that time.

On August 8, 2011, the Commission issued an order appointing a hearing officer and setting a pre-hearing conference for October 5, 2011. On August 16, 2011, the hearing officer issued an order setting forth certain requirements for the proceedings and once again notifying the parties of the date for the pre-hearing conference. The hearing officer's order advised the parties as follows:

Attendance at the Pre-hearing Conference by the parties or their counsel is mandatory. The Conference will be held at the offices of the City of Chicago Commission on Human Relations, 740 North Sedgwick, Chicago, Illinois. Failure to attend the Pre-Hearing Conference without filing a motion for a continuance **in writing** may result in sanctions being imposed upon the non-attending party. [emphasis in original]

On October 5, 2011, a pre-hearing conference was held. Complainant was present but Respondent did not appear, nor did Respondent contact the hearing officer or the Commission to inform anyone that it would not be present. On October 7, 2011, a Notice of Potential Default was issued by the hearing officer and sent to Respondent. This notice – like all other documents previously sent to Respondent – was not returned as undeliverable. Respondent did not respond to the Notice of Potential Default. On November 30, 2011, an Order of Default against Respondent was issued.

The Order of Default means that Respondent is deemed to have admitted the allegations of the Complaint and to have waived any defenses to the allegations including defenses concerning the Complaint's sufficiency. As further set forth in Commission Regulation 235.320, an administrative hearing was held only to allow Complainant to establish a *prima facie* case and to establish the nature and amount of relief to be awarded. Complainant could rely on her Complaint to establish her *prima facie* case or present additional evidence. Respondent was notified that it could not contest the sufficiency of the complaint or present any evidence in defense, but could present evidence as to whether the relief sought by Complainant was reasonable and supported by the evidence provided by Complainant.

On January 12, 2012, an administrative hearing was held. Complainant and her witness were present. The proceedings were interpreted by a Spanish-language interpreter. Complainant appeared *pro se*. Respondent once again did not appear, nor did it inform the hearing officer or the Commission that it was unable to appear.

## **II. Findings of Fact**

1. Complainant Jose “Arian” Ramirez Manzanares was born a male but presents as a female. She is transsexual. C. par. 1; Tr. p. 7-8.<sup>1</sup>
2. Respondent Lalo’s Restaurant was at all pertinent times an establishment offering food and entertainment services to the public, located at 1960 North Clybourn Avenue, Chicago, Illinois. C. par. 2, Tr. p. 13.<sup>2</sup>
3. On April 18, 2010, Complainant went to Respondent’s establishment with friends and attempted to enter the establishment with her friends (two females and their male dates) and her partner, Jorge Diaz. They intended to dance. C. par. 2, Tr. p. 7, p. 13. Complainant was dressed as a woman. Tr. p. 23.
4. When Complainant and her friends attempted to enter Respondent’s establishment, the employee/security guard of Hispanic origin asked for identification cards. C. par. 3, Tr. p. 7.

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<sup>1</sup> All references to the Complaint will be “C. par. x.” All references to the transcript of the Hearing will be “Tr. p. x.”

<sup>2</sup> It appears that the North Clybourn location is now closed. However, Lalo’s restaurants continue to operate in other locations in Chicago and suburbs.

5. When the Complainant offered her identification card, the employee/security guard began to examine it carefully. C. par. 3, Tr. p. 7. He looked up and down at Complainant and smiled. Tr. p. 7. When Complainant questioned what he was doing, the employee/security guard said that Complainant looked like a woman but her identification said she was a man. C. par. 4, Tr. p. 7-8. He told Complainant she could not enter. Tr. p. 7. In front of the strangers who were in the line to get into the restaurant, the security guard said he did not know which bathroom Complainant would use. C., par. 4. He then told Complainant if she had a problem with his decision she should talk to the manager. C. par. 4.

6. Complainant went into the establishment to talk with the manager. Tr. p. 7. As Complainant waited in a hallway, the manager talked with the employee/security guard and asked why Complainant was not allowed in. Tr. p. 8. The employee/security guard said that the Complainant did not look like her identification. Tr. p. 8.

7. As Complainant was waiting in the hallway for Respondent's decision about her entry, she heard comments from the other people waiting in line for entry. Tr. p. 9. Complainant heard them mocking her, asking if she were a woman or a man or a faggot. Tr. p. 9. Complainant felt at that moment that she did not have value because the Respondent's employees were not allowing her to be admitted because she was different. Tr. p. 9-10. All of the friends who had arrived with Complainant were admitted to Respondent's establishment. Tr. p. 10.

8. Respondent's manager and the employee/security guard then told Complainant that she could enter. Tr. 10. She was told by the manager that at the first instance she "behaved badly," security would eject her from the club. Tr. p. 11. When she went to the entry door after this warning for the second attempt to enter the Respondent's establishment, however, an African-American employee/security guard took her identification away from her and took it to the manager. Tr. p. 10.

9. When the African-American employee/security guard took her identification, she decided that she would not stay at the Respondent's establishment because the Respondent's employees had warned her they would kick her out at the first "disturbance." Tr. p. 11. She told them to return her identification because she had decided not to stay because she was a human being, she could pay for the restaurant's services, and should not have that restriction placed on her. Tr. p. 11.

10. Jorge Diaz, who identified himself as Complainant's partner, was with Complainant the night she attempted to enter the Respondent's establishment. Tr. p. 17. Diaz and a group of his friends were all allowed in Respondent's establishment after showing their identification. Tr. p. 17.

11. When the employee/security guard questioned Complainant's identification at the establishment's entry door, Diaz explained that Complainant was not a woman, she was a transsexual, and she had a valid identification. Tr. p. 17. When Complainant went to look for the manager, Diaz first went with her and then left her to go to the bathroom. Tr. p. 17.

12. When Diaz came out of the bathroom, Diaz saw the manager and security guard talking; as he passed them, he overheard what they were saying. Tr. p. 18. Diaz heard the security guard

say to the manager that Complainant could not be allowed in because of the question about where she would go to the bathroom. Tr. p. 18. Diaz interrupted the manager and security guard, informed them he was Complainant's partner, and asked if they knew that what they were saying was discriminatory. Tr. p. 18-19. The manager said there was a problem, because women would be upset if Complainant entered the woman's bathroom. Tr. p. 19. Diaz stated that women's bathrooms had separate stalls and noted that men's bathrooms do not. Tr. p. 19.

13. Diaz heard the manager say they would let her in, but did not want problems. Tr. p. 19. Diaz then heard the manager tell Complainant she could come in but at the first problem, they would kick her out. Tr. pp. 19-20.

14. Diaz and Complainant then returned to where the African-American security guard was stationed. The security guard took Complainant's identification and said he was going to talk with the manager. Tr. p. 20. Complainant told the security guard to return her identification because she did not want to enter anymore. Tr. p. 20. The African-American security guard said she could enter, but Complainant said she was very annoyed because there was discrimination and she no longer wanted to enter. Tr. p. 20.

15. Respondent's security guards never asked Complainant about her age. Tr. p. 22. Complainant's identification did not show her with a mustache and beard. Tr. p. 22. Her identification did identify her as a male. Tr. p. 23.

16. When Respondent would not let Complainant in, her friends suggested she should call 911 and complain about her treatment. Tr. p. 11. After the second security guard asked for and kept her identification and she decided not to enter the restaurant, Complainant did call 911 and said she had been subject to discrimination. The people at 911 told her there was nothing they could do because there was no violence, but suggested she call the "National Commission on Human Rights." Tr. p. 11.

17. As a result of her experience with Respondent, Complainant feels that people who are transsexuals or gay are still being discriminated against and continue to be objects of mockery. Tr. p. 17. The experience has made her feel that she does not have value as a human being. Tr. p. 17. She almost never had experiences like this. Tr. p. 17. Complainant said the experience "destroyed her a lot." Tr. p. 17. It was important for her to pursue her claim so that the people who discriminated against her did not end up without consequences. Tr. p. 11.

18. Complainant attended four days of proceedings at the Commission to pursue her claim. Tr. 15. As a result of her filing and participating in proceedings at the Commission, Complainant was forced to take off 4 days of work at her job in construction. Her boss initially gave her permission to attend Commission proceedings, but then said he needed her at work. He said that if she continued to need time off she was going to lose her job. Her boss never fired her. Tr. pp. 11-16. After she no longer had a job, she decided to ask Diaz to help her with expenses. Tr. p. 12. Complainant did not provide any testimony or documentary evidence of her lost wages or the loss of a job other than those statements, but claimed she lost her job due to pursuing her Complaint. Tr. 15-17.

19. At the hearing and at the pre-hearing conference, the Complainant presented as an attractive young woman neatly dressed and very respectful. She was clearly distressed while relating the circumstances of the events that took place at Respondent's establishment. She was also very nervous about her ability to present her case *pro se*, especially with a significant language barrier.

### III. Conclusions of Law

1. Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination on the basis of gender identity. Section 2-160-020(k) of the Chicago Human Rights Ordinance defines gender identity as "the actual or perceived appearance, expression, identity or behavior, of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth." Complainant is a transsexual and as such is protected against discrimination based on her gender identity.

2. Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination in a public accommodation operating in the City of Chicago. Respondent is a covered public accommodation pursuant to Section 2-160-020(i) because it is a business establishment in the City of Chicago that sells, provides, or offers to the general public products and services.

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

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...gender identity.....

Respondent violated Section 2-160-070 of the Chicago Human Rights Ordinance because at its business establishment it withheld, limited, and curtailed services and offered those services in a discriminatory manner to Complainant because of Complainant's gender identity.

4. Commission Regulation 520.100 prohibits harassing persons in protected classes in public accommodations and further provides in Commission Regulation 520.150(b):

Slurs and other verbal or physical conduct related to an individual's membership in a Protected Class...constitutes harassment when the conduct: (i) has the purpose or effect of creating an intimidating, hostile or offensive environment; (ii) has the purpose or effect of unreasonably interfering with an individual's full use of the public accommodation; or (iii) otherwise adversely affects an individual's full use of the public accommodation.

Respondent violated Section 2-160-070 of the Chicago Human Rights Ordinance in that its actions constituted harassment of the Complainant at its business establishment by unnecessarily questioning the Complainant regarding her gender and gender identity prior to and after offering services, thereby creating a hostile and offensive environment.

#### IV. Discussion

The Order of Default means that Respondent is deemed to have admitted the allegations of the Complaint and to have waived any defenses to the allegations in the Complaint including defenses concerning the Complaint's sufficiency. Commission Regulation 235.320. Therefore, the allegations of the Complaint – that Complainant is transsexual, that she went to Respondent's establishment but was subjected to harassment and differential treatment due to her gender identity, that an employee/security guard initially refused her admittance because her identification said she was male although she presented as a female, that the security guard ridiculed her in front of strangers and that she felt intimidated and very embarrassed – are all admitted by the Respondent in light of the default.

To prove a *prima facie* case of gender identity discrimination, Complainant must show that: (a) she is a member of the protected class of persons having transgender or transsexual gender identity; (b) she sought the use of a public accommodation; (c) she was subjected to harassment or some other discriminatory restriction in her full use of the public accommodation; and (d) similarly-situated persons not in her protected class were treated more favorably. See, e.g., *Warren et al., v. Lofton and Lofton Management et al.*, CCHR No. 07-P062/63/92 (July 24, 2009). Complainant met that burden with the allegations of her Complaint along with Complainant's testimony at the hearing. She established that she is transsexual or transgender. She sought to use Respondent's restaurant and entertainment facilities located in the City of Chicago. She was subjected to greater scrutiny, intimidating statements, and other harassment as she sought to enter. All of her companions who were not transgender or transsexual were allowed to enter without being subjected to similar treatment.

In addition, Complainant's testimony at the hearing, supported by the testimony of her partner, was that the Respondent's employees asked questions about her bathroom use in a humiliating manner in front of strangers and warned her that she would be ejected if there was any "disturbance" when the only issue was Respondent's questioning of Complainant's gender identity. There is no evidence that Complainant was anything other than polite despite the discrimination by Respondent's employees, nor is there any evidence she did or would cause any kind of "disturbance."

In *Sandy v. Chicago Cultural Center et al.*, CCHR Case No. 03-P-10 (Jan. 25, 2005), the Commission acknowledged that there may be times when questions about a person's gender or gender identity could be legitimate when a member of the public sought to use a private facility, in that case a bathroom. However, in this case, Complainant was not seeking to use a bathroom in particular but to enter into Respondent's establishment. There was no testimony or other evidence from Complainant or her partner that Respondent asked her what bathroom she would use or if she would use a bathroom at all. Respondent did not attempt to resolve the issue of bathroom use even if that was indeed Respondent's motivation for its treatment of Complainant, which the hearing officer found doubtful. Respondent did not even attempt to propose potential solutions to accommodate Complainant. In addition, as the hearing officer found, Complainant presented herself as an attractive, well-dressed, and respectful young woman at the hearing, with no indication to an observer that she is anything other than a young woman. Under those circumstances, use of the women's bathroom, which is undoubtedly equipped with stalls, should not have posed a problem or caused any "incidents."

The fact that Respondent offered to allow Complainant to enter after this discriminatory treatment does not preclude Complainant from establishing a *prima facie* case of discrimination. When Respondent only allowed Complainant to enter after questioning her about bathroom use in front of strangers and only under the warning that one unidentified "incident" would result in her ejection, Respondent did not provide Complainant the "full use" of its public accommodation, as required by Section 2-160-070 the Human Rights Ordinance and Commission Regulation 510.100, because it offered her access to the restaurant "under different terms than [we]re applied to others." See *Warren, supra*, as well as *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62 (Oct. 21, 1998), and *Head v. St. Joseph's Hospital*, CCHR No. 93-PA-13 (Sept. 8, 1993).

The Commission has noted in the past that even one derogatory comment can deprive a person of the full use of a public accommodation. See, e.g., *Craig v. New Crystal Restaurant*, CCHR Case No. 92-PA-40 (Oct. 18, 1995). In that case, the Commission noted that because of the limited contact that a person may have with a public accommodation, even one incident of verbal abuse can affect the ability of a member of a protected class to enjoy the full use of the public accommodation. *Craig, supra* at 10. In this case, being initially denied admission while the public accommodation's employees questioned which bathroom Complainant would use, in front of strangers and warning Complainant without any basis that she would be kicked out if there was any "disturbance" clearly created a hostile environment for Complainant based on her gender identity.

Therefore, Complainant has established her *prima facie* case based both on Respondent's initial failure to admit her to a place of public accommodation at all based on her gender identity and also on the basis of differential treatment in connection with the attempt to utilize a public accommodation. Respondent<sup>3</sup> is therefore liable for violation of the Chicago Human Rights Ordinance.

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<sup>3</sup> The precise ownership of Respondent need not be further adjudicated at this time. The identification of a business Respondent in a complaint by a trade name without the exact name of the owner has been held adequate and is read to name the owner of the business operating under that trade name. See *Brandon v. Kentucky Fried Chicken*, CCHR No. 04-P-62 (Sept. 8, 2005), and *Williams v. Iggy's Restaurant*, CCHR No. 05-P-79 (Sept 8, 2005). The Commission served the Complaint in this matter on Respondent at the address of the Lalo's Restaurant where the violation occurred, namely 1960 North Clybourn Avenue in Chicago. That service resulted in the filing of a Response to Complaint on June 3, 2010. In response to the prompt in the Commission's Response to Complaint form for the full legal name of each owner or operator and the name and title of the representative who will serve as contact person for the case, Respondent listed the owners of Lalo's Restaurant as Rene Roman, with the address of 804 S. Oak Park Avenue in Oak Park, Illinois, and Daniel Castaneda, with the address of 425 S. Roselle Rd. in Schaumburg, Illinois. The Response was filed under the name and signature of M. Isabel Suarez-Melgar, who identified herself as "Human Resource Manager, Lalo's Restaurant" and also listed herself as Respondent's contact person for the case with an address of 804 S. Oak Park, Oak Park, IL. Her latest recorded communication with the Commission was on September 7, 2011, when she filed a Request for Production of Documents under her name and signature, thus acknowledging that she had received the Commission's orders commencing the hearing process. She had previously attended settlement conferences on Respondent's behalf on May 25 and July 28, 2011, after submitting a written explanation on March 4, 2011, of Respondent's failure to appear for a previously scheduled settlement conference. Thus Suarez-Melgar has acted in this case as agent of the owner or owners of Lalo's Restaurant at 1960 North Clybourn in Chicago.

It now appears from Commission staff observation that the Lalo's Restaurant location at 1960 North Clybourn Avenue is closed. However, it also appears that the business which operated at 1960 North Clybourn continues to



## V. Remedies

As Respondent has been found liable, Complainant is entitled to relief. It is Complainant's burden to support her request for relief with evidence that establishes her entitlement to it and the extent of relief which is warranted. Respondent was notified in the Order of Default that, pursuant to CCHR Reg. 235.320, it could present evidence at the administrative hearing as to whether the relief sought by Complainant is reasonable and supported by Complainant's evidence. Despite this notice, Respondent did not attend the hearing to respond to the testimony offered in support of Complainant's requests for relief.

Complainant, whose primary language is Spanish, appeared *pro se* at the hearing. The hearing officer determines the admissibility of any testimonial evidence and is not bound by the strict rules of evidence applicable in courts of law or equity. CCHR Reg. 240.314. The hearing officer and the Commission may determine the weight and probity of evidence which may not be admissible under those rules in courts of law or equity. *McGee v. Simms*, CCHR No. 94-H-131 (May 23, 1995).

The Commission on Human Relations has broad powers under Section 2-120-510(l) of the Chicago Municipal Code (Commission's Enabling Ordinance) to order relief to compensate Complainant and to make Complainant whole. Relief may include damages for injury or loss, admission to the public accommodation, punitive damages, and interest on damages. Further, the Commission has the power to discourage Respondents from engaging in similar conduct by issuing orders for injunctive relief and assessing fines. *Id.*

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operate restaurants, perhaps through a successor. A Google search for "lalo's restaurant chicago" reveals the website "lalo's.com" listing three Lalo's locations in Chicago and three in surrounding suburban communities. The website includes a 2010 copyright notice under the name "Lalo's Restaurant Group." The "Lalo's Story" section of the website includes the statement, "Although there have been several franchise proposals, the restaurants still remain entirely family owned."

It further appears from records of the Illinois Secretary of State that Lalo's Restaurant Group LLC, with registered agent listed as Rene Roman, was voluntarily dissolved on June 9, 2009. The manager listed for this LLC is Lalo's Restaurant Holding Company LLC, with a principal office at 804 S. Oak Park Ave., Oak Park, IL 60304. The managers listed for the Holding Company are Rene Roman and Daniel Castaneda, both at the address of 804 S. Oak Park Ave.

Another corporation shown as involuntarily dissolved on September 9, 2011, is Lalo's 1960 LLC, listed in the Secretary of State's database with Rene Roman as registered agent and Lalo's Restaurant Holding Company LLC as manager. Additional corporations can be found in the Secretary of State's database under variations of the Lalo's name in association with the names of Roman and Castaneda. All of this information is sufficient to establish that an owner or successor owner of Lalo's Restaurant at 1960 North Clybourn Avenue in Chicago received notice of this Complaint and of the administrative hearing process, and had the opportunity to participate in the process.

CCHR Reg. 210.270(b), of which Respondent was explicitly notified in the Notice of Discrimination Complaint mailed to it on April 21, 2010, provides that once any business respondent has knowledge of a complaint against it, the business must inform the Commission of its contact person's name, address, and telephone number, and must inform the Commission whenever the status of the entity changes and then provide updated contact information for its representative/s or successor/s. If a business entity fails to do this, the Commission shall continue to send orders, notices, and other documents to the most recent address the Commission has and that shall be deemed sufficient. A respondent that does not update contact information cannot later rely on failure to receive any order, notice, or other document as a defense.

### a. Compensatory Damages

The first issue is whether Complainant is entitled to any damages for lost wages or the loss of her employment. The hearing officer found, and the Commission agrees, that Complainant did not meet her burden of proving the amount of any lost wages and did not prove that the loss of her job was a direct consequence of Respondent's actions. Indeed, she testified that she was not fired but decided to rely on her partner for expenses. No documentation or testimony was presented to support a finding that she lost her job or that she had lost wages while pursuing her claim at the Commission while employed. Therefore, no damages for lost wages or the loss of Complainant's job may be awarded.

The second issue is whether Complainant is entitled to damages for emotional distress. Section 2-120-510(l) of the Chicago Municipal Code provides that the Commission may award actual damages. The Commission has repeatedly held that damages for emotional harm can be awarded as part of an award of actual damages. See, e.g., *Jones v. Shaheed*, CCHR No. 00-H-82 (Mar. 17, 2004); *Nash and Demby v. Sallas Realty et al.*, CCHR No. 92-H-128 (May 17, 1995). In *Winter v. Chicago Park District et al.*, CCHR No. 97-PA-55 (Oct. 18, 2000), the Commission explained, "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."

The amount of an 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 Services et al.*, CCHR No. 96-E-170 (June 18, 1997) at 13. A complainant's testimony standing alone may be sufficient to establish that he or she suffered compensable emotional distress. *Hanson v. Association of Volleyball Professionals*, *supra*.

In *Griffiths v. DePaul University*, CCHR No. 95-E-224 (Apr. 19, 2000), the Commission noted that emotional distress awards of less than \$5,000 were entered (in that case, to a victim of housing discrimination) when:

- a. There was negligible or merely conclusory testimony concerning mental distress;
- b. The discriminatory conduct consisted of discrete acts which took place over a brief period of time;
- c. There were no prolonged effects of the discriminatory conduct;
- d. There was no medical treatment and/or a paucity of physical symptoms;
- e. The discriminatory conduct was not so egregious that one would expect a reasonable person to experience severe emotional distress;
- f. The complainant was not unusually fragile due to past experiences or a pre-existing condition; or
- g. The conduct involved refusal to rent, rather than harassment, or an attempt to evict or refusal to sell.

*Griffiths* at 34, citing *Sheppard v. Jacobs*, CCHR No. 94-H-162 (July 16, 1997) at 21-22, quoting *Nash and Demby*, *supra*, at 21-22.

Here, Complainant is entitled to damages for emotional distress. She testified credibly that she was humiliated, that she felt that transsexuals are still being discriminated against and continue to be objects of mockery, and that Respondent's actions made her feel she does not have value as a human being. She was held up to ridicule by Respondent's employees in front of other people. Complainant's feeling that she was devalued by Respondent's actions continues to affect Complainant as evidenced by her considerable distress recounting the events of the discriminatory actions of Respondent at the hearing, as reported by the hearing officer.

The hearing officer recommended an award of \$3,500 in damages for emotional distress. The Commission approves this recommendation. Complainant's claim is analogous to other public accommodation cases in which the Commission has awarded damages in similar amounts in similar circumstances. See, e.g., *Scott & Lyke v. Owner of Club 720*, CCHR No. 09-P-2/9 (Feb. 16, 2011), awarding \$1,500 to an African-American complainant who was denied entry into a club due to a braided hairstyle and who changed his hairstyle subsequently due to the experience, along with \$1,000 to a second African-American complainant admitted to the club wearing a braided hairstyle, but required to remove his kufi head covering after admission, where both complainants offered no evidence of long-term effects of the discrimination. See also *Warren, supra*, awarding \$3,000 to a complainant who was subjected to anti-gay slurs while using a restaurant but who did not prove he had physical manifestations or sought treatment, but did prove that the experience exacerbated a previously existing condition. In *Hanson, supra*, the Commission awarded \$3,500 for emotional distress to a disabled wheelchair-user who was "very angry and frustrated" after being denied access to a tournament and found the experience one of the most "humiliating experiences" of his life. In *Morrow v. Tumala*, CCHR Case No. 03-P-2 (Apr. 18, 2007), the Commission found that the one incident of racial discrimination by a cab driver resulted in the complainant having ongoing significant emotional problems and thoughts of being less of a human, and awarded \$5,000 in damages for emotional distress.

According to the hearing officer, Complainant testified credibly and with great emotion and distress at the hearing that she felt humiliated and devalued by Respondent's actions and continues to feel the effects of the discrimination. But she did not testify that she sought physical or mental treatment. Therefore, the hearing officer's recommended award of \$3,500 for emotional distress is appropriate and is adopted.

#### **b. Punitive Damages**

Punitive damages may also be awarded to punish the wrongdoer and deter that party and others from committing similar acts in the future. *Nash and Demby, supra*. Punitive damages may be awarded when a respondent's actions were willful, wanton, or taken in reckless disregard of the complainant's rights. *Warren, supra*. For example, the Commission has awarded such damages when the discriminatory conduct is blatant and motivated by ill will (*Castro v. Georgeopoulos*, CCHR No. 91-FHO-91 (Dec. 18, 1991)), when a respondent engaged in repeated acts of discrimination, including physical threats and intimidation (*Collins & Ali v. Magdenovski*, CCHR No. 91-FHO-70-5655 (Sept. 16, 1992)), when a respondent has a history of repeatedly discriminating against protected classes (*Nash and Demby, supra*), and when a respondent has lied to the Commission (*Leadership Council for Metropolitan Open Communities v. Souchet*, CCHR No. 98-H-107 (Jan. 17, 2001)).

The Commission has also noted, "In public accommodation cases, where actual damages are often not high, punitive damages may be particularly necessary to ensure a meaningful deterrent." *Miller v. Drain Experts et al.*, CCHR No. 97-PA-29 (Apr. 15, 1998) at 7. Among the factors to be considered in determining whether punitive damages should be awarded are whether the respondent has engaged in discriminatory behavior on other occasions and the respondent's attitude toward the judicial process including whether the respondent disregarded the Commission's processes. *Miller, supra* at 12. However, the Commission has also held that where a respondent's conduct was found not to be egregious, the single fact that the respondent defaulted is not enough to warrant imposition of punitive damages. *Blakemore v. General Parking*, CCHR No. 99-PA-120 (Feb. 21, 2001).

An award of punitive damages is warranted in this case. Because Respondent did not appear at the hearing or the pre-hearing conference prior to the hearing, Respondent's motivations for the actions and remorse following the discriminatory act cannot be determined and there is no evidence of whether what occurred was pursuant to a policy of Respondent or the individual acts of employees. No evidence of other instances of discrimination by Respondent was introduced at the hearing.

However, the actions of the Respondent's employees in subjecting Complainant to discrimination and humiliation were clearly in willful and wanton disregard of Complainant's rights and subjected Complainant to public humiliation and mockery. Complainant's partner pointed out to Respondent's employees that their actions were discriminatory, to no avail. Finding of Fact #12.

In determining the amount of punitive damages to be awarded, the size and profitability of Respondent's business are factors that can be considered. *Hanson, supra*. But because Respondent did not appear at the pre-hearing conference or hearing, no evidence was presented regarding its financial condition. Even though the location where these events occurred is apparently now closed, the website for Lalo's lists three restaurant locations in Chicago and three in surrounding communities. (<http://lalos.com/locations/>, May 15, 2012). The Commission can take judicial notice of these facts in determining the amount of punitive damages to award to Complainant.

Therefore, to deter Respondent from allowing its employees to continue to violate the rights of transgender and transsexual individuals, the hearing officer recommended punitive damages in the amount of \$2,500. The Commission approves and adopts this recommendation. This modest award recognizes that Respondent's owners may not have known of the actions of its employees, yet the ownership is ultimately responsible for the harm caused by those actions. See, e.g., *Warren, supra* at 29. This amount is within the range of punitive damages awards by the Commission in similar cases cited herein, including *Warren*, awarding \$1,500 to each of three complainants for sexual orientation and gender identity harassment by restaurant's security guard; *Morrow, supra*, awarding \$3,000 where a taxi driver attempted to charge an African-American additional fare compared to a white customer for the same trip; and *Hanson, supra*, awarding \$5,000 where a respondent's disability discrimination was repeated despite warnings of its illegality.

### c. Injunctive Relief

Section 2-120-510(1) of the Chicago Municipal Code authorizes the Commission to order injunctive relief to remedy a violation of the Human Rights Ordinance or the Fair Housing Ordinance. The Commission has ordered respondents found to have violated one of these ordinances to take specific steps to eliminate discriminatory practices and prevent future violations. Such steps have included training, notices, record-keeping, and reporting. See, e.g., *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998); *Walters et al. v. Koumbis*, CCHR No. 93-H-25 (May 18, 1994); *Metropolitan Tenants Organization v. Looney*, CCHR No. 96-H-16 (June 18, 1997); *Leadership Council for Metropolitan Open Communities v. Souchet, supra*; *Pudelek & Weinmann v. Bridgeview Garden Condo. Assn. et al*, CCHR No. 99-H-39/53 (Apr. 18, 2001); *Sellers v. Outland*, CCHR No. 02-H-73 (Oct. 15, 2003), aff'd in part and vacated in part on other grounds, Cir. Ct. Cook Co. No. 04 106429 (Sept. 22, 2004) and Ill.App.Ct. No. 1-04-3599 (Sept. 15, 2008); *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009); and most recently *Roe v. Chicago Transit Authority et al.*, CCHR No. 05-E-115 (Oct. 20, 2010).

In this case, not one but several of Respondent's employees participated in the discriminatory actions against Complainant. Therefore, the hearing officer recommended injunctive relief.

The Commission agrees with the hearing officer's recommendations to promulgate an anti-discrimination policy and provide staff training designed to prevent further gender identity discrimination and similar violations. However, the Commission does not adopt the recommendations to require Respondent to involve the Commission in the execution of these steps. The responsibility to comply with orders for injunctive relief resides entirely with the party so ordered and should not be made dependent on action of the Commission, which in light of its adjudicatory role cannot serve as Respondent's agent or advisor. As such, Respondent may choose any reasonable means to achieve compliance and need not involve the Commission.

The Commission also emphasizes, as the hearing officer noted, that its jurisdiction is limited to the City of Chicago. Thus the Commission cannot require Respondent to apply the required policy and training to its locations and personnel operating entirely outside Chicago. However, Respondent may choose to do so, especially in light of the comparable prohibitions against discrimination found in the Cook County Human Rights Act and the Illinois Human Rights Act.

Accordingly, the Commission adopts the hearing officer's recommendation as to injunctive relief with modifications as follows:

### **Order of Injunctive Relief**

1. On or before 90 days from the date of mailing of the Commission's Final Order and Ruling on Liability and Relief, Respondent must distribute to all employees and management personnel responsible for the operation of any Lalo's restaurant located in the City of Chicago (including managers and employees of any franchisee or subsidiary operating a restaurant or place of entertainment under the Lalo's name) a written policy which provides that gender identity as defined in the Chicago Human Rights Ordinance shall not be used as a basis for denying or imposing limitations on the full use of any of Respondent's restaurant facilities in Chicago. In the distribution, Respondent shall note that adherence to the policy is mandatory for all above-described employees and for management or administrative personnel. The policy should outline mandatory steps to be taken to resolve any potential issues that may arise, including use of restrooms made available to customers.
2. On or before six months from the date of from the date of mailing of the Commission's Final Order and Ruling on Liability and Relief, Respondent shall ensure that all employees and management or administrative personnel at all of Respondent's Chicago locations attend a mandatory training session on the policy described above and on the rights of potential and actual customers of Lalo's Chicago locations under the Chicago Human Rights Ordinance, including rights to protection from gender identity discrimination.
3. Respondent is not required to obtain prior approval of the policy or the training program from the Chicago Commission on Human Relations or to work with the Commission on Human Relations in complying with this order of injunctive relief. Respondent may request the Commission's assistance with compliance, and the Commission may assist as feasible consistent with its adjudicatory role. However, the responsibility to comply with this order of injunctive relief is entirely Respondent's, with or without Commission assistance.
4. On or before seven months from the date of from the date of mailing of the Commission's Final Order and Ruling on Liability and Relief, Respondent shall file with the Commission and serve on Complainant a report detailing the steps taken to comply with this order of injunctive relief. The report shall include a copy of the required written policy and a detailed description of the training provided including copies of any training material distributed and any written announcements of the training. Finally, the report shall include an affidavit of an owner or manager authorized to bind Respondent, affirming that Respondent has complied with all requirements of this order of injunctive relief and that all reported details are true and correct.

### **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 \$500 for each offense. Every day that a violation shall continue shall constitute a separate and distinct offence.

The Commission adopts the hearing officer's recommendation of a fine of \$500 for violating the Chicago Human Rights Ordinance and repeatedly failing to attend scheduled proceedings in this matter.

**e. Interest**

Section 2-120-510(1), Chicago Municipal Code, allows an additional award of interest on damages ordered to remedy violations of the Chicago Fair Housing Ordinance or the Chicago Human Rights Ordinance. Pursuant to CCHR 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. Accordingly, the Commission awards pre- and post-judgment interest on all damages awarded in this case, starting from April 18, 2010, the date of the discriminatory incident.

**f. Attorney Fees**

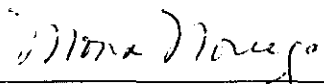
Complainant appeared *pro se*, so attorney fees are not awarded.

**VI. CONCLUSION**

The Commission on Human Relations finds Respondent Lalo's Restaurant liable for gender identity discrimination in violation of the Chicago Human Rights Ordinance, the Commission orders the following relief:

1. Payment to the City of Chicago of a fine of \$500;
2. Payment to Complainant of emotional distress damages of \$3,500 and punitive damages of \$2,500, for total damages in the amount of \$6,000;
3. Payment to Complainant of interest on the foregoing damages from the date of violation on April 18, 2010;
4. Compliance with the order of injunctive relief described above.

CHICAGO COMMISSION ON HUMAN RELATIONS

By:   
Mona Noriega, Chair and Commissioner  
Entered: May 16, 2012