



**City of Chicago**  
**COMMISSION ON HUMAN RELATIONS**  
740 N. Sedgwick, 4<sup>th</sup> Floor, Chicago, IL 60654  
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

**IN THE MATTER OF:**

Anthony Cotten  
**Complainants,**

v.

Taj Mahal Restaurant  
**Respondent.**

**Case No.:** 13-P-82

**Date of Ruling:** October 15, 2014

**Date Mailed:** November 5, 2014

**TO:**  
Anthony Cotten  
6517 S. Bell  
Chicago, IL 60636

Muhammed Sabih  
c/o Taj Mahal Restaurant  
1512 W. Taylor Street  
Chicago, IL 60607

## **FINAL ORDER ON LIABILITY AND RELIEF**

YOU ARE HEREBY NOTIFIED that, on October 15, 2014, the Chicago Commission on Human Relations issued a ruling in favor of Complainants 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 Anthony Cotten emotional distress and punitive damages in the amount of \$1,000, plus interest on that amount from November 25, 2013, in accordance with Commission Regulation 240.700.
2. To comply with the order of injunctive relief stated in the enclosed ruling.
3. To pay a fine to the City of Chicago in the amount of \$1,000.<sup>1</sup>

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.

### **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, 3rd Floor, Chicago, IL 60654  
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**IN THE MATTER OF:**

Anthony Cotten  
**Complainant,**  
v.

Taj Mahal Restaurant  
**Respondent.**

**Case No.:** 13-P-82

**Date of Ruling:** October 15, 2014

**FINAL RULING ON LIABILITY AND RELIEF**

**I. INTRODUCTION**

On November 26, 2013, Complainant Anthony Cotten filed a Complaint with the Chicago Commission on Human Relations alleging that Respondent Taj Mahal Restaurant discriminated against him due to his disability. Specifically, Complainant, who uses a wheelchair, alleged that Taj Mahal Restaurant was physically inaccessible to him and did not offer services to him under the same terms and conditions that services were offered to other customers without disabilities.

Complainant's Complaint was sent by the Commission to Respondent Taj Mahal on December 9, 2013. When contacted by the Commission Investigator on December 21, 2013, Respondent's representative agreed that he had received the Complaint. No Verified Response was received from Respondent. On January 21, 2014, the Commission issued an Order to Respond and Notice of Potential Default ordering Respondent to respond to the Complaint by February 6, 2014. Respondent failed to respond and the document was not returned by the United States Postal Service as undeliverable. On February 11, 2014, the Commission issued a second Order to Respond and Notice of Potential Default ordering Respondent to respond the Complaint by February 21, 2014. Again, Respondent failed to respond.

On March 13, 2014, the Commission issued an Order of Default against Respondent due to its failure to respond to the Complaint as ordered. 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 his Complaint to establish his *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 April 8, 2014, the Commission issued an order commencing the hearing process. On May 13, 2014, a pre-hearing conference was held. Complainant was present; no representatives from Respondent or its attorney appeared or alerted the Commission that Respondent could not appear. On May 16, 2014, the hearing officer issued an Order that notified the parties that Respondent had failed to attend the pre-hearing conference, and that the hearing was set for July

2, 2014. An additional Order issued on May 16, 2014, notified Respondent that its failure to attend the pre-hearing conference might subject Respondent to the imposition of additional penalties. No response from Respondent was received by the Commission and the document was not returned to the Hearing Officer by the United States Postal Service as undeliverable.

On July 2, 2014, an administrative hearing was held. Complainant and his witness were present. Neither Respondent nor any representative from Respondent was present at the hearing. Respondent did not inform the Commission or the hearing officer that it would be unable to appear.

On August 11, 2014, the hearing officer issued her Recommended Ruling on Liability and Relief, notifying the parties of the deadline to file and serve any objections. No objections were received.

## II. FINDINGS OF FACT

1. Complainant Anthony Cotten has a disability and uses a wheelchair. C, par. 1.<sup>1</sup>
2. Respondent Taj Mahal is a restaurant open to the public located at 1512 W. Taylor Street, Chicago, Illinois. C, and C, par. 1.
3. On November 25, 2013, Complainant and his friend, Craig Sanders (“friend”), went to Respondent’s restaurant for a bite to eat. C., par. 3, Tr. p. 6.
4. When Complainant and his friend arrived at Respondent’s restaurant, Complainant determined that the restaurant was not accessible due to 4 or 5 stairs. C, par. 3, Tr., p. 6. Complainant asked his friend, who does not use a wheelchair, to go inside to see if there was an accessible way for him to enter the restaurant or if the restaurant had a ramp. Tr., p. 6. Complainant’s friend went inside the restaurant to ask if there was an accessible entrance. C, par. 3, Tr., p. 6.
5. When Complainant’s friend returned, he told Complainant that he had talked with an employee named David who said the restaurant did not have a way for Complainant to enter and did not have a ramp. C, par. 3, Tr., p. 7. After talking with the employee, Complainant’s friend bought a bottle of water and left. C, par. 3, Tr., p. 7.
6. The experience left Complainant feeling discriminated against as a person who uses a wheelchair. Tr., p. 7. He felt like a second-class citizen. Tr., p. 7.
7. Once Respondent’s employees found out that Complainant could not access the restaurant, no one from the restaurant came to the door or outside to speak with him about the inaccessibility of the restaurant. Complainant said he felt like Respondent’s employees did not care or it did not matter to them whether he was able to get inside the restaurant to eat. Tr., p. 8.

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<sup>1</sup> Findings of fact based on the Complainant’s Complaint are cited as “C” followed by a paragraph number if appropriate. Findings of fact based on the hearing transcript are cited as “Tr.” followed by a page number.

### III. APPLICABLE LEGAL STANDARDS

The Chicago Human Rights Ordinance (“CHRO”) prohibits discrimination based on disability, among other protected classes, concerning the full use of a public accommodation. Section 2-160-070 of the CHRO 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...disability.

Subpart 500 of the Commission’s Regulations clarifies the obligations of persons who control a public accommodation. Specifically, Reg. 520.110 defines the “full use” requirement:

Full use...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....

The CHRO and corresponding regulations balance the requirement of providing full use of a public accommodation to people with disabilities with the practicalities of making that possible. Thus Reg. 520.105 states:

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

Reg. 520.120 provides a definition of “reasonable accommodation” as applied to a public accommodation:

Reasonable accommodation... means... accommodations...which provide persons with a disability access to the same services, in the same manner as are provided to persons without a disability.

Reg. 520.130 defines what is necessary for a public accommodation to prove that it is an undue hardship to provide either full use or reasonable accommodation to a person with a disability:

Undue hardship will be proven if the financial costs or administrative changes that are demonstrably attributable to the accommodation of the needs of persons with disabilities would be prohibitively expensive or would unduly affect the nature of the public accommodation.

To prove a *prima facie* case of disability discrimination with respect to a public accommodation, a complainant must show that he or she (1) is a person with a disability within the meaning of the CHRO; (2) is a qualified individual who satisfied all non-discriminatory standards for service; and (3) did not have full use of the subject facility, service, or function as other members of the public did. *Maat v. String-A-Strand*, CCHR No. 05-P-05 at 4 (Feb. 20, 2008), citing *Doering v. Zum Deutchen Eck*, CCHR No. 94-PA-35 (Sept. 14, 1995, as reissued

Sept. 29, 1995). For example, an individual may be deprived of the full use of a facility where he or she cannot readily enter the front entrance in a wheelchair because of the existence of a barrier. *Maat v. String-A-Strand, supra* at 5.

If a complainant establishes these elements by a preponderance of the evidence, a respondent may prove by a preponderance of the evidence that providing full use of its public accommodation would cause undue hardship. See CCHR Reg. 520.105 and *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 at 3 (Aug. 16, 2006). However, even if that initial showing of undue hardship is made, a respondent must also establish that (1) it reasonably accommodated the complainant or (2) it could not even reasonably accommodate the complainant without undue hardship. *Id.*

#### IV. DISCUSSION

Complainant has established the elements of a *prima facie* case in this case. He is a person with physical impairments. He is a qualified individual; qualification to use a restaurant is minimal and requires generally the desire to utilize and pay for the services offered to the public for a fee. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010). Complainant proved that he did not have physical access to the public accommodation, because of his observations and because his friend was told by Respondent's employee that no accessible entrance was available. As the Commission noted in *Cotten v. La Luce Restaurant, supra*, "an individual may be deprived of the full use of a facility where he or she cannot readily enter the front entrance in a wheelchair because of the existence of a barrier." Complainant also established by his testimony that Respondent's services were not offered to him through reasonable alternative means. In fact, on the day in question, Respondent's employees did not even make the effort either to inquire of Complainant's friend or of Complainant himself about whether they could offer services to Complainant in an alternative manner, for example, meals to take out or to be delivered.

Once the Complainant established the elements of a *prima facie* case, Respondent must prove by a preponderance of the evidence that there is no accommodation that could reasonably provide the independent access required by Complainant and the CHRO, or that providing the accommodation would impose an undue hardship on Respondent. Because the Commission had issued an Order of Default against this Respondent, Respondent was subject to the effects of default listed in CCHR Reg. 235.320: "A defaulted 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." The hearing was limited to allowing Complainant to establishing a *prima facie* case and to establish the nature and amount of relief to be awarded. Respondent would have been allowed to argue that Complainant failed to establish a *prima facie* case, and could have presented evidence and argument about the relief to be awarded, but Respondent chose not to be present and to ignore, once again, the Commission's procedures. CCHR Reg. 235.320.

The Commission has the authority to order structural alterations to make a facility wheelchair accessible unless making the facility accessible would impose an "undue hardship." In making the determination about what, if any, structural alterations will be required, the Commission is not bound by other federal or state law. *Cotten v. Lou Mitchell's*, CCHR No. 06-P-9 (Dec. 16, 2009). Older facilities are not "grandfathered" or otherwise exempt from accessibility requirements of CHRO and Reg. 520.105, which are in addition to any Building Code or other City ordinance requirements. *Cotten v. La Luce Restaurant, Inc.*, CCHR No. 08-P-34 (Apr. 21, 2010). The Commission also has the authority to order that services be provided

by reasonable alternative means and to post a conspicuous notice of the services it offers to people with disabilities. *Cotten v. Taylor Street Food and Liquor*, 07-P-12 (July 16, 2008).

Respondent's failure to attend the Commission's hearing means there is no evidence about what, if any, "undue hardship" providing an accessible entrance would impose. "Undue hardship" will be proven by a respondent:

... if the financial costs or administrative changes that are demonstrably attributable to the accommodation of the needs of persons with disabilities would be prohibitively expensive or would unduly affect the nature of the public accommodation.

Factors to be considered include, but are not limited to:

- (a) the nature and cost of the accommodation;
- (b) the overall financial resources of the public accommodation, including the resources of any parent organization;
- (c) the effect on expenses and resources, or the impact otherwise of such accommodation on the operation of the public accommodation; and
- (d) the type of operation or operations of the public accommodation.

CCHR Reg. 520.130

The Commission agrees with the hearing officer's finding that as Complainant has established a *prima facie* case and Respondent has not provided any evidence regarding the remedies sought; therefore, both damages and injunctive relief ordered against the Respondent are appropriate in this case.

## **V. REMEDIES**

Under the Chicago Municipal Code, Section 2-120-510(l), the Commission may award a prevailing Complainant the following forms of relief:

[A]n order ... to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant, to hire, reinstate or upgrade the complainant with or without back pay or provide such fringe benefits as the complainant may have been denied ... to pay to the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs, incurred in pursuing the complaint before the commission ...; to take such action as may be necessary to make the individual complainant whole, including but not limited to, awards of interest on the complainant's actual damages and back pay from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed for violations of provisions of Chapter 2-160 and Chapter 5-8.

## A. Emotional Distress Damages

Complainant seeks \$1,000 in damages for emotional distress caused by the discriminatory denial of access to Taj Mahal Restaurant. Complainant did not seek or testify regarding damages for any particular out-of-pocket expenses, so damages will be limited to damages for emotional distress.

The Commission has repeatedly held that damages for emotional harm can be awarded as part of an award of actual damages. *Jones v. Shaheed*, CCHR No. 00-H-82 (March 17, 2004); *Nash/Demby v. Sallas & Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995). “Emotional distress damages are awarded in order to fully compensate a complainant for the emotional distress, humiliation, shame, embarrassment and mental anguish resulting from a respondent’s unlawful conduct.” *Winter v. Chicago Park District, et al.*, CCHR Case No. 97-PA-55, at 16 (Oct. 18, 2000).

The amount of the award for emotional distress depends “on several factors, including but not limited to, the vulnerability of the complainant, the egregiousness of the discrimination, the severity of the mental distress and whether it was accompanied by physical manifestations and/or medical or psychiatric treatment, and the duration of the discriminatory conduct and the effect of the distress.” *Steward v. Campbell’s Cleaning, et al.*, CCHR No. 96-E-170 (June 18, 1997) at 13. A complainant’s testimony standing alone may be sufficient to establish that he or she suffered emotional distress damages and is entitled to damages. *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62, at 11 (Oct. 21, 1998).

Emotional distress damages awarded by the Commission have varied, from amounts such as \$50,000, the amount ordered in *Winter*, to far smaller amounts. In *Winter*, the complainant was awarded substantial damages for emotional distress because she was forced to toilet herself in view of other people due to the inaccessibility of the respondent’s facilities and, as a result, suffered on-going mental health consequences. In *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 (Aug. 16, 2006), the Commission awarded \$1,000 in emotional distress damages to a complainant with a disability who was not able to access a restaurant although the complainant offered “sparse evidence” of inconvenience. In *Cotten v. Eat-A-Pita*, CCHR No. 07-P-08 (May 20, 2009), the complainant was awarded \$500 in emotional distress damages due to the lack of any personal contact with the respondent’s personnel, the brief duration of the event, and the complainant’s minimal testimony about his general feelings as a wheelchair user when confronting inaccessible accommodations. See also, *Cotten v. 162 North Franklin, LLC, d/b/a Eppy’s Deli and Café*, CCHR No. 08-P-35 (Sept. 15, 2009), awarding \$500 for emotional distress to the complainant who encountered an inaccessible entrance, but experienced no contact with employees and no slurs, the incident was brief and complainant provided minimal testimony about emotional effects; *Cotten v. Addiction Sports Bar & Lounge*, CCHR No. 07-P-109 (Oct. 21, 2009), awarding \$1.00 for emotional distress where location was inaccessible but respondent’s staff worked to minimize complainant’s inconvenience; *Cotten v. Arnold’s Restaurant*, CCHR No. 08-P-24 (Aug. 18, 2010), awarding \$500 in emotional distress where the restroom was inaccessible but complainant was not subjected to rude behavior and his testimony was minimal; and *Cotten v. Top Notch Beefburger, Inc.*, CCHR No. 09-P-31 (Feb. 16, 2011), awarding \$500 in emotional distress damages where the restroom was inaccessible and complainant feared soiling himself.

The hearing officer noted that Complainant did not testify to great extent about the single, brief incident. He testified, in total, that “as being an individual in a wheelchair, I felt so discriminated against, I felt like a second class citizen.” Tr., p. 7. Complainant stated that when

Respondent's employees failed to even come out to talk with him about the restaurant's inaccessibility, he "felt like they really didn't care or it didn't matter to them whether I got inside the establishment to eat." *Id.* He had no direct contact with Respondent's employees.

The hearing officer determined that Complainant's testimony regarding the incident as well as the lack of personal interaction with Respondent and its employees supports a minimal award of damages for emotional distress in the amount of \$500. The hearing officer further determined that this amount is similar to awards in other cases where discriminatory encounters have been brief, testimony to support the amount of damages sought has been limited, and there was no direct contact with respondents. The Commission agrees and adopts the hearing officer's recommendation.

## **B. Punitive Damages**

Punitive damages may also be awarded against a respondent to punish the wrongdoer and deter that party and others from committing similar acts in the future. *Nash/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, et al., v. Lofton and Lofton Management, et al.*, 07-P-62/63/92 (July 24, 2009). The Commission has noted that the "purpose of the award of punitive damages ... is to punish [the respondent] for his outrageous conduct and to deter him and other like him from similar conduct in the future." *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998). Punitive damages may be particularly necessary in cases where damages are modest to ensure a meaningful deterrent. *Miller v. Drain Experts & Earl Derkits*, CCHR No. 97-PA-29 (Apr. 15, 1998). One factor that may be considered in the award of punitive damages is whether the respondent disregarded the Commission's processes, but where the respondent's conduct was found not to be egregious, the single fact that the respondent defaulted is not enough to warrant the imposition of punitive damages. *Blakemore v. General Parking*, CCHR No. 99-PA-120 (Feb. 21, 2001).

Here, the hearing officer concluded that a award of punitive damages is warranted in this case. Respondent's employees did not make any attempt to provide services to Complainant and did not leave the restaurant to discuss possible solutions or reasonable accommodations with Complainant. In addition, Respondent did not participate in any of the Commission's processes (although it acknowledged receipt of the documents in a telephone conversation with Commission staff), evidencing a level of contempt for the process, which should also be taken into account in determining punitive damages. *Miller, supra*. No representative for Respondent appeared to testify at the administrative hearing, so Respondent's motivations for its actions and any remorse following the discriminatory actions cannot be determined.

In determining the amount of punitive damages to be awarded, the size and profitability of Respondent's business are factors that normally would be considered. *Hanson v. Association of Volleyball Professionals*, 97-PA-62 (Oct. 21, 1998). Because Respondent did not appear at the hearing, it did not present any evidence regarding its financial condition, although the Order of Default did specify that Respondent could present evidence as to the relief to be awarded. CCHR Reg. 235.320.

In order to deter Respondent from acting in this manner again and to deter others from acting similarly, the hearing officer recommended an award of \$500 in punitive damages, finding that an award of this amount to Complainant is warranted by the facts of the case and by Respondent's persistent failure to cooperate with any Commission procedures despite repeated



written warnings of the consequences of those actions. Accordingly, the Commission adopts the hearing officer's recommendation and orders payment of \$500 for punitive damages.

### **C. Fine**

Section 2-160-120 of the Chicago Human Rights Ordinance provides that any person who violates any provision of the ordinance as determined by the Commission shall be fined not less than \$100 and not more than \$1,000 for each offense. The hearing officer recommended a fine of \$500. The Commission believes, however, that the maximum fine of \$1,000 is warranted in this case. The maximum fine has been assessed in instances where a respondent failed to document any undue hardship for the lack of accessibility and/or failed during the pendency of the case to take measures to improve the restaurant's accessibility. *Cotten v. Eat-A-Pita* and *Cotten v. La Luce Restaurant, supra*. Here, Respondent failed to participate in the administrative hearing process, requiring default proceedings, and failed to present any mitigating circumstances or evidence of efforts to comply with the Human Rights Ordinance. Compare *Cotten v. Arnold's Restaurant, supra*. Accordingly, the Commission orders Respondent to pay the maximum fine of \$1,000.

### **D. Injunctive Relief**

Section 2-120-510(l) authorizes the Commission to order injunctive relief to remedy a violation of the Chicago Human Rights Ordinance. See *Mahmoud v. Chipotle Mexican Grill Restaurant Co., LLC*, CCHR No. 12-P-25 (June 18, 2014) and cases cited therein. The Commission is authorized to order injunctive relief *sua sponte* in order to remedy and prevent future discrimination. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010). The Commission has ordered respondents found to have violated the CHRO to take specific steps to eliminate discriminatory practices and prevent future violations. Such steps have included training, notices, and structural changes. In *Mahmoud v. Chipotle Mexican Grill, supra*, the respondent was ordered to provide full use of the restaurant with an accessible entrance if feasible without undue hardship, signage, reasonable accommodations (doorbell or buzzer, signage), and training of staff on accessibility features and reasonable accommodations. In *Cotten v. La Luce Restaurant, supra*, the respondent was ordered to provide a permanent accessible entrance or, if installing a permanent ramp would impose an undue hardship, obtain an adequate portable ramp, buzzer and signage. In *Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012), a restaurant club owner who curtailed full use of its facility due to the complainant's transsexual status was ordered to adopt a written anti-discrimination policy to prevent future gender discrimination, distribute that policy to its staff, and provide mandatory training to its administrative personnel and employees on the rights of people of all protected classes. Proof of completion of these compliance activities was to be provided to the Commission according to a set time schedule. See also, *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009), respondent ordered to provide a permanent accessible entrance, or if installing a permanent ramp would impose an undue hardship, obtain an adequate portable ramp, buzzer and signage; *Maat v. String-A-Strand*, CCHR No. 05-P-5 (Feb. 20, 2008), respondent ordered to provide accessible entrance and volunteer at agency that assisted people with disabilities.

In this case, the hearing officer determined that Respondent's facility was inaccessible and its employees failed to offer any reasonable accommodations. Therefore, it is appropriate that the following injunctive relief be ordered in order to further the Commission's goal of facilitating the integration of all protected classes into places of public accommodation. CCHR Reg. 510.100.

The order for injunctive relief is appropriate to the facts of this case. It is closely tailored to the terms of the Chicago Human Rights Ordinance and the Commission Regulations interpreting the Ordinance. Additionally, the order for injunctive relief set forth below is modeled on that established in *Eat-A-Pita, supra*, and previous Commission decisions involving wheelchair accessibility of public accommodations. See *Cotten v. 162 N. Franklin, LLC d/b/a Eppy's Deli and Café*, and *Cotten v. CCI Industries, Inc., supra*. The order gives Respondent another opportunity to come into compliance with the Chicago Human Rights Ordinance and perhaps avoid future discrimination complaints and findings. It is in essence a road map for compliance.

Accordingly, the Commission adopts the hearing officer's recommendation as to injunctive relief and orders Respondent to take the following actions to remedy its past violation and prevent future violations:

1. **Provide a permanent accessible entrance if able to do so without undue hardship.** If able to do so without undue hardship (as defined in Commission Regulation 520.130), on or before *90 days from the date of mailing of this Final Ruling on Liability and Relief*, Respondent must file with the Commission and serve on Complainant documentary evidence that Respondent has complied with this requirement. The documentary evidence must include a certification signed by Respondent's authorized representative or a qualified professional drawing describing the alterations made, and it may include photographs or drawings. Respondent must maintain conspicuous signage at the entrance informing the public how to access the accessible entrance to the restaurant. The accessible entrance must be a public entrance and, if not the main entrance, must be substantially equivalent to other public entrances.
2. **Provide objective documentary evidence of any undue hardship.** If Respondent claims that it would impose any undue hardship (as defined by Commission Regulation 520.130) to make **any** public entrance accessible which complies with the full use requirement as defined by Commission Regulation 520.110 or any reasonable accommodation due to undue hardship, on or before *90 days of the date mailing of this Final Ruling on Liability and Relief*, Respondent must file with the Commission and serve on Complainant the following evidence of undue hardship:
  - a. If the undue hardship is based on *physical infeasibility* or the *requirements of other applicable laws*, then Respondent must provide a signed certification of Respondent or a qualified professional<sup>2</sup> which sets forth in detail the factual basis for the claimed undue hardship.
  - b. If the undue hardship is based on prohibitively high cost:
    - i. A signed certification of a qualified professional describing and itemizing the cost of the least expensive physically and legally feasible alterations which would make one public entrance fully accessible or the cost of least expensive reasonable accommodations required to comply with this order.

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<sup>2</sup> A professional would be an architect or other professional with expertise in accessibility modifications.

- ii. Adequate documentation of all available financial resources of Respondent, which may include a photocopy of Respondent's last annual federal tax return filed for the business or a CPA-certified financial statement completed within the calendar year prior to the submission. *Complainant is ordered not to disclose this financial information to any other person except as necessary to seek enforcement of the relief awarded in this case. Similarly, the Commission shall not disclose this financial information to the public except as necessary to seek enforcement of the relief awarded in this case or as otherwise required by law.*

3. **Make reasonable accommodations.** If Respondent claims that undue hardship prevents it from making one public entrance accessible which complies with the full use requirement as defined by Commission Regulation 520.110, on or before *90 days after the date of mailing of this Final Ruling on Liability and Relief*, the Respondent must take the following steps to provide reasonable accommodations within the meaning of CCHR Reg. 520.120:

- a. File with the Commission and serve on Complainant documentary evidence of the purchase of an *adequate portable ramp* and certification that staff on all shifts are trained and able to utilize the ramp if required. If it is not feasible to use a portable ramp (for example, the incline to be ramped is too steep), Respondent must provide a signed certification by Respondent's authorized representative or a qualified professional detailing why use of a portable ramp is not feasible.
- b. Install and maintain a *doorbell or buzzer* at each public entrance which can be utilized by a person using a wheelchair or with mobility impairments and which is adequate to summon staff to the entrance for the purpose of deploying the portable ramp or providing alternative service. The doorbell or buzzer must be accompanied by conspicuous signage that it is a means for people with disabilities to seek assistance.
- c. Maintain *exterior signage* conspicuously displaying a telephone number which may be used to contact staff during business hours to request deployment of the ramp or alternative service (carryout, delivery service, e.g.). If services such as carryout or delivery service is provided to the general public by internet, the signage must also include applicable website and electronic mail addresses.
- d. Provide other or alternative *reasonable accommodations as feasible without undue hardship* to enable a person who uses a wheelchair or who has other impairments to access the services Respondent provides to the general public in a manner which is as equivalent as possible. Such measures may include carryout or curbside service, other physical changes, or changes in rules, policies, practices or procedures.
- e. Ensure that Respondent's staff is trained and supervised to deploy a portable ramp if a portable ramp is used, to respond to the doorbell or

buzzer and to provide equivalent service and/or reasonable accommodations consistent with Respondent's plan for compliance with the Chicago Human Rights Ordinance.

4. **Adopt written policies.** Within 60 days of the date of mailing of this Final Ruling on Liability and Relief, Respondent shall adopt written policies for managers and employees to assure that people with disabilities are provided services and assisted when necessary to assure that Respondent's services are available to all customers, including those with disabilities. The policies should outline mandatory steps to be taken to resolve any policy issues that may arise.
5. **Train employees on policies.** Within 90 days of the date of this Final Ruling on Liability and Relief, all employees and administrative personnel at Respondent's restaurant shall attend a mandatory training on the Respondent's policy adopted in response to #4 above and on the rights of people in all protected classes.
6. **File a report on compliance with order of injunctive relief.** Within six months of the date of the mailing of this Final 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 policies and a detailed description of the training provided including copies of any training materials distributed and any written announcements of training issued to managers and employees. 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 the order of injunctive relief in this Final Ruling on Liability and Relief and that all reported details are true and correct.
7. **Extension of Time.** Respondent may seek a short extension of time to meet any deadline set with regard to this order for injunctive relief, by filing and serving a motion pursuant to the procedures set forth in Commission Regulations 210.310 and 210.320. (The hearing officer need not be served.) The motion must establish good cause for the extension. The Compliance Committee of the Commission shall rule on the motion by mail.
8. **Effective period.** This injunctive relief shall remain in effect for *three years* from the date of mailing of this Final Ruling on Liability and Relief for the purpose of Complainant's seeking enforcement of it (by motion pursuant to Reg. 250.220).

#### **E. Interest**

Section 2-120-500(1), Chicago Municipal Code, allows an additional award of interest on damages ordered to remedy violations of 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 the violation and compounded annually from the date of violation. In this case, the Commission orders payment of such interest from the date of violation on November 25, 2013.

#### **F. Attorney Fees and Costs**

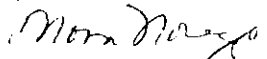
Complainant appeared *pro so*, so attorney fees and costs are not awarded.

## VI. CONCLUSION

The Commission finds Respondent Taj Mahal Restaurant liable for public accommodation discrimination based on disability in violation of the Chicago Human Rights Ordinance and orders the following relief:

1. Payment to Complainant of emotional distress damages in the amount of \$500;
2. Payment to Complainant of punitive damages in the amount of \$500;
3. Payment to the City of Chicago of a fine of \$1,000;
4. Payment of interest on the foregoing damages from the date of violation on November 25, 2013;
5. Compliance with the order for injunctive relief as described above.

CHICAGO COMMISSION ON HUMAN RELATIONS



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By: Mona Noriega, Chair and Commissioner  
Entered: October 15, 2014