City of Chicago
COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF:

Evans Marshall
Complainant,
v.

Feed Restaurant
Respondent.

Case No.: 15-P-26

Date of Ruling: July 14, 2016

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On May 22, 2015, Complainant Evans Marshall filed a complaint against Respondent Feed Restaurant alleging that Respondent had discriminated against him in the use of a public accommodation; Complainant also filed an appearance by an attorney. Specifically, Complainant alleged that he has a disability and uses a wheelchair. C., par. 2 and 3.[1] Complainant alleged that he had gone to Feed Restaurant on December 14, 2014, after having been told that it was accessible to wheelchair users. C., par. 8. However, upon arriving at the restaurant, he was unable to access the restaurant due to a concrete step at the entrance. C. par. 14. Complainant sought compensatory damages, damages for emotional distress, attorney fees and costs, and any other remedies available to him. C., par. 31.

On June 30, 2015, the Commission sent Respondent an Order to Respond to the Complaint and a Notice of Potential Default; Respondent was to respond by July 13, 2015 or face an Order of Default. This was the first in a series of failures by Respondent to respond promptly – or respond at all – to the Complaint and various orders by the Commission or the hearing officer.

On July 6, 2015, Respondent filed a Response to the Complaint and an appearance of an attorney. In its Response, Respondent admitted that there was a "gap" between the sidewalk and the entrance to the restaurant and stated that Respondent's employees attempted to assist Complainant enter into the restaurant, but were unable to lift the wheelchair into the restaurant. R., par. 13.[2] Further, Respondent stated that Complainant's wheelchair was too wide for the entry door. R., par. 16. Respondent also argued in its Position Statement that it was a small business and had done all it had to do to meet the "readily achievable" standard of the Americans with Disabilities Act and noted that it had provided "curbside service" by offering to provide Complainant food while he was sitting outside, citing 28 C.F.R. §36.305(a), one of the federal regulations implementing the Americans with Disabilities Act, 42 U.S.C. §12101 et seq.[3]

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[1] "C" refers to Complainant's Complaint.
[2] "R." refers to Respondent's Response.

[3] **Sec.36.305 Alternatives to barrier removal.**

(a) General. Where a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation shall not fail to make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those methods are readily achievable.

On August 6, 2015, the Commission issued an Order Finding Substantial Evidence, ordering the matter to proceed to an Administrative Hearing. On August 6, 2015, the Commission issued ~~an Order~~ Appointing Hearing Officer and Commencing Hearing Process. The Pre-Hearing Conference was scheduled for October 8, 2015. The Order specified that Requests for Production of Documents was due on September 21, 2015. No requests for documents were filed by either party.

On October 8, 2015, a Pre-Hearing Conference was held. Complainant appeared and was represented by counsel. Neither Respondent nor Respondent's counsel appeared, nor did Respondent or its counsel contact the Commission to set a new date or explain why Respondent was unable to appear. A Notice of Potential Order of Default was issued by the hearing officer on October 8, 2015. Respondent was to file a response within 28 days of the Notice showing evidence of "good cause" for its failure to attend or face the consequences of the entry of an order of default. CCHR Reg. 235.310(d).

On November 6, 2015, Respondent filed a motion for leave to file its response late and an answer to the Notice of Potential Default. Respondent's attorney admitted that she had received notice of the pre-hearing conference date, but said that due to the death of her son's mother-in-law, she had been required to watch her grandchild, and about the same time her office computer was hacked which did not allow her to open up her scheduling software. Complainant filed its opposition to Respondent's motion for leave to file late and to the Respondent's answer to the Notice of Potential Default on November 13, 2015. The hearing officer did not enter the order of default, noting that the mistake was the fault of Respondent's counsel, not Respondent itself. Both parties filed Pre-Hearing Memoranda in a timely fashion.

On December 8, 2015, a hearing was set for this matter. A Spanish-language translator for Respondent and its witnesses, a CART[4] reporter for Complainant's counsel, and a court reporter were also present. Complainant and his attorney were present. Respondent's counsel and witness were present; one witness had recently returned from surgery in South America. Respondent's owner and representative did not appear, despite phone calls from Respondent's attorney. Respondent's attorney reported that Respondent's owner/representative said his child had a dental emergency, that his wife was unable to drive, and that he was at a dentist.

Once again, on December 8, 2015, the hearing officer issued a Notice of Potential Default due to Respondent's failure to appear at the hearing. The Notice stressed that any "good cause" statement was required to be filed by December 22, 2015, and must be supported by documentation of the dental emergency in order to avoid an order of default being issued. A new hearing date of January 12, 2016, was set.

(b) Examples. Examples of alternatives to barrier removal include, but are not limited to, the following actions --

(1) Providing curb service or home delivery;

(2) Retrieving merchandise from inaccessible shelves or racks;

(3) Relocating activities to accessible locations; [sic]

[4] A CART reporter provides Communication Access Real-time Translation for people with hearing impairments.

On January 4, 2016, once again after the ordered deadline of December 22, 2015, Respondent through its attorney filed its statement of good cause. Respondent's owner/representative stated that his five-year-old daughter needed an emergency dental procedure and his wife did not drive nor did she have a driver's license. Attached to the statement of good cause were barely decipherable notes from a dentist office that stated that Respondent's representative was at the dental office on the date of the hearing. Complainant objected to the filing and asked the hearing officer to enter an order of default.

The hearing officer noted that an entry of an order of default and its subsequent consequences were serious sanctions. After reviewing the documentary evidence and checking the phone numbers on the slips from the dental clinic, the hearing officer found that "despite the limited value of the documentary evidence," Respondent had established "good cause" for its failure to attend the hearing and no order of default was entered. However, finding a continuing failure by Respondent's attorney to follow Commission directives in a timely fashion, the hearing officer ordered that a fine, in an amount to be determined after the hearing was held, would be assessed against Respondent for its attorney's inexcusable and continuing failures to meet deadlines.

A hearing was held on January 12, 2016. Complainant and his attorneys were present. A CART reporter was provided for Complainant's attorney. Respondent's owner/representative, witnesses, and attorney were present. A Spanish-language interpreter was provided for Respondent's owner/representative and Respondent's witnesses. At the close of the hearing, the hearing officer determined that no post-hearing briefs would be allowed.

On March 23, 2016, the hearing officer issued a Recommended Ruling on Liability and Relief. Respondent filed objections to the Recommended Ruling, which were considered in reaching this Final Ruling.

II. FINDINGS OF FACT

1. Complainant Evans Marshall lives in Chicago. He uses a motorized wheelchair for mobility. Tr. p. 9; C. par. 2.[5]

2. Complainant has chronic venous stasis bilateral insufficiency, or very poor circulation, and anemia. Tr. p. 9; C. par. 2. As a result of these conditions, he is in chronic pain. Tr. p. 9, 45. Chronic venous stasis bilateral insufficiency causes ulcers to form on his legs. C. par. 2. Outdoor cold temperatures also affect him to a greater degree than people without this condition. If it is 70° F outside, his body would register the temperature as 40°F. Tr. p. 9, 45.

3. Complainant had used a wheelchair for five years prior to the hearing. Tr. p. 9. He used a "standard width" wheelchair and has never had difficulty entering standard width doors with his wheelchair. Tr. p. 9; C. par. 2.

4. On December 14, 2014, Complainant decided to dine at Feed Restaurant at 2803 W. Chicago Avenue, Chicago, Illinois. Tr. p. 10; C. par. 5. One of his PACE paratransit drivers[6] had recommended the restaurant as a nice place to go and to eat. Tr. p. 10.

[5] "Tr. p." refers to the transcript of the January 12, 2016, hearing.

[6] PACE paratransit is a dial-a-ride van service provided to individuals who cannot use standard public transportation.

5. Prior to setting up his ride with PACE paratransit to Respondent's restaurant, Complainant called the restaurant to see if it was accessible to his wheelchair. Complainant always called before he went to a public place he had not previously visited. Tr. p. 10; C. par. 7.

6. Complainant called the restaurant to ask them about accessibility and what kinds of food the restaurant offered; he had to eat certain things. Tr. p. 10; C. par. 7. Complainant called the week before he went to the restaurant. Tr. p. 11. Complainant identified himself as a person who used a motorized wheelchair. Tr. p. 11; C. par. 7. Complainant talked three times with a woman who answered the phone at Respondent's restaurant; the woman did not provide her name. Tr. p. 10, 34; C. par. 7.

7. In response to Complainant's question about whether Respondent's restaurant had an accessible entrance, the unidentified woman at the restaurant told Complainant that he should not worry, that the restaurant served people using wheelchairs "all the time," and suggested that he call when he arrived. C. par. 8. The unidentified person said that Respondent's staff helped people in wheelchairs and that the restaurant had a ramp or apparatus to help people in wheelchairs enter the restaurant. Tr. p. 11. The woman also said they assisted people by pushing wheelchairs into the restaurant. Tr. p. 25.

8. Based on representations from Respondent's staff that the restaurant was accessible, Complainant arranged to have PACE paratransit pick him up and take him to Respondent's restaurant on December 14, 2014, at 6:30 p.m. Tr. p. 11-12; C. par. 10. Complainant was required to call PACE paratransit the day before to arrange for the service and was required to designate both a pick-up time at his residence and a time to pick him up at his destination for the return trip home when he made the PACE paratransit reservation. Tr. p. 12. PACE requires two hours advanced notice if a reservation is to be cancelled or changed. Tr. p. 12. Complainant paid $6.00 for the PACE rides to and from Respondent's restaurant. Tr. p. 41.

9. Complainant arrived on the PACE bus at Respondent's restaurant at about 6:45 p.m. on December 14, 2014; he was scheduled to be picked up at 8:00 p.m. by the PACE bus driver after he ate at the restaurant. Tr. p. 12, 28.

10. On December 14, 2014, according to an exhibit introduced by Respondent without objection from Complainant, Chicago's O'Hare Airport had a high temperature of 50°F and a low temperature of 45°F, with no snow but a trace amount of precipitation. Maximum wind speeds were 14 mph, with gusts of 19 mph. R. Exh. 7. Complainant recalled that it was cold and starting to snow (Tr. p. 17, 45), but the exhibit established that Complainant's memory is incorrect as to the temperature and snow. Complainant testified that it felt very cold to him. Tr., p. 17.

11. When Complainant arrived at Respondent's restaurant, he saw what he called a canvas or plastic wind shelter around the front entrance of the restaurant. Tr. p. 13; C. Exh. #1 and R. Exh. #1.[7] The wind shelter made maneuvering to the entrance "very close." Tr. p. 14. When he arrived at the door to the restaurant, there was a high "step" at the door. Tr. p. 14. In Complainant's complaint, he described the step as 3" high; in his testimony, he described the step as 4" high. Tr. p. 15, 32; C. par. 13. In a photograph introduced by Respondent at the hearing, the distance from the sidewalk to the entrance appears to be approximately 2.5" high.

[7] "C. Exh." and "R. Exh." refers to exhibits which were introduced by the parties and entered into evidence at the January 12, 2016, hearing in this matter.

R. Exh. 5. The hearing officer found that the entrance to the restaurant was approximately 2.5" above the sidewalk grade and was not ramped.

12. Complainant was not able to navigate his motorized wheelchair over the concrete "step" and enter the restaurant by himself. C. par. 14.

13. The PACE paratransit driver remained with Complainant and attempted to assist him enter into the restaurant. Tr. p. 16. The paratransit driver had what Complainant called "an apparatus" in the van which the driver put down in front of the door as a "type of ramp," but that did not provide access. Tr. p. 16.

14. The PACE paratransit driver went into the restaurant but no one from the restaurant came out to assist Complainant. Tr. p. 15. When the paratransit driver realized it was impossible for Complainant to get into the restaurant, the driver had to leave to pick up his next passenger. Tr. p. 41. The driver left the Complainant at the restaurant. Tr. p. 41. Complainant's understanding was that rules require a paratransit driver to stay with a passenger to assure that a business is open, but the driver is not responsible to assure accessibility. Tr. p. 51.

15. Unable to access the restaurant by himself or with his driver's assistance, after 15 to 30 minutes, Complainant used his cell phone to call the restaurant; he talked with a woman who answered the restaurant's phone. Tr. p. 17, 43; C. par. 18. The woman answering the phone told Complainant that they could not do anything to assist Complainant. Tr. p. 18, 43.

16. Shortly after this phone call, two people from Respondent's restaurant came out to see Complainant. Tr. p. 18. One was a woman; one was a man, who identified himself as the owner's brother. Tr. p. 18.

17. The woman said there was nothing they could do and asked Complainant if there was anything they could bring outside to him. Complainant said he had come to eat in the restaurant, otherwise he could have ordered the food to be delivered. Complainant told her he wanted to be like anyone else who could walk into a place and enjoy the food. Tr. pp. 18-19, 43, 44.

18. The man told Complainant he was the manager and the owner's brother. Complainant told the man that he had called the restaurant three times to ask if the restaurant was accessible to wheelchairs. The man said he could not do anything and that Complainant should just tell the woman what he wanted; the man then returned to the restaurant. Tr. pp. 19-20, 43.

19. The woman then returned from the restaurant with a paper and pen. She told Complainant that he could not block the entrance, or she would call the police. Complainant testified that he was not blocking the entrance because he knew that was not acceptable. Complainant witnessed customers entering and exiting while he was outside the restaurant. Tr. pp. 20-21. He did not stay in the wind shelter because it would have blocked the entrance. Tr. p. 30-31. He was two yards outside of the entrance to the wind shelter. Tr. p. 31.

20. Complainant felt inferior because he could not go into the restaurant and enjoy a meal like everyone else. He was also cold, because the temperature was dropping. He felt scared because he was alone and there were people loitering on the street nearby. Tr. pp. 21-22. The sky was dark as he waited. Tr. p. 51. He saw people in the restaurant looking outside at him. C. par. 20. He felt humiliated and embarrassed. C. par. 26.

21. Complainant's paratransit return ride arrived at 8:10 p.m. to take him home. Complainant had been waiting outside for 1 hour and 20-30 minutes when the ride arrived. Tr. par. 23; C. par. 25.

22. Complainant would not have gone to Respondent's restaurant if he had known it was not accessible. Tr. p. 25. He would not have allowed the restaurant's staff to push him or lift him in his wheelchair because he could get hurt, the person lifting him could get hurt, or his wheelchair might be damaged. Tr. p. 36.

23. Complainant's wheelchair has accessed all sorts of doors. Tr. p. 39. Complainant describes his wheelchair as standard. He can access vehicles, so he knows it is standard. Tr. p. 48. At the hearing, counsel for Respondent measured the wheelchair; it measured 28.5" wide. Tr. pp. 49-50.

Respondent

24. Milton Sumba was the cook at Respondent's restaurant. He was in charge of "everything" during the evening hours. Tr. p. 53. Milton Sumba had been working at the restaurant for 9 years, for the current owner for 3 years. Tr. p. 54.

25. Respondent's restaurant is very small; its capacity according to City of Chicago regulations is 40. Tr. p. 54.

26. On December 14, 2014, Milton Sumba was working with two other persons in the restaurant. One of the three was washing dishes and stayed in the back of the restaurant. Tr. p. 54.

27. The cashier was the first person one would see upon entering the restaurant; the cashier was at a desk in the dining room. The kitchen was in the back of the building. Behind the kitchen was a prep room where the dishwasher also worked. There was a wall between the kitchen and prep room. Tr. pp. 54-55. There were two tables with six customers the night of December 14, 2014. Tr. p. 59.

28. Milton Sumba was in the prep room on December 14, 2014, and could not see what was happening on the sidewalk. There was no phone in the prep room. Tr. p. 56.

29. At some point on December 14, 2014, Milton Sumba was notified by the woman who worked as the cashier that there was an "issue on the sidewalk." He went outside to see what was happening. He saw Complainant, the PACE driver, and the woman who worked at the restaurant. Tr. pp. 56-57. Complainant was seated outside the winter wind protection [shelter]. Tr. p. 58.

30. Milton Sumba asked Complainant what was going on and how could he help him. Tr. p. 57. Complainant told Milton Sumba that he had called in advance and was told the restaurant accepted people with wheelchairs. Tr. p. 58. Milton Sumba told Complainant that the restaurant did not have a ramp and said "please excuse us for that." Tr. p. 60.

31. Milton Sumba returned to the kitchen; on his way, he asked the cashier to take the menu out and ask the customer what he wanted. Milton Sumba told the cashier that Complainant could have whatever he wanted at no charge. Milton Sumba felt badly about the

misunderstanding. Tr. p. 59. The cashier later told Milton Sumba that Complainant did not want to order anything and that Complainant was very upset. Tr. p. 60.

32. Milton Sumba did not know when Complainant left the sidewalk in front of the restaurant on December 14, 2014; Milton Sumba did not return to the sidewalk after he talked with Complainant. Tr. p. 61. Milton Sumba assumed that the driver would take Complainant home. Tr. pp. 61-61. Milton Sumba thought Complainant's issue was solved by offering a free meal of Complainant's choosing. Tr. p. 65.

33. Milton Sumba recalled there was no snow on December 14, 2014. Tr. p. 63.

34. Milton Sumba did not witness any altercation or offensive behavior by the cashier directed toward Complainant. Tr. p. 61.

35. Milton Sumba had never encountered a "problem" with anyone in a wheelchair at the restaurant. Tr. p. 54. Many people in wheelchairs came to the restaurant during his time working there; there had never been a problem. None of the customers in wheelchairs had used motorized wheelchairs. Tr. p. 60. The restaurant did not have a ramp because none of the customers in wheelchairs had ever needed one to enter the restaurant. Tr. p. 60. If necessary, the restaurant's staff would push a customer into the restaurant. Tr. p. 64.

36. Milton Sumba believed that the distance from the sidewalk to the frame of the door, the "obstacle" that Complainant had to overcome to enter the restaurant, was less than three inches. Tr. pp. 62-63.

37. Respondent's restaurant did not have a doorbell which would have allowed a person in a wheelchair to ring for assistance. Tr. p. 60.

38. Milton Sumba had never had training on the Americans with Disabilities Act. Tr. p. 65. Milton Sumba did not think he needed training to help people with disabilities because he was ready to help anyone. Tr. p. 66. Milton Sumba has had no training on food safety either. Tr. p. 66.

39. Freddy Sumba was one of the owners of the restaurant; he had owned the restaurant for about three years. He also had a full-time job as an assistant engineer at a building on North Sheridan in Chicago, Illinois, to provide additional financial support for himself. Tr. p. 68. Freddy Sumba did not have a degree in engineering; he received on-the-job training. Tr. pp. 69-70.

40. Freddy Sumba was not present at the restaurant on December 14, 2014, and has no first-hand knowledge of the events. Tr. pp. 71, 72. Freddy Sumba believed that his brother Milton Sumba was at the restaurant on December 14, 2014. Tr. p. 71.

41. The first time Freddy Sumba knew that there was an issue about Complainant's treatment on December 14, 2014, was when he received a letter from Complainant. Tr. p. 71. At some point, Freddy Sumba said Milton Sumba told him about what happened, but Freddy Sumba did not think it was a serious thing or that Complainant had taken it seriously. Tr. p. 71. Freddy Sumba did talk about the incident with Milton Sumba before he received the official notification from the Chicago Commission on Human Relations. Tr. p. 72.

42. Freddy Sumba had not completed his taxes for 2014 at the date of the hearing so he could not tell if the restaurant was profitable in 2014. Freddy Sumba said that in 2013 the restaurant showed a ~~loss;~~ **he could** not recall the exact amount of the loss, but thought it was between $200 and $300. No documentation was introduced by Respondent to support this testimony. Tr. pp. 73-74.

43. Freddy Sumba hoped that the restaurant would show a profit in 2014 and 2015, but he did not know how much profit that would be. Tr. p. 74.

44. Freddy Sumba said he would not be able to pay the $15,000 in damages along with attorney's fees sought by Complainant. Freddy Sumba said the reason he worked another job was that the restaurant did not make sufficient money to support him. His partner in the restaurant, Milton Sumba, did not have the money. Tr. pp. 74-75, 78-79.

45. Freddy Sumba said the restaurant paid $1,400 per month in rent, plus utilities. The restaurant employed six people. Tr. p. 76. The restaurant was open seven days a week. Tr. p. 73. No documentation was introduced by Respondent to support this testimony.

46. Freddy Sumba said that he and his employees have not had training on the Americans with Disabilities Act, but are willing to assist when needed to the best of their ability. Tr. pp. 79-80. Freddy Sumba and his employees have not had any training on how to lift or push wheelchairs. Tr. pp. 80-81. Freddy Sumba and his employees have never had a problem with customers in wheelchairs. Tr. p. 81.

47. Freddy Sumba did not know whether he would be able to put a ramp at the front entrance and would have to check with the City of Chicago about how long the ramp would be and whether he could invade the sidewalk. Tr. p. 82. Freddy Sumba has never obtained a quote to construct a ramp because he did not think it was necessary. Tr. p. 84.

III. APPLICABLE LEGAL STANDARDS

Complainant filed a complaint of discrimination under the Chicago Human Rights Ordinance ("CHRO") alleging discriminatory conduct in the City of Chicago against Respondents on May 22, 2015. Under Section 2-120-510 of the CHRO, complaints of discrimination must be filed within 180 days of the alleged violation. Complainant filed a timely complaint within 180 days and the Commission has jurisdiction over the complaint.

The CHRO prohibits discrimination based on disability, among other protected classes, in the full use of a public accommodation. Section 2-160-070 of the CHRO provides:

> 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...disability.

Section 2-160-020(c) of the CHRO defines "disability," in part, as "a determinable physical or mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder ...."

Section 2-160-070 of the CHRO prohibits discrimination in places of "public accommodation" operating in the City of Chicago. "Public accommodations" include a place or

business establishment that sells, provides, or offers to the general public products and services. Section 2-160-020(i).

CCHR Reg. 520.110 clarifies the obligations of persons who control a public accommodation, providing:

> ... all parts of the premises open to the public shall be available to persons who are members of a Protected Class [including persons with disabilities] at all times and under the same conditions as the premises are available to all other persons and that the services offered to persons who are members of a Protected Class shall be offered under the same terms and conditions as are applied to all other persons.

The requirement of providing full use of a public accommodation to people with disabilities is not without limits. CCHR Reg. 520.105 states:

> No person who owns, leases, rents, operates, 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.

CCHR Reg. 520.120 defines reasonable accommodations in public accommodations:

> ... accommodations (physical changes or changes in rules, policies, practices or procedures) which provide persons with a disability access to the same services, in the same manner as are provided to persons without a disability.

CCHR Reg. 520.130 establishes what is necessary for a public accommodation to prove that it would be an undue hardship to provide full use or any reasonable accommodations:

> 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.
>
> (a) There must be objective evidence of financial costs, administrative changes, or projected costs or changes that would result from accommodating the needs of persons with disabilities.
>
> (b) 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.

IV. DISCUSSION

In order to prove a *prima facie* case of discrimination based on disability, a complainant must prove that: 1) he is a person with a disability within the meaning of the CHRO, 2) he is a qualified individual who has established all of the non-discriminatory requirements for service, and 3) he did not have full use of the public accommodation as other patrons without disabilities. *Mahmoud v. Chipotle Mexican Grill Service Co., LLC d/b/a/ Chipotle Mexican Grill*, CCHR No. 12-P-25 (June 18, 2014); *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010); *Maat v. String-A-Strand*, CCHR No. 05-P-05 (Feb. 20, 2008).

Complainant has provided credible proof of the elements of a *prima facie* case. He is a person with a physical impairment that impedes his ability to ambulate without use of a motorized wheelchair. 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, supra.* Complainant proved that he did not have full use of the public accommodation, because he could not enter Respondent's restaurant, which is open to the public, because of a barrier at the only entrance, a fact attested to by both Complainant and Respondent's witnesses. *Cotten v. La Luce, supra.* The only contested fact about that barrier is whether it was 2.5" or 4" high, but either amount would impose a barrier to independent access for someone using a wheelchair. A barrier that impedes independent access to a public accommodation deprives an individual with a disability full use of that public accommodation. *Mahmoud, supra*; *Maat v. String-A-Strand, supra.*

Once a complainant is found to have met the standards of establishing a *prima facie* case, the burden is then on Respondent to prove by a preponderance of the evidence that it provided full use or that providing full use of its public accommodation would cause undue hardship. See CCHR Reg. 520.105 and *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (June 4, 2009). Even if proof of undue hardship is established, Respondent must then prove that it either reasonably accommodated Complainant or that it could not reasonably accommodate Complainant without undue hardship. *Id.*

Respondent argued, in its Response to the Complaint and at the hearing of this matter, that any change to its entry to make it accessible would be financially onerous or likely impossible due to City of Chicago right-of-way requirements. These are affirmative defenses that the requested accommodation imposes an undue hardship on Respondent's business. Commission regulations define hardship as "...financial costs or administrative changes that are demonstrably attributable to the accommodation of the needs of persons with disabilities [that] would be prohibitively expensive or would unduly affect the nature of the public accommodation." CCHR Reg. 520.130. The regulations require "objective evidence" of any financial cost or administrative change attributable to the accommodation. *Id.*

Respondent attempted to prove that it did not have the financial resources to provide an accessible entrance by the testimony of its owner that the restaurant was not making a profit. No documentation was provided and the testimony was very tentative about the "profits" of the business shown on tax forms. Respondent had not obtained estimates of the cost of providing an accessible entry into its business. No objective evidence was provided as required by CCHR regulations. *Cotten v. Eat-A-Pita, supra.* Therefore, Respondent did not prove by objective evidence that providing an accessible entrance was an undue financial hardship.

Respondent offered the owner's speculative testimony that any construction of an accessible entrance would impede upon the City of Chicago's right of way. Again, no plans for an accessible entry were offered, nor was there any evidence of the restrictions placed on Respondent by City of Chicago ordinances. The Commission has found that speculative or vague comments about the possible difficulties of constructing accessible features do not constitute the objective evidence required by CCHR regulations. *Cotten v. Eat-A-Pita, supra.* Respondent rents the space according to Freddy Sumba's testimony, but no evidence was offered to support this statement, nor was any evidence offered that the landlord had refused to allow changes to be made to the premises. CCHR Reg. 520.105 specifically holds renters of public accommodations accountable for providing accessibility. Thus, Respondent did not prove by objective evidence that providing an accessible entrance was an undue administrative hardship or was impossible due to City of Chicago right-of-way requirements.

Respondent argued that it had provided assistance by pushing or lifting wheelchairs in the past, but this is unacceptable. When access for a person with a disability relies on actions of others, Respondent does not provide the "full use" of its restaurant, as required by CHRO Section 2-160-070 and the Commission's Regulations, because it offers access to the restaurant "under different terms than are applied to others." See *Mahmoud, supra*; *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62 (Oct. 21, 1998); see also *Warren, et al., v. Lofton and Lofton Management, et al.*, CCHR No. 07-P-62/63/92 (July 24, 2009); *Head v. St. Joseph's Hospital*, CCHR No. 93-PA-13 (Sep. 8, 1993). Requiring a person with a disability to rely on the beneficence of strangers does not provide the "benefits of a free and open society" that is to be fostered by the CHRO. See Section 2-160-010, Chic. Muni. Code.

In addition, offering to push or carry a wheelchair through an inaccessible entrance is unacceptable because it poses, as Complainant testified based on personal experience, a danger to the wheelchair user and his wheelchair, as well as possible harm to those pushing or carrying the wheelchair. As the Commission has noted, citing *Cotten v. Lou Mitchell's*, CCHR No. 06-P-9 (Jan. 7, 2010):

> The Commission interprets the CHRO as not allowing the carrying or lifting of a wheelchair user as either a full or reasonable accommodation....[e]ven if this may be a well-meaning gesture, the Commission has rejected Respondent's view, regardless of whether some wheelchair users may be willing to accept being carried in this way.

Cotten v. La Luce, supra. See also *Zografopoulos v. Wendella Sightseeing Co., Inc.*, CCHR No. 05-P-95 (Mar. 10, 2008).

In *Cotten v. La Luce*, the Commission noted in support of its determination that the CHRO would not find carrying or lifting a wheelchair a "reasonable accommodation." Additionally, the regulations implementing the Americans with Disabilities Act specifically state "carrying an individual with a disability is considered ineffective and therefore an unacceptable method for achieving...accessibility." *Id.* at 8, citing *Matthews v. Jefferson*, 29 F.Supp.2d at 533 (W.D. Ark. 1998) quoting 28 C.F.R. §35.150(b)(1); *Ramirez v. District of Columbia*, 10 A.D. Cases 738, 740 (D.D.C. 2000). See also *Covington v. McNeese State Univ.*, 08-505 (La.App. 3 Cir. 11/5/08), 996 So.2d 667, *writ denied*, 09-69 (La.3/6/09), 3 So.3d 491.[8]

[8] Both Complainant and Respondent relied almost exclusively on federal law and regulations prior to and during the hearing of this matter. Commission regulations note that prior Commission decisions are the applicable precedent for Commission cases; decisions from other jurisdictions may be looked to for guidance. CCHR Reg. 270.500.

Respondent and Complainant agree that Respondent offered to provide a meal *gratis*. Both parties also agree that Complainant, who was waiting alone in the cold outside the restaurant, refused the offer. Telling a person with a disability that the public accommodation is accessible, and then offering a free meal when a customer is forced to wait for over an hour in the cold because the restaurant is not accessible, is not a reasonable accommodation. *Cotten v. Eat-A-Pita, supra.*

The Board of Commissioners agrees with the hearing officer's conclusion that Complainant established the *prima facie* elements of his case and that Respondent has not proved that offering a reasonable accommodation would be an undue hardship, or in the alternative, that the alternate service Respondent provided was a reasonable accommodation. Accordingly, the evidence establishes that Respondent violated the Chicago Human Rights Ordinance.

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 admit the complainant to a public accommodation; to extend to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of the respondent; 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 ... 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. Actual Damages

In his complaint, Complainant did not specify an amount to compensate him for actual damages. In his Pre-Hearing Memorandum and at the hearing, Complainant asked for damages for emotional distress in the amount of $15,000. Complainant did not seek damages for any out-of-pocket expenses, but testified that he paid $6.00 for his PACE paratransit rides to and from Respondent's restaurant.

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 (Mar. 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 No. 97-PA-55, at 16 (Oct. 18, 2000).

Manning v. AQ Pizza LLC, d/b/a Pizza Time, et al., CCHR No. 06-E-17 (Sep. 19, 2007) (CCHR did not base decision on federal court cases cited by Complainant and hearing officer where there were ample precedential CHR decisions and no issues of first impression involved.); *Fulton v. Dimeo-Doroba, Inc. et al.*, CCHR No. 97-E-79 (June 11, 1997) (CCHR looks for guidance to decisions interpreting other laws only where issue is one of first impression and where those laws have sufficiently similar language; otherwise it uses its own precedent.).

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, supra.* Respondents must take complainants as they are, even if they have pre-existing conditions which make the complainant more vulnerable, but Respondents are only liable for the increased level of distress for failure to accommodate. See *Winter v. Chicago Park District, supra*; *Hussian v. Decker*, CCHR No. 93-H-13 (Nov. 15, 1995).

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 ongoing 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 *Morrow v. Driver of Cab #1357 (Tumala),* CCHR Case No. 03-P-2 (Apr. 18, 2007), the Commission found that one incident of racial discrimination by a cab driver resulted in the complainant having ongoing emotional problems and thoughts of being viewed as a "lesser human" due to her race; the Commission awarded $5,000 in damages for emotional distress. In *Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012), the Commission awarded the complainant $3,500 for one incident of unequal access discrimination where the complainant was humiliated on the night of the incident and continued to feel the effects when recounting the discriminatory incident at the hearing. In *Hamilton and Hamilton v. Café Descartes*, CCHR No. 13-P-05/06 (June 18, 2005), a daughter and mother were awarded $5,500 and $3,000, respectively, for emotional distress when they were ejected from a restaurant because the daughter, a very vulnerable individual, used a support animal; the daughter testified to continuing distress from the incident.

The Commission has awarded $1,000 or less in most cases in which the discrimination was a single incident, and there was little testimony of distress or ongoing problems resulting from the incident. In *Cotten v. Eat-A-Pita, supra*, 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 (Sep. 15, 2009) (complainant awarded $500 where he encountered an inaccessible entrance, but experienced no contact with employees and no slurs, the incident was brief and complainant provided minimal testimony); *Cotten v. Addiction Sports Bar & Lounge*, CCHR No. 07-P-109 (Oct. 21, 2009) (complainant awarded $1.00 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) (complainant awarded $500 where location's restroom was inaccessible but complainant was not subjected to rude behavior and his testimony about emotional distress was minimal); and *Cotten v. Top Notch Beefburger, Inc.*, CCHR No. 09-P-31 (Feb. 16, 2011) (complainant awarded $500 where restroom was inaccessible and complainant feared soiling himself).

Complainant's testimony places him above the cases in which the minimal damages were awarded, but far less than the cases where substantial damages were awarded because ongoing physical or emotional problems were proved. Complainant testified that due to his condition sitting outside in the cold affected him more than most people. In order to avoid problems with inaccessible locations, he had called and been assured that Respondent's restaurant was accessible. Because of the requirements of PACE paratransit, once Complainant arrived he was required to wait for over an hour to be picked up and returned home. Complainant was forced to wait outside in the cold, rain and dark during that time; he was very cold and nervous about people loitering on the street. Complainant saw people inside the restaurant looking at him. He testified he felt humiliated and embarrassed. Complainant did not testify about any ongoing physical or emotional effects of this experience.[9]

Complainant and Respondent's witnesses have differing versions of how Complainant was treated by Respondent's employees, but both parties agree that Complainant was outside alone for most of the time he was waiting for PACE paratransit to return. Both parties agree Complainant was offered a free meal to take home and he refused. Complainant testified that Respondent's employee threatened to call the police if he blocked the entrance, but there was no testimony that any police were called.

Complainant is entitled to damages for emotional distress, but the hearing officer did not recommend $15,000, an amount which the Commission has only awarded in the most egregious of cases. Complainant is unusually vulnerable due to the consequences of his illness and his use of a wheelchair, and stranding him alone outside on a cold, dark night deserves significant compensation above the usual amount conferred by the Commission for single instances of discrimination. However, Complainant did not testify to any harsh treatment by Respondent's staff or any ongoing ill effects to his mental or physical health as a result of the event. Based on Complainant's testimony, the hearing officer recommended awarding Complainant damages for emotional distress in the amount of $3,000. The hearing officer also recommended awarding Complainant $6.00 for the cost of his paratransit rides.

Respondent argues in its Objections to the Recommended Ruling, that an award of $3,000 in emotional distress is not supported by Commission precedent. Respondent contends that the incident in the instant case was a single incident and thus not comparable to cases in which larger emotional distress damages were assessed. Respondent requested that the award be reduced to $750, arguing that paying damages of $3,000 would impose undue financial distress on Respondent. Respondent submitted tax returns with its objections to support this claim; however, none of the tax returns were submitted into evidence during the hearing. During the hearing, Respondent's owner only testified that he may have shown a loss on his tax returns. Additionally, no other objective evidence was introduced into evidence, such as the cost of constructing a ramp or providing other accessible features.

The Commission has long held that respondents are not allowed to introduce new evidence in objections to recommended rulings. *Pryor v. Carbonara*, CCHR No. 93-H-29 (May 17, 1995). Relevant evidence should have been introduced at the hearing. The documents regarding Respondent's financial condition would have been permissible at the hearing, if properly introduced. Evidence of financial constraints and/or constraints imposed by the City of Chicago on constructing a ramp may not be introduced by Respondent in responding to the recommended decision in this matter.

[9] After the close of evidence, Complainant's counsel argued in her closing that staying outside for an hour "further exacerbated [Complainant's] disability" (Tr. p. 88) and that Complainant had a "bathroom accident" (Tr. p. 97), but Complainant gave no testimony and offered no documentary evidence on these events during the hearing.

As stated above, Complainant's testimony places him in the modest award category. The hearing officer found that the emotional damages proved in this case are similar to those of *Manzanares v. Lalo's Restaurant*, and *Hamilton and Hamilton v. Café Descartes*. Accordingly, like those cases, the hearing officer recommended a modest award of $3,000 for emotional distress damages and $6.00 for the cost of Complainant's paratransit rides. The Commission agrees that this recommended amount is appropriate.

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 or where a respondent's actions were willful, wanton, or taken in reckless disregard of the complainant's rights. *Nash/Demby v. Sallas & Sallas Realty, supra; Warren, et al., v. Lofton and Lofton Management, et al., supra).* "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 & Earl Derkits*, CCHR No. 97-PA-29 (Apr. 15, 1998). In considering how much to award in punitive damages where they are appropriate, the Commission also looks to a respondent's history of discrimination, any attempts to cover up the conduct, and the respondent's attitude towards the adjudication process including whether the respondent disregarded the Commission's procedures. *Brennan v. Zeeman,* CCHR No. 00-H-5 (Feb. 19, 2003), quoting *Huff v. American Mgmt. & Rental Svc.,* CCHR No. 97-H-187 (Jan. 20, 1999).

The hearing officer found that Respondent, albeit mostly due to the lack of attention by its attorney, repeatedly failed to respond to orders and deadlines established by the Commission, both in the investigative stage and the hearing stage. The inactions of an attorney are imputed to the client by Illinois law and Commission precedent. *Maat v. Villareal Agencia de Viajes*, CCHR No. 05-P-28 (May 17, 2007). This disregard of the Commission's processes warrants an award of punitive damages. Therefore, the hearing officer recommended an award of punitive damages of $500. In its objections, Respondent requested a reduction in the amount of punitive damages recommended by the hearing officer; however, no specific legal argument was made regarding this request. The Commission agrees with the hearing officer's approach and adopts the recommendation.

C. 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. *See also, Cotten v. Eat-A-Pita, supra* (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, supra* (respondent ordered to provide accessible entrance and volunteer at agency that assisted people with disabilities).

In *Cotten v. Eat-A-Pita*, the Commission granted the *pro se* respondent an opportunity to prove that installing a ramp would impose an undue hardship after the hearing and during the compliance process even though the respondent had not proved undue hardship during the hearing. *Cotten v. Eat-A-Pita, supra.* Although Respondent was represented by counsel, Respondent appears to be a small business that, with adequate preparation and legal representation, might be able to present objective proof of some undue hardship.

Accordingly, the Commission directs Respondent to take the following actions to remedy its past violation and prevent future violations:

1. **Provide an accessible entrance to the restaurant located at 2803 W. Chicago Avenue which complies with the full use requirement as defined in Commission Regulation 520.110, if able to do so without undue hardship.** Within 90 days of 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 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 entrance.

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 provide an accessible entrance which complies with the full use requirement as defined by Commission Regulation 520.110, within 90 days of the date mailing of this Final Ruling on Liability and Relief, Respondent shall 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[10] which sets forth in detail the factual basis for the claimed undue hardship.

    b. If the undue hardship is based on prohibitively high cost, Respondent must provide:

        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 the least expensive reasonable accommodations required to comply with this order.

[10] 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, Complainant 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. Within 90 days of the date of mailing of this Final Ruling on Liability and Relief, Respondent shall install signage at its front door and in its restaurant with information about alternative services it provides that could assist people with disabilities, including phone, fax and internet orders, with contact information.

4. Within 90 days of the date of this Final Order and Ruling on Liability and Relief, Respondent should assure that, if it has a website, its website is accessible to people with disabilities, including people with vision impairments, and that information about services it provides (fax, phone and internet orders, TTY number) be included on its home page.

5. 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 the Respondent's services are available to all customers, including those with disabilities. The policies should outline mandatory steps to be taken to resolve any potential issues that may arise.

6. Within six months of the date of mailing of this Final Ruling on Liability and Relief, Respondent shall train all employees and administrative personnel on the rights of people with disabilities and about written policies developed in response to #5 above.

7. Within seven months of the date of 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 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 the order of injunctive relief in this Final Order and Ruling on Liability and Relief and that all reported details are true and correct.

8. **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 CCHR Regs 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.

9. **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 CCHR Reg. 250.220).

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 $1,000 for each offense. Every day that a violation shall continue constitutes a separate and distinct offense. The hearing officer recommended a fine of $100 because punitive damages were imposed for Respondent's failure to comply promptly with the Commission process, due almost solely to Respondent's attorney, and no evidence was adduced that showed Respondent's employees harassed or mistreated Complainant.

The Commission believes, however, that the maximum fine of $1,000 is warranted in this case. The maximum fine has been assessed where the 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 CHRO. *Cotten v. Eat-A-Pita, supra*; See also *Cotten v. Taj Mahal Restaurant*, CCHR No. 13-P-82 (Oct. 15, 2014). Here, as noted by the hearing officer, Respondent failed to comply with the Commission process, which resulted in the rescheduling of proceedings on several occasions. Accordingly, the Commission orders Respondent to pay the maximum fine of $1,000.

E. Interest

In order to make complainants whole, the CHRO provides for the payment of interest for certain damages, including damages for emotional distress. Section 2-120-510 (l), Chic. Muni. Code. 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 the violation. In this case, the hearing officer recommended an award of such interest, starting from the date of the discriminatory act, December 14, 2014. The Commission agrees and adopts the recommendation.

F. Attorney Fees

Section 2-120-510(l) of the Chicago Human Rights Ordinance allows the Commission to order a respondent to pay all or part of the prevailing complainant's reasonable attorney fees and associated costs; fees are routinely granted to prevailing complainants. *Jones v. Lagniappe – A Creole Cajun Joynt LLC and Mary Madison*, CCHR No. 10-E-40 (Dec. 19, 2012).

The hearing officer recommended an award of attorney fees and costs to Complainant. Respondent in its objections to the hearing officer's recommendations urges the Commission to order that each party pay their own attorney's fees because the payment of Complainant's attorney's fees and costs would pose an undue burden. The Commission has long held that the determination of the amount of attorney fees awarded to complainant is not based on a respondent's ability to pay. *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Feb. 24, 1999). Therefore, Respondent's objection must be rejected. As such, the Commission adopts the hearing officer's recommendation and awards Complainant reasonable attorney fees and costs.

Pursuant to Commission Regulation 240.630, Complainant may serve and file a petition for attorney's fees and/or costs, supported by arguments and affidavits, no later than 28 days from the mailing of this Final Ruling on Liability and Relief. The supporting documentation shall include the following:

1. A statement showing the number of hours for which compensation is sought in segments of no more than one-quarter hour, itemized according to the date performed, the work performed, and the individual who performed the work;

2. A statement of the hourly rate customarily charged by each individual for whom compensation is sought;

3. Documentation of costs for which reimbursement is sought.

VI. CONCLUSION

The Commission finds Respondent Feed Restaurant liable for disability discrimination in violation of Section 2-160-070 of the Chicago Human Rights Ordinance and orders the following relief:

1. Payment to the City of Chicago of a fine of $1,000;

2. Payment to Complainant of damages in the amount of $3,006;

3. Payment to Complainant of punitive damages in the amount of $500;

4. Payment of interest on the foregoing damages from the date of violation on December 14, 2014;

5. Compliance with the order for injunctive relief as described above;

6. Payment of Complainant's reasonable attorney fees and costs as determined by further order of the Commission pursuant to the procedures outlined above.

CHICAGO COMMISSION ON HUMAN RELATIONS

Mona Noriega

By: Mona Noriega, Chair and Commissioner
Entered: July 14, 2016