

**City of Chicago**  
**COMMISSION ON HUMAN RELATIONS**  
740 N. Sedgwick, Third Floor, Chicago, IL 60610  
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

**IN THE MATTER OF:**

Darryl Williams  
**Complainant,**

v.

Bally Total Fitness Corporation  
**Respondent.**

**Case No.:** 05-P-94

**Date of Order:** May 16, 2007

**Date Mailed:** May 23, 2007

**TO:**

Darryl Williams  
333 N. Michigan  
Chicago, IL 60601

Arthur B. Sternberg  
Fagel, Haber LLC  
55 E. Monroe, 40<sup>th</sup> Floor  
Chicago, IL 60603

**FINAL ORDER ON LIABILITY**

YOU ARE HEREBY NOTIFIED that, on May 16, 2007, the Chicago Commission on Human Relations issued a ruling in favor of the Respondent in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby DISMISSED.

Pursuant to Commission Regulations 100(14) and 250.150, Complainant may seek 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  
Clarence N. Wood, Chair/Commissioner

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## FINAL RULING ON LIABILITY

### I. PROCEDURAL HISTORY

Complainant filed a Complaint against Respondent at the Commission on September 27, 2005, alleging that the Respondent public accommodation discriminated against him based on his race. In response to the Complaint, the Commission ordered Respondent to file a Verified Response to Complainant's Complaint; the Verified Response was received by the Commission on November 16, 2005. On August 21, 2006, the Commission issued a finding of substantial evidence that an ordinance violation had occurred. Efforts to conciliate this matter were not successful.

The Commission held a Pre-Hearing Conference in this case on January 17, 2007 in the Commission's offices. All parties were in attendance at the Pre-Hearing. A Hearing was held on January 31, 2007; again, all parties were in attendance at the Hearing. Complainant appeared *pro se*; Respondent was represented by counsel.

On March 16, 2007, the Hearing Officer issued a First Recommended Decision Regarding Liability; copies were sent to all parties. In that First Recommended Decision, the parties were advised that they could file objections to any of the findings of fact or legal conclusions reached by the Hearing Officer within 30 days of the date of the Decision. Had such objections been filed, the parties had an additional 21 days to file responses to the objections. No such objections were received by the Hearing Officer or by the Commission from either party.

### II. FINDINGS OF FACT

1. On September 14, 2005, at 10:09 p.m., Complainant went to Respondent's athletic club facility located

at the Century City mall. C., ¶2, Tr. 22-23, R. Exh. 1.<sup>1</sup>

2. Complainant is African-American. C., ¶1.

3. Complainant has been a member of Respondent's club since 1983. Tr. 18.

4. Respondent has many athletic club facilities in the Chicago area; Complainant has frequented many of these facilities as a member. Tr. 19 – 24; R. Exh.1.

5. Complainant has used the Century City facility hundreds of times. Tr. 19. His use is recorded by a membership card he swipes when he enters the facility. Tr. 21, R. Exh. 1. He has used the club frequently both before and after September 14, 2005. R. Exh. 1. He "pretty much" enjoys the club. Tr. 25. He is at the club about once a week. Tr. 19. He believes that his membership entitles him to use the club until the last minute the club is open. Tr.17.

6. Respondent closes the Century City facility at 11:00 p.m; Complainant recognizes that this is the closing time for the facility. Tr. 16-17. Each night it is open, it is the facility's practice to announce that the club will be closing at approximately 15-minute intervals beginning at 10:15. Tr. 16.

7. On September 14, 2005, Complainant entered the club at about 10:10 p.m. Tr. 22-23, 29. He exercised and then went to the locker room at about 10:50 to dress to leave. Tr. 29. There were also some other people in the men's locker room when Complainant arrived to change. Tr. 29. The other members were white males. C., 7.

8. Around 11:00 p.m., Complainant was changing in the locker room into street clothes to exit the facility. Tr. 31. At that point, an employee of Respondent, Jeff Thomas, who is white, entered the locker room and stood near Complainant. Tr. 31-32. Thomas told Complainant that it was time to leave. Tr. 16. Complainant told him that he would be ready to leave at 11:00 p.m., the time the facility closed. Tr. 17. Complainant said that Thomas stayed with him and did not talk to other club members in the locker room (Tr. 16), but this statement was credibly contradicted both by Thomas (Tr. 55) and Ramon Alonso, a former employee of Respondent (Tr. 66). Complainant testified that he did not know why Thomas stayed there and further testified that he did not ask him to leave. Tr. 42-43.

9. Complainant stated that "racial remarks" were made, but did not specify in his testimony what those remarks were. Tr. 17. In his Complaint, Complainant said that Thomas said that "'you people' have a problem with time." C. 5. Complainant did not testify or give any further information about any other comments made by Thomas on September 14, 2005.<sup>2</sup>

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<sup>1</sup> All references to the Complaint will be labeled "C., ¶x." All references to Respondent's Response will be labeled "R., ¶x." All references to the Hearing transcript will be labeled "Tr., x." Exhibits offered into evidence by Respondents shall be labeled "R. Exh. x." Complainant offered no exhibits into evidence at the Hearing.

<sup>2</sup> Complainant had filed another Complaint against the facility in 2003; Respondent entered documents in that case as exhibits without objection from Complainant. Tr. 34-39, 56. Complainant filed an additional Complaint against Respondent after this Complaint and sought to bring documents from that Complaint to the Hearing Officer's attention at the Hearing. Tr. 13-15. The Hearing Officer found that the earlier Complaint was

10. Complainant further testified that he did not complain about Thomas' actions that evening because he thought it would be better to "report it on paper" another time. Tr. 48. Complainant did not file a written report about this incident with Respondent. Tr. 47.

11. Respondent's employee Thomas testified that he has worked at the facility for 10 to 11 years. Tr. 48-49. His position is a fitness coach and salesperson. Tr. 49. His duties include closing the club on certain days. Tr. 49. He has closed the club "hundreds of times." Tr. 49.

12. Thomas testified that the club follows certain procedures in closing the facility. Tr. 49. Between 10 and 10:15 p.m., the club announces that the club is closing within an hour to 45 minutes (depending on the time of the announcement), and the pool area closes at 10:30 p.m. Tr. 49-50. Between 5 and 10 minutes prior to closing, an announcement is made that members need to get out of the locker room and that the club will close promptly at 11:00 p.m. Tr. 50.

13. Thomas' responsibilities include making the announcements if the receptionist is busy, clearing the pool area at 10:30, and entering the men's locker room at 10:45 to see what is happening there and to make sure the shower area is closed. Tr. 50. Employees are required to go through the locker room and club to make sure the club is empty. Tr. 50-51.

14. Often men are still in the men's locker room after 11:00 p.m. Tr. 52. Thomas has a set practice of what to do and say when that happens. Tr. 52. If the members are on their way out (dressed and ready to leave), he says, "Guys, it is past time, make your way to the front." Tr. 52. If someone is just coming in to the locker room, he asks the member if he has heard the announcement, because sometimes people wear headphones and do not hear the announcements. Tr. 52. If a member has not heard the announcements, he explains the club's policy to the member and asks him to leave earlier next time. Tr. 52.

15. On September 14, 2005, Thomas went into the men's locker room. Tr. 51. He saw Complainant in the locker room. Tr. 53. He also saw other individuals in the locker room. Tr. 53. He went first to the showers to see if they were empty, then came toward the front. Tr. 53. There were two men with coats on and he told them it was time to leave. Tr. 53. He saw Complainant opening his locker; it was 11:05 p.m. Tr. 53.

16. Thomas asked Complainant if he had heard the announcements. Tr. 54. Thomas testified that Complainant told him to leave him alone. Tr. 54. Thomas told Complainant that it was his job to explain the policies. Tr. 54. Thomas testified that Complainant responded that Thomas should "stand down"<sup>3</sup> and that Complainant was a lawyer and would get Thomas in trouble if Thomas did not get away. Tr. 54. Thomas testified that he tried to explain the policies once again, but Complainant responded that he would be looking for him outside the club. Tr. 55. Thomas testified that he felt threatened and left the locker room. Tr. 55. Thomas denied standing in front of Complainant until Complainant left. Tr. 59.

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irrelevant to this Complaint and that the later Complaint could not be heard as the matter was not assigned to this Hearing Officer.

<sup>3</sup> According to Dictionary.com, "stand down" means to step aside or withdraw, as from competition when used in the general sense. When used in the military sense, it means a temporary cessation of offensive activities.

17. Thomas prepared a written incident report and submitted it to his employer. Tr. 55, Exh. 3.
18. Ramon Alonso, a former employee of Respondent, was also in the locker room in an adjacent area about 7-10 feet away at the time of the conversation described above (paragraph 16) between Thomas and Complainant. Tr. 56. Alonso walked toward Thomas after the conversation started. Tr. 57, 60-61.
19. Thomas was trained in customer service as part of his employment with Respondent. Tr. 57. He was trained to approach people gently, respectfully, and empathetically. Tr. 57.
20. In response to questions from Complainant at the Hearing, Thomas stated that, although he felt threatened, he did not call the police because Complainant left the club and Alonso was there. Tr. 59-60. Complainant left the facility that evening between 11:20 and 11:35 p.m. Tr. 61.
21. Witness Ramon Alonso is not currently employed by Respondent; he took a voluntary layoff on January 2, 2007, when the Respondent cut back on employees. Tr. 62. His testimony at the Hearing was voluntary. Tr. 62. He was employed by Respondent as a maintenance technician at the Century City facility on September 14, 2005. Tr. 62-63.
22. On September 14, 2005, Alonso entered the men's locker room after closing time at about 11:00 p.m.; he needed to work on the plumbing after hours. Tr. 63. He saw men still in the locker room when he entered. Tr. 63. He also saw Thomas in the locker room. Tr. 64. He saw Complainant first as he entered and then the other members. Tr. 64.
23. Alonso stated that Complainant was the first person Thomas talked with; Thomas let Complainant know that the club was closed. Tr. 64. Complainant was dressed in workout clothes at that time. Tr. 64.
24. Alonso heard Thomas telling Complainant that the club was closed and asking him if he knew and understood the closing procedures. Tr. 65. At that point, Complainant became very rude. Tr. 65. Upon hearing this, Alonso walked from where he was working into the locker room area and stood about two feet behind Thomas; he heard Thomas trying to explain the procedures, but Complainant kept talking and was rude and loud. Tr. 65, 69. The entire incident took less than a minute, after which time Alonso saw Thomas leave Complainant. Tr. 66. Alonso saw Complainant during this time. Tr. 69. Alonso also heard Thomas talk with the other members who were leaving. Tr. 66.
25. Alonso denied that Thomas was rude or racist; he felt that Thomas was in physical or bodily harm. Tr. 66, 72. Alonso did not follow Thomas after the incident. Tr. 73. Alonso did not call police or call security because he was there with Thomas. Tr. 74. Alonso could have called building security, but did not feel it was necessary. Tr. 74.
26. Alonso also prepared a written incident report and submitted it to Respondent's employee, Denise Hunter, the morning after the incident. Tr. 66, 68, Exh. 4. Although at the time he did not know Thomas well, Alonso knew Thomas as a nice guy and felt the treatment Thomas received from Complainant was uncalled for. Tr. 66-67. Alonso stated that he approached Hunter the next morning with the information and she asked if he would like to submit an incident report. Tr. 68. Alonso did not know that Thomas was also submitting a report at the time. Tr. 68.

27. Denise Hunter has been employed by Respondent for seven years. Tr. 76. She has been a general manager of Respondent's Century City facility for three years; she was general manager on September 14, 2005. Tr. 77. She is an African-American woman. Tr. 81.

28. Hunter first learned of the incident on September 14, 2005 the morning of September 15, 2005. Tr. 77. Alonso came to her office and told her what had happened. Tr. 77. At her suggestion, Alonso put his description of the incident in an incident report. Tr. 78, Exh. 4.

29. Later in the day, Hunter received a call from Complainant letting her know that he was upset; Complainant said that Thomas had been rude to him. Tr. 77, 83, 84, 90. Complainant said that as a dues-paying member he should be able to work out to the last minute. Tr. 79, 84, 86-88. He also said he was an attorney and could jeopardize her employment. Tr. 79, 83-84. Hunter said that Complainant did not tell her that Thomas had been "racist or anything like that." Tr. 79. Hunter talked with Complainant for a while and at the end of the conversation thought the problem was taken care of. Tr. 79. She told Complainant she would speak to Thomas and that Complainant should come in to speak to her. Tr. 79, 89.

30. After the conversation with Complainant, Hunter talked with Thomas and asked him to file an incident report. Tr. 79. Thomas told her that Complainant was extremely rude and hostile. Tr. 92. Thomas also stated to Hunter that Complainant told Thomas to "stand down" and to get away from Complainant. Hunter also testified that Thomas told her that Complainant said he would meet Thomas outside. Tr. 92.

31. Complainant never came in to see Hunter. Tr. 81, 89. She was not aware that Complainant was still unhappy until she received the Complaint. Tr. 80. Hunter did not call Complainant when he did not come in to see her. Tr. 89-90.

32. Hunter said she would not tolerate acting in a rude manner; Respondent conducts ongoing training on customer relations. Tr. 81. Respondent's policy is not to look at the customer's color and to treat everyone with respect. Tr. 82. Hunter is not aware of Thomas being accused of being rude or of acting in a racist manner by any other person. Tr. 82. She knows Thomas fairly well, having worked with him for three years. Tr. 85.

33. Hunter did not discipline Thomas because Thomas had followed Respondent's protocol for closing the club. Tr. 90. Hunter did not believe that Thomas had treated Complainant rudely by letting Complainant know that the club closed at 11:00 p.m. Tr. 91.

### **III. CONCLUSIONS OF LAW**

Section 2-160-070 of the Chicago Human Rights Ordinance states, in part:

No person that owns, leases rents, operates, manages or in any manner controls a public accommodation shall withhold, deny, curtail, limit or discriminate concerning the full use of such public accommodation by any individual because of the individual's race . . . .

The Chicago Human Rights Ordinance prohibits discrimination in public accommodations on the basis of race. Complainant Darryl Williams is African-American and is protected under the Ordinance's prohibition

against racial discrimination in public accommodations.

A complainant has the initial burden of establishing a *prima facie* case of discrimination. *Luckett v. Chicago Dept. of Aviation*, CCHR No. 97-E-115 (Oct. 18, 2000). A complainant may establish a *prima facie* case by two methods: the direct evidence method or by inferences drawn from the facts proven in the case. *Horn v. A-Aero 24 Hour Locksmith et al.*, CCHR No. 99-PA-32 (July 19, 2000).

Under the direct evidence method, a complainant may meet his burden of proof by a preponderance of the evidence by establishing with credible evidence that the respondent directly stated or otherwise indicated that the complainant was being refused service or offered different service due to his being a member of a protected class, in this case, race. See *Perez v. Kmart Auto Service et al.*, CCHR No. 95-PA-19/28 (Nov. 20, 1996). There is no such evidence in this case. Even if it could be determined that Respondent's employee Thomas said "you people" to Complainant, which the Hearing Officer did not in view of substantial credible contrary evidence, such a neutral statement standing alone cannot be viewed as a direct statement of discrimination absent additional evidence showing discriminatory animus. *Luckett v. Chicago Dept. of Aviation*, CCHR No. 97-E-115 (Oct. 18, 2000) citing *Troupe v. The May Dept. Stores Co.*, 20 F.3d 734 (7<sup>th</sup> Cir. 1994). No such additional evidence was provided.

Complainant's statement that Thomas made the "you people" remark was rebutted by Thomas and Alonso, both in their contemporaneous incident reports, admitted without objection, and in their testimony. Alonso does not work for Respondent now and was testifying voluntarily. Also, Hunter testified that at no time in her telephone conversation with Complainant did he mention the "you people" statement, but rather talked about his perception that Thomas was rude to a dues-paying member; none of Complainant's questions of Hunter on cross examination asked about this alleged statement. In fact, in his testimony, Complainant did not repeat the statement made in his Complaint that Thomas addressed him as "you people." Instead, Complainant said that "racist" remarks were made without specifying what those remarks were.

If, as in this case, a complainant cannot provide direct evidence of discriminatory intent, the complainant must rely on inferences to be drawn from the actions of the respondent. The Commission has adopted the *McDonnell Douglas* test formulated by the United States Supreme Court in *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973). Under this test, the complainant must establish a *prima facie* case of discrimination; the respondent then has the burden of articulating a non-discriminatory basis for the actions against the complainant; and then the burden shifts to the complainant to establish that the basis put forth by respondent is pretextual. See *Perez v. Kmart Auto Serv. et al.*, CCHR No. 95-PA-19/28 (Nov. 20, 1996).

In order to establish a *prima facie* case of discrimination in a public accommodation based on race, Complainant must establish the following elements: (1) that Complainant is African-American; (2) that Complainant sought to use and enjoy the public accommodation; (3) that the full use of the public accommodation was withheld, denied, curtailed, or limited in some way or that he was otherwise discriminated against concerning the use of the public accommodation; and (4) that other individuals who are not African-Americans were treated more favorably.

The Commission agrees with the Hearing Officer's finding that Complainant did not meet his burden of establishing a *prima facie* case. He is African-American and did seek to use and enjoy a public accommodation. Those are only two of the four elements, however, and he did not meet his burden on the

other two elements.

There is no credible evidence that Complainant's use of this public accommodation was curtailed; rather there is substantial evidence that he was allowed to use the facilities beyond the time of closure. Complainant also testified that he is "pretty satisfied" with the club and has used the facilities hundreds of times both before and after September 14, 2005. The dispute, if there even is a dispute, is about Complainant's and Respondent's concept of closing time of the facility. Complainant believes that he can work out until 11:00 p.m. and then use the locker room to change and leave after 11:00 p.m. Respondent's policy, as stated by all three witnesses, is that club members are to be dressed and out of the door by 11:00 p.m. This does not describe a civil rights violation but rather, if anything, a contract dispute. Hunter testified credibly that this difference of opinion as to when a member must leave was the basis of Complainant's phone call with her the day after the incident. Further, Hunter testified that Complainant said in that conversation that Thomas had told him in a rude – not a racist – manner that Complainant must be out of the club by 11:00 p.m.

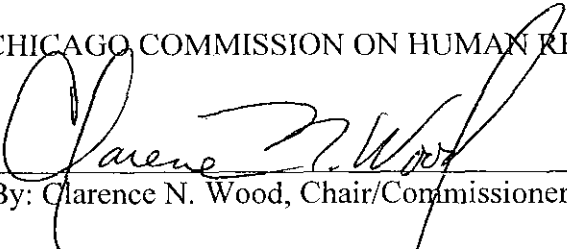
Moreover, Complainant did not establish that Thomas' actions towards him deprived him of full enjoyment of Respondent's facility. Even if a staff member behaved in a rude manner towards Complainant on one occasion over a lengthy business relationship with the company, which is not supported by the record, that alone is insufficient to establish an adverse action under the Chicago Human Rights Ordinance. Not every insult, discourtesy, or inconvenience rises to the level of an adverse action for the purposes of a discrimination claim. *Blakemore v. Chicago Dept. of Consumer Serv.*, CCHR No. 98-PA-42 (Dec. 22, 1999) (Complainant's claim that he was told to "shut up" by an employee who was trying to speak on the telephone while Complainant was talking nearby held trivial).

In addition, Complainant presented no evidence that other patrons who were white were treated more favorably under similar circumstances. Indeed, other club members in the men's locker room whom Complainant identified as white in his Complaint were also told to leave the facility because the club was closed. The Respondent's three witnesses testified that the 11:00 p.m. closing policy is consistently announced and enforced, although there are always some individuals who are not ready to leave at the club's closing time.

#### IV. CONCLUSION.

For the reasons stated above, the Commission finds that Complainant Darryl Williams has not established that Respondent Bally Total Fitness Corporation discriminated against him on the basis of his race. Accordingly, the Commission finds no liability and DISMISSES the Complaint.

CHICAGO COMMISSION ON HUMAN RELATIONS

  
By: Clarence N. Wood, Chair/Commissioner