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

IN THE MATTER OF:

Anthony Cotten
Complainant,

v.

Bistro 18
Respondent.

Case No.: 14-P-24

Date of Ruling: October 8, 2015
Date Mailed: November 5, 2015

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

Bistro 18
1640 W. 18th Street
Chicago, IL 60608

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on October 8, 2015, 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 damages in the amount of $400, plus interest on that amount from March 10, 2014, 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.[1]

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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[1]**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, 4th Floor, Chicago, IL 60654
(312) 744-4111 [Voice], (312) 744-1081 [Facsimile], (312) 744-1088 [TTY]

IN THE MATTER OF:	
Anthony Cotten **Complainant,** **v.**	**Case No.:** 14-P-24 **Date of Ruling:** October 8, 2015
Bistro 18 **Respondent.**	

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On March 14, 2014, Complainant Anthony Cotten filed a Complaint with the Chicago Commission on Human Relations alleging that Respondent Bistro 18 discriminated against him due to his disability. On March 21, 2014, the Commission mailed to Respondent a Notice of Discrimination Complaint informing it that Complainant had filed a discrimination complaint alleging that Respondent had violated the City of Chicago Human Rights Ordinance. That notice informed Respondent that it was required to file with the Commission and serve Complainant with a Verified Response by April 22, 2014. Respondent did not file a response by that date.

On May 5, 2014, the Commission mailed Respondent an Order to Respond and Notice of Potential Default with a new response deadline of May 19, 2014. Respondent did not respond by that date.

On June 10, 2014, the Commission Investigator telephoned Respondent at its business telephone and left a voicemail message, indicating that the Verified Response to the Complaint was overdue and giving an additional week, until June 17, 2014, to submit a response. Respondent did not submit a response on or before that date. On June 27, 2014, the Commission Investigator went to Respondent's business and spoke to the owner about the overdue response. The owner replied in Spanish that "I am going to court." The Investigator gave him until July 7, 2014, to file and serve the Verified Response but Respondent failed to do so.

On July 10, 2014, the Commission entered an Order of Default against Respondent Bistro 18. The effect of this Order of Default meant that "Respondent is deemed to have admitted the allegations of the Complaint and to have waived any defenses to those allegations, including defenses concerning the Complaint's sufficiency." The order further provided:

> As set forth in Reg. 235.320, an administrative hearing shall be held only for the purpose of allowing the complainant to establish a *prima facie* case and to establish the nature and amount of relief to be awarded. Although a defaulted respondent may not contest the sufficiency of the complaint or present any evidence in defense of the complaint's allegations, the Commission will determine based on the evidence presented by the complainant whether there was an ordinance violation and whether the Commission has jurisdiction.

The Order further instructed Respondent how to attempt to vacate the default but Respondent did not make any effort to do so.

On July 24, 2014, the Commission issued an order commencing the hearing process. On August 7, 2014, a status and pre-hearing conference was held. Complainant was present; no one from Respondent appeared or alerted the Commission that Respondent could not appear.

After notice to all parties, a hearing was held on November 13, 2014 with Complainant in attendance. No one from Respondent attended.

On August 24, 2015, the hearing officer issued his 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 is an adult male with a disability in that he is a T2 paraplegic, paralyzed from the waist down. He uses a wheelchair for mobility. He has had this disability since 1991 [Tr., p. 10; Cmplt. at ¶1].[1]

2. Bistro 18 is a restaurant located in the Pilsen neighborhood of Chicago with 2-3 brick or concrete steps at the front entrance door. [Cmplt. at ¶2; Tr., p. 12].

3. On March 10, 2014, Complainant and a friend, Craig Sanders, were in Pilsen and drove to Bistro 18. Complainant had read about it in a local area newspaper. [Tr., pp. 12-13].

4. Complainant could not have entered into Respondent's restaurant in his wheelchair but would have had to be picked up and carried over the steps. [Tr., p. 15].

5. Seeing that he could not get into the restaurant, Complainant asked Sanders to talk to someone in the restaurant to determine if it had a portable ramp or another entrance. Sanders returned and said that the restaurant did not have an accessible means to get in. [Tr., p. 16; Cmplt., ¶2].[2]

6. Complainant asked Sanders to get him a specific sandwich to eat, which Sanders did. However, Sanders did not get himself anything to eat. [Tr., pp. 17-19]. They then to drove to get Sanders something to eat and they both ate their food in Complainant's car. [Tr., pp. 19-20].

7. Complainant's reaction to not being able to go into Bistro 18 was that he "didn't feel too good about it, that I wasn't able to go in and sit down to have a bite to eat. I felt frustrated." It made him feel that he wished he was not in a wheelchair. He testified that he felt, "why did I have to be in this wheelchair. Why did this happen, have to happen to me? Why can't I be able to walk into places like other people do?" He felt bad that he could not even go to a nice restaurant like he believed Bistro 18 was. [Tr., pp. 21-22].

8. Having considered other similar experiences in not being able to get into restaurants and other entities having services he wanted to receive, Complainant reiterated that these experiences like the one he had at Bistro 18, made him feel down and depressed, and made

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[1] Tr. means transcript. C. Ex. means Complainant's exhibit. R. Ex. means Respondent's Exhibit. H. Ex. means Hearing Officer's exhibit. Cmplt. means Complaint filed by Anthony Cotten.

[2] Since Sanders did not testify, Cotten's comments about what Sanders said when he went into the restaurant and talked to someone working there are hearsay. However, they are essentially what was said in the Complaint, which as a result of the default, has been admitted. [Cmplt., ¶2].

him feel like a second class citizen and that he was not worth anything. [Tr., pp. 32-33]. At one point, Complainant attempted to assert that Bistro 18's response to him could have been caused by race, assuming that the employee knew Complainant was African American because Sanders is African American, but then Complainant backed off that position. [Tr., pp. 33-34].

9. Complainant acknowledged that he had a number of similar cases, i.e. not being able to get into restaurants and other places offering services, but due in part to his disability, could not recall the specifics of the facts in those cases or compare his treatment and reactions in those cases to this one. [Tr., pp. 24-33].

III. CONCLUSIONS OF LAW

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

Under these applicable legal standards and the Order of Default entered in this case, Complainant has proved a *prima facie* case of public accommodation discrimination due to his disability. There is no question that he has a disability, in that he is a T2 paraplegic, paralyzed from the waist down and has been so since 1991. [FOF #1]. Complainant has proven that he was a qualified individual who satisfied all non-discriminatory standards of service in that he intended to eat a meal at Bistro 18 and had money with which to purchase food from Bistro 18. Complainant also 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, Inc., 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."

Given all of this, Complainant has established a *prima facie* case. The only real issue is that given that Complainant's friend, Craig Sanders, did not himself get something to go from Bistro 18, but rather went somewhere else to get something to eat and then both of them ate in Complainant's car. However, that does not undercut the existence of a *prima facie* case; rather it is an issue in determining the amount of damages. *Id.*

Once 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.

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*, CCHR No. 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 Bistro18 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 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, to far smaller amounts. 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.

In this case, like in *Cotten v. Taj Mahal Restaurant*, CCHR No. 13-P-82, *Cotten v. Eat-A-Pita*, CCHR No. 07-P-08 and *Cotten v. 162 North Franklin, LLC, d/b/a Eppy's Deli and Café*, CCHR No. 08-P-35, Complainant testified about a lack of any personal contact with the respondent's personnel, the brief duration of the event, and his testimony about his general feelings as a wheelchair user when confronting inaccessible accommodations. [*See supra* at FOF ##6-9]. However, in this case, Complainant indicated that his friend, Craig Sanders, while buying Complainant a sandwich, did not buy himself one. [FOF #6]. In the Complaint, Complainant stated that Sanders bought one sandwich. [Cmplt., ¶2].

That means that there is no proof that Complainant was not able to enjoy lunch in Bistro 18, since he was intending on eating with Sanders, who did not buy any food there, but went elsewhere to get a sandwich and then both of them ate in Complainant's car. [FOF #6]. In all practicality, that meant that Complainant suffered somewhat less emotional distress and for a shorter time than in the cases cited above. For that reason, the hearing officer determined that a slightly lower award was warranted for emotional distress. Therefore, the hearing officer recommended an award of $400 for the emotional distress Complainant suffered. The Commission agrees with the hearing officer's approach and adopts the 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 others 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).

In *Cotten v. Taj Mahal, supra*, the Commission awarded Complainant punitive damages of $500, finding that the respondent and its employees did not make any effort to provide service to Complainant or even send someone to address his concerns and that it did not participate in the Commission's proceedings at all. However, the hearing officer noted that in this case, Complainant specifically did not seek any punitive damages award. [Tr., p. 34].

The Commission has held that it can award more in punitive damages than sought by the Complainant "because purposes of punitive damages are to punish and deter not to compensate the complainant." *Horn v. A-Aero 24 Hour Locksmith et al.*, CCHR No. 99-PA-32 (July 19, 2000). Here, the hearing officer recommended awarding no punitive damages because the purposes of punitive damages can be achieved by awarding the maximum amount of the statutory fine. The Commission agrees and adopts the hearing officer's recommendation.

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 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.*

In this case, the hearing officer recommended the maximum fine of $1,000 for the reasons stated in the cases quoted above and for another reason. In October, 2013, Complainant and a different friend had essentially the same experience at another restaurant located in Pilsen, Pizzeria Milan Restaurant. See *Cotten v. Pizzeria Milan Restaurant*, CCHR No. 13-P-70 (Dec. 17, 2014). In that case, the respondent's representative testified that Alderman Danny Solis was working with the business owners in Pilsen as many of them were in violation of the CHRO because the buildings in which the businesses are located had two or more steps at the entrance. *Id.* The hearing officer noted that while that witness claimed that Alderman Solis was sending architects and building inspectors to remedy the problem, nothing has happened. The hearing officer recommended imposing the maximum fine in this case believing that by doing so other building and restaurant owners would be encouraged to take action and implore their alderman to help them do so, which could ultimately have the effect of making many of these Pilsen businesses accessible to mobility-impaired persons like Complainant. The Commission agrees with the hearing officer and orders Respondent to pay $1,000.

D. 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. Accordingly, the Commission orders payment of such interest from the date of the violation: March 10, 2014.

E. 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 gender identity 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's 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[3] 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.

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

[3] A professional would be an architect or other professional with expertise in accessibility modifications.

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).

F. Attorney Fees and Costs

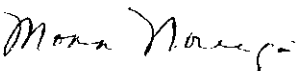
Complainant appeared *pro so*, so attorney fees and costs are not awarded.

VI. CONCLUSION

The Commission finds Respondent Bistro18 liable for disability discrimination in violation 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 emotional distress damages in the amount of $400;
3. Payment of interest on the foregoing damages from the date of violation on March 10, 2014; and
4. Compliance with the order for injunctive relief as described above.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Mona Noriega, Chair and Commissioner
Entered: October 8, 2015