**City of Chicago**
**COMMISSION ON HUMAN RELATIONS**
**740 N. Sedgwick, 3rd Floor, Chicago, IL 60654**
**312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)**

**IN THE MATTER OF:**

Rafael Scott
**Complainant,**
**v.**
Owner of Club 720
**Respondent.**

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Sheldon B. Lyke
**Complainant,**
**v.**
Owner of Club 720 d/b/a Avila
**Respondent.**

**Date of Order:** February 16, 2011
**Date Mailed:** February 18, 2011

**Case No.: 09-P-2**

**Case No.: 09-P-9**

**TO COMPLAINANTS:**

Raphael Scott
5410 W. 26th Street
Cicero, IL 60804

Sheldon B. Lyke
5316 S Dorchester Ave. #414
Chicago, IL 60615

**TO RESPONDENT:**

Stephen Muller, President
Club 720 (Edward Francis Tunney Enterprises)
720 N. Wells
Chicago, IL 60654

Stephen Muller, Managing Principal
Wells Street Companies
747 N. LaSalle Street, Suite 500
Chicago, IL 60654

Dimitrios G. Christopoulos, Registered Agent
Edward Francis Tunney Enterprises, Inc.
c/o Christopoulos Law Group LLC
351 W. Hubbard, Suite 602
Chicago, IL 60654-4943

## FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on February 16, 2011, 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 Rafael Scott compensatory damages in the amount of $1,515, plus interest on that amount from January 24, 2009, in accordance with Commission Regulation 240.700.

2. To pay to Complainant Sheldon B. Lyke compensatory damages in the amount of $1,000, plus interest on that amount from February 6, 2009, in accordance with Commission Regulation 240.700.

3. To pay fines to the City of Chicago in the total 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 at this time. Respondent must comply with this Final Order shall occur no later than 28 days from the date of mailing of the order. Reg. 250.210.

CHICAGO COMMISSION ON HUMAN RELATIONS
Dana V. Starks, Chair and Commissioner

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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 the Complainant awarded the damages. **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.

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| **IN THE MATTER OF:** | |
| | **Date of Ruling:** February 16, 2011 |
| Rafael Scott<br>**Complainant,**<br>**v.**<br>Owner of Club 720<br>**Respondent.** | **Case No.:** 09-P-2 |
| ---------- | |
| Sheldon B. Lyke<br>**Complainant,**<br>**v.**<br>Owner of Club 720 d/b/a Avila<br>**Respondent.** | **Case No.:** 09-P-9 |

# FINAL RULING ON LIABILITY AND RELIEF

## I. PROCEDURAL HISTORY

On January 28, 2009, Complainant Rafael Scott filed a Complaint with the City of Chicago Commission on Human Relations alleging that the Owner of Club 720[1] engaged in race discrimination by refusing to allow him to enter Club 720 on January 24, 2009, because of his braided hairstyle. Complainant Scott claims that Respondent's actions violate Chapter 2-160 of the Chicago Municipal Code because Respondent limited his full enjoyment of a public accommodation because of his race, which is African-American.

Respondent filed a Verified Response on March 13, 2009. It was signed and verified by Stephen Muller, who represented himself as the club's owner. On May 20, 2010, the Commission entered an order finding substantial evidence of race discrimination.[2] On July 26, 2010, an Order Appointing Hearing Officer and Commencing Hearing Process was mailed to the parties, setting a pre-hearing conference for August 26, 2010. Neither Respondent nor its counsel appeared for that pre-hearing conference. No prior notice or explanation was given for this absence. Complainant Scott did appear. As a result, on September 3, 2010, the hearing officer issued an Order of Default against Respondent.

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[1] The response to Scott's Complaint received by the Commission on March 13, 2009, was verified by Stephen Muller, who identified himself as both "owner" and "president" of Club 720. The response to Lyke's Complaint, received by the Commission on March 26, 2009, was also signed by Muller, who identified himself as "owner" and "secretary" of Club 720. The Commission received another "Response to Complaint" in Scott's cases on March 11, 2010. That document was signed by Edward F. Tunney, who stated that he was not an owner or officer of Club 720 on the date of the incident alleged by Scott. A Commission search of the Illinois Secretary of State's website database of corporations on June 14, 2010, revealed the corporation Edward Francis Tunney Enterprises, Inc., with the status "not good standing." Among the listed assumed names of this corporation, "Club 720" was listed as inactive and "Club 720 Chicago" as active.

[2] Complainant had also claimed sex discrimination but the Commission found substantial evidence only of race discrimination.

On March 5, 2009, Complainant Sheldon Lyke filed a Complaint with the City of Chicago Commission on Human Relations alleging that the Owner of Club 720 engaged in discrimination based on race and religion by initially refusing to allow him to enter the Club on February 6, 2009,[3] because of his braided hairstyle, then forcing him to leave the Club if he did not remove his religious head covering. Complainant Lyke claims that Respondent's actions violate Chapter 2-160 of the Chicago Municipal Code because Respondent limited his full enjoyment of a public accommodation because of his race, African-American, and religion, Muslim.

On March 26, 2009, the Commission received a Response to Lyke's Complaint. On October 8, 2009, the Commission entered an order finding substantial evidence of an ordinance violation, followed by an order commencing the hearing process and scheduling a pre-hearing conference for June 8, 2010. Respondent failed to appear for the pre-hearing conference.[4] Accordingly, the hearing officer issued an Order of Default against Respondent on June 18, 2010.

The two cases were consolidated for purposes of the administrative hearing, which took place on October 7, 2010. Respondent failed to appear. On December 7, 2010, the hearing officer issued his Recommended Decision on Liability and Damages, recommending that the Commission find liability for discrimination based on religion as to Complainant Lyke but no liability for race discrimination as to either Complainant. On January 13, 2011, Complainant Lyke filed objections to the recommended ruling arguing that the Commission should find race discrimination as well.

## II. FINDINGS OF FACT

1. Complainant Rafael Scott is African-American. (Tr. 24)

2. Complainant Sheldon Lyke is African-American. (Tr. 25) Lyke identifies religiously as Muslim. Complaint, Par. 1.

3. Club 720 was at the time of these Complaints[5] a nightclub located at 720 N. Wells Street in Chicago. (Tr. 4, 7)

### - Rafael Scott Incident

4. On January 24, 2009, Scott went to Club 720 with his brother and sister to attend a friend's birthday party. (Tr. 20) At the time, Scott was wearing his hair in a braided cornrow style. (Tr. 21)

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[3] The Complaint mentions both February 6 and 7 as the date of the incident. However, at the hearing Lyke testified that the incident occurred on February 6, 2009. (Tr. 4)

[4] Also, Respondent failed to appear for a settlement conference scheduled for April 28, 2010, and Complainant Lyke filed a Motion for Sanctions regarding this procedural violation. The Commission mailed to Respondent on May 26, 2010, a Notice of Potential Default and Other Sanctions for Failure to Attend Settlement Conference, requiring Respondent to file and serve a response providing good cause for the absence on or before June 11, 2010. Although Respondent failed to respond to the Commission's Notice, the Commission did not enter any sanctions for failure to attend the settlement conference.

[5] Club 720 is now closed.

5. When Scott tried to enter the Club, a security guard told him that he could not let Scott into the Club because he had "braids." (Tr. 21) Scott asked the security guard to see the dress code policy in writing. He was never allowed to see it. (Tr. 22) The security guards at the door were both Latino. (Tr. 21)

6. Scott saw women going into the nightclub wearing braids. (Tr. 22) He also saw non-black men going into the nightclub wearing spiked "Mohawk" hairstyles. (Tr. 22)

7. Scott was humiliated by being refused entry to the nightclub because of his braids. (Tr. 27) The incident happened in front of a lot of people. (Tr. 27) Scott was also deprived of the opportunity to attend the birthday party and lost the $15 he paid for valet parking. (Tr. 26-8)

- **Sheldon B. Lyke Incident**

8. On February 6, 2009, Lyke went to Club 720 with friends for a night out. (Tr. 4) Lyke was wearing his hair in a braided cornrow style. (Tr. 5) Lyke was also wearing a crocheted kufi on his head, a head covering "worn predominantly by men of the Muslim faith." (Tr. 4)

9. When Lyke tried to enter the Club, he was stopped by two security guards, both of whom appeared to be Latino. (Tr. 5) One of the security guards looked at him and said, "The management doesn't allow people to come to this club with braided hair. With braids or cornrows." (Tr. 5) The security guard had his hair braided into pigtails. (Tr. 6)

10. The security guard told Lyke that he would let him into the Club "this time." (Tr. 6)

11. After Lyke had been in the Club for approximately two hours, another security guard came over to him and told him he had to take his hat off. (Tr. 8) Lyke told the security guard that he was not wearing a hat and that no one had told him when he entered the Club that he had to remove his head covering. (Tr. 8)

12. The security guard told him, "This isn't up for discussion. You either take your hat off or you leave." (Tr. 8) Lyke repeated his objection that the kufi is not a hat. (Tr. 8)

13. The security guard told him that he could talk to the manager, so Lyke and several of his friends left the dance floor and met the manager by the front door. (Tr. 9) The manager told him that he had to take his hat off. (Tr. 9) Lyke responded again that it was "a religious head covering."

14. One of the individuals with Lyke, Monique Marsh, asked, "Why would he have to take his hat off if he were Muslim?" and the manager responded, "Well, he's not Muslim." Lyke then said, "Don't you think you should ask me whether or not—what my religion is?" The manager responded that he had to take his hat off or he had to leave. (Tr. 10)

15. Lyke then got his belongings and left the Club. (Tr. 10) About half of the party he was with left at the same time. (Tr. 11)

16. Lyke was humiliated by the incident and the fact that it created "kind of a scene." Tr. 11. Other people heard the conversation that he had with the manager. (Tr. 11) Lyke was at

the Club because he went out with other people from a conference he was attending for graduate students of color. The next day, Lyke testified, "Everyone who went to that conference was talking about the [Club 720] event." (Tr. 17) Lyke did not incur any out-of-pocket expenses. (Tr. 16)[6]

## III. APPLICABLE STANDARDS

Section 2-160-070 of the Chicago Human Rights Ordinance makes it unlawful for a person that "owns, leases, rents, operates, manages or in any manner controls a public accommodation [to]...discriminate concerning the full use of such public accommodation by any individual because of the individual's race....[or] religion." Section 520.100 states that "[d]iscriminatory acts include, but are not limited to: denying admittance to persons in a Protected Class; [and] using different terms for admittance of persons in a Protected Class...."

The Chicago Human Rights Ordinance defines a public accommodation as a "place, business establishment or agency that sells, leases, provides or offers any product, facility or service to the general public...." Section 2-160-020. Respondent Club 720 is covered by Section 2-160-070 because it is a business establishment that provides or offers services to the general public. Further, Section 510.110(d) of the Rules and Regulations of the Chicago Commission on Human Relations specifically lists "restaurants, bars or other establishments serving food or drink" as a type of public accommodation.

## IV. ANALYSIS

Because of the default entered against Respondent as to both the Scott Complaint and the Lyke Complaint, Complainants are only required to establish a *prima facie* case of discrimination in order to prevail on their claims.

### A. Race Discrimination

Both Scott and Lyke claim they were denied the full use of Club 720 because of their African-American race. In general, Complainants may rely on one of two different theories of discrimination. *First*, they may establish disparate treatment, that is, that they were treated differently from similarly-situated individuals who are not African-American. *Second*, they may argue that the policy of refusing entry to individuals with braids had a disparate impact on African-Americans because that hairstyle is more common to African-Americans and thus more likely to exclude African-Americans than people of other races. The hearing officer recommended a finding that Complainants failed to establish a *prima facie* case of race discrimination using either theory.

The hearing officer explained that Complainants failed to prove that Club 720's policy regarding braids was not enforced consistently or that it was a pretext for denying entry to African-Americans, noting the testimony of both Complainants acknowledging that other African-Americans who came to the club with them were allowed to enter. The hearing officer disallowed as hearsay Scott's testimony that his sister told him she saw non-African-American patrons with braids inside the club, noting that Scott did not call his sister to testify at the hearing about her observations. Scott's testimony that he saw non-African-Americans entering the club

[6] Lyke testified that he spent about two dollars for the bus ride home. Tr. 16.

with hair styled in Mohawks did not, in the hearing officer's view, establish disparate treatment because those individuals were not wearing braids and thus were not similarly-situated.

The hearing officer also rejected Lyke's argument that the Latino security guard had a braided hairstyle, pointing out that Lyke was not actually denied entry to Club 720 because of his braids. Rather, the guard told him of the policy but nevertheless let him in.

The hearing officer also rejected the disparate impact theory of liability, citing *Walton v. Chicago Dept. of Streets and Sanitation*, CCHR No. 95-E-271 (May 17, 2000), as requiring proof of a significant or substantial statistical disparity in order to establish that a challenged practice has a disparate impact and pointing out that neither Complainant submitted any statistical studies or other evidence as to the frequency of braided hairstyles among different races.

The Board of Commissioners respects the hearing officer's analysis as reflecting well-established approaches to discrimination claims in the case law, particularly in the employment area.[7] Nevertheless, the Commission concludes on this evidence that Club 720's policy barring the wearing of braids by customers does violate the Chicago Human Rights Ordinance. It has a clear and obvious disparate impact on potential customers who are African-American. Moreover, it intentionally subjects African-Americans to more stringent terms of admittance compared to potential customers of other races.

Recent guidance from the Supreme Court of South Carolina is pertinent to these facts. In *McCrea v. Gheraibeh*, 380 S.C. 183, 669 S.E.2d 333 (2008), that court considered a *Batson*[8] challenge to a peremptory juror strike in a civil action, in which defense counsel explained that he struck an African-American juror based on his "uneasiness" over the juror's wearing of dreadlocks. Reversing the trial court and court of appeals, the Supreme Court of South Carolina held that this was not a race-neutral reason. Rather, the stated reason was found inherently discriminatory and racially motivated, and thus an impermissible basis for striking a juror in light of *Batson*. The Court explained, "Regardless of their gradual infiltration into mainstream American society, dreadlocks retain their roots as a religious and social symbol of historically black cultures."

The Commission agrees with this reasoning. Even though other individuals and religious or ethnic groups may wear hairstyles such as braided cornrows and dreadlocks, in Chicago these hairstyles are overwhelmingly associated with and worn by African-Americans, a fact of which the Commission may take administrative notice.[9] A policy that restricts access to a place of public entertainment to people who do not wear braided hairstyles has a clear purpose of imposing less favorable terms and conditions of use of the public accommodation on African-Americans. They may not choose to wear hairstyles associated in common public understanding with their racial group.

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[7] See, e.g., *Eatman v. United Parcel Service*, 194 F.Supp.2d 256 (S.D.N.Y. 2002).

[8] *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.1d 69 (1986), holds that the Equal Protection Clause of the Fourteenth Amendment prohibits the striking of a potential juror on the basis of race or gender.

[9] The Commission noted in *Richardson v. Boy Scouts of America*, CCHR No. 92-E-80 (Apr. 20, 1993, dismissed on other grounds Feb. 19, 2003), that it may take administrative (i.e. judicial) notice of facts which are "indisputable and capable of accurate and ready determination."

Some legal scholars have offered concurring analyses of the implicit racial bias in grooming codes that ban hairstyles such as braids, locks, and twists. See, e.g., Onwauchi-Willig, Angela, *Another Hair Piece: Exploring new Strands of Analysis Under Title VII*, 98 Georgetown Law Journal (2010), U. Iowa Legal Studies Research Paper No. 10-10, available at SSRN: http://ssm.com/abstract=1557809; and Greene, D. Wendy, *Title VII: What's Hair (and Other Race-Based Characteristics) Got to Do with It?*, 79 University of Colorado Law Review No. 4, (Dec. 1, 2008), available at SSRN: http://ssm.com/abstract=1474088. See also Russell, Constance Dionne, *Styling Civil Rights: The Effects of Section 1981 and the Public Accommodations Act on Black Women's Access to White Stylists and Salons*, 24 Harvard BlackLetter Law Journal No. 189 (Spring 2008), available at SSRN: http://ssm.com/abstract=1268133.

Previous precedential decisions of this Commission have addressed dress codes and grooming standards in the context of sex discrimination claims involving policies that set different standards for men and women. *Palmer v. United Airlines*, CCHR No. 93-E-156 (Nov. 18, 1994), and *Evans v. Hamburger Hamlet et al.*, CCHR No. 93-E-177 (May 8, 1996). In both cases the Commission followed the standard applied by the Seventh Circuit in *Carroll v. Talman Federal Savings and Loan Assoc. of Chicago*, 604 F.2d 1018, 1031-32 (7 Cir. 1979). In *Carroll*, the Seventh Circuit noted that such rules do not necessarily violate Title VII. *Id.* at 1032. Nevertheless, the Seventh Circuit found discriminatory a policy which required women to wear uniforms while men in the same positions needed only to wear business attire, explaining that the policy was tantamount to separate dress codes for men and women which were implemented *due to stereotypes about men and women*—namely the belief that women would merely follow fashion, whether or not it was sensible for business. *Id.* at 1033.

Although Respondent's policy in this case did not explicitly establish different grooming standards for black patrons and those of other races, it nevertheless disfavored a hairstyle associated with one racial group based on stereotypical assumptions about wearers of the hairstyle, imposing an additional burden on that group in order to enjoy the full use of the public accommodations it offered. As Complainant Scott stated in his testimony, "I feel like I was just stereotyped like a thug...." (Tr. 29)

This is not a case where the wearing of a braided hairstyle presented any conceivable health or safety hazard. Nor is there any reasonable basis for associating the wearing of a braided hairstyle with the potential for criminal or disruptive conduct—in a large metropolitan area where African-Americans of all occupations and economic levels wear braided hairstyles. The Commission can conceive of no reasonable justification for requiring a person to avoid wearing a braided hairstyle in order to patronize a nightclub in the City of Chicago. The discriminatory intent and impact of Respondent's policy in this context is indisputable; it was designed to impose different admittance standards on black patrons, "separating and belittling" those who wear braids.

In *Blakemore v. Dominick's Finer Foods*, CCHR No. 01-P-51 (Oct. 8, 2006), the Commission reaffirmed the wrongfulness of racial stereotyping in a public accommodation context and also reaffirmed that in order to make an inference of racial motivation, it is not required to rely on the precise shifting-burdens formula evolved from the U.S. Supreme Court Decision in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). Citing its earlier decision in *Jenkins v. Artists' Restaurant*, CCHR No. 90-PA-14 (Aug. 14, 1991), the Commission stated:

> In many ways this society invites people to stereotype young black males as likely criminals. Operating on the basis of such stereotypes, however, will serve to unfairly deny to individuals the respect they deserve as equal and full members of the community. We should not engage in such behavior and the law does not tolerate it.

In both *Blakemore v. Dominick's* and *Jenkins*, this Commission approved the reasoning stated in *Furnco Construction Co. v. Waters*, 438 U.S. 567 at 477, 98 S.Ct. 2943 at 2949, 56 L.Ed.2d 957 (1978), stating that the *McDonnell Douglas* method was "never intended to be rigid, mechanized, or ritualistic. Rather it is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." The Commission further noted in both decisions that, although it may refer to federal cases construing federal anti-discrimination laws for guidance in construing the City's ordinances, nevertheless the Chicago ordinances are different laws written with different language and passed by a different legislative body, so they may in some instances be construed in a fashion that is different from that of federal or state statutes. See also Reg. 270.510.

Therefore, in considering the totality of circumstances presented by the evidence in this case, the Commission concludes that Complainant Scott has established a *prima facie* case of race discrimination in that he was refused admission to Club 720 based on an asserted policy banning braided hairstyles.

As to Complainant Lyke, however, the evidence does not establish a *prima facie* case of race discrimination. Although Lyke was told of the policy banning the wearing of braids, when he and his party questioned it, he was allowed into Club 720 "this time." He did enter and remained without incident for two hours. It was Lyke's head covering which caused his later exclusion, as discussed below. Thus Lyke did not experience a material personal harm due to the no-braids policy, because it was not applied to limit his full use of the Club. Accordingly, he does not have standing to challenge the policy in that he did not establish that he was personally injured by it. *McCabe v. Chipotle et al.*, CCHR No. 03-P-119 (Aug. 8, 2003).

Lyke argues that the incident amounted to harassment based on his race, but the evidence in this case is insufficient to establish that he was racially harassed as defined by CCHR Reg. 520.150(b). No racial slurs were used and Lyke was not told of the no-braids policy in an intimidating, hostile, or offensive manner. If anything, it appeared that, as to Lyke, Respondent's staff was embarrassed about having to enforce the policy. Lyke and his party questioned the policy, thinking it was a joke, and the staff person explained it was the management's policy but let Lyke enter "this time." (Tr. 5-6) While this conversation may have caused Lyke to feel uncomfortable, that discomfort was related to the nature of the policy itself, not to the staff's actual treatment of Lyke in the course of stating and explaining it. See *Blakemore v. Gogola et al.*, CCHR No. 04-P-84 (Apr. 12, 2005), where a building employee told the complainant he could not enter but security personnel promptly intervened and let him enter, and the incident was found not invidious, long-lasting, or sufficiently pervasive to state an adverse action.

### B. Religious Discrimination

Lyke also claims that he was subjected to discrimination based on religion because he was required to remove his kufi or leave the Club. Lyke claims he was told by the manager of the Club that "hats" were not permitted inside Club 720. Complainant, who identifies himself religiously as Muslim, refused to remove the kufi because it was not a hat but something he wore

because of his religion. Even after he told the Club's manager that it was worn because of his religion, he was still required to remove it or leave.

There is no evidence that Club 720 initially banned the kufi because it was a Muslim religious symbol. For example, Lyke submitted no evidence that other individuals were allowed into Club 720 wearing other religious symbols or that he had been specifically targeted because he is Muslim. However, once Lyke told the Club 720 manager that what he was wearing was a religious head covering, and Club 720 still required him to remove the kufi or leave, Club 720 discriminated against Lyke because of his religion.

A failure to reasonably accommodate religious beliefs or practices constitutes discrimination based on religion. In *Martin v. Kane Security Services*, CCHR No. 99-E-141 (Oct, 17, 2000), the Commission found substantial evidence that a respondent failed to accommodate an employee's religious beliefs based on evidence that the respondent told the complainant to remove her hijab, a headscarf it knew she wore for religious reasons.

Although Club 720 told Lyke to remove the kufi because of its blanket policy banning hats, the Commission agrees with the hearing officer that, once the manager knew that the kufi was a head covering worn as a religious practice, it should have accommodated Lyke's religious practice by allowing him to remain in the club wearing the kufi. There is nothing which suggests that this was not a reasonable accommodation or that it would have imposed an undue hardship on Respondent. In fact, Lyke had been admitted to the club and remained for two hours without incident before he was required to remove the kufi.

Chicago is a city of diverse population, with an even more diverse range of out-of-town visitors from many religious and ancestral backgrounds who may dress or wear their hair in a manner expressing that background. Dress codes or admittance policies which limit access to public accommodations based on appearance must not penalize religious practices without adequate justification. No such justification is apparent here, but even if justifiable, exceptions must be made to accommodate religious practices to the extent possible without undue hardship. Respondent's staff persisted in requiring Lyke to remove the kufi even when informed that it was a Muslim religious practice. Respondent made no effort whatever to accommodate but only reiterated the blanket no-hats policy. This clearly violates the Chicago Human Rights Ordinance.

## V. RELIEF

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

> … an order: to cease the illegal conduct complained of; 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 or at any stage of judicial review; 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

backpay from the date of the civil rights violation. These remedies shall be cumulative, and in addition to any fines imposed for violation of provisions of Chapters 2-160 and 5-8.

Although Respondent was found in default on both Complaints and thus could not present evidence in its defense on Complainants' discrimination claims, nevertheless it had the right to present evidence and be heard on the issue of the relief to be ordered. CCHR Reg. 235.320. Yet Respondent failed to appear at the hearing and make any presentation regarding the appropriate relief. Accordingly, the Commission proceeds based on Complainants' evidence presented at the hearing.

**A. Emotional Distress Damages**

It is well established that the compensatory damages which may be awarded by the Commission are not limited to out-of-pocket losses but may also include damages for the embarrassment, humiliation, and other emotional distress caused by the discrimination. *Nash & Demby v. Sallas Realty et al.,* CCHR No. 92-H-128, (May 17, 1995), citing *Gould v. Rozdilsky*, CCHR No. 92-FHO-25-5610 (May 4, 1992). Such damages may be inferred from the circumstances of the case as well as proved by testimony. *Id.*; see also *Campbell v. Brown and Dearborn Parkway*, CCHR No. 92-FHO-18-5630 (Dec. 16, 1992); *Hoskins v. Campbell*, CCHR No. 01-H-101 (Apr. 6, 2003); *Marable v. Walker*, 704 F.2d 1219, 1220 (11 Cir. 1983); and *Gore v. Turner*, 563 F.2d 159, 164 (5 Cir. 1977).

In general, the size of an emotional distress damages award is determined by (1) the egregiousness of the respondent's behavior and (2) the complainant's reaction to the discriminatory conduct. The Commission considers factors such as the length of time the complainant has experienced emotional distress, the severity of the mental distress and whether it was accompanied by physical manifestations, and the vulnerability of the complainant. *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 21, 1998) at 13-4; *Nash and Demby, supra;* and *Steward v. Campbell's Cleaning Svcs. et al.*, CCHR No. 96-E-170 (June 18, 1997). See also the recent discussion of the applicable standards in *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009).

In addition, "The Commission does not require 'precise' proof of damages for emotional distress. A complainant's testimony standing alone may be sufficient to establish that he or she suffered compensable distress." *Diaz v. Wykurz et al.,* CCHR No. 07-H-28 (Dec. 16, 2009); *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 18, 1995). A complainant need not provide medical evidence to support a claim of emotional distress. *Sellers v. Outland*, CCHR No. 02-H-73 (Oct. 15, 2003), affirmed in part and vacated in part on other grounds, Cir. Ct. Cook Co. No. 04 106429 (Sept. 22, 2004) and Ill.App.Ct. No. 1-04-3599 (Sept. 15, 2008). Medical documentation or testimony may add weight to a claim of emotional distress but is not strictly required to sustain a damages award.

**- Lyke's Emotional Distress**

The record in this case indicates that although the religious discrimination was a one-time incident, it occurred in front of Lyke's friends, other people coming in and out of the club, and people Lyke had just met at a conference he was attending for graduate students of color. People were looking at them and it was "kind of a scene." Lyke testified that the incident was "really

humiliating" and he found it embarrassing even though he did not seek any professional help as a result of it. He testified that the incident "stuck in my head." (Tr. 11-12)

Based on this evidence, the hearing officer recommended that Lyke be awarded $1,000 in emotional distress damages. This amount is consistent with many of the Commission's emotional distress damage awards in the public accommodations area where there was a single-incident violation that was not egregious but that caused immediate humiliation and embarrassment to the complainant. See, e.g., *Warren and Elbert v. Lofton & Lofton Mgmt. d/b/a McDonald's, et al.*, CCHR No. 07-P-62/63/92 (July 15, 2009); *Cotten v. Taylor Street Food and Liquor*, CCHR No. 07-P-12 (July 16, 2008); and *Blakemore et al. v. Bitritto Enterprises d/b/a Cold Stone Creamery et al.*, CCHR No. 06-P-12 *et al.* (Mar. 21, 2007). Lyke's testimony about the emotional impact of being required to leave the Club because of his kufi was rather general, but he did explain that other people were hearing the conversation and added, "It looks like I'm some kind of trouble-maker. It was just really kind of humiliating. And in addition, you know, this is kind of something that kind of stuck with me." Tr. 17. Although Lyke went on to testify that there was considerable conversation about the event the next day at the conference he was attending, and he wondered whether he was being too sensitive about the incident, there was no evidence that Lyke experienced any debilitating long-term effects from being required to leave the Club. (Tr. 17-18)

- **Scott's Emotional Distress**

Scott also described his experience of the race discrimination as humiliating. Scott was not even allowed to come into the Club. He tried not to cause a scene but a lot of other people were paying attention to the incident. (Tr. 24) He was coming to attend a special birthday party for over 50 people, which he had helped to plan. When he protested his exclusion, one of the security guards told him, "I don't have anything else to say to you. Get out of my face." (Tr. 25) Then he was unable to get his $15 payment back from the valet parking service. Finally he just left and went home. His friend later asked why he didn't attend her party, and he told her why. (Tr. 26) In addition, Scott had just visited a barber shop to be well-groomed for the party, where he had his hair freshly braided for the occasion. He also bought new clothing to wear. (Tr. 27) Scott went on to testify that he made a "humiliating" drive back home, and felt further humiliated because "there were a lot of people that were watching. And there were a lot of people who felt that that was wrong." *Id.* Scott's brother and sister were with him, and they went home too. (Tr. 28) Scott explained that nothing like this had ever happened to him before. He wore a braided hairstyle at the time but the incident led him to change his hairstyle: "I feel like I was just stereotyped like a thug....And now I don't wear my hair in the braids anymore. But I feel like, you know, the braids shouldn't change....The braids, they didn't change who I am....I felt it was wrong to just not allow someone into a public place because of their hairstyle." (Tr. 29)

These details demonstrate that the rejection of Scott was somewhat more egregious in that Respondent's staff went beyond merely applying the no-braids policy and addressed Scott with harsh and insulting language. In addition, Scott had not just made a spontaneous decision to go to the Club. He came to attend a special party for a friend, which he had helped to plan. He clearly was anticipating the evening with pleasure, buying a new outfit to wear and having his hair newly braided for the occasion. He was thus well-groomed when he arrived at the Club. Being excluded because of his hairstyle caused him to question and change his personal appearance in a way that should not have been necessary. Scott proved a somewhat higher level of emotional distress than Lyke, warranting a damages award of $1,500. This is consistent with

the Commission's awards in other public accommodation discrimination cases where the excluding incident was accompanied by harsher respondent conduct and the evidence establishes an impact beyond generalized humiliation and embarrassment. See, e.g., *Warren and Elbert, supra.*, and *Maat v. String-A-Strand*, CCHR No. 05-P-5 (Feb. 20, 2008).

**B. Out-of-Pocket Damages**

The Commission has long held that a complainant may recover damages for out-of-pocket losses even without written documentation of such damages as long as the complainant can testify to the amount of damages with certainty. *Horn v. A-Aero 24 Hour Locksmith Service et al*, CCHR No. 99-PA-032 (July 19, 2000); *Williams v. O'Neal*, CCHR No. 96-H-73 (June 8, 1997); *Soria v. Kern*, CCHR No. 95-H-13 (July 17, 1996); *Hussian v. Decker*, CCHR No. 93-H-13 (Nov. 15, 1995); *Khoshaba v. Kontalonis*, CCHR No. 92-H-171 (Mar. 16, 1994). Such out-of-pocket damages may include expenses related to the prosecution of a complaint before the Commission. *Horn v. A-Aero 24 Hour Locksmith Service et al., supra.* However, compensatory damages for out-of-pocket losses or emotional distress should not be awarded when they cannot be shown to have been caused by the discriminatory conduct or foreseeable to the respondents. *Pudelek & Weinmann v. Bridgeview Garden Condo. Assn. et al,* CCHR No. 99-H-39/53 (Apr. 18, 2001)

Scott testified with certainty that he paid $15 for valet parking, for which he could not obtain a refund even though he was never allowed to enter Club 720 at all. Thus this $15 out-of-pocket loss flows from Respondent's discriminatory conduct and is compensable.

By contrast, Lyke testified that he spend about $2 for a bus ride after he was required to leave the Club. (Tr. 16) He had already been in the Club without incident for two hours and would have incurred this transportation expense in connection with his evening out with fellow conference participants regardless of the discriminatory conduct toward him. This cost is not sufficiently connected to Respondent's discriminatory conduct to be compensable.

**E. Interest on Damages**

Section 2-120-510(l), Chicago Municipal Code, allows an additional award of interest on damages ordered to remedy violations of the Chicago Fair Housing Ordinance or the Chicago Human Rights Ordinance. Pursuant to CCHR Reg. 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly from the date of violation, and compounded annually.

Accordingly, the Commission awards pre- and post-judgment interest on all damages awarded in this case, starting from the date of each violation—specifically January 24, 2009, as to Complainant Scott and February 6, 2009, as to Complainant Lyke.

**D. Fines**

Section 2-160-120 of the Chicago Human Rights Ordinance requires that a fine be assessed against a party found in violation, in an amount of not less than $100 and not more than $500. The hearing officer recommended a fine of $250 against Respondent for the religious discrimination against Lyke.

In light of Respondent's clear failure to accommodate Lyke's wearing of a kufi even after being informed that the kufi is worn as a religious practice, the Commission finds the maximum fine is appropriate and so fines Respondent $500 for the discrimination against Lyke. The requirement to reasonably accommodate religious practices has been a feature of federal, state, and local civil rights laws for some decades, and as such the operator of a public accommodation should be aware of these laws, establish compliant policies, and train its staff accordingly.

Similarly, the Commission has found that Respondent's policy excluding people who wear braided hairstyles from the full use of a public accommodation is not race neutral and is racially motivated. Respondent failed to participate in the administrative hearing process after the Commission's finding of substantial evidence and was held in default; the record thus provides no evidence or explanation attempting to show that the policy was established and implemented in good faith for some justifiable purpose, which might mitigate the amount of a fine. Race discrimination remains an intolerable offense which operators of public accommodations must scrupulously avoid. On this evidence, a maximum fine of $500 is warranted for the race discrimination against Scott.

### E. Other Relief

Because Club 720 is now closed and there is no evidence that Respondent is operating another nightclub or similar public accommodation in the City of Chicago, no injunctive relief is ordered. Also, on this record no punitive damages are ordered. Finally, because neither Complainant was represented by counsel, no attorney fees are allowed.

## VI. CONCLUSION

The Commission finds that Respondent discriminated against Complainant Rafael Scott based on race and against Complainant Sheldon Lyke based on religion, in violation of the Chicago Human Rights Ordinance, and orders Respondent to pay the following relief:

A. Payment to the City of Chicago of a fine of $500 for each of two incidents of discrimination found, for a total of $1,000.

B. Payment to Complainant Rafael Scott of $1,500 as emotional distress damages plus $15 as out-of-pocket damages, for total damages of $1,515 plus pre- and post-judgment interest from January 24, 2009.

C. Payment to Complainant Sheldon B. Lyke of $1,000 as emotional distress damages plus pre- and post-judgment interest from February 6, 2009.

**CHICAGO COMMISSION ON HUMAN RELATIONS**

By: Dana V. Starks

Dana V. Starks, Chair and Commissioner
Entered: February 16, 2011