

City of Chicago
COMMISSION ON HUMAN RELATIONS

ADJUDICATION DIVISION

2008 Activity
Concerning Discrimination Cases
filed under the
Chicago Human Rights Ordinance
and
Chicago Fair Housing Ordinance



Chicago Commission on Human Relations
740 N. Sedgwick, Third Floor, Chicago, IL 60610
312.744.4111 (voice) - 312.744.1088 (TTY) - 312.744.1081 (fax)

City of Chicago
Richard M. Daley, Mayor

Commission on Human Relations
Dana V. Starks, Chair & Commissioner

Adjudication of Discrimination Complaints

The Enabling Ordinance of 1990 gave the reorganized Commission on Human Relations powers to enforce the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance. These powers are exercised through the Adjudication Division. The work of the Division is:

- To receive and investigate complaints of discrimination in violation of the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance.
- To facilitate the settlement of cases, where possible.
- To determine, after investigation and hearing, whether discrimination occurred in violation of the City of Chicago ordinances.
- To order remedies if the complainant proves at a hearing that discrimination has occurred.

The orders of the Commission's Adjudication Division carry the force of law. If the Commission rules, after an administrative hearing, that discrimination occurred, it has the power to order injunctive relief as well as the payment of out-of-pocket damages, emotional distress damages, punitive damages, attorney's fees and costs, and fines.

The role of the Adjudication Division is neutral. It does not serve as either side's lawyer, advisor, or advocate. It is not a prosecutor of the case. It does not take the side of either the complainant (the person who filed the complaint) or the respondent (the alleged violator).

Adjudication on the Web

See the Commission on Human Relations web site at www.cityofchicago.org/humanrelations for more information about Chicago's discrimination ordinances and their enforcement, including –

- The Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance
- The Commission on Human Relations Enabling Ordinance
- The regulations governing enforcement of these ordinances
- Information on how to research Commission case law
- A *Board Rulings Digest* summarizing decisions about violations and remedies ordered
- A complaint form and other frequently-used forms for complainants and respondents
- A *Guide to Discrimination Complaints* in English and Spanish
- Information and forms to help complainants prepare, file, and prove a complaint
- Information and forms to help respondents respond to a complaint
- Information about other discrimination laws and enforcement agencies

What is Discrimination?

In general, to prevail in a discrimination case under the City of Chicago ordinances, a complainant must be able to prove by a preponderance of the evidence that:

- The complainant was subjected to *adverse treatment* by a covered individual, business, or government entity (the respondent).
- This conduct was based on the complainant's status in one or more of these *protected categories*:

Race	Sex	Age
Color	Sexual Orientation	Disability
National Origin	Gender Identity	Source of Income
Ancestry	Marital Status	Military Discharge Status
Religion	Parental Status	

- The conduct was in one of the following *covered areas*:

Housing	Public Accommodations
Employment	Credit or Bonding Transactions
- The adverse action took place *in the City of Chicago*.
- The complainant filed the complaint within *180 days* of the alleged discriminatory action.
- The complainant was treated differently *because of* his or her protected status, and not for other legitimate, non-discriminatory reasons.

Filing a Discrimination Complaint

Adjudication intake staff are available during announced business hours to answer inquiries about filing a complaint under the Chicago Human Rights Ordinance or Chicago Fair Housing Ordinance. Those interested should telephone 312/344-4111 for current information. Intake staff assist the public with preparation of complaints on a walk-in basis or provide forms for self-preparation of complaints and filing by mail. There is no filing fee.

A complaint form, along with additional information about the ordinances and the adjudication process, can be found on the Commission's web site: www.cityofchicago.org/humanrelations.

How Cases Proceed

People who believe they have been subjected to discrimination as defined in the City of Chicago ordinances must file written complaints with the Commission following a prescribed form. Once they do so, the Commission notifies each named respondent and sets a deadline to submit a written response and any documents that support the respondent's position. The complainant also receives a deadline to reply to any response and to submit any documentation that supports the allegations of the complaint.

The Commission will offer the parties the opportunity to try to settle the case before the investigation is completed. Settlement is voluntary. The Commission does not propose or advocate particular settlement terms, but may write up the agreed terms of settlement for the parties' signature.

If the case does not settle or otherwise close at the pleading stage, the investigator completes any additional evidence-gathering that may be needed and compiles the evidence for review by senior staff of the Commission. This is typically accomplished by interviewing witnesses and examining relevant documents or sites. The investigator may seek information about the experiences of other people whose situations are comparable to the complainant's. The Commission has subpoena power along with the power to sanction parties that fail to cooperate with the investigation.

Commission senior staff then determine whether or not there is substantial evidence of discrimination. A finding of "substantial evidence" does not mean that the complainant has won the case, only that there is enough evidence of a violation for the case to go forward. If the Commission finds that there is not substantial evidence of an ordinance violation, it dismisses the case. The complainant may request a review of the dismissal.

If the Commission finds that there is substantial evidence of discrimination (or retaliation if applicable), it notifies the parties that the case will proceed to an administrative hearing. Again, the parties may attempt to settle the case prior to the hearing.

The administrative hearing is a trial, but somewhat less formal than in a court. A hearing officer, who is an attorney appointed by the Commission, presides over the hearing and manages the hearing process. The Commission does not prosecute the case or represent the complainant at this hearing. It is entirely the complainant's responsibility to prove the case and to prove entitlement to injunctive and monetary relief as well as attorney fees and costs. Pre-hearing discovery and subpoena procedures are available to the parties to aid in obtaining evidence to support their positions.

Based on the hearing officer's recommendation and the hearing record, the Board of Commissioners makes the final determination as to whether the complainant has proved that the respondent has violated the Chicago Human Rights Ordinance or the Chicago Fair Housing Ordinance. If the Board rules that there has been a violation, it also determines what relief will be awarded to the complainant.

Relief may include a fine for each violation, an order to take steps to eliminate discriminatory practices, an award of damages to be paid to the complainant, and an order to pay the complainant's attorney fees.

Commission final orders awarding or denying relief have the force of law, can be appealed to the state court on a common law *certiorari* petition, and are enforceable by obtaining a state court judgment.

Annual Summary of Adjudication Division Activity

	Housing	Employment	Public Accommodation	TOTAL
COMPLAINTS FILED	56	96	96	248
Staff-Assisted	35	72	42	149
Self-Prepared	21	24	54	99
CASES FORWARDED TO HEARING STAGE	10	23	41	74
Substantial Evidence	9	23	39	71
Default (at investigation stage)	1	0	2	3
CASES CLOSED	92	131	93	316
Settled	20	32	39	91
Complainant Withdrew Case	14	14	10	38
Complainant Failed to Cooperate	10	12	9	31
Lack of Jurisdiction	2	3	2	7
No Substantial Evidence	43	67	26	136
Ruling After Hearing	3	3	7	13
REQUESTS FOR REVIEW after involuntary dismissal	8	17	6	31
Denied	8	17	5	30
Granted	0	0	1	1

New discrimination complaints filed in 2008 remained at levels similar to 2007 and 2006. The number of completed investigations remained strong and contributed to continued progress to reduce investigator caseloads to manageable levels and reduce the number of delayed investigations. The volume of post investigation proceedings continues to increase.

Discrimination Bases Claimed in Complaints Filed

PROTECTED CLASSES	Hsng.	%	Empl.	%	Public Accom.	%	Total Claims	%
Race	14	25%	49	51%	43	45%	106	43%
Color	6	11%	5	5%	4	4%	15	6%
National Origin	4	7%	10	10%	4	4%	18	7%
Ancestry	2	4%	5	5%	1	1%	8	3%
Religion	3	5%	5	5%	0	0%	8	3%
Sex	2	4%	26	27%	2	2%	30	12%
Sexual Orientation	4	7%	13	14%	1	1%	18	7%
Gender Identity	0	0%	1	1%	5	5%	6	2%
Marital Status	1	2%	2	2%	0	0%	3	1%
Parental Status	2	4%	3	3%	1	1%	6	2%
Age	0	0%	9	9%	1	1%	10	4%
Disability	11	20%	21	22%	49	51%	81	33%
Source of Income	23	41%	1	1%	1	1%	25	10%
Military Discharge	1	2%	0	0%	0	0%	1	.4%
Retaliation ¹	0	0%	11	11%	3	3%	14	6%
TOTAL COMPLAINTS	56		96		96		248	

The percentage figures in the chart above show the percentage of *complaints* containing a *claim* of discrimination on the basis named. A complaint may claim discrimination on more than one basis (e.g. sex and age) arising out of the facts alleged. Thus the number of claims usually exceeds the number of complaints.

In 2008, race was the most frequently named discrimination basis in complaints as has been typical over the years. Complaints alleging disability discrimination in public accommodations (usually concerning the wheelchair accessibility of storefront businesses) fell somewhat in 2008, to 49 compared to 68 in 2007. Nevertheless, these remained the single most frequent type of complaint filed, followed by race discrimination claims in public accommodations.

¹Retaliation is prohibited in the Chicago Human Rights Ordinance but not in the Chicago Fair Housing Ordinance. Therefore, retaliation claims in housing discrimination cases are dismissed without investigation.

The total number of race discrimination claims remained at a level comparable to that of 2007. Race remained the most frequently named basis in employment discrimination complaints and second after disability in public accommodation complaints. Race ranked second, after source of income, in housing discrimination complaints, with disability ranking third in the housing area.

Sexual orientation has continued to comprise a smaller proportion of claims than had been the case through 2005 when the Illinois Human Rights Act was amended to cover sexual orientation discrimination, offering claimants another way to pursue such cases. Sexual orientation was named as a basis in 7% of 2008 complaints and gender identity in 2%. Gender identity discrimination was claimed most frequently in the public accommodation area, while sexual orientation discrimination was claimed most frequently in the employment area.

After race at 51%, the most frequently named bases in employment discrimination complaints were sex at 26% and disability at 22%. Sexual orientation was next at 14%. Age and national origin fell somewhat compared to 2007, to 9% and 10% respectively.

Source of income was again the most frequently-named basis in housing discrimination complaints, remaining at 41% of new complaints in 2008 and 2007 compared to 52% in 2006. These claims usually involve individuals who use Section 8 vouchers to support some part of their rent. Race and disability switched places but remained the next most frequent bases claimed in housing discrimination complaints at 25% for race compared to 22% in 2007, and 20% for disability compared to 26% in 2007. Color was named as a basis in 11% of housing discrimination complaints. National origin, parental status, and marital status were all claimed less frequently in the housing area in 2008 compared to 2007.

Substantial Evidence Determinations

The data below covers only those cases in which a determination of either “substantial evidence” or “no substantial evidence” of discrimination (or retaliation) was made after a full investigation. A finding of substantial evidence means there is sufficient evidence, if believed, to support a finding that an ordinance violation occurred. A substantial evidence finding allows the case to go forward to an administrative hearing and Board of Commissioners ruling if the case does not settle.

	Housing	Employment	Public Accommodation	TOTAL
Substantial Evidence	9	23	39	71
No Substantial Evidence	43	67	26	136
TOTAL FULL INVESTIGATIONS	52	90	65	207

The total number of completed full investigations remained high as in 2007 and 2006. The proportion of completed investigations which resulted in a substantial evidence finding began moving up again after declining a bit in 2007, to a record high of 71 complaints and one-third of completed investigations. With another three cases proceeding to hearing based on an order of default, this resulted in a record high number of 74 complaints going forward to the hearing stage in 2008. In fact, the number of cases going into the hearing stage and pending in the process has continued to rise since 2004.

Settlements

A high percentage of discrimination cases conclude by settlement between the parties. Complainants as a group obtain a great deal more monetary and other relief through settlements than through orders issued after administrative hearings. In 2008, for example, about 30% of closed cases were resolved by settlement compared to 2.5% concluded with liability findings and orders for relief.

Settlement is voluntary between the parties and may occur at any stage of the investigation or hearing process. When cases settle, the respondents do not admit liability and the Commission makes no determination as to whether a violation occurred. The Commission is not a party to the settlement and does not require or advocate particular settlement terms. However, Commission staff, mediators, and hearing officers do encourage and facilitate settlement.

Individual settlement terms vary and, because many cases settle privately between the parties, the Commission often does not know the terms of settlements including their monetary value to complainants. In the interest of promoting settlement in the future, the Commission does not announce or publicize the terms of particular settlements, although parties may choose to do so if they have not agreed to the contrary as part of the settlement terms.

Rulings After Administrative Hearings

The Board of Commissioners issued 14 rulings on discrimination complaints in 2008, summarized below. Nine were in favor of complainants and five in favor of respondents. These rulings occur after an administrative hearing before an independent hearing officer who issues a recommended decision.

Employment Discrimination Cases

Johnson v. Fair Muffler Shop, CCHR No. 07-E-23 (Mar. 19, 2008)

Race Discrimination

After an order of default, the Board found that Complainant established a *prima facie* case of race discrimination where the manager of Respondent used derogatory language toward Complainant regarding his race and discharged him without legitimate reasons. The Board awarded \$18,245 in back pay, \$10,465 in front pay, emotional distress damages of \$20,000, and punitive damages of \$30,000. The Board imposed a \$250 fine for each of two offenses. On October 15, 2008, the Commission awarded attorney fees of \$8,145.

Manning v. AQ Pizza LLC & Alhakim, CCHR No. 06-E-17 (Sep. 19, 2007)

Sexual Harassment, Race Discrimination, Retaliation

In 2007, after an order of default, the Board found that Complainant established a *prima facie* case of sexual harassment, race harassment, and retaliation by the manager of the pizza restaurant where she worked for about six weeks. In 2008, the Commission awarded attorney fees of \$4,303.75.

Hawkins v. Ward and Hall, CCHR No. 03-E-114 (May 21, 2008)

Sexual Harassment

After an order of default, the Board found that Complainant established a *prima facie* case of sexual harassment where one supervisor made sexual advances toward Complainant and another supervisor failed to take remedial action when he knew of the harassment. As a result, Complainant resigned but returned to work when the harassing supervisor apologized and promised to stop. The supervisor nevertheless began professionally harassing Complainant by scheduling her on the weekend and demanding that she come in when sick. The Board awarded \$6,000 in back pay, emotional distress damages of \$2,000, punitive damages of \$2,000, plus a fine of \$400 against Hall and \$200 against Ward.

Alexander v. 1212 Restaurant Group et al, CCHR No. 00-E-110 (Oct. 16, 2008)

Sexual Orientation Discrimination

The Board found discrimination based on perceived sexual orientation where the Respondent company's majority owner and employees harassed Complainant for being gay by ongoing derogatory comments. The Board found that Complainant did not establish race and sexual orientation discrimination in connection with the termination of his employment. The Board awarded emotional distress damages of \$35,000 and punitive damages of \$140,000 against Respondents jointly and severally, and imposed a fine of \$500 against each Respondent. (Attorney fees pending at year-end)

Public Accommodation Discrimination Cases

Maat v. String-a-Strand, CCHR No. 05-P-05 (Feb. 20, 2008)

Disability Discrimination

After an order of default, the Board ruled that Complainant established a *prima facie* case of disability discrimination where a business did not have a wheelchair accessible ramp or aisles wide enough for wheelchairs, and the business owner behaved rudely and disrespectfully toward Complainant after she sought accommodation. The Board awarded emotional distress damages of \$1,500 and imposed a fine of \$500. As injunctive relief, the Board ordered Respondent to install or maintain a ramp and to volunteer at a governmental or non-profit organization which assists persons with disabilities.

Lapa v. Polish Army Veterans Association et al., CCHR No. 02-PA-27 (Feb. 20, 2008)

Sexual Orientation

In March 2007, the Board had found sexual orientation discrimination where officers of the Respondent organization, in whose building Complainant rented office space, created a hostile environment by repeatedly directing pejorative and vulgar references to him as homosexual and/or failed to take corrective action after Complainant complained about this treatment. In 2008, the Board awarded attorney fees of \$2,874.

Holman v. Funky Buddha, Inc., CCHR No. 06-P-62 (May 21, 2008)

Discrimination Claimed: Sexual Orientation

The Board found no sexual orientation discrimination where a security guard at a club struck and ejected Complainant. The Board found that the club had a legitimate non-discriminatory reason for removing Complainant, namely that he was under the influence of alcohol and acting aggressively. Respondent also established that the security guard had no knowledge that Complainant is gay.

Williams v. Funky Buddha Lounge, CCHR No. 04-P-82 (July 16, 2008)

Sex and Sexual Orientation Discrimination

After an order of default, the Board ruled that Complainant established a *prima facie* case of sex and sexual orientation discrimination where he was denied entry to Respondent's establishment because he was not a gay woman. The Board awarded emotional distress damages of \$500 and imposed a fine of \$500.

Williams v. First American Bank, CCHR No. 05-P-130 (July 16, 2008)

Discrimination Claimed: Sex

The Board found no sex discrimination where a bank employee initially did not allow Complainant to use its restroom thinking he was not a bank patron, but a manager told Complainant he was welcome to use the restroom after confirming he actually was a customer. The Board found that Complainant failed to prove that similarly-situated women were treated more favorably. The Board ordered Complainant to pay Respondent \$600 in attorney fees for misrepresenting facts at the pre-hearing conference and non-compliance with a Commission order.

Cotten v. Taylor Street Food and Liquor, CCHR No. 07-P-12 (July 16, 2008)

Disability Discrimination

After an order of default, the Board found that a wheelchair user established *prima facie* case of disability discrimination through testimony that he sought to enter the storefront liquor store to make a purchase but could not do so due to the presence of two stairs. The Board awarded \$1,000 as emotional distress damages and imposed a fine of \$500. As injunctive relief, the Board ordered Respondent to eliminate physical barriers to

access to its business premises or, if unable due to undue hardship, to provide alternative reasonable accommodations and a conspicuous notice informing wheelchair users approaching its entrance how to access the same services.

Harris v. Dunkin' Donuts, CCHR No. 05-P-97 (July 16, 2008)

Discrimination Claimed: Race, Sex

The Board found no race or sex discrimination where a customer was denied access to Respondent's restroom but a Caucasian woman was allowed to enter the restroom to look for her keys. Although Complainant established a *prima facie* case of race and sex discrimination, Respondent established that the restroom was out of order at the time and not usable by any member of public.

Housing Discrimination Cases

Cunningham v. Bui and Phan, CCHR No. 01-H-36 (Mar. 19, 2008)

Discrimination Claimed: Parental Status, Race

The Board found no race or parental status discrimination due to insufficient evidence that these were reasons Complainant was told he could not rent the apartment, noting that language difficulties were a factor in the communication which occurred.

Hodges v. Hua and Chao, CCHR No. 06-H-11 (May 21, 2008)

Discrimination Claimed: Source of Income

The Board found no source of income discrimination where Complainant claimed that a landlord refused to rent to her because she would have used a Section 8 voucher. The Board found that Respondents did not lease the apartment to Complainant because she failed to visit the property and complete a rental application as Respondents' policy required.

Draft v. Jercich, CCHR No. 05-H-20 (July 16, 2008)

Source of Income Discrimination

After an order of default, the Board found that Complainant established a *prima facie* case of source of income discrimination where apartment owners refused to rent an available unit to her because she wished to use a Section 8 voucher. Respondents showed Complainant the unit but told her they would not rent to Section 8 recipients. The Board awarded emotional distress damages of \$5,000 and imposed a fine of \$500.

Other Hearing Stage Activity

Post-investigation activity remained at a record level in 2008. At year-end, the Commission's docket included 20 complaints scheduled for mediation after a substantial evidence finding and 40 complaints in the administrative hearing or Board ruling process, totaling 60 cases pending in post-investigation proceedings compared to 53 and the end of 2007, 50 at the end of 2006, 34 at the end of 2005.

Reduction of Investigation Backlog

The Commission has been concerned for some years about the length of time it has taken to complete the full investigation of complaints. In 2008, the Commission continued the progress made since 2005 to reduce the volume and age of pending investigations as well as the size of investigator caseloads. By the end of 2008 the number of pending investigations was reduced to 224 compared to 796 at the end of 2004. The number pending for more than one year was reduced from 528 to 65 over the same four-year period, and the average individual investigator caseload dropped from 72 to 25. This means the Commission entered 2009 with a much more manageable investigation caseload and new investigations being completed much more quickly than in past years.