



City of Chicago  
**COMMISSION ON HUMAN RELATIONS**  
740 N. Sedgwick, Suite 400, Chicago, IL 60654  
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

**IN THE MATTER OF:**

Robert Jones  
**Complainant,**  
v.

Minah Inc. d/b/a Sunshine Shell Gas Station  
**Respondent.**

**Case No.:** 11-P-75

**Date of Ruling:** September 19, 2012

**Date Mailed:** September 24, 2012

**TO:**

Robert Jones  
10133 S. Peoria  
Chicago, IL 60643

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**FINAL ORDER**

YOU ARE HEREBY NOTIFIED that, on September 19, 2012, the Chicago Commission on Human Relations entered a ruling in favor of Respondent in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby **DISMISSED**.

Pursuant to Commission Regulations 100(15) and 250.150, Complainant may seek a 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  
Entered: September 19, 2012



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## FINAL RULING ON LIABILITY

Complainant Robert Jones filed this discrimination Complaint against Respondent Minah Inc. d/b/a Sunshine Shell Gas Station ("Minah" or "Sunshine Shell") alleging that on September 11, 2011, one of Minah's employees subjected him to verbal racial harassment in violation of the Chicago Human Rights Ordinance ("CHRO"). Specifically, Complainant alleges that Respondent violated Chapter 2-160 of the Chicago Municipal Code, which prohibits, among other things, race discrimination involving the full use of a public accommodation. (CHRO §2-160-070).

### I. PROCEDURAL HISTORY

The Complaint was filed on September 14, 2011, and a Response was filed on November 25, 2011. After an investigation and finding of substantial evidence, the parties appeared for the administrative hearing before a Commission hearing officer on June 7, 2012.

The hearing officer issued her Recommended Ruling on July 13, 2012. Neither party filed objections to the Recommended Ruling.

### II. FINDINGS OF FACT

1. Complainant is an African American male. On Sunday morning, September 11, 2011, he went with his wife and son to the Sunshine Shell Gas Station on 87<sup>th</sup> and State Streets. (Tr. 12, 37-38). Jones was in a hurry because he had an appointment downtown and was running late. (Tr. 12, 25)

2. The family pulled into the station at pump Number 8. (Tr. 12) Jones wanted to teach his 8-year-old son Zion how to handle money and pump gas, so he gave Zion \$10 and told him to go up to the cashier and ask for \$6 in gas. (Tr. 13)

3. Respondent's employee Arshad Shaikh was in the back of the cashier booth at the gas station and his co-worker Shami Rizwan was in the front handling customers when Zion walked up. (Tr. 27)<sup>1</sup> The booth is small and cluttered. (Resp. Ex. 1) Because of its size and location, it is difficult to see pump Number 8 where Jones' car was parked. (Tr. 31; Resp. 2)

<sup>1</sup> Rizwan never appeared as a witness at the hearing. Before testimony began, Respondent's owner Azam Khan informed the hearing officer that Rizwan has been in India since January 2012 and it is unclear when or if he will return to the United States. (Tr. 5-8)

4. The booth also has bullet proof glass. (Resp. Ex. 1, Tr. 30). Therefore, it is difficult to hear customers (or anyone else in the vicinity) speak unless they do so into the microphone on the outside of the booth. (Tr. 29-30). The Respondent does not typically sell gas to children and it is prohibited by law. (Tr. 33).

5. Zion is soft-spoken and small. (Tr. 13, 27) He approached Rizwan to try to pay for the gas but was confused and didn't speak loud enough into the microphone. (Tr. 13, 35) Rizwan asked where Zion's car was, i.e. what pump the car was on. (*Id.*)

6. The parties' version of the facts differs at this point. Jones testified that he was sitting in the car when Zion went up to the booth. He got out of the car about 30 seconds later when the cashier started yelling at Zion. (Tr. 13, 17) Jones testified that he approached the booth and asked if there was a problem. Rizwan asked Jones why he sent a kid to pay for and pump gas. Jones testified that the cashier then said "stupid niggers." (Tr. 13)

7. Mrs. Jones, who was sitting in the driver's seat of the car approximately 20 feet away from the booth, testified that she heard the cashier's slur. (Tr. 20) She rolled the window down and said "What did you say?" (*Id.*) Mrs. Jones testified that Rizwan "looked directly at [her]" and responded "stupid nigger." (*Id.*) Despite this alleged slur, the Jones family still paid for and pumped the gas before driving away. (Tr. 21)

8. Shaikh's version of events differs considerably. He testified that Jones was angry when he got out of the car. The gas pump was not open and Jones was in a hurry. He started yelling and screaming at the cashier and said, "What's going on? Where's my gas?" (Tr. 32, 40-42) Shaikh testified that Rizwan was polite to Jones and never used a racial slur. (Tr. 32, 36-37)

9. Jodie Toney, who is an African American man, was also at the gas station and witnessed the events. (Tr. 45) Toney has been a regular customer at the station for more than 3 or 4 years. (*Id.*) He does not work for Respondent and has never met the owner. (*Id.*)

10. On the day in question, Toney had purchased cigarettes and was waiting for his change around the same time that Zion was standing in front of the booth. (Tr. 46, 48) He witnessed the exchange between the cashier, Zion, and Jones. (Tr. 48)

11. Similar to Shaikh's testimony, Toney testified that Jones was "real snotty" and had a "real nasty attitude" when he approached the booth. (Tr. 48- 49) According to Toney, Jones was screaming loud and cursing at the cashier (Tr. 65), so much so that several customers left. Toney testified that he would have left too but he was waiting for his change after buying the cigarettes. Instead, he stepped back from the window because of the way that the Complainant was acting. (Tr. 48-49) Toney testified that Jones seemed violent and dangerous. He argued with Rizwan and even kicked the bottom of the booth. (Tr. 64-67)

12. At the hearing, Toney confronted Jones directly and testified that "you were real obnoxious with [Rizwan]. You disrespected him." (Tr. 53). "You walked up to the man. You started screaming at the man because of your kid. You wanted him to sell the gas to your kid.... The clerk was trying to explain to your kid in a nice, formal fashion that he couldn't sell him the gas.... You came and got to arguing with the clerk....everybody [at the station] was talking about how ignorant you were.... You were wrong the whole time." (Tr. 61-62)

13. Regarding the alleged racial slur, Toney testified further, "I have been going there for years and I have seen a lot of stuff on that lot concerning that gas station and our people.

They try to be nice to you. They try to do what they can, and they get screwed, but I never heard him calling you no N word....” (Tr. 53) “The N word is a very precious word. If anybody said that word, I would remember that....The whole time that this went on, I didn’t know nothing about the N word. The N word came up only one day and that was today. That man [Rizwan] never used that word.” (Tr. 54, 60)

14. Referring to Jones, Toney went on to state, “He lied. He know he lied. The man upstairs knows he lied.” (Tr. 54)

### III. CONCLUSIONS OF LAW AND ANALYSIS

Section 2-160-070 of the CHRO makes it unlawful for a person who operates or manages a public accommodation to withhold, deny, curtail, limit or discriminate concerning the full use of a public accommodation because of the individual’s race.<sup>2</sup> Commission Regulations further provide, “Any person who owns, leases, rents, operates, manages or in any manner controls a public accommodation has an affirmative duty to maintain a public accommodation environment free of harassment based on membership in a Protected Class.” CCHR Reg. 520.100 (a). Thus slurs and other verbal or physical conduct relating to an individual’s race can constitute a violation of the CHRO. *See also* CCHR Reg. 520.150(b).

To establish public accommodation discrimination under the CHRO based on race, Complainant must show that he: (1) is a member of a protected class; (2) sought the use of a public accommodation; (3) was discriminated against concerning the use of such public accommodation; and (4) suffered material harm as a result. *Blakemore v. Inter-Parking, Inc.*, CCHR No. 99-PA-120 (Feb. 22, 2001). Further, because this case is based on alleged racial slurs, Complainant must show that the slurs or conduct (1) had the purpose or effect of creating an intimidating, hostile or offensive environment; (2) had the purpose or effect of unreasonably interfering with their full use of the public accommodation; or (3) otherwise adversely affected their full use of the public accommodation. CCHR Reg. 520.150(b).

The use of a racial slur in a single instance can be sufficient to violate the CHRO, especially in connection with use of a public accommodation. *Burford v. Complete Roofing and Tuck Pointing*, CCHR No. 10-P-109; *Miller v. Drain Experts et al.*, CCHR No. 97-PA-29 (Apr. 15, 1998) (where defaulted respondents were found liable for calling the complainant a racist name while providing services); and *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 19, 1995) (a public accommodations case in which the Commission held that directing the slur “faggot” to a restaurant customer in a single instance violated the CHRO because it was sufficiently separating and belittling to create a harassing and hostile service environment).

Here, Complainant has established that he is African American and sought the use of a public accommodation. However, he failed to show that he was discriminated against or harassed based on his race. Jones cannot establish these elements of proof because the hearing officer determined that his version of the events on September 11, 2011, lacked credibility.

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<sup>2</sup>A public accommodation is defined as “a place, business establishment or agency that sells, leases, provides or offers any product, facility or service to the general public....” CHRO Section 2-160-020. The Commission determines whether or not a case involves a public accommodation by considering whether the particular service or facility at issue is open to the general public. *Maat v. Chicago Police Dept.* CCHR No. 04-P-54 (Dec. 30, 2005); *Mukemu v. Sun Taxi Assoc. et al.*, CCHR No. 02-PA-11 (Feb. 5, 2002). This definition is met here because Jones sought service at a gas station that was open to the public.

First, the hearing officer found that Jones' own testimony was not credible, explaining that it is hard to believe that Rizwan started yelling at Zion, an 8-year-old, soft-spoken child, for no reason, and further that it is hard to believe Rizwan would throw out a racial slur simply because Jones walked up to the booth and asked what was going on.

Second, the hearing officer determined that Mrs. Jones' testimony was not credible. She claimed that she heard the racial slur through a partially raised window then said, "What did you say?" and Rizwan "looked directly at her" and said "stupid nigger." Yet photographs of the inside of the booth and of the location where the Jones' car was parked in relation to the booth undercut her testimony. The booth is cluttered with snacks and other items, and there would have been no way for Rizwan to see the Jones car, let alone look directly at Mrs. Jones. Further, if Rizwan was having trouble hearing Zion, who was standing directly in front of him, how could he possibly hear Mrs. Jones through bulletproof glass from a car that, by her own admission, was at least 20 feet away from the booth?

Third, the hearing officer explained that it defies logic that Mr. Jones would pay for and pump gas at a place where a cashier had called him a "stupid nigger" twice, in front of his son. This is especially true when another gas station stood across the street from Sunshine Shell Gas Station and Jones could have purchased gas there.

Finally and most importantly, the hearing officer explained that Toney's testimony completely undercut that of Jones. Toney passionately and convincingly supported Shaikh's testimony that it was Jones, not Rizwan, who acted inappropriately. He credibly testified that Jones got out of the car and was angry because of the delay in getting gas. Jones cursed at the Rizwan. He kicked the booth. By contrast, Rizwan was polite in dealing with Jones' outburst. Moreover, like Shaikh, Toney was adamant that Rizwan never used a racial slur. The hearing officer found Toney's account of the events completely credible, noting that there is no evidence in the record that Toney was biased or received anything in exchange for testifying for Respondent. As a third party with no stake in the outcome of this case, the hearing officer found his testimony is even more believable.

For all of these reasons, the hearing officer recommended a finding that Complainant failed to establish that Respondent discriminated against him based on race in the use of a public accommodation in violation of the CHRO.

In weighing the evidence and making findings of fact, the hearing officer must determine the credibility of witnesses. *Poole v Perry & Associates*, CCHR No. 02-E-161 (Feb. 15, 2006); *Claudio v. Chicago Baking Co.*, CCHR No. 99-E-76 (July 17, 2002). The Commission reviews a hearing officer's proposed findings of fact pursuant to Section 2-120-510(l) of the Chicago Municipal Code, which provides in pertinent part: "The commission shall adopt the findings of fact recommended by a hearing officer...if the recommended findings are not contrary to the evidence presented at the hearing." This standard of review takes into account that the hearing officer has had the opportunity to observe the testimony and demeanor of witnesses. *Poole, supra*; see also *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997). The Commission will not re-weigh a hearing officer's recommended findings of fact unless they are against the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996); *Wiles v. The Woodlawn Organization et al.*, CCHR No. 96-H-1 (Mar. 17, 1999).

Applying these standards, the Commission finds that the recommended findings of fact and conclusions of law of the hearing officer, including her credibility determinations, are fully

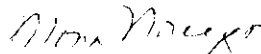
supported by the evidence received at the administrative hearing. Therefore, the Commission adopts them without modification.

#### IV. CONCLUSION

Complainant Robert Jones has not proved by a preponderance of the evidence that Respondent Minah Inc. d/b/a Sunshine Shell Gas Station discriminated against him concerning the use of a public accommodation based on his race. Accordingly, the Commission finds in favor of Respondent and the Complaint in this matter is hereby DISMISSED.

CHICAGO COMMISSION ON HUMAN RELATIONS

By:

  
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Mona Noriega, Chair and Commissioner  
Entered: September 19, 2012