



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:

Sarah and Deborah Hamilton
Complainants,

v.

Café Descartes Acquisitions, LLC d/b/a Café
Descartes
Respondent.

Case No.: 13-P-05/06

Date of Ruling: June 18, 2014

Date Mailed: August 4, 2014

TO:

Rachel Weisberg
Equip for Equality
20 N. Michigan Ave., Suite 300
Chicago, IL 60602

Jeremiah Murray
Attorney at Law
4550 W. 103rd St., Suite 201
Oak Lawn, IL 60453

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on June 18, 2014, 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 Sarah Hamilton emotional distress and punitive damages in the amount of \$8,500, plus interest on that amount from January 21, 2013, in accordance with Commission Regulation 240.700.
2. To pay to Complainant Deborah Hamilton emotional distress and punitive damages in the amount of \$6,000, plus interest on that amount from January 21, 2013, in accordance with Commission Regulation 240.700.
3. To comply with the order of injunctive relief stated in the enclosed ruling.
4. To pay a fine to the City of Chicago in the amount of \$1,000.¹

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.

5. To pay Complainant's reasonable attorney fees and associated costs as determined pursuant to the procedure described below.

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.

Attorney Fee Procedure

Pursuant to Reg. 240.630, Complainant may now file with the Commission and serve on all other parties and the hearing officer a petition for attorney fees and/or costs as specified in Reg. 240.630(a). Any petition must be served and filed on or before **September 2, 2014**. Any response to such petition must be filed and served on or before **September 16, 2014**. Replies will be permitted only on leave of the hearing officer. A party may move for an extension of time to file and serve any of the above items pursuant to the provisions of Reg. 210.320. The Commission will rule according to the procedure in Reg. 240.630 (b) and (c).

CHICAGO COMMISSION ON HUMAN RELATIONS



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FINAL RULING ON LIABILITY AND RELIEF

I. PROCEDURAL HISTORY

On January 28, 2013, Complainant Sarah Hamilton filed a complaint with the Chicago Commission on Human Relations (the "Commission") alleging that Respondent Café Descartes discriminated against her due to her disability and her use of a service animal. Specifically, Complainant Sarah Hamilton alleged that Respondent's employees initially refused to allow her to enter Café Descartes with her service animal and, when they did allow her to enter, restricted her access to the restaurant's services under different terms and conditions than services offered to other non-disabled customers.

Also on January 28, 2013, Deborah Hamilton, Sarah Hamilton's mother, filed a complaint with the Commission alleging that Respondent Café Descartes discriminated against her due to her daughter's disability and her daughter's use of a service animal. Deborah Hamilton, who was with her daughter when this discrimination occurred, claimed she was also offered services at Café Descartes under different terms and conditions than other customers because of her daughter's disability and use of a service animal.

On March 7, 2013, Respondent Café Descartes, by its attorney, filed its Response to Complainants' Complaints and its Position Statement. Respondent stated it had insufficient evidence to respond to most of the allegations, and denied the actions alleged constituted discrimination under Chapter 2-160 of the Chicago Municipal Code. The Respondent further claimed that Complainants were not refused service or asked to leave the café.

On October 4, 2013, the Commission issued an Order Finding Substantial Evidence. On October 16, 2013, the Commission appointed the hearing officer and set a pre-hearing conference for December 3, 2013.

On October 30, 2013, Complainants filed notice that they had served a Request to Produce Documents on Respondent. On November 27, 2013, Complainants filed a Motion to Compel, noting that Respondent had not filed any objections to the request or provided the documents to Complainants. On December 5, 2013, an order for sanctions was issued against Respondent for failure to respond to Complainants' document request, noting that no objections to the request or response to the motion to compel had been filed with the Commission and no documents had been produced to Complainants. As a result, the hearing officer ordered that Respondent would not be allowed to use any non-produced materials to support its defense at the hearing.

On December 3, 2013, a pre-hearing conference was held. Complainants' attorney was present; no representatives from Respondent or its attorney appeared or alerted the Commission that they could not appear. On December 4, 2013, a Notice of Potential Default was issued. No response to the Notice of Potential Default

was ever received by the Commission from Respondent's representatives. As a result, on January 6, 2014, an Order of Default was issued, which stated that Respondent was deemed to have admitted the factual allegations of Complainants' Complaints and that Respondent would only be allowed to present evidence at the hearing as to the relief to be awarded.

On December 4, 2013, an order was issued requiring that pre-hearing memoranda be submitted by all parties on January 17, 2014, and that attendance at the January 23, 2014, hearing was mandatory. Complainants' Pre-hearing Memorandum was received on January 13, 2014; no pre-hearing memorandum was filed by Respondent's representatives.

On January 23, 2014, an administrative hearing was held. Complainants Sarah and Deborah Hamilton and their counsel were present. Complainant Sarah Hamilton's service dog, Jordan, was present throughout the hearing. Respondent's counsel appeared, but was not accompanied by any representatives from Respondent. On March 18, 2014, the hearing officer issued her Recommended Ruling. No objections were filed.

II. FINDINGS OF FACT

1. Complainant Sarah Hamilton is a person with multiple disabilities, including visual impairments, autism, and seizures. C (Sarah Hamilton), par. 1,¹ Tr. pp. 11 and 43.²

2. Complainant Deborah Hamilton is Sarah Hamilton's mother. C. (Deborah Hamilton), par. 1.³

3. Sarah Hamilton uses the services of a service dog named Jordan, a female yellow Labrador Retriever. C (Sarah Hamilton), par. 1. The service animal was trained to be a service animal by Paws Giving Independence, a Peoria, Illinois, an organization that trains and places service animals. Tr. 14. The service animal wears a vest indicating that she is a service animal. C (Sarah Hamilton), par. 1, Tr. 22. The service animal wears an ID badge issued by Paws Giving Independence, identifying her as a service animal. Tr. 14, 22. Exh. A.⁴ The identification card has a picture of the dog on the front and a statement of United States federal law on service animals on the reverse. Exh. A.

4. Respondent Café Descartes is a coffee shop open to the public that sells coffee, other drinks and some food. Tr. p. 18. Respondent Café Descartes is located at 327 North Michigan Avenue, Chicago, Illinois. C (Sarah Hamilton), par. 2.

5. Sarah Hamilton's autism causes emotional difficulties, difficulty with social interactions, and perseveration of thought (meaning she will focus on a certain idea or thought). Due to her perseveration, Sarah Hamilton might repeat an idea over and over and might get caught up in the details of a matter or event. Tr. p. 12. Due to her disability, Sarah Hamilton does not like change. She and her mother must prepare in advance for her daily activities so that she knows what to expect and what to do if there are any changes to that schedule. Tr. p. 11. It was evident to the hearing officer at the hearing that while Sarah Hamilton had difficulty expressing her emotions, she felt strongly about what had happened to her.

6. Sarah Hamilton has low vision, caused by retinal disinsertion, which she has had from birth. Tr. p. 12. She trips and falls frequently and has difficulty with threshold changes and stairs. Tr. p. 12. She is able to read when she holds reading matter close to her eyes. Tr. p. 13.

7. Sarah Hamilton has seizures for which she takes medication; currently the seizures occur infrequently. Tr. p. 13. The seizures impact her memory, disrupting some of her long-term memory storage. Tr. p. 13. Due to

¹ "C (Sarah Hamilton)" refers to the Complaint filed by Sarah Hamilton on January 13, 2013. "Par." refers to the paragraph of the Complaint referred to.

² "Tr. p." refers to the page of the transcript of the January 23, 2014 hearing.

³ "C (Deborah Hamilton)" refers to the Complaint filed by Deborah Hamilton on January 13, 2013. "Par." refers to the paragraph of the Complaint referred to.

⁴ "Exh." refers to exhibits admitted into evidence at the January 23, 2014, hearing. All exhibits were Complainants' exhibits; Respondent did not seek to admit any exhibits.

the perseveration caused by autism, however, Sarah Hamilton sometimes remembers things for a very long time. Tr. p. 13.

8. Sarah Hamilton has used a service animal named Jordan since November 2010. Tr. 13-15. Sarah Hamilton had asked her mother for a dog after it was suggested that she use a cane to protect her from falls; Sarah resisted the idea of using a cane. Tr. 14. Her mother realized that Sarah's autism and seizures might also benefit from having a service dog. Tr. 14.

9. Sarah Hamilton's service animal had a year of basic training in a foster family, followed by a year of training at the Peoria Paws Giving Independence Center. Tr. 14-16. During the second year of the dog's training, Sarah travelled back and forth to Peoria. Tr. 14-16. The family spent the summer of 2010 in Peoria in training, followed by several visits by the service animal to Sarah's home. Tr. 16. Sarah was very involved in all of the Paws Center activities, many of which were group activities. Tr. 16-17. Sarah feeds, bathes and walks her service dog, and thinks giving her dog care is critical to the service the dog provides. Tr. 45-46. Sarah would never do anything that would put the dog in harm's way. Tr. 46. The service dog goes everywhere with Sarah unless the weather is too hot or too cold. Tr. 46. Sarah has been trained to place her service dog under tables and not in high traffic areas so people do not trip over the dog. Tr. p. 47.

10. Sarah Hamilton's service animal guides her around obstacles and helps her with threshold changes, especially stairways. The dog is trained to create a pause for Sarah at the top and bottom of stairs. Tr. pp. 15, 43 and 45.

11. Sarah Hamilton's service animal has also been trained to assist her with social interactions. On Sarah's "visit" command, the dog will socialize with other people, getting "wiggly" and "all puppy with people." Tr. pp. 43-44. Usually service dogs are not allowed to be petted, but Sarah's dog is an exception if she gives the command. Tr. p. 15. Sarah's testimony showed that she took great pride in taking care of and using her service animal.

12. Deborah Hamilton believes that the service dog has helped her daughter engage with other people, including strangers. People love to talk with Sarah about their dogs. Tr. 15. Sarah's ability to socialize increased significantly after she obtained the service animal. Tr. 15. Sarah thinks it is "cool" that people talk about their dogs with her and says having her service animal makes it easier for her to talk to people. Tr. p. 44.

13. Sarah Hamilton's service dog attended the hearing on January 23, 2014, at the Commission's offices without incident. The dog stayed beneath the conference table and was neither seen nor heard during the hearing. Tr. 17.

14. Sarah Hamilton's service dog always wears a vest when the dog is working or is outside of the home. Tr. p. 18. When the dog is at home, she does not wear the vest and knows she can "act like a puppy." Tr. p. 18.

15. On January 21, 2013, Sarah and Deborah Hamilton and the service dog were travelling to see Sarah's doctor at Northwestern University. Tr. p. 19. They prefer to walk to Northwestern University from the train station because they have a long train ride from their home and the service dog needs to find a place to relieve herself. Tr. p. 20. Sarah and Deborah Hamilton had planned to stop at Respondent Café Descartes because the location was halfway between the train station and the doctor's office. Tr. 20. They had never been to Café Descartes before that day. Tr. 20.

16. On January 21, 2013, the service dog was wearing her vest. Tr. 20-21, Exh. B.

17. Shortly after 9:00 a.m. on January 21, 2013, Sarah and Deborah Hamilton and the service dog entered Respondent Café Descartes. They were the only customers in the café at that time. There was one employee, a young Hispanic male. Tr. pp. 21-22. Sarah and Deborah Hamilton and the service dog had to enter the secondary entrance door on the northeast side because the main door was a revolving door. Tr. p. 22.

18. As soon as Sarah and Deborah Hamilton and the service dog entered the door, the employee saw them and said excitedly, "No pets, no pets." Tr. p. 22; C (Sarah Hamilton), par. 2; C (Deborah Hamilton), par. 2.

Sarah pulled the service dog's identification badge out of the zipper pocket on the dog's vest and gave it to Deborah Hamilton. Tr. p. 22. Deborah Hamilton explained to the employee that the dog was a service animal and tried to show him the identification badge which had information about the right to use service animals. Tr. p. 22, Exh. A. The employee refused to look at the badge or engage in any conversation with the Hamiltons, and just kept saying, "No pets." Tr. pp. 22-23; C (Sarah Hamilton), par. 3; C (Deborah Hamilton), par. 3.

19. At this point the employee called someone on the telephone, who was later identified by Respondent as the owner of the café. R, par. 3.5 Deborah Hamilton hoped it was a supervisor who would resolve the situation. Tr. pp. 24-25. Deborah heard the words "dog" and "pet" but did not know what the conversation was about. Tr. pp. 24-25. After the employee ended the phone conversation, the employee told them that they could stay with the service dog, but only for one-half hour. Tr. pp. 24-25; C (Sarah Hamilton), par. 3; C (Deborah Hamilton), par. 3.

20. Deborah Hamilton told the employee that the situation (the 30-minute restriction) was still not right and did not follow the ADA [Americans with Disabilities Act]. She told the employee they would be staying longer than one-half hour. Tr. 25.

21. At that point, other customers began to come into the store. Deborah Hamilton did not hear anyone else being told they had to leave or that there was a time limit being put on their stay. Tr. 25. No written policy stating a time limit was posted. Tr. 26.

22. Sarah and Deborah Hamilton and the service dog sat down in Café Descartes. The service dog was under the table, was not blocking any customer traffic, and was not in any liquid. Tr. pp. 26-27, 47-48. Deborah Hamilton was very upset by the treatment she and Sarah received and posted the story on Facebook.⁶ She tried to call the federal Department of Justice but it was a holiday and she could not contact anyone. Deborah Hamilton was usually able to resolve these kinds of situations (where people resisted the idea of allowing a service animal into an establishment), but could not find a higher source of authority on that day. Tr. pp. 26-27.

23. The Hamiltons and the service dog then moved to another table so they could recharge Deborah Hamilton's mobile phone at an outlet in the café. That table was tucked away in a corner of Café Descartes. Tr. p. 28. The service dog was sitting in the corner and was not blocking customer traffic nor was the dog sitting in water. Tr. p. 28. Deborah then called the Chicago Police Department non-emergency number (311). Tr. p. 29.

24. A Chicago Police Officer came and spoke with the employee and then talked with the Hamiltons. The police officer told the Hamiltons that the employee said there had been a chemical spill on the floor and that was the reason the dog could not enter. Deborah and Sarah Hamilton had not smelled any chemical odor or seen any puddles on the floor and noted that no other customers, including children, had been asked to leave. Tr. pp. 30-31; C (Sarah Hamilton), par. 4; C (Deborah Hamilton), par. 4. The Hamiltons had noticed the employee mopping one small area of the café at 9:30 a.m., about 30 minutes after they entered, but neither the Hamiltons nor the dog were near that area. C (Sarah Hamilton), par. 4; C (Deborah Hamilton), par. 4. The hearing officer found that the employee's claim that there was a chemical spill was false and a pretext for disability discrimination.

25. The Hamiltons had no further contact with Respondent's employee and left around 10:20 a.m. Tr. p. 31. They did not order any food or drink because they were told to leave when they arrived before they were able to order. Tr. p. 42.

26. Sarah Hamilton was surprised by the statement of Respondent's employee to the Chicago Police Officer that there had been a chemical spill. Tr. p. 47. Sarah said the statement was outrageous because "they pulled it out of nowhere." Tr. p. 47. Sarah Hamilton has not returned to Café Descartes because it "creates an uncomfy situation" and she does not want to return to that kind of situation. Tr. p. 48.

⁵ "R." refers to the Respondent's Answer to the Complainants' Complaint.

⁶ Deborah Hamilton testified about the after-effects of her posting on Facebook and attempted to have exhibits admitted about these actions and the responses of the Respondent to the Facebook posts. Tr. pp. 32-33. The exhibits were not admitted. The hearing officer found that this testimony is not relevant to the issue of whether discrimination occurred.

26. The reaction to Sarah Hamilton's service animal was stressful for both Deborah and Sarah Hamilton. There have been other times when they have had problems with access, but this situation was the most extreme. Tr. 37.

27. Sarah Hamilton has become fixated on the incident and it has become one of her "hang-ups." Tr. 37 Sarah and Deborah Hamilton and the service dog make regular trips between the train station and Northwestern University to see Sarah's specialists and their route passes Café Descartes. Tr. 37. When passing Café Descartes, Sarah will ask if they are close to the café or whether they are on the same block, and will vocalize about it. Tr. 38. The Hamiltons have altered their route to the other side of the street to lessen Sarah's anxiety so they are not walking directly in front of the café. Tr. 38.

28. Sarah Hamilton worries that if she walks by Café Descartes the employee might think she is "bugging him." Tr. p. 48.

29. Deborah Hamilton believes the experience has possibly increased Sarah's anxiety when encountering a new store. Tr. 38. Sarah says the situation makes her more on guard and she now expects this kind of thing to happen again which makes her a "little bit" scared. Tr. p. 49.

30. According to Deborah Hamilton, due to Sarah's autism, she is a "black and white thinker," meaning it is hard for her to tell a lie. Deborah Hamilton said that hearing from the Chicago Police Officer that the employee said they had put the service dog in harm's way upset Sarah, as she takes pride in caring for her service animal. Tr. 39-40.

31. Deborah Hamilton was upset about the situation on that day, but hopes it was an outlier or unusual occurrence. She would do a lot to avoid having that kind of situation happen again. Tr. 40.

32. Respondent offered no evidence, including evidence about its resources, at the hearing although the Order of Default had stated Respondent could have provided such evidence in response to the request for damages.

III. CONCLUSIONS OF LAW

1. Section 2-160-070 of the Chicago Human Rights Ordinance states that:

No person that owns, leases, rents, operates or 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.....

2. Section 2-160-020(c) of the Chicago Human Rights Ordinance defines "disability" in part as follows:

Disability means a determinable physical or mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder.

Complainant Sarah Hamilton has a disability and is protected against discrimination based on that disability. Further, Complainant Deborah Hamilton suffered indirect discrimination based on the disability of her daughter, Sarah Hamilton.

3. Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination in a public accommodation operating in the City of Chicago. Section 2-160-020(i) of the Chicago Human Rights Ordinance defines public accommodation as follows:

"Public accommodation" includes a place or business establishment located in the City of Chicago that sells, provides, or offers products and services to the general public.

Respondent is a covered public accommodation because it offers restaurant services to the general public in the City of Chicago.

4. Section 2-160-070 provides that a public accommodation must not “deny, curtail, limit or discriminate concerning the full use of such public accommodation.” “Full use” is defined by CCHR Reg. 520.110 to mean:

... all parts of the premises open to the public shall be available to persons who are members of a Protected Class [including persons with disabilities] at all times and under the same conditions as the premises are available to all other persons and that the services offered to persons who are members of a Protected Class shall be offered under the same terms and conditions as are applied to all other persons.

Respondent curtailed the full use of its services and offered those services in a discriminatory manner to Complainants Sarah and Deborah Hamilton because of Complainant Sarah Hamilton’s disability and use of a service animal in that Respondent curtailed the entry to and use of the premises to Complainants in contrast with other non-disabled customers.

5. CCHR Regulation 520.105 provides:

No person who owns, leases, rents, operates, 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.

6. CCHR Reg. 520.130 defines “Reasonable Accommodation” as:

“... accommodations (physical changes or changes in rules, policies, practices or procedures) which provide persons with a disability access to the same services, in the same manner as are provided to persons without a disability.” CCHR Reg. 520.110. “ ‘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.”

Respondent did not reasonably accommodate Complainants Sarah and Deborah Hamilton in that it did not alter its rules against “pets” on the premises (as stated by its employee) to allow Sarah Hamilton to enter and be served accompanied by her service animal in the same manner as other customers without disabilities.

IV. DISCUSSION

In order to prove a *prima facie* case of discrimination based on disability, a complainant must prove that: 1) she is a person with a disability within the meaning of the Chicago Human Rights Ordinance (“CHRO”), 2) she is a qualified individual who has established all of the non-discriminatory requirements for service, and 3) she did not have full use of the public accommodation as other patrons without disabilities. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010); *Maat v. String-A-Strand*, CCHR No. 05-P-05 (Feb. 20, 2008).

Complainant Sarah Hamilton has established the elements of a *prima facie* case in this matter. She is a person with physical or mental impairments. She is a qualified individual; qualification to use a restaurant is minimal and requires generally the desire to utilize and pay for the services offered to the public for a fee. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010). Complainant proved that she did not have access to the public accommodation, because she was told by Respondent’s employee upon entering that she could not enter with her “pet.” Complainant Sarah Hamilton also proved that Respondent curtailed her use of the public accommodation. After the employee consulted with the owner, Complainant was told by Respondent’s employee that she and her mother could only stay for thirty minutes; no other customers were informed in writing or orally that they were restricted in the use of the public accommodation in this way. *Cotten supra*.

Deborah Hamilton's claim of discrimination is based on her association with her daughter and her daughter's service animal. The Commission has long recognized that an individual can state a claim of public accommodation discrimination even though that person is not a member of a protected class if that individual had been discriminated against due to his or her association with a member of the protected class. *Sohn/Cohen v. Costello/Horwich*, CCHR No. 91-PA-19 (Oct. 8, 1992) (Commission established basis of indirect discrimination where white dentists stated claim of discrimination when the respondents refused to renew the lease because clients were black); *Efstathiou v. Café Kallisto*, CCHR No. 95-PA-1 (May 21, 1997) (white man has a claim of discrimination against a restaurant because it refused to admit him into the restaurant because his companions were black). See also, *Anderson v. Stavropoulos*, CCHR No. 98-H-14 (Feb. 16, 2000) (Caucasian may bring indirect discrimination claim that he was unable to co-rent his apartment due to Respondent's bias against African-Americans); *Pudelek/Weinmann v. Bridgeview Garden Condo. Assoc. et al.*, CCHIR No. 99-H-39/52 (Apr. 18, 2001) (Respondent liable for having "adults-only" policy which discouraged Complainant from selling unit to buyers with a child); and *Workman v. First National Bank of Chicago*, CCHR No. 95-E-106 (Jan. 4, 1996) (white woman has claim of discrimination based on allegations that she was fired because she hired a black employee).

Complainant Deborah Hamilton has also established the elements of a *prima facie* case of discrimination. Deborah Hamilton proved that she was with her daughter and her daughter's service animal when she was initially denied access to the café, and then was denied full access to Respondent's public accommodation due to the use of her daughter's service animal, and that she was a qualified individual who wished to use the services of the public accommodation.

Once Complainants 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. However, 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 Complainants to establish a *prima facie* case and to establish the nature and amount of relief to be awarded. Respondent was allowed to present evidence only as to the relief to be awarded, but chose not to present any evidence. CCHR Reg. 235.320.

Thus, the hearing officer determined that Complainants Sarah and Deborah Hamilton have established that Respondent violated Section 2-160-070 of the Chicago Human Rights Ordinance when its employee initially refused them entry into the café, and then subsequently curtailed their full use and enjoyment of Respondent's public accommodation due to Sarah Hamilton's disability and use of a service animal. The Board of Commissioners agrees and adopts the hearing officer's recommendation.

V. REMEDIES

Upon determining that a violation of the Chicago Fair Housing Ordinance or the Chicago Human Rights Ordinance has occurred, the Commission may award relief as set forth in §2-120-510(l) of the Chicago Municipal Code:

[T]o order such relief as may be appropriate under the circumstances determined in the hearing. Relief may include but is not limited to 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 hire, reinstate or upgrade the complainant with or without back pay or to provide such fringe benefits as the complainant may have been denied; 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 back pay 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 Chapter 2-160 and Chapter 5-8.

CHRO, Section 2-120-510(l).

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 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 more 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), *aff'd* 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.

At the hearing, Complainants asked for \$15,000 in damages, but did not specify the bases for those damages. Complainants did not seek damages for any particular out of pocket expenses, so damages will be limited to damages for their emotional distress.

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 compensable emotional distress damages. *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62, at 11 (Oct. 21, 1998). Respondents must take complainants as they are, even if they have pre-existing conditions which make them more vulnerable; but Respondents are only liable for the increased level of distress for failure to accommodate. *Winter, supra*.

Emotional distress damages awarded by the Commission have varied, from amounts such as \$50,000, to far smaller amounts. In *Winter*, for example, the complainant was awarded \$50,000 in damages for emotional distress because she was forced to toilet herself in view of other people due to the inaccessibility of the respondent's facilities and, as a result, suffered on-going mental health consequences. In *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 (Aug. 16, 2006), the Commission awarded \$1,000 in emotional distress damages to a complainant with a disability who was not able to access a restaurant, but who offered "sparse evidence" of inconvenience. In *Morrow v. Driver of Cab #1357 (Tumala)*, CCHR Case No. 03-P-2 (Apr. 18, 2007), the Commission awarded \$5,000 in emotional distress damages, finding that although the case presented just one incident of race discrimination by a cab driver, it resulted in the complainant having ongoing emotional problems and thoughts of being viewed as a "lesser human" due to her race. In *Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012), the Commission awarded the complainant \$3,500 for one incident of unequal access discrimination where the complainant was humiliated on the night of the incident and continued to feel the effects when recounting the discriminatory incident at her hearing. The complainants in *Burford v. Complete Roofing and Tuck Pointing and Michael Smith*, CCHR No. 09-P-109 (Oct. 19, 2011), a mother and daughter, also received \$3,000 each for the discriminatory action taken by a roofing contractor who refused to come into their home and used racially derogatory statements. Again this was a one-time incident, but was deeply offensive.

In this case, the hearing officer determined that Complainant Sarah Hamilton is entitled to damages for her emotional distress. Due to her diagnosis of autism, Sarah Hamilton is a vulnerable complainant for whom confrontations are particularly distressing as evident from her testimony and demeanor at the hearing. She described the situation at the café as "uncomfy," a term which the hearing officer determined encompasses distress. She was surprised and outraged when Respondent's employee stated that she had put her service animal in danger, when she knew that was not true. Sarah became "fixated" on the events. This fixation causes her to become disturbed whenever she walks near Respondent's café, which she must do regularly on her way to frequent medical visits. She worries that the employee at the Café Descartes might think that she is "bugging him." Sarah is more on guard now when entering new environments because of this incident.

Complainant Deborah Hamilton was also stressed by the situation on the day of the event and its aftermath. Deborah Hamilton worries that her daughter will become more reluctant to try new places or socialize as a result of this event. Deborah has encountered times at other business establishments when she had to explain that the service animal must be allowed into a public accommodation, but this situation was the most extreme incident she and Sarah have encountered. Deborah Hamilton said that due to her daughter's autism she is a "black and white thinker," and was upset to hear from the Chicago Police Officer that Respondent's employee said Sarah had put her service animal in harm's way. Deborah is concerned with Sarah's fixation over this event, and noted that it has become a "hang-up" for her daughter. Deborah has changed the route to Sarah's medical appointments to avoid walking in front of the café, but even if they are across the street from the café, Sarah will ask if they are close to the café and will ask repeated questions about the location and incident.

The hearing officer found that the situation encountered by Sarah Hamilton is analogous to the situation in the *Morrow* case cited above. Due to Sarah's special vulnerability because of her diagnosis of autism, this one incident continues to impact her life, causing her to be more anxious in new situations. She is fixated on the situation at Café Descartes and continues to change her regular routine in order to avoid coming close to the restaurant. Sarah Hamilton was very disturbed by the false accusation that she was placing her service animal in danger. Therefore, the hearing officer recommended an award of \$5,500 in damages for her emotional distress.⁷ The Board of Commissioners agrees with this recommendation.

The hearing officer found that Deborah Hamilton also continues to be impacted by this one incident. She worries about her daughter in new situations and is concerned that her daughter may not be as comfortable in social situations as before. Deborah Hamilton hopes that being denied access due to the service animal was an unusual occurrence, as this event was stressful for her. Because Deborah does not have the special vulnerability that her daughter has, the hearing officer recommended an award of \$3,000 in damages for her emotional distress. The Board agrees with this recommendation.

⁷ This adjusts the *Morrow* award to account for inflation.

http://inflationdata.com/Inflation/Inflation_Calculators/Inflation_Calculator.asp

b. Punitive Damages

Punitive damages are appropriate when a respondent's action is shown to be a product of evil motives or intent or when it involves a reckless or callous indifference to the protected rights of others. *Houck v. Inner City Horticultural Foundation, supra*, quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983), a case under 42 U.S.C. §1983. See also *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998), stating, "The purpose of an award of punitive damages in these kinds of cases is 'to punish [the respondent] for his outrageous conduct and to deter him and others like him from similar conduct in the future.'" See also *Restatement (Second) of Torts* §908(1) (1979). Punitive damages may be particularly necessary in cases where actual damages are modest, to ensure a meaningful deterrent. *Miller v. Drain Experts et al.*, CCHR No. 97-PA-29 (Apr. 15, 1998).

In determining the amount of punitive damages to be awarded, the "size and profitability [of a respondent] are factors that normally should be considered." *Soria v. Kern*, CCHR No. 95-H-13 (July 18, 1996) at 17, quoting *Ordon v. Al-Rahman Animal Hospital*, CCHR No. 92-E-139 (July 22, 1993) at 18. However, "neither Complainants nor the Commission have the burden of proving Respondent's net worth for purposes of...deciding on a specific punitive damages award." *Soria, supra* at 17, quoting *Collins & Ali v. Magdenovski*, CCHR No. 91-H-70 (Sept. 16, 1992) at 13. Further, "If Respondent fails to produce credible evidence mitigating against the assessment of punitive damages, the penalty may be imposed without consideration of his/her financial circumstances." *Soria, supra* at 17.

In considering how much to award in punitive damages where they are appropriate, the Commission also looks to a respondent's history of discrimination, any attempts to cover up the conduct, and the respondent's attitude towards the adjudication process including whether the respondent disregarded the Commission's procedures. *Brennan v. Zeman*, CCHR No. 00-H-5 (Feb. 19, 2003), quoting *Huff v. American Mgmt. & Rental Svc.*, CCHR No. 97-H-187 (Jan. 20, 1999).

Not only did Respondent's employee discriminate against Complainants, but Respondent's owner exacerbated that discrimination by stating that while Complainants would be permitted to enter the café, they could only remain for 30 minutes. In addition, Respondent only minimally participated in the Commission's processes, evidencing a level of contempt for the process, which should also be taken into account in determining punitive damages. *Brennan, supra*. Neither Respondent's employee nor its owner appeared to testify at the hearing, so their motivations for the actions and any remorse following the discriminatory actions cannot be determined. However, on the day of the incident, the owner did tell the employee to limit Complainants' time in the restaurant, so it can be assumed that barring or curtailing access for service animals is a policy – formal or informal – of Respondent.

In determining the amount of punitive damages to be awarded, the size and profitability of Respondent's business are factors that normally would be considered. *Hanson, supra*. Respondent, however, did not present any evidence regarding its financial condition although the Order of Default did specify that Respondent could present evidence as to the relief to be awarded. CCHR Reg. 235.320.

In order to deter Respondent from acting in this manner again and to deter others from acting similarly, the hearing officer recommended an award of \$3,000 to each Complainant, for a total of \$6,000 in punitive damages, which is the same amount given to the complainant in *Morrow*, cited above, for similar circumstances. The hearing officer found that the recommended award is warranted based on the facts of the case and the actions taken by Respondent. The Commission agrees and adopts the hearing officer's recommendation.

c. 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 January 21, 2013, the date of the discriminatory act.

d. Injunctive Relief

Section 2-120-510(l) authorizes the Commission to order injunctive relief to remedy a violation of the Chicago Human Rights Ordinance. The Commission is authorized to order injunctive relief *sua sponte* in order to remedy and prevent future discrimination. *Cotten v. La Luce Restaurant*, CCHR 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 *Manzanares, supra*, a restaurant club owner who curtailed use of its facility due to the complainant's transgender status was ordered to adopt a written anti-discrimination policy to prevent future gender identity 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. Similarly, in *Roe v. Chicago Transit Authority, et al.*, CCHR No. 05-E-115 (Oct. 20, 2010), the respondent was ordered to provide mandatory training to employees on laws and internal policies prohibiting discrimination with a focus on workplace harassment; again, the respondent was ordered to provide proof of compliance with these activities with the Commission. *See also Cotten v. La Luce Restaurant*, CCHR 08-P-34 (Apr. 21, 2010) (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); *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009) (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); *Maat v. String-A-Strand*, CCHR 05-P-5 (Feb. 20, 2008) (the respondent was ordered to provide an accessible entrance and volunteer at an agency that assisted people with disabilities).

In this case, both Respondent's owner and employee participated in the discriminatory actions against Complainants. 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):

- 1. Respondent must develop a written policy which provides that the use of service animals should not be used as a basis for denying admission to or otherwise curtailing use of Respondent Café Descartes, within 30 days of the date of the Commission's Order.** Respondent shall not require that service animals have any particularized identification, as that is not required by local, state or federal laws. Respondent shall not require that service animals be relegated to only certain areas in Café Descartes or that people with service animals may be limited to any length of time in the café unless all customers are so limited.
- 2. Respondent must install written notices on all of the entrances to Café Descartes that service animals are welcome, within 30 days of the date of the Commission's Order,**
- 3. The written policy described in paragraph 1 above shall be distributed to all of Respondent's employees and management personnel within 45 days of the date of the Commission's order.** In the distribution Respondent shall note that following the policy is mandatory for all of Respondent's employees and administrative personnel.
- 4. All employees and administrative personnel at Respondent Café Descartes shall attend a mandatory training on the policy, and on the rights of people in all protected classes, including people who use service animals, within 60 days of the date of the Commission's Order,**
- 5. Respondent shall provide the Commission with proof of its compliance** with each of these steps within two (2) weeks of the deadlines set forth above.
- 6. 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 Regs 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.

7. 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).

e. Fines

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. Every day that a violation shall continue constitutes a separate and distinct offense. The Commission adopts the Hearing Officer's recommendation that a fine of \$1,000 be assessed in this case against Respondent.

f. Attorney Fees and Costs

Section 2-120-510(I) allows the Commission to order a respondent to pay all or part of the prevailing complainant's reasonable attorney fees and associated costs; fees are routinely granted to prevailing complainants. *Jones v. Lagniappe – A Creole Cajun Joynt LLC and Mary Madison*, CCHR No. 10-E-40 (Dec. 19, 2012). Attorney fees and costs should be awarded to Complainants with the amount to be determined by further ruling of the Commission pursuant to the procedures stated in CCHR Reg. 240.630.

VI. CONCLUSION

For the reasons stated above, the Commission adopts the Hearing Officer's recommendation and finds Respondent Café Descartes liable for public accommodations discrimination in violation of the Chicago Human Rights Ordinance. As detailed above, the Commission orders the following relief:

1. Payment to Complainant Sarah Hamilton of emotional distress damages in the amount of \$5,500.
2. Payment to Complainant Deborah Hamilton of emotional distress damages in the amount of \$3,000.
3. Payment to Complainant Sarah Hamilton of punitive damages in the amount of \$3,000.
4. Payment to Complainant Deborah Hamilton of punitive damages in the amount of \$3,000.
5. Payment of interest on the damages from the date of the violation.
6. Compliance with the order of injunctive relief as described above.
7. Payment of a fine to the City of Chicago in the amount of \$1,000.
8. Payment of reasonable attorney fees and costs to be determined pursuant to CCHR Reg. 240.630. and by further orders of the Commission.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: Mona Noriega
Mona Noriega, Chair and Commissioner
Entered: June 18, 2014