



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

IN THE MATTER OF:

Anthony Cotten
Complainant,

v.

Samer Food, Inc.
Respondent.

Case No.: 13-P-83

Date of Ruling: September 10, 2015

Date Mailed: September 28, 2015

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

Samer H. Morrar
Samer Food, Inc.
6250 S. Morgan St.
Chicago, IL 60636

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on September 10, 2015, the Chicago Commission on Human Relations issued a ruling in favor of Complainants in the above-captioned matter, finding that Respondent violated the Chicago Human Rights Ordinance. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission orders Respondent:

1. To pay to Complainant Anthony Cotten emotional distress and punitive damages in the amount of \$600, plus interest on that amount from December 2, 2013, in accordance with Commission Regulation 240.700.
2. To comply with the order of injunctive relief stated in the enclosed ruling.
3. To pay a fine to the City of Chicago in the amount of \$500.¹

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law.

CHICAGO COMMISSION ON HUMAN RELATIONS

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.

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COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF:

Anthony Cotten
Complainant,
v.

Samer Food, Inc.
Respondent.

Case No.: 13-P-83

Date of Ruling: September 10, 2015

FINAL RULING ON LIABILITY AND RELIEF

I. PROCEDURAL HISTORY

On December 2, 2013, Complainant Anthony Cotten filed a complaint with the Chicago Commission on Human Relations (“Commission”) alleging that Respondent Samer Food, Inc., located at 6250 S. Morgan St., Chicago, Illinois, discriminated against him due to his disability. Complainant Cotten, who has a disability and uses a wheelchair for mobility, alleged that Respondent’s grocery store was physically inaccessible to him and did not offer services to him under the same terms and conditions that services were offered to other customers without disabilities.

Complainant’s complaint was sent by the Commission to Respondent Samer Food, Inc., on December 15, 2013, along with a notice that Respondent was required to file a Response to the Complaint on or before January 13, 2014. No response to the Complaint was filed as required by Commission Regulations. An Order to Respond and Notice of Potential Default was sent to Respondent on January 15, 2014, and stated that a Response to the Complaint was due by January 29, 2014. Again Respondent failed to file a timely Response.

On February 25, 2014, a Second Order to Respond and Notice of Potential Default was sent to Respondent requiring a Response by March 12, 2014. On March 11, 2014, Respondent filed a Verified Response. In the Response, Samer Food, Inc., denied that it had discriminated against the Complainant. Further, the Response stated that Respondent was courteous to every customer and provided assistance to customers when assistance was needed. Respondent also alleged that as a tenant of the premises, it was not allowed to change any structures in the building.

On October 16, 2014, the Commission issued an Order Finding Substantial Evidence. On October 29, 2014, the Commission issued an Order Appointing the Hearing Officer and Commencing the Hearing Process. A pre-hearing conference was set for December 2, 2014, at the Commission’s offices. On November 3, 2014, the Hearing Officer issued an Order detailing certain procedural requirements; the Order also stated that December 2, 2014, was the date of the pre-hearing conference. Prior to the pre-hearing conference, the Hearing Officer was hospitalized and the parties were notified by telephone by Commission staff that the conference would be rescheduled. A notice rescheduling the pre-hearing conference to January 8, 2015, was sent to the parties on December 10, 2014.

On January 8, 2015, a pre-hearing conference was held. Complainant was present; Respondent was not. On January 9, 2015, a Notice of Potential Default against Respondent was issued by the Hearing Officer. Respondent was given 28 days to provide good cause for the reason Respondent was not present at the pre-hearing conference, and to ask that no order of default be entered. Respondent filed no response to the Notice of Potential Default; an Order of Default was issued on February 17, 2015. Respondent was notified both in the Notice and the Order that if a default order was entered, Respondent would be 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." (Emphasis added.) The hearing scheduled on this matter "shall be held only to allow the complainant to establish a *prima facie* case and to establish the nature and amount of relief to be awarded." CCHR Reg. 235.320. Awarded relief can include damages to complainants and injunctive relief. At the hearing, "a respondent who has been found in default may present evidence as to the relief to be awarded." CCHR Reg. 235.320.

A hearing was scheduled for April 14, 2015. Prior to the hearing, Respondent was notified by in two orders that if Samer Food, Inc., was a corporation under Illinois law that it must be represented by an attorney. Notice of the hearing date on April 14 was sent to Respondent by Order of the Hearing Officer on February 17, 2015.

On April 14, 2015, a hearing was held. Complainant was present; Respondent did not appear, nor did Respondent notify the Commission before the hearing date that it could not appear or file a motion for a new hearing date. Complainant was the only witness.

On April 15, 2015, the day after the hearing, the wife of Samer Morrar, president of Respondent Samer Food, Inc., contacted the Commission by telephone and stated that her husband did not attend the April 14, 2015, hearing because "he was in the hospital for emergency surgery." On April 16, 2015, Mr. Morrar's wife faxed the Commission and the Hearing Officer a note from Mr. Morrar's doctor stating that Mr. Morrar had had surgery for kidney stones and related kidney dysfunction on April 15, 2015, and also three weeks prior, which "required him to miss work and other appointments." Based on the phone call and the doctor's note, an order was issued and sent to both parties that the hearing would be reconvened on June 25, 2015.¹ The order reminded Respondent that the Order of Default from its failure to appear at the pre-hearing conference was still in effect because the doctor's note for Mr. Morrar did not provide an excuse for Respondent's failure to appear at the pre-hearing conference. The order further reminded Respondent that, if it was a corporate entity, it must be represented by an attorney at the hearing.

The reconvened hearing was scheduled for June 25, 2015. Neither Complainant nor Respondent was in attendance. At 4:12 p.m., on June 24, 2015, the day before the 9:30 a.m. hearing, Complainant faxed the Commission a motion requesting a new date because he was "ill due to my depression." Due to the lateness of the fax from Complainant, the Hearing Officer did not receive that motion prior to the date of the hearing.² The Hearing Officer did not rule on the motion prior to the time of the hearing, nor was the Commission able to reach Respondent's representative by telephone prior to the hearing to inform him that the hearing would go forward. Complainant did not indicate whether Respondent received a copy of the motion for continuance.

¹ None of the Orders issued by the Hearing Officer and sent to Respondent throughout this process were returned by the United States Postal Service as undeliverable.

² Complainant did not fax a copy of the motion to the Hearing Officer, which is required by Commission regulations.

No one representing Respondent contacted the Commission to inquire if the June 25, 2015, hearing would go forward or if it would be delayed, nor did anyone representing Respondent file a motion seeking a new date for the hearing or otherwise contact the Commission or the Hearing Officer.

In view of the fact that Complainant had appeared at each proceeding until the second hearing on this matter, and that Respondent had once again failed to appear or inform the Commission that it would not be appearing at the hearing, the Hearing Officer determined that an order would be issued based on the hearing held on April 14, 2015.

On July 1, 2015, the Hearing Officer issued her Recommended Ruling on Liability and Relief, notifying the parties of the deadline to file and serve any objections. No objections were received.

II. FINDINGS OF FACT

1. Complainant Anthony Cotten has a disability and uses a wheelchair for mobility. C., par. 1.³

2. Respondent Samer Food, Inc., is a grocery store open to the public located at 6250 S. Morgan, Chicago, Illinois. C.; R.⁴

3. On December 2, 2013, Complainant and his friend, Craig Sanders (“friend”), went to Respondent’s grocery store. C., par. 3-4; Tr., p. 5⁵. Complainant wished to purchase some items. *Id.*

4. When Complainant and his friend arrived at Respondent’s grocery store, Complainant observed that the store was not accessible because there were two or three large stairs at the entrance. C., par. 3; Tr., p. 5-6. Complainant asked his friend, who does not have a mobility impairment, to go inside to see if there was an accessible entrance to the store or if the store had a portable ramp. C., par. 4, Tr., p. 6. Complainant’s friend went inside the store to ask if the store had a portable ramp or an accessible entrance. Tr., p. 6.

5. When his friend returned after about ten minutes, he told Complainant that he had spoken with an employee who said the store did not have either an accessible entrance or portable ramp for Complainant to enter. C., par. 4; Tr., p. 6. Complainant’s friend then asked him if he wanted him to purchase anything in the store, and Complainant said he was not sure what the store had, but he would like some water and chips. C., par. 4; Tr., p. 7. Complainant’s friend returned to the store while Complainant waited outside. Tr., p. 7. After purchasing these items, Complainant’s friend returned to the car and they left the area. Tr., p. 7.

6. No employee in the store came outside to speak with Complainant and apologize to him that the store was inaccessible. Tr. p. 7. No one came out of the store to suggest any alternative method of obtaining the services and goods the store offered or to provide any other assistance. Tr. p. 7. Complainant stated that Respondent’s Response had said that it offered

³ “C.” refers to the Complaint filed by Complainant.

⁴ “R.” refers to the Response filed by Respondent.

⁵ “Tr.” refers to the transcript from the hearing on April 14, 2015. “P.” refers to the page number of that transcript.

other services, but none were not offered to him on that date. Tr. pp. 7-8. Complainant said it made him feel that the store did not care if he was able to come in or not. Tr. p. 7.

7. Complainant testified that it bothered him that he had to have his partner and friend go inside and do Complainant's shopping for him. It upset him that he was not "allowed" to go into places and shop on his own. Tr. p. 5. It bothered him that he could not go into the store and see what items might be on sale. Tr. p. 6.

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.....

Section 2-160-020(c) of the Chicago Human Rights Ordinance defines "disability" in part as "a determinable physical or mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder"

Complainant Anthony Cotten has a disability pursuant to Section 2-160-070 and is protected against discrimination in the City of Chicago based on that disability.

2. Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination in a public accommodation operating in the City of Chicago. "Public accommodation" includes a place or business establishment located in the City of Chicago that sells, provides, or offers to the general public products and services. Section 2-160-020(i).

Respondent is a covered public accommodation pursuant to Section 2-160-070 because it offers retail grocery services to the general public in the City of Chicago.

3. 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 Complainant Anthony Cotten because of Complainant's disability in that Respondent's store was inaccessible to Complainant, thereby curtailing the entry to, and use of the premises, to Complainant in contrast with other customers without disabilities, in violation of Section 2-160-070.

4. 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.

“Reasonable Accommodation” is defined 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. 520.120. “Undue hardship” will be established “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.” CCHR Reg. 520.130.

Respondent did not reasonably accommodate Complainant Anthony Cotten in that it did not provide an accessible entry that allowed Complainant to enter and to be served in the same manner as other customers without disabilities, in violation of CCHR Reg. 520.105. Further, Respondent did not provide reasonable accommodations to allow Complainant to otherwise receive all of Respondent’s retail services in violation of CCHR Reg. 520.105.

IV. DISCUSSION

In order to prove a *prima facie* case of discrimination based on disability, a complainant must prove that: 1) he is a person with a disability within the meaning of the Chicago Human Rights Ordinance (“CHRO”), 2) he is a qualified individual who has established all of the non-discriminatory requirements for service, and 3) he did not have full use of the public accommodation as other patrons without disabilities. *Cotton v. Pizzeria Milan Restaurant*, CCHR No. 13-P-70 (Dec. 17, 2014); *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 has established the elements of a *prima facie* case in this case. He is a person with physical impairments. He is a qualified individual; qualification to use a retail store 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 he did not have physical access to the public accommodation, because of his observations of the stairs leading to the entrance and because his friend was told by Respondent’s employee that no accessible entrance or ramp was available. Complainant also established by his testimony that Respondent’s full retail services were not offered to him through reasonable alternative means.

Once Complainant established the elements of a *prima facie* case, Respondent must prove by a preponderance of the evidence that providing full use of its public accommodation would cause an undue hardship. See Commission Regulation 520.105 and *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 at 3 (Aug. 16, 2006). However, even if that initial showing of undue hardship is made, a respondent must also establish that (1) it reasonably accommodated the complainant, or (2) it could not reasonably accommodate the complainant without undue hardship. *Id.*

The Commission has the authority to order structural alterations to make a facility wheelchair accessible unless making the facility accessible would impose an “undue hardship.” In making the determination about what, if any, structural alterations will be required, the Commission is not bound by other federal or state law. *Cotten v. Lou Mitchell’s*, CCHR No. 06-P-9 (Dec. 16, 2009). Older facilities are not “grandfathered” or otherwise exempt from accessibility requirements of CHRO and Reg. 520.105, which are in addition to any Building Code or other City ordinance requirements. *Cotten v. La Luce Restaurant, Inc.*, CCHR No. 08-P-34 (Apr. 21, 2010). The Commission also has the authority to order that services be provided by reasonable alternative means and to post a conspicuous notice of the services it offers to people with disabilities. *Cotten v. Taylor Street Liquors*, CCHR No. 07-P-12 (July 16, 2008).

“Undue hardship” will be proven by a respondent:

... if the financial costs or administrative changes that are demonstrably attributable to the accommodation of the needs of persons with disabilities would be prohibitively expensive or would unduly affect the nature of the public accommodation.

Factors to be considered include, but are not limited to:

- (a) the nature and cost of the accommodation;
- (b) the overall financial resources of the public accommodation, including the resources of any parent organization;
- (c) the effect on expenses and resources, or the impact otherwise of such accommodation on the operation of the public accommodation; and
- (d) the type of operation or operations of the public accommodation.

CCHR Reg. 520.130

Due to the fact that Respondent did not appear at the hearing, Respondent did not meet its burden of showing that it provided the services either by independent access or by reasonable accommodations. Respondent provided no evidence that constructing a permanent ramp would impose an undue hardship on Respondent or that there was no accommodation that could reasonably provide the independent access required by Complainant.

As Complainant has established a *prima facie* case, and Respondent has not provided evidence that its store was accessible or that services were fully provided to Complainant on the date in question, both damages and injunctive relief ordered against Respondent are appropriate in this case.

V. REMEDIES

The Commission has broad powers to order relief to compensate complainants and to make complainants whole. CHRO, Section 2-120-510(I). Relief may include damages for injury or loss, admission to the public accommodation, punitive damages, and interest on actual damages. Further, the Commission has the power to discourage respondents from engaging in similar conduct by issuing injunctive relief and assessing fines. CHRO, Section 2-120-510(I).

A victim of public accommodations discrimination may be entitled 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 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 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 from the date of the civil rights violation.... These remedies shall be cumulative, and in addition to any fines imposed for violations....

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

a. Actual Damages

At the hearing, Complainant asked for \$1,000 in damages. Complainant filed no pre-hearing memorandum specifying the kind of damages he sought. His complaint did not describe any emotional harm but he offered some testimony about the emotional distress he endured as a result of the incident. Complainant testified that Respondent's employees did not seek to provide him with any services. Complainant did not seek or testify regarding damages for any out-of-pocket expenses.

The Commission has repeatedly held that damages for emotional harm can be awarded as part of an award of actual damages. *Jones v. Shaheed*, CCHR No. 00-H-82 (Mar. 17, 2004); *Nash/Demby v. Sallas & Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995). "Emotional distress damages are awarded in order to fully compensate a complainant for the emotional distress, humiliation, shame, embarrassment and mental anguish resulting from a respondent's unlawful conduct." *Winter v. Chicago Park District, et al.*, CCHR Case No. 97-PA-55, at 16 (Oct. 18, 2000).

The amount of the award for emotional distress depends "on several factors, including but not limited to, the vulnerability of the complainant, the egregiousness of the discrimination, the severity of the mental distress and whether it was accompanied by physical manifestations and/or medical or psychiatric treatment, and the duration of the discriminatory conduct and the effect of the distress." *Steward v. Campbell's Cleaning, et al.*, CCHR No. 96-E-170 (June 18, 1997) at 13. A complainant's testimony standing alone may be sufficient to establish that he or she suffered emotional distress damages and is entitled to damages. *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62, at 11 (Oct. 21, 1998).

Emotional distress damages awarded by the Commission have varied, from amounts such as \$50,000, the amount ordered in *Winter*, to far smaller amounts. In *Cotten v. Eat-A-Pita*, CCHR No. 07-P-08 (May 20, 2009), the complainant was awarded \$500 in emotional distress damages due to the lack of any personal contact with the respondent's personnel, the brief duration of the event, and the complainant's minimal testimony about his general feelings as a wheelchair user when confronting inaccessible accommodations. *See also, Cotten v. 162 North Franklin, LLC, d/b/a Eppy's Deli and Café*, CCHR No. 08-P-35 (Sep. 15, 2009) (complainant awarded \$500 where he encountered an inaccessible entrance, but experienced no contact with employees and no slurs, the incident was brief and complainant provided minimal testimony); *Cotten v. Addiction Sports Bar & Lounge*, CCHR No. 07-P-109 (Oct. 21, 2009) (complainant

awarded \$1.00 where location was inaccessible but respondent's staff worked to minimize complainant's inconvenience); *Cotten v. Arnold's Restaurant*, CCHR No. 08-P-24 (Aug. 18, 2010) (complainant awarded \$500 where location's restroom was inaccessible but complainant was not subjected to rude behavior and his testimony was minimal); and *Cotten v. Top Notch Beefburger, Inc.*, CCHR No. 09-P-31 (Feb. 16, 2011) (complainant awarded \$500 where restroom was inaccessible and complainant feared soiling himself).

The Hearing Officer found that Complainant testified minimally about his feelings regarding his inability to enter the store. Complainant had no direct contact with Respondent's employees. As such, the Hearing Officer determined that Complainant's evidence supported a minimal award of damages for emotional distress in the amount of \$500. This amount is in line with awards in other cases where discriminatory encounters have been brief and there was no direct contact with respondents, but in which complainants provided some credible testimony to support an award of emotional distress damages. The Commission agrees and adopts the Hearing Officer's recommendation.

b. Punitive Damages

Punitive damages may also be awarded against a respondent to punish the wrongdoer and deter that party and others from committing similar acts in the future. *Nash/Demby, supra*. Punitive damages may be awarded when a respondent's actions were willful, wanton, or taken in reckless disregard of the complainant's rights. *Warren, et al., v. Lofton and Lofton Management, et al.*, 07-P-62/63/92 (July 24, 2009). The Commission has noted that the "purpose of the award of punitive damages ... is to punish [the respondent] for his outrageous conduct and to deter him and other like him from similar conduct in the future." *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998). Punitive damages may be particularly necessary in cases where damages are modest to ensure a meaningful deterrent. *Miller v. Drain Experts & Earl Derkits*, CCHR No. 97-PA-29 (Apr. 15, 1998). One factor that may be considered in the award of punitive damages is whether the respondent disregarded the Commission's processes, but where the respondent's conduct was found not to be egregious, the single fact that the respondent defaulted is not enough to warrant the imposition of punitive damages. *Blakemore v. General Parking*, CCHR No. 99-PA-120 (Feb. 21, 2001).

The Hearing Officer recommended minimal punitive damages of \$100 in this case. There was no evidence that Respondent's employees' actions were willful, wanton, or taken in reckless disregard of Complainant's rights. Although Respondent did not fully cooperate with the Commission's processes and did not appear at the pre-hearing conference and hearing; the Hearing Officer reasoned that in view of the fact that Respondent was acting *pro se* and made some efforts to participate in the Commission processes, a minimal award is justified. The Commission agrees with the Hearing Officer's approach and adopts the recommendation.

c. Injunctive Relief

Section 2-120-510(l) authorizes the Commission to order injunctive relief to remedy a violation of the Chicago Human Rights Ordinance. See *Mahmoud v. Chipotle Mexican Grill Restaurant Co., LLC*, CCHR No. 12-P-025 (June 18, 2014) and cases cited therein. The Commission is authorized to order injunctive relief *sua sponte* in order to remedy and prevent future discrimination. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010). The Commission has ordered respondents found to have violated the CHRO to take specific steps to eliminate discriminatory practices and prevent future violations.

Such steps have included training, notices, and structural changes. In *Mahmoud v. Chipotle Mexican Grill, supra*, the respondent was ordered to provide full use of the restaurant with an accessible entrance if feasible without undue hardship, signage, reasonable accommodations (doorbell or buzzer, signage), and training of staff on accessibility features and reasonable accommodations. In *Cotten v. La Luce Restaurant, supra*, the respondent was ordered to provide a permanent accessible entrance or, if installing a permanent ramp would impose an undue hardship, obtain an adequate portable ramp, buzzer and signage. *See also, Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009); *Maat v. String-A-Strand*, CCHR No. 05-P-5 (Feb. 20, 2008).

In this case, Respondent's store was inaccessible and its employees failed to offer any reasonable accommodations or alternative services. 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. Provide a permanent accessible entrance if able to do so without undue hardship. Within 90 days of the date of mailing of the Commission's Final Ruling on Liability and Relief, the Respondent must file with the Commission and serve on Complainant documentary evidence that Respondent has made permanent alterations sufficient to make at least one public entrance to the business which provides "full use" as defined by Commission Regulations 520.110 to people using wheelchairs or with physical impairments. The documentary evidence must include a certification signed by Respondent's authorized representative or a qualified professional drawing describing the alterations made. Respondent must maintain conspicuous signage at the entrance informing the public how to access the accessible entrance to the restaurant. The accessible entrance must be a public entrance and, if not the main entrance, must be substantially equivalent to other public entrances.

2. Provide objective documentary evidence of any undue hardship. If the Respondent claims that it would impose any undue hardship (as defined by Commission Regulation 520.130) to make **any** public entrance accessible which complies with the full use requirement as defined by Commission Regulation 520.110 or to provide for any accommodations listed in paragraph 3 below, within 90 days of the date mailing of the Commission's Final Ruling on Liability and Relief, the Respondent shall file with the Commission and serve on Complainant the following evidence of undue hardship:

- a. If the undue hardship is based on physical infeasibility or the requirements of other applicable laws, then Respondent must provide a signed certification of Respondent or a qualified professional⁶ which sets forth in detail the factual basis for the claimed undue hardship.
- b. If the undue hardship is based on prohibitively high cost, the Respondent must provide:
 - i. A signed certification of a qualified professional describing and itemizing the cost of the least expensive physically and legally feasible alterations which would make one public entrance fully accessible or the cost of least expensive reasonable accommodations required to comply with this order.

⁶ A professional would be an architect or other professional with expertise in accessibility modifications.

- ii. Adequate documentation of all available financial resources of Respondent, which may include a photocopy of Respondent's last annual federal tax return filed for the business or a CPA-certified financial statement completed within the calendar year prior to the submission. **Complainant is ordered not to disclose this financial information to any other person except as necessary to seek enforcement of the relief awarded in this case. Similarly, Complainant shall not disclose this financial information to the public except as necessary to seek enforcement of the relief awarded in this case or as otherwise required by law.**

3. **Make reasonable accommodations if undue hardship is claimed.** If claiming undue hardship to provide an accessible entrance to the restaurant which complies with the full use requirement as defined in Commission Regulation 520.110, on or before *90 days from the date of mailing of this Final Ruling on Liability and Relief*, Respondent must take the following steps to provide reasonable accommodations (within the meaning of Reg. 520.120):

- a. File with the Commission and serve on Complainant documentary evidence of the purchase of an adequate portable ramp and certification that all employees are trained and able to utilize the ramp if required. If it is not feasible to use a portable ramp (for example, the incline to be ramped is too steep), Respondent must provide a signed certification by Respondent's authorized representative or a qualified professional detailing why use of a portable ramp is not feasible.
- b. Install and maintain a *doorbell or buzzer* at each public entrance which can be utilized by a person in a wheelchair and which is adequate to summon staff to the entrance for the purpose of providing carryout or other alternative service. The doorbell or buzzer must be accompanied by conspicuous signage indicating that it is a means for people with disabilities to seek assistance.
- c. Maintain *exterior signage* conspicuously displaying a telephone number which may be used to contact staff during business hours to request carryout or delivery service, or other alternative service. If service (such as carryout or delivery) is provided to the general public by internet, the signage must also include applicable website and electronic mail addresses.
- d. Provide other or additional *reasonable accommodations as feasible without undue hardship* to enable a wheelchair user to access the services Respondent provides to the general public in a manner which is as nearly equivalent as possible. Such measures may include carryout or curbside service; other physical changes; or changes in rules, policies, practices or procedures.
- e. Ensure that Respondent's staff are trained and supervised to respond to the doorbell or buzzer and to provide equivalent service and/or reasonable accommodation consistent with Respondent's plan for compliance with the Chicago Human Rights Ordinance.

4. **Adopt written policies.** Within 60 days of the date of mailing of the Commission's Order, the Respondent shall adopt written policies for managers and employees to assure that people with disabilities are provided services and assisted when necessary to assure that

Respondent's services are available to all customers, including those with disabilities. The policies should outline mandatory steps to be taken to resolve any policy issues that may arise.

5. **Train employees on policies.** Within 90 days of the date of the Commission's Order, all employees and administrative personnel at Respondent's restaurant shall attend a mandatory training on the Respondent's policy adopted in response to #4 above and on the rights of people in all protected classes.

6. **File a report on compliance with order of injunctive relief.** Within 120 days of the date of the mailing of the Commission's Final Ruling on Liability and Relief, Respondent shall file with the Commission and serve on Complainant a report detailing the steps taken to comply with this order of injunctive relief. The report shall include a copy of the required written policies and a detailed description of the training provided including copies of any training materials distributed and any written announcements of training issued to managers and employees. Finally, the report shall include an affidavit of an owner or manager authorized to bind Respondent, affirming that Respondent has complied with all requirements of the order of injunctive relief in the Commission's Final Ruling on Liability and Relief and that all reported details are true and correct.

7. **Extension of Time.** Respondent may seek a short extension of time to meet any deadline set with regard to this order for injunctive relief, by filing and serving a motion pursuant to the procedures set forth in Commission Regulations 210.310 and 210.320. (The hearing officer need not be served.) The motion must establish good cause for the extension. The Compliance Committee of the Commission shall rule on the motion by mail.

8. **Effective period.** The injunctive relief shall remain in effect for three years from the date of mailing of the Final Ruling on Liability and Relief should Complainant seek enforcement of the Ruling (by motion pursuant to Regulation 250.220).

d. Fines

Pursuant to Section 2-160-120 of the Chicago Municipal Code, the Commission may impose a fine of not less than \$100 and not more than \$1,000 if a respondent is found to have violated the Chicago Human Rights Ordinance. Every day that a violation shall continue constitutes a separate and distinct offense. The Hearing Officer recommended a fine of \$200. The Commission disagrees with the recommendation of the Hearing Officer. The Commission finds no basis to order a minimal fine in light of Respondent violating the Chicago Human Rights Ordinance and repeatedly failing to attend scheduled proceedings in this matter. Accordingly, the Commission orders Respondent to pay a fine of \$500.

e. Interest

In order to make complainants whole, the CHRO provides for the payment of interest for certain damages, including damages for emotional distress. CHRO, Section 2-120-500(l). Pursuant to Reg. 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly from the date of the violation and compounded annually from the date of the violation. In this case, the Commission orders payment of such interest from the date of the violation, discriminatory act, December 2, 2013.

f. Attorney Fees and Costs

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

VI. CONCLUSION

The Commission finds Respondent Samer Food, Inc., liable for public accommodation discrimination based on disability, in violation of the Chicago Human Rights Ordinance and orders the following relief:

1. Payment to the City of Chicago of a fine of \$500;
2. Payment to Complainant of emotional distress damages in the amount of \$500;
3. Payment to Complainant of punitive damages in the amount of \$100;
4. Payment of interest on the foregoing damages from the date of violation on December 2, 2013; and
5. Compliance with the order for injunctive relief as described above.

CHICAGO COMMISSION ON HUMAN RELATIONS

Mona Noriega

By: Mona Noriega, Chair and Commissioner
Entered: September 10, 2015