



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.

Ochoa Sporting Goods
Respondent.

Case No.: 14-P-15

Date of Ruling: December 17, 2014

Date Mailed: January 16, 2014

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

Ramiro Ochoa, President
Ochoa Sporting Goods
1749 W. 18th Street
Chicago, IL 60608

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on December 17, 2014, the Chicago Commission on Human Relations issued a ruling in favor of Complainant 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 damages in the amount of \$500, plus interest on that amount from December 3, 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 \$1,000.¹

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

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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IN THE MATTER OF:

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Case No.: 14-P-15

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FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

Complainant Anthony Cotten (Complainant) filed a Complaint with the Chicago Commission on Human Relations (CCHR) on February 26, 2014, alleging that Respondent Ochoa Sporting Goods (Respondent) discriminated against him due to his disability by failing to ensure his full use of a public accommodation. Specifically, Complainant, who uses a wheelchair, alleged that he was unable to gain access to Respondent's store because of several steps at the front entrance.

On February 28, 2014, the Commission sent Complainant's Complaint to Respondent. On April 3, 2014, the Commission mailed Respondent a Notice of Potential Default. Respondent failed to respond to the Complaint. On April 14, 2014, a Commission Investigator unsuccessfully attempted to reach Respondent via telephone and visited the store location to serve a copy of the Complaint. Respondent failed to respond to the Complaint. Accordingly, the Commission entered an Order of Default on May 7, 2014. Pursuant to CCHR Regulation 235.320¹, Respondent was advised that the allegations of the Complaint were deemed admitted and any defenses to those allegations, including those concerning the sufficiency of the Complaint, had been waived.

A pre-hearing conference was held in this matter on June 14, 2014. Respondent failed to appear for this pre-hearing. The Administrative Hearing (Hearing) was held on July 29, 2014. Respondent again failed to appear. In light of the Order of Default, the Hearing was held solely for the purpose of allowing Complainant to establish a prima facie case and to establish the nature and amount of relief to be awarded.

On September 30, 2014, the hearing officer issued a Recommended Ruling on Liability and Relief. No objections were filed.

¹ All subsequent references to the applicable CCHR Regulation will be referred to as "Reg."

II. FINDINGS OF FACT

1. Complainant Anthony Cotten has a disability and uses a wheelchair for mobility. C, par. 1²
2. Cotten testified that on December 3, 2013, he and his friend Craig Sanders stopped by Ochoa Sporting Goods to shop for sporting attire and to see if Cotten could potentially sell his clothing line in the store. Tr. p. 3. Cotten could not enter the store because he was in a wheelchair and there were 3 or 4 stairs. *Id.*, and C, par 3.
3. Cotten asked Sanders to go into the store and see if they had a ramp or an accessible entrance. While Cotten waited in the car, Sanders went to the front door of the store. When he rang the bell to be buzzed in, an Ochoa employee came to the door. Sanders asked if they had a ramp or another way for Cotten to get into the building. C, par. 3, Tr. p. 3.
4. The employee responded “no” and walked away from Sanders. Cotten testified that the employee appeared to be in a rush and “wasn’t trying to service [them] at all.” He stated that she acted as if she wanted them to leave and did not care that he [Cotten] was in a wheelchair. C, par. 3, 4. Cotten and Sanders then left. C, par. 3, Tr. pp. 3-4.
5. Cotten testified that not being able to access the store made him feel like a second class citizen. He stated that his feelings were hurt because the Ochoa employee did not seem to care that he was in a wheelchair or that he was trying to do business with them. Tr. p. 4.
6. Cotten testified that he sought \$800 in damages, given the inconvenience. Tr. p. 5.

III. CONCLUSIONS OF LAW AND ANALYSIS

Because an Order of Default has been entered in this case, 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. Reg. 235.320. In addition, Complainant need only establish a *prima facie* case of disability discrimination in the use of a public accommodation in order to be eligible for an order granting relief. *See In the Matter of Ofelia Montelongo v. Hassan Assarpira*, CCHR No. 09-H-23 (March 16, 2011).

Section 2-160-070 of the Chicago Human Rights Ordinance (CHRO) makes it unlawful for any person who operates or manages a public accommodation to withhold, deny, curtail, limit, or discriminate concerning the full use of such public accommodation because of an individual’s disability. “Full use” of a public accommodation means that the services offered to persons who are members of a

² Findings of fact based on Complainant’s Complaint are cited as “C” followed by a paragraph number. Findings of fact based on the Hearing transcript are cited as “Tr.” followed by a page number.

protected class are offered under the same terms and conditions as are applied to all other persons. Reg. 520.110.

The CHRO and corresponding regulations balance the requirement of providing full use of a public accommodation to people with disabilities with the practicalities of making that possible. Thus, Reg. 520.105 states:

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

To prove a *prima facie* case of disability discrimination with respect to a public accommodation, a complainant must show that he or she (1) is a person with a disability within the meaning of the CHRO; (2) is a qualified individual who satisfied all non-discriminatory standards for service; and (3) did not have full use of the subject facility, service, or function as other members of the public did. *Maat v. String-A-Strand*, CCHR No. 05-P-05 at 4 (Feb. 20, 2008), citing *Doering v. Zum Deutchen Eck*, CCHR No. 94-PA-35 (Sept. 14, 1995, as reissued Sept. 29, 1995). For example, an individual may be deprived of the full use of a facility where he or she cannot readily enter the front entrance in a wheelchair because of the existence of a barrier. *Maat v. String-A-Strand*, *supra* at 5.

If a complainant establishes these elements by a preponderance of the evidence, a respondent may prove by a preponderance of the evidence that providing full use of its public accommodation would cause undue hardship. *See* Reg. 520.105; *See also* *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 even reasonably accommodate the complainant without undue hardship. *Id.*

Complainant has met his burden of establishing a *prima facie* case of disability discrimination. Complainant is a person with a disability. He is a qualified individual in that he attempted to access Respondent's store. Complainant proved that he was unable to physically access Respondent's store due to several steps at the entrance. Further, there was no other means of entry available or offered to Complainant.

Once Complainant has 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. Because the Commission had issued an Order of Default against this Respondent, Respondent was subject to the effects of default listed in 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 Complainant to establishing a *prima facie* case and to establish the nature and amount of relief to be awarded. Respondent would have been allowed to argue that Complainant failed to establish a *prima facie* case, and could have presented evidence and argument about the relief to be awarded, but Respondent chose not to be present and to ignore the Commission's procedures. Reg. 235.320.

The Commission agrees with the hearing officer's finding that the evidence establishes a violation of the CHRO where Complainant has satisfied the elements of a *prima facie* case and Respondent has failed to provide any evidence regarding the remedies sought. Therefore, both damages and injunctive relief are appropriate remedies in this case.

IV. REMEDIES

Upon determining that a violation of the CHRO has occurred, the Commission may award the prevailing complainant 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 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...

A. Emotional Distress

It is well established that the compensatory damages which may be awarded by the Commission may 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 (11th Cir. 1983); and *Gore v. Turner*, 563 F. 2d 159, 164 (5th 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 distress, whether it was accompanied by physical manifestations, and the vulnerability of the complainant. *Houck v. Inner City Horticultural Foundation*, CCHR N. 97-E-93 (Oct. 21, 1998) at 13-14; *Nash and Demby*, *supra*; and *Steward v. Campbell's Cleaning Svcs. et al.*, CCHR No. 96-E-170 (June 18, 1997). See also the 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*; *See also Cotten v. Taj Mahal Restaurant* CCHR No. 13-P-82 (Oct. 15, 2014). Medical documentation or testimony may add weight to a claim of emotional distress but is not strictly required to sustain a damages award.

Here, Complainant sought \$800 in emotional distress damages due to being denied access to Respondent's store because of his disability. The hearing officer noted that Complainant's testimony regarding the extent of his emotional distress was minimal, stating only that he felt like a "second-class citizen" and that "his feelings were hurt" because he was denied access to the store and Respondent's employee did not seem to care about his situation. The hearing officer concluded that while this sparse testimony does not negate an award of damages for emotional distress, it does not warrant \$800.

The Commission has routinely awarded less than \$800 when the evidence of emotional distress is sparse. *See Cotten v. 162 N. Franklin, LLC d/b/a Eppy's Deli and Cafe*, CCHR No. 08-P-35 (Sept. 16, 2009) (complainant awarded \$500 in emotional distress damages where there was minimal evidence of emotional distress and the discriminatory encounter was brief); *Cotten v. Eat-A-Pita*, CCHR No. 07-P-08 (May 20, 2009) (complainant awarded \$500 in damages for emotional distress where he was not subject to any slurs or epithets related to his disability, the encounter was brief and there was minimal testimony regarding the effect of the encounter on the complainant); and *Cotten v. Arnold's Restaurant*, CCHR No. 08-P-24 (Aug. 18, 2010) (complainant awarded \$500 for emotional distress where the respondent's restroom was inaccessible but complainant was not subjected to rude behavior and his testimony was minimal).

The hearing officer determined that Complainant's testimony regarding the extent of his emotional distress was insufficient to warrant an award of \$800, and instead awarded \$500. The hearing officer determined that this award was consistent with awards in similar cases where the encounter had been brief and minimal testimony was offered to support the award of emotional distress damages. The Commission agrees and adopts the hearing officer's recommendation.

B. Fine

Section 2-160-120 of the CHRO 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. The hearing officer recommended a fine of \$500. The Commission believes, however, that the maximum fine of \$1,000 is warranted in this case. The maximum fine has been assessed in instances where a respondent failed to document any undue hardship for the lack of accessibility and/or failed during the pendency of the case to take measures to improve the restaurant's accessibility. *Cotten v. Eat-A-Pita* and *Cotten v. La Luce Restaurant, supra*; *See also Cotten v. Taj Mahal, supra*. Here, Respondent ignored the Commission's proceedings which resulted in an Order of Default entered against it. Additionally, Respondent failed to participate in the Hearing process, and failed to present any mitigating circumstances or evidence of efforts to comply with the CHRO. Accordingly, the Commission orders Respondent to pay the maximum fine of \$1,000.

C. Injunctive Relief

Complainant did not specifically seek injunctive relief in his Complaint or during the Hearing. Nevertheless, Section 2-120-510(l) authorizes the Commission to order injunctive relief to remedy a violation of the CHRO. *Mahmoud v. Chipotle Mexican Grill Restaurant Co., LLC*, CCHR No. 12-P-25 (June 18, 2014); *See also Cotten v. Taj Mahal, supra*. 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 previously ordered respondents found in violation of the CHRO to take specific steps to eliminate discriminatory practices and prevent future violations, ranging from structural changes to employee training.

Additionally, the Commission has ordered respondent to adopt written policies to prevent future instances of discrimination and provide employee training on such policies. Similarly, in *Mahmoud v. Chipotle Mexican Grill Restaurant, supra*, the respondent was ordered to provide full use of its restaurant or to provide reasonable accommodations and to train its staff on deploying such accommodations. In *Cotten v. Taj Mahal, supra*, the respondent was ordered to provide full use of the restaurant in question with a permanent accessible entrance, or to provide an adequate portable ramp and other reasonable accommodation(s) if installing a permanent accessible entrance was an undue hardship. 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. In *Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012), a respondent, who was found to have denied a transsexual patron full use of its restaurant club, was ordered to adopt an anti-discrimination policy to prevent future gender-based discrimination, distribute the policy to its staff, and provide mandatory training to its staff on the rights of all protected classes recognized by the CHRO. The respondent in *Manzanares* was also required to provide documentary proof of its compliance with these mandates according to a set time schedule.

In this case, the hearing officer determined that Respondent's store was inaccessible. Therefore, injunctive relief is appropriate to further the Commission's goal of facilitating the full integration of all CHRO-protected classes into places of public accommodation. Reg. 510.100. The order for injunctive relief is appropriate to the facts of this case and closely tailored to the terms of the CHRO and its interpretive regulations. This order of relief is modeled on prior rulings issued by this Commission, namely: *Mahmoud v. Chipotle Mexican Grill, supra*; *Cotten v. Eat-A-Pita, supra*; and *Cotten v. Taj Mahal, supra*.

Accordingly, the Commission adopts the hearing officer's recommendation as to injunctive relief and orders Respondent to take the following actions:

- 1. Provide a permanent, accessible entrance to Ochoa Sporting Goods, if able to do so without undue hardship.** If able to do so without undue hardship (as defined in Reg. 520.130), on or before six months from the date of mailing of this Final Ruling on Liability and Relief, Respondent must file with the Commission and serve on Complainant documentary evidence that Respondent has complied with this requirement and made permanent alterations sufficient to make at least one public entrance to the business fully accessible to persons using wheelchairs (pursuant Reg. 520.105 and Reg. 520.110). The documentary evidence must include a certification signed by Respondent's authorized representative or a qualified

professional describing the alterations made, and it may include photographs or drawings. If only one of multiple entrances is being made accessible, there must be conspicuous signage at any non-accessible entrance directing the public to the accessible one. The accessible entrance must be substantially equivalent to other public entrances.

2. **Provide objective documentary evidence of any undue hardship.** If unable to provide a permanent accessible entrance or any reasonable accommodation due to undue hardship (as defined by Reg. 520.130), Respondent must file with the Commission and serve on Complainant at least the following objective documentary 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 professional which sets forth in detail the factual basis for the claimed undue hardship.³
 - b. If the undue hardship is based on prohibitively high cost:
 - 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 the entrance fully accessible.
 - ii. Adequate documentation of all available financial resources of Respondent, which may include: (a) a photocopy of Respondent's last annual federal tax return filed for business, or (b) a CPA-certified financial statement completed within the calendar year prior to 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, the Commission 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 Respondent claims that undue hardship prevents it from making the entrance fully accessible (within the meaning of Reg. 520.110) by means of permanent alterations to the premises, 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 staff on all shifts are trained and able to utilize the ramp when requested. If it is not feasible to utilize a portable ramp, a signed certification by Respondent's authorized representative or a qualified professional, detailing why use of a portable ramp is not feasible, must be provided.
 - b. Install and maintain a doorbell or buzzer at each public entrance which can be utilized by a person using a wheelchair or with mobility impairments and which is adequate to

³ A professional would be an architect or other professional with expertise in accessibility modifications.

summon staff to the entrance for the purpose of deploying the portable ramp or providing alternative service.

- c. Maintain exterior signage conspicuously displaying a telephone number for contacting staff during business hours to request use of a portable ramp, or other alternative service.
- d. Provide other or alternative reasonable accommodations as feasible without undue hardship to enable a person who uses a wheelchair or who has other impairments to access the services Respondent provides to the general public in a manner which is as equivalent as possible. Such measure may include curbside service, other physical changes, or changes in rules, policies, practices, or procedures.
- e. Provide notice of the reasonable accommodations being provided in lieu of a permanent accessible entrance by filing with the Commission and serving on Complainant a detailed written description of Respondent's plan for reasonable accommodations in compliance with the CHRO, which may include photographs or drawings. The description must be signed by an authorized representative of Respondent or a qualified professional.
- f. If claiming that it is an undue hardship to provide *any reasonable accommodation* to enable a wheelchair user to utilize the public accommodation in question (pursuant to Reg. 520.105), Respondent must file with the Commission and serve on Complainant objective, documentary evidence of the undue hardship as described in Section 2 of this order for injunctive relief and Reg. 510.130.

4. File a report on compliance with order of injunctive relief. Within six months of the date of the mailing of this 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 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 this Final Ruling on Liability and Relief and that all reported details are true and correct.

5. 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 Reg. 210.310 and Reg. 210.320. The motion must establish good cause for the extension. The Commission's Compliance Committee shall rule on the motion by mail.

6. 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).

D. Interest

Section 2-120-510(l), Chicago Municipal Code, allows an additional award of interest on damages ordered to remedy violations of the CHRO. Pursuant to 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 from the date of the violation. Accordingly, the Commission orders payment of such interest from the date of the violation: December 3, 2013.

E. Attorney Fees and Costs

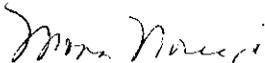
Complainant appeared pro se and therefore attorney fees and costs are not awarded.

VI. CONCLUSION

The Commission finds Respondent Ochoa Sporting Goods liable for public accommodation discrimination based on disability, in violation of the Chicago Human Rights Ordinance and orders the following relief:

1. Payment to Complainant of emotional distress damages in the amount of \$500;
2. Payment to the City of Chicago of a fine of \$1,000;
3. Payment of interest on the forgoing damages from the date of the violation: December 3, 2013; and
4. Compliance with the order for injunctive relief as outlined above;

CHICAGO COMMISSION ON HUMAN RELATIONS



By Mona Noriega, Chair and Commissioner

Entered: December 17, 2014