City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
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**IN THE MATTER OF:**

James "Robin" Robinson
**Complainant,**
**v.**

American Security Services
**Respondent.**

**Case No.:** 08-P-69

**Date of Ruling:** January 19, 2011
**Date Mailed:** January 21, 2011

**TO:**
James "Robin" Robinson
1440 S. Indiana Ave., Apt. 402
Chicago, IL 60605

Michael Maksimovich
Attorney at Law
8643 Ogden Ave.
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# FINAL ORDER

YOU ARE HEREBY NOTIFIED that, on January 19, 2011, the Chicago Commission on Human Relations issued a ruling in favor of Respondent in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby DISMISSED.

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

CHICAGO COMMISSION ON HUMAN RELATIONS
Dana V. Starks, Chair and Commissioner

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# FINAL RULING ON LIABILITY AND RELIEF

## I. PROCEDURAL HISTORY

Complainant James "Robin" Robinson alleges that Respondent American Security Services ("American") discriminated against her in violation of the Chicago Human Rights Ordinance, Ch. 2-160, Chicago Muni. Code ("CHRO"). Specifically Robinson asserts that on two separate occasions, security guards employed by American called her a "fag" and subjected her to a hostile environment while she shopped at an Ultra Foods grocery store. Robinson alleges that Respondent engaged in gender identity discrimination involving the full use of a public accommodation.

Robinson filed her initial Complaint on August 22, 2008.[1] Between that date and January 26, 2009, Robinson amended her complaint three times. Beginning on September 23, 2008, American answered each Complaint denying all of the factual allegations and claimed violations of the CHRO. On August 13, 2009, the Commission issued an Order Finding Substantial Evidence of a violation of the CHRO against American.

On May 11, 2010, American filed its Pre-Hearing Memorandum, which included notice of its intent to introduce a surveillance video it said was made on August 20, 2008, during one of Complainant's alleged visits to Ultra Foods. Subsequently, Complainant filed four Motions to Bar the Surveillance Video arguing that Respondent failed to provide a copy to her and that when Respondent ultimately did so, she was unable to view the video. By order dated May 24, 2010, the hearing officer denied the first motion in order to give Respondent an opportunity to produce the video and took the subsequent motions under advisement.[2] As explained below, the video was never admitted into evidence at the hearing, was not considered by the hearing officer in making her recommended ruling, and has not been considered by the Commission in making this final ruling. The hearing officer in her recommended ruling denied all of Complainant's remaining Motions to Bar the Surveillance Video as moot.

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[1] Complainant also asserted claims against Ultra Foods and two of its employees in her original Complaint. Complainant voluntarily withdrew these claims on June 24, 2009, and the Commission entered an order dismissing them from the case on August 13, 2009.

[2] Despite advising the parties at the hearing that Complainant's third Motion to Bar would be taken under advisement, Complainant filed yet another such Motion on August 7, 2010.

The administrative hearing took place on July 22, 2010. On September 24, 2010, the hearing officer issued her recommended ruling of no liability. Complainant filed objections on September 29, 2010, and supplemental objections on October 1, 2010.[3]

## II. FINDINGS OF FACT

### A. The Parties

1. Complainant was born male as James R. Robinson but is a transvestite and lives as a female. (First Amended Complaint at ¶2). Robinson lives in the South Loop area of Chicago. (Tr. 25-27). She is unemployed and receives monthly benefits from the Social Security Administration. *Id.*[4]

2. Complainant began filing complaints with the Commission in 2004 and has done so "a lot of times." (Tr. 61-62). Most of her complaints end in financial settlements, although she insists that filing complaints with the Commission "has nothing to do with financial gain." (Tr. 62-63). Complainant admitted that she does not always pay taxes on the settlement dollars that she receives. (Tr. 67).[5]

3. American Security Services has approximately 350 employees and provides security guard services at various facilities, including Ultra Foods. (Tr. 105).

4. American does background checks on all of its security guards, provides training, and requires them to be certified. (Tr. 106). The company also has an anti-discrimination and anti-harassment policy in place. Employees are subject to immediate termination if they violate the policies. (Tr. 107).

5. Ultra Foods hired American Security Services as an independent contractor to provide security services at its store on West 87th Street. During the time period of the events giving rise to this Complaint, American security guards worked at the Ultra Foods store daily from 6 p.m. until 12:30 a.m. (Tr. 113-115).

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[3] Also, on October 5, 2010, Complainant filed a motion to seal certain portions of the record in this case. The Commission will issue a separate order deciding that motion.

[4] This finding of fact by the hearing officer also stated that Complainant lives with her mother. Complainant objected to the inclusion of findings about living with her mother, being unemployed, and receiving Social Security benefits. The objection is overruled as to being unemployed and receiving Social Security benefits. As to living with her mother, that information was revealed when Complainant herself explained that she lives with her mother and receives "a monthly check" in response to questioning on cross-examination about whether he was employed. When Complainant questioned the relevance of the entire line of inquiry, the hearing officer ruled the information relevant as background. (Tr. 25-26). The Commission does not disagree with this ruling. A complainant can be cross-examined about the factual context of events on which claims are based, including the complainant's general personal and economic status. Such evidence may be relevant to credibility as well as the issue of appropriate relief if liability is found. The Commission has nevertheless modified this finding of fact to eliminate reference to Complainant's mother, because Complainant's living arrangement with her was ultimately not material to the outcome of the case. However, Complainant's unemployment and receipt of Social Security (SSI) benefits are facts material to the outcome; thus those findings are retained.

[5] This finding is supported by Complainant's testimony at the hearing. The Board of Commissioners retains the finding in full because the relevance of this evidence was an issue in the case. The Board's analysis and ruling regarding this evidence are set forth below.

**B. Complainant's Allegations**

6. Complainant does not drive but frequently uses cabs to travel around Chicago and the surrounding suburbs. (Tr. 28-29, 33). On the evening of May 12, 2008, Complainant took a cab from her home in the South Loop to the Ultra Foods grocery store at 3250 W. 87th Street—approximately fifteen and a half miles away. (*Id.*; Resp. Ex. 1, Ultra Foods receipt). She claims that she was at the store for two hours; the cab driver waited for her while she shopped with the meter running; and she paid $60 for the round trip. (Tr. 30-31). The receipt produced by Robinson shows that she was in the store at approximately 9:00 p.m. that evening. (Resp. Ex. 1).

7. Robinson testified that while she was in the back of the grocery store, she encountered Victor Hernandez, who worked onsite at Ultra Foods as a security guard for American. (Tr. 18 – 19, 47). Robinson claims that when she walked past Hernandez "he told one of the females he was talking to 'that's a fag' and they both laughed at [her]." *Id.*

8. Robinson testified further that, subsequently when she was bagging her groceries at the end of the cashier's counter, Hernandez came over, stood behind her, and looked at her. Hernandez then purportedly walked around Robinson, stood directly in front of her, took her shopping cart, and deliberately pushed it aside. Robinson pulled it back. (Tr. 20-21, 50).

9. Robinson testified that she was upset, but despite being laughed at, being called a 'fag,' being glared at by Hernandez, and having her cart pushed away, she did not complain to the store manager, customer service, the police, or anyone else. (Tr. 36-39). She simply took her grocery bags and left the store.

10. Robinson testified that "a lot of times when I have an incident I might overlook it, like one or two times, until I get tired of it, and then I'll do something about it." (Tr. 38).

11. Robinson testified that on August 20, 2008, and taking a cab, she again ventured to Ultra Foods on 87th Street. (Tr. 51). However, unlike her prior visit, Robinson did not retain a receipt to establish that she had been at the store on that date. *Id.* She testified that while bagging her groceries, an Ultra Foods employee, whom she had seen during her previous shopping visit in May, said to American security guard Juan Ventura, "Man, there comes that fag again." Robinson testified that Ventura responded, "Man, I know, that's a fag." (Tr. 20-21).

12. Robinson initially testified that she saw Ventura and the Ultra Foods employee in the middle of the store when this incident occurred. Then she testified that she saw Ventura near the front door of the store when the incident occurred. (Tr. 55-56). Robinson testified that, although she was not in the store nearly as long as during her visit of May 12, 2008, the cab ride still cost $60 for the round trip. (Tr. 59).

13. Again, despite allegedly being called a 'fag,' Robinson did not complain to customer service or the store manager. (Tr. 54). Instead, two days later, she filed this Complaint with the Commission. (Tr. 52; see also Original Complaint).

### C. American's Response

14. Upon receiving the Complaint, American's account manager Mike Williams began an investigation. He contacted both Hernandez and Ventura regarding Complainant's allegations, which both men denied. They put their denials in writing. (Resp. Ex. 3 and 4).[6]

15. Although neither of them still work for American, both men testified at the hearing. Hernandez confirmed that American trained him on its policies, including the rules against discrimination. He received a certificate for 20 hours of security training. (Tr. 84). Hernandez testified that he does not have a criminal background and has never been charged with or engaged in harassment. (Tr. 86-88).

16. Hernandez confirmed that he worked security on May 12, 2008. However, not only did he deny calling Complainant a "fag," laughing at her, and pushing her cart aside, he testified that the hearing on July 16, 2010, was the first time he had ever seen Complainant. (Tr. 72-73, 86). Further, Hernandez stated that he knows other transgender individuals because one worked at the Ultra Foods where he was employed.

17. When asked why he came to testify at the hearing, Hernandez replied: "I'm here pretty much to tell the truth about this, because this is – ridiculous....I'm shocked, because I don't know who the [Complainant] is." (Tr. 89).

18. Similarly, Ventura testified that he received training as an American employee and learned about the company's anti-discrimination policies. (Tr. 94) While he worked security at Ultra Foods on August 20, 2008, he denied ever harassing Complainant or calling her a "fag." (Tr. 78, 97-98). Like Hernandez, Ventura testified that the hearing was the first time he had ever seen Complainant. (Tr. 96, 100-101).

19. When asked why he came to testify at the hearing, Ventura stated: "Because I don't think its fair that they put my name and make me seem like I, you know, say certain comments or make certain comments to certain individuals because of what they are." (*Id.* at 101).

20. During Ventura's cross-examination, Robinson asked if she could "withdraw my charges against him...because it was something that he said that moved me, and almost brought me to tears....I really don't want to question him any more." (Tr. 102-103).

## III. APPLICABLE LEGAL STANDARDS

Section 2-160-070 of the Chicago Human Rights Ordinance provides, in relevant part, as follows:

> No person that owns, leases, rents, operates, manages or in any manner controls a public accommodation shall withhold, deny, curtail, limit or discriminate concerning the full use

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[6] Complainant did not know and therefore did not identify the names of the American employees in her original Complaint. Upon conducting an investigation into Complainant's claims, including review of their internal work records, American identified Hernandez and Ventura as the security guards on duty at Ultra Foods on the dates set forth in the Complaint. (Tr. 115).

> of such public accommodation by any individual because of the individual's...gender identity.[7]

The CHRO prohibits more than just the discriminatory withholding or denial of access to a public accommodation. CCHR Reg. 520.150(a) also prohibits harassment:

> Harassment on the basis of actual or perceived membership in a Protected Class...is a violation of the [C]HRO. Any person who owns, leases, rents, operates, manages or in any manner controls a public accommodation has an affirmative duty to maintain a public accommodation environment free of harassment on the basis of membership in a Protected Class.

Such harassment in the context of a public accommodation is defined in CCHR Reg. 520.150(b):

> Slurs and other verbal or physical conduct relating to an individual's membership in a Protected Class...constitutes harassment when the conduct: (i) has the purpose or effect of creating an intimidating, hostile or offensive environment; (ii) has the purpose or effect of unreasonably interfering with an individual's full use of the public accommodation; or (iii) otherwise adversely affects an individual's full use of the public accommodation.

Based on the singular or abbreviated nature of many of the contacts between members of the public and a public accommodation, a single incident of verbal abuse *may* be sufficient to establish a violation of the CHRO where that conduct results in the person using the public accommodation being served differently from other members of the public because of his or her membership in a protected group. See *Brekke v. Delia et al.*, CCHR No. 01-PA-110/117 (July 22, 2005). However, not every insult, discourtesy, or even derogatory comment will necessarily rise to the level of a violation. *Id*; see also *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 19, 1995). Rather, the Commission considers the nature and context of the comment to determine if it was so "separating or belittling" that it created a hostile environment for the complainant during the use of the public accommodation. *Maat v. Chicago Police Department*, CCHR No. 04-P-54 (Dec. 30, 2005); *Anguiano v. Abdi*, CCHR No. 07-P-30 (Sept. 16, 2009)

For example, in *Craig*, the complainant went to a restaurant that he frequented. After receiving poor service despite being a regular customer, he complained to several waitresses and said that if it were his restaurant, he would fire them all. In response, one of the waitresses quipped, "I don't know who he thinks he is, that holier than thou damn faggot." *Id.* at 3. The Commission found a violation of the CHRO based on harassment because the word "faggot" was a discriminatory term that "often has the purpose and effect of separating the person addressed from other [heterosexual] persons." *Id.* at 10. In addition, the person who made the comment

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[7] A public accommodation is defined as "a place, business establishment or agency that sells, leases, provides or offers any product, facility or service to the general public...." CHRO Section 2-160-020. The Commission determines whether or not a case involves a public accommodation by considering whether the particular service or facility at issue is open to the general public. *Maat v. Chicago Police Dept.* CCHR No. 04-P-54 (Dec. 30, 2005); *Mukemu v. Sun Taxi Assoc.* et al., CCHR No. 02-PA-11 (Feb. 5, 2002). This definition is met here because Ultra Foods is a grocery store that offers products and services for sale to the general public. Section 2-160-070 in turn applies to Respondent because, in providing security services to Ultra Foods, American "controlled" the terms and conditions of use of a public accommodation. American could thus be held liable for the conduct of its employees under agency principles. See *Warren et al. v. Lofton & Lofton Management d/b/a McDonald's et al.*, CCHR No. 07-P-62/62/92 (July 24, 2009).

knew that the complainant was gay, directed the statement to the complainant, and made the statement to belittle him. *Id.* at 10-11.

Similarly, in the recent case of *Warren et al. v. Lofton & Lofton Management d/b/a McDonald's et al.*, CCHR No. 07-P-62/62/92 (July 24, 2009), the Commission found sexual orientation and gender identity discrimination where a restaurant security guard audibly discussed and ridiculed the attire and sexual orientation of three customers. This kind of conduct, where proved, is highly likely to create an intimidating, hostile, or offensive environment which unreasonably interferes with an individual's full use of a public accommodation, and thus to violate the CHRO.

## IV. CONCLUSIONS OF LAW AND DISCUSSION

In this case, before reaching the issue of whether the alleged conduct was sufficiently separating or belittling, the Commission must determine whether Complainant has proved by a preponderance of the evidence that American's two security guards called her a "fag" when she went shopping at Ultra Foods. As explained more fully below, the Commission finds that she has failed to prove these events occurred and therefore has failed to show a violation of the CHRO.

This is not a case alleging that Respondent denied Complainant service outright. Based on Complainant's testimony, she completed her shopping at Ultra Foods on the days in question and was not prohibited by Respondent or anyone else from doing so; she was in the store approximately two hours on May 12 and has returned to Ultra Foods to shop after the alleged incidents occurred. (Tr. 58-59). Here, the issue is whether she was subjected to harassing treatment while shopping.

The first issue is whether Hernandez and Ventura made the statements alleged in the Complaint. Then if that is proved, the next issue is whether those statements and accompanying conduct rose to the level of discriminatory harassment in violation of the CHRO. Given the "he said, she said" nature of the pleadings and the testimony at the hearing, the hearing officer was required to make credibility determinations. In fact, based on this record, credibility determinations are the crux of the decision in this case.

In any case before the Commission, a complainant has the burden of proving by a preponderance of the evidence that the respondent has violated the ordinance under which the claim was filed. Each element of the claim must be proved by evidence produced and admitted at the administrative hearing. See *Wehbe v. Contacts & Specs et al.*, CCHR No. 93-E-232 (Nov. 20, 1996); *Matthews v. Hinkley & Schmidt*, CCHR No. 98-E-206 (Jan. 17, 2001); and numerous other decisions. By "preponderance of the evidence," we mean that the item to be proved is more likely true than not true. *Wehbe, supra.*; see also *People v. Close*, 389 Ill.App.3d 228, (3rd Dist. 2009).

The Commission reviews a hearing officer's proposed findings of fact pursuant to Section 2-120-510(l) of the Chicago Municipal Code, which provides in pertinent part: "The commission shall adopt the findings of fact recommended by a hearing officer...if the recommended findings are not contrary to the evidence presented at the hearing." This standard of review takes into account that the hearing officer has had the opportunity to observe the testimony and demeanor of witnesses. *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006); see also *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997). The Commission thus will not re-weigh a hearing officer's recommendation as to witness credibility unless it is against

the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996); *Wiles v. The Woodlawn Organization et al.*, CCHR No. 96-H-1 (Mar. 17, 1999). Also, the Commission may disregard all testimony of a particular witness if it finds some of it not credible. See *Sanders v. Onnezi*, CCHR No. 93-H-32 (March 16, 1994), *Bray v. Sandpiper Too et al.*, CCHR No. 94-E-43 (Jan. 10, 1996); *Crenshaw v. Harvey*, CCHR No. 95-H-82 (May 21, 1997); *Poole v. Perry, supra.*

A variety of factors may be considered in assessing witness credibility, including the individual's interest in the outcome, bias, and demeanor (*Poole* and *McGee*, *supra*); the plausibility of the story (*Stovall, supra*); inconsistencies and contradictions in the testimony of the witness (*Anderson v. Stavropoulos*, CCHR No. 98-H-14 (Feb. 16, 2000); *Doxy v. Chicago Public Library*, CCHR No. 99-PA-31 (Apr. 18, 2001); *Little v. Tommy Gun's Garage, Inc.*, 99-E-11 (Jan. 24, 2002)); whether the testimony is corroborated by another witness or contemporaneous documents (*Doxy, supra*; *Edwards v. Larkin*, CCHR No. 01-H-35 (Feb. 16, 2005)); whether the testimony is detailed and unprompted (*Chimpoulis & Richardson v. J & O Corp. et al.*, CCHR No. 97-E-123/127 (Sept. 20, 2000)); and whether the witness has previously engaged in fraud or dishonesty (*Belcastro v. 860 N. Lake Shore Drive Trust*, CCHR No. 95-H-160 (Feb. 20, 2002)). Credibility is not only about whether a witness has deliberately lied but also about the reliability of the recollections and observations of a witness.

In this Complaint, Robinson alleged that Hernandez and Ventura, without any apparent prior dialogue, discussion, or interaction with her, both said "that's a fag" when Complainant was in their vicinity. It was thus Robinson's initial burden to present sufficient, credible evidence at the hearing to establish that it is more likely than not that Hernandez and Ventura made these comments as alleged. See, e.g., *Long v. Chicago Public Library*, CCHR No. 00-PA-13 (Jan. 18, 2006); *Little*, supra; and *Mahaffey v. University of Chicago Hospitals*, CCHR No. 93-E-221 (July 22, 1998). A complainant's failure to provide credible evidence of discriminatory statements, or contradictory evidence of such statements, supports a finding that the statements were never made. See, e.g., *Little, supra* at 23, where a complainant's contradictory allegations and testimony at the hearing regarding racial threats of bodily harm made against her by the respondent's employees established her lack of credibility and instead showed that her assertions were merely "embellishment or hyperbole."

Pursuant to these standards, here the Commission must and does adopt the hearing officer's recommended findings of fact including her recommended resolution of the credibility of conflicting testimony. The hearing officer found Complainant's testimony completely lacking in credibility and her accusations against Respondent a "farce." She found the testimony of the security guards, Hernandez and Ventura, to be credible. The Commission's review of the record confirms that the hearing officer's position is not contrary to the evidence presented at the hearing. The Commission has reviewed Complainant's objections arguing that her testimony should be found credible and the that of the security guards found not credible, but does not find these arguments persuasive.

In her direct testimony at the hearing, Complainant did not even describe the events that purportedly took place on May 12 and August 20 of 2008 from memory, instead reading from her Complaint. Although the hearing officer overruled Respondent's objection to reading her testimony, the hearing officer nevertheless found that it undermined Complainant's credibility. (Tr. 18-21). In addition, the hearing officer noted that Complainant's story is inconsistent regarding Ventura's location at the store when he made the alleged verbal slur on August 20. Complainant testified initially that it occurred in the middle of the store, then testified that Ventura was at the front of the store when it happened. (Finding of Fact #12). More telling was

Complainant's abrupt desire "to withdraw the charges" against Ventura after hearing his testimony. (Finding of Fact #20).

Although Complainant produced a receipt to corroborate that she had shopped at Ultra Foods on May 12, she had no receipt for August 20 and admitted she "couldn't prove that [she] was in the store" that day. (Tr. 53). Nor did Complainant have receipts for the $60 round trip cab rides she says she took on her two visits to Ultra Foods. Although corroboration of a complainant's testimony is not strictly required to prove a case, lack of corroboration where it should be available is a factor which can be considered in evaluating credibility. Here, the Commission finds it implausible that an individual would experience the slurs and conduct complained of yet fail to obtain and produce available documentation of each incident. It is especially unlikely that this Complainant—who has displayed thorough if not repetitious attention to detail in her written filings—would fail to obtain such documentation.

In a further inconsistency, Complainant testified that on that August 20, she was not in the store nearly as long as during her May 12 visit—when she maintained that the cab driver waited for her for two hours with the meter running—and yet she stated the cab ride still cost her $60 for the round trip. (Tr. 59). Moreover, the Commission finds it implausible that Complainant—who is unemployed and supports herself through monthly SSI benefits from the Social Security Administration (Tr. 24-27)—would pay $60 for a cab ride to purchase $80 worth of groceries at a store some 15 miles away despite the availability of a variety of grocery stores closer to her home in the South Loop. (Tr. 33-34). Complainant's arguments that the products at Ultra Foods are better and cheaper are unpersuasive.

Finally and most importantly, the hearing officer found that both Ventura and Hernandez credibly testified that, prior to the hearing, they had never seen Complainant before and they had never called her or anyone else a "fag" or engaged in the other conduct they were accused of. The hearing officer observed that during his testimony, Hernandez was visibly upset that he had been charged with discrimination. Similarly, the hearing officer found that Ventura appeared perplexed about the allegations because the hearing was also the first time he had ever seen Complainant. On all counts, the hearing officer found their testimony that the alleged slurs and hostile conduct never happened was more believable and credible than Complainant's version of events.[8] The hearing officer expressly found that Complainant was not at Ultra Foods at all on August 20.

In reviewing the record, the Commission further finds that Complainant was evasive and selective in parts of her testimony, such as resisting appropriate questions on cross-examination about the time it took her to travel between her home and Ultra Foods (Tr. 28-33). This further undermines her credibility.

The Commission agrees with the hearing officer that it is hard to believe two different security guards on two different occasions would have made essentially the same verbal

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[8] Complainant argues in her objections that the hearing officer over-emphasized the voluntary nature of the testimony of Hernandez and Ventura, because they appeared pursuant to subpoena. The Commission does not regard this fact as undermining the hearing officer's credibility findings. Use of a subpoena does not necessarily mean a witness was unwilling to testify. Neither Hernandez nor Ventura were still employed by American. (Finding of Fact #15). It is not unusual for a party to subpoena witnesses who are not under their control, to assure their attendance and sometimes to enable them to obtain time off work. Hernandez was working in a family business and part time at Soldier Field. (Tr. 82). Ventura was working as a security officer at the University of Chicago Medical Center. (Tr. 93).

statement in the same manner "out of the blue" as Complainant has alleged. It is also hard to believe that a security guard would deliberately and spontaneously go to a checkout line and grab Complainant's cart in order to harass her because of her gender identity. Complainant's testimony also fails to explain why store personnel and security guards would have perceived her to be homosexual or transgender on the two occasions she alleged. Complainant has stated that she is male but a transvestite who lives a "transgender life style" as female; from this it can be inferred that through her attire and appearance she was presenting herself as female. But she provided no information about how she appeared or conducted herself that day (or on any previous occasions) which might have caused the security guards to take notice of her among the other customers in the store.

The Commission also finds it implausible that an individual would experience the alleged offensive slurs and conduct on two separate occasions but not report either incident to the management of American Security Services (a business she knew because she had filed a previous complaint against it; see Tr. 24, 63-64, 109, 123) or Ultra Foods (a business she says she had patronized before the alleged incidents occurred). Yet that is Complainant's testimony. The explanation that she does not pursue a first offense of name-calling (See Tr. 42-43) is not consistent with her stated outrage at the alleged conduct. Nor is the Commission persuaded by Complainant's arguments that she was not required to report the incidents and her failure to do so does not mean the incidents did not occur. The Commission is not ruling that Complainant was required to report the incidents as an element of her discrimination claim. Rather the hearing officer and Commission in evaluating the credibility of Complainant's testimony have considered her failure to report the alleged conduct of the security guards in evaluating the plausibility of the factual scenario she presented.

Respondent attempted to put into evidence a video recording made on August 20, 2008, which it claims would show that Robinson was never in the store that day. (Tr. 118-122). The problem with this evidence is that Respondent failed to timely produce it to Complainant and when it did produce it, neither Complainant nor the hearing officer could view the video. At the hearing, the hearing officer attempted to view the video on the court reporter's computer. After some effort, the video was running. The hearing officer stated on the record what she observed on the video: "[I]t's showing movement in the store....Mr. Williams just pointed out on the left side of the screen a security guard standing with a white shirt and a black cap on as the shoppers are going through the store." It is clear from the transcript that only a small portion of the video was viewed at the hearing. The hearing officer asked Respondent's counsel to submit instructions to her and Complainant after the hearing about how to open the video on a computer. (Tr. 118-122). Respondent submitted the instructions on August 9, 2010.

Nevertheless, the hearing officer made clear in her recommended ruling that she did not rely on this video in her fact-finding. Although the hearing officer denied Complainant's motions to bar the evidence, on the basis that the motions were moot, in effect she granted the motions by not admitting the video into evidence. The Commission in making this ruling also has not viewed any part of the video. At most, the small portion of the video that was viewed by all present during the hearing and described by the hearing officer on the record shows that a security guard was present but Complainant could not be seen in the small segment viewed. That does not resolve any material factual issues either for or against Complainant.

Complainant has continued to object to the hearing officer's handling of this video. These objections are overruled. First, Complainant objected at the hearing and in her objections to the recommended ruling that she could not adequately see what was on the video because, although she wears glasses, she also needs a magnifier, which she did not bring to the hearing

with her. The hearing officer correctly overruled this objection at the hearing, noting that the image was not that small. (Tr. 120). The Commission finds these assertions of inability to see documentary evidence without magnifying equipment to be self-serving and not credible. If Complainant had this much vision impairment, she would not have been able to read her own Complaint into the hearing record as she did, and she would have brought any necessary magnifying equipment to the hearing to see the printed material she knew would be part of the hearing process. She did not object to admission of any other documentary evidence at the hearing because she could not see its contents.

Complainant further contradicted herself and undermined her credibility by asserting in her objections to the recommended ruling that she could not view the video because "I don't own a computer." (Objections to Recommended Ruling filed September 29, 2010). Yet at the hearing she was asked by the hearing officer, "Complainant, do you have computer access to be able to open [the video]?" In response, Complainant testified, "I have sophisticated stuff." She went on to testify that she had tried to open the video prior to the hearing but got only a blue image of a disc with a file number. (Tr. 7). Thus even if Complainant does not own a computer, she has admitted that she has access to one (and indeed computer access is available from many sources including public libraries). Again it appears that Complainant has been willing to say anything she believes necessary to win this case rather than testifying fully and accurately.

The hearing officer noted in her findings of fact and recommended ruling that Complainant has filed multiple discrimination complaints with the Commission against various respondents. The hearing officer found this to be repeated and calculated activity which further undercuts Complainant's credibility and the strength of her claims. The hearing officer found Complainant's motivation to be financial rather than to address legitimate, discriminatory wrongs, and further considered Complainant's filing of multiple amended complaints and multiple motions in this case to be an attempt to wear Respondent down and get a financial settlement. Complainant has objected to all of these inferences.

The Commission has always made clear that the filing of multiple complaints has no bearing, in itself, on whether a particular complaint has merit or on a complainant's credibility. *Blakemore v. Kinko's*, CCHR No. 01-PA-77 (Dec. 6, 2001); *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010). As explained in *Cotten*:

> [T]he Commission must and does review each complaint on its merits. See Section 2-120-510(e) *et seq.*, Chicago Muni. Code. The Commission may not and does not regard a complainant's allegations or testimony as inherently incredible merely because that complainant may have filed other complaints, nor is a complaint subject to dismissal for that reason. Members of the public have the right to file complaints at the Commission on Human Relations alleging violations of the Chicago Human Rights Ordinance or the Chicago Fair Housing Ordinance.

The hearing officer acknowledged these principles in her recommended ruling. It is well-established that Complainant has a right to pursue claims of discrimination under the CHRO and has the right to file as many complaints as she chooses as long as she proceeds in good faith compliance with CCHR Reg. 210.410.

The Commission recognizes that there may be circumstances when an individual's litigiousness can be taken into account.[9] Nor does the Commission rule out the possibility that the potential for financial gain may inspire allegations that are not truthful and claims that are not legitimate. Credibility assessment is the means by which the Commission determines the truth of particular allegations and testimony. When assessing credibility, the interests and motivations of a witness may be relevant to the credibility of that witness and may be considered. *Poole* and *McGee*, *supra.*

Here, the Commission agrees with the hearing officer that Complainant has submitted unnecessarily lengthy and repetitious documents. However, the Commission also recognizes that Complainant may have acted out of a good faith—even if misplaced—desire to present the case thoroughly and persuasively, rather than an improper motive to pressure Respondent into settlement. Thus the Commission does not base this ruling on Complainant's repetitious motions.

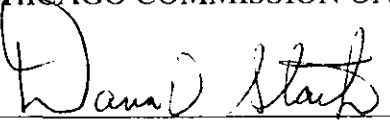
Further, the Commission does not base its credibility determinations in this case on whether Complainant has paid taxes on financial settlements received in other cases. The Commission does not advise parties or make determinations about the taxability of settlements or awards of relief. Parties may not understand the applicable law about when these receipts must be reported as income, but an incorrect understanding is insufficient to establish an intent to defraud or lack of credibility.

As explained above, the hearing record sufficiently supports the hearing officer's credibility determinations in favor of Respondent on the merits of this case without need for such determinations. The Commission agrees with the hearing officer that Complainant has proved by a preponderance of credible evidence only that she went grocery shopping at Ultra Foods on May 12, 2008. Complainant has failed to prove, by a preponderance of credible evidence, all of her other material factual allegations and charges of discrimination against American Security Services.

## V. CONCLUSION

Accordingly, the Commission finds in favor of Respondent and specifically finds that Complainant James "Robin" Robinson has not proved the allegations of gender identity discrimination made against Respondent American Security Services in this matter. Accordingly, this Complaint is DISMISSED.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Dana V. Starks, Chair and Commissioner
Entered: January 19, 2010

[9] See, e.g., *Williams v. Bally Total Fitness & Lounge*, CCHR No. 06-P-48 (Jan. 21, 2009), as well as CCHR Regs. 210.410 and 210.420.