City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Renata Burford and Doris Burford
Complainant,
v.
Complete Roofing and Tuck Pointing, and Michael Smith
Respondents.

Case No.: 09-P-109

Date of Ruling: October 19, 2011
Date Mailed: November 7, 2011

TO: Renata and Doris Burford
1910 S. Troy
Chicago, IL 60623

Owner/Manager and Michael Smith
Complete Roofing and Tuck Pointing
430 W. 38th St.
Chicago, IL 60609

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on October 19, 2011, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondents 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 Respondents jointly and severally:

1. To pay to *each* Complainant compensatory and punitive damages in the total amount of $4,000, plus interest on that amount from November, 2010, in accordance with Commission Regulation 240.700. Thus total damages payable are $8,000 plus interest.

2. 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 at this time. Respondent must comply with this Final Order shall occur no later than 28 days from the date of mailing of the order. Reg. 250.210.

CHICAGO COMMISSION ON HUMAN RELATIONS

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[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.

Payment of damages and interest is to be made directly to the Complainant awarded damages, through Complainant's attorney of record if applicable. **Payments of a fine** is 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 Human Rights Compliance 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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FINAL RULING ON LIABILITY AND RELIEF

I. PROCEDURAL HISTORY

Complainants Renata Burford and Doris Burford filed a Complaint against Respondents Complete Roofing and Tuck Pointing and its agent Michael Smith alleging that they violated the Chicago Human Rights Ordinance ("CHRO") by denying them full service and engaging in racial harassment after the Complainants attempted to retain them to repair their roof. Specifically, Complainants alleged that Respondents violated Chapter 2-160 of the CHRO, which prohibits, among other things, race discrimination involving the full use of a public accommodation. The Complaint was filed on November 19, 2010.

After Respondents failed to file and serve a Response to the Complaint, the Commission issued an Order to Respond and Notice of Potential Default on January 5, 2011. Again, Respondents failed to respond. On March 10, 2011, the Commission entered an Order of Default against Respondents due to their failure to respond to the Complaint as ordered. On April 15, 2011, the hearing officer served an order on all parties setting the administrative hearing date for May 26, 2011. starting at 10:00 a.m. at the office of the Commission. Respondents failed to appear for the hearing.[1]

[1] The Commission investigator was initially in oral contact with Michael Smith and his company at the telephone number provided for the company by Complainants. The investigator spoke with Smith by telephone on December 28 and 30, 2010, about the Complaint and the need to respond. The investigator telephoned three more times on January 3 and 4, 2011, reaching other people who acknowledged that the investigator had reached Complete Roofing and Tuck Pointing and took messages. The Commission's Order to Respond and Notice of Potential Default, mailed on January 5, 2011, was not returned to the Commission as undeliverable. However, the Order of Default mailed on March 22, 2011, was returned marked "Attempted—Not Known—Unable to Forward." The packet including the Order Appointing Hearing Officer and Commencing Hearing Process, as well as the Hearing Officer's Recommended Ruling issued after the administrative hearing, were similarly returned. CCHR Reg. 210.270(b) provides that once a respondent has knowledge of a complaint it has a continuing obligation to keep the Commission informed of current contact information and status, and if a respondent fails to do so, the Commission shall send orders, notices, and other document to the most recent address the Commission has and that shall be deemed sufficient such that the respondent cannot later rely on failure to receive such documents as a defense. Respondents were notified of this obligation in the initial Respondent Notification packet mailed to each of them on December 2, 2010, after the filing of the Complaint.

On July 25, 2011, the hearing officer issued her Recommended Ruling on Liability and Damages, notifying the parties of the deadline to file and serve any objections. No objections were received.

II. FINDINGS OF FACT

1. Complainants are African American. They are a mother and daughter and live at 1910 S. Troy in Chicago, Illinois. (Complaint. ¶1) On or about November 15, 2010, they called Respondent Michael Smith at Complete Roofing and Tuck Pointing to set up an appointment for him to look at their roof, which was in need of repair. (Tr. 5-6) A neighbor referred Complainants to the business. (Tr. 5)

2. During this first conversation, Smith asked to see the insurance claim paperwork prepared by Complainants' insurance agent, who had completed an assessment for the roof repair. (Tr. 5) When Complainant Renata Burford told Smith he wasn't supposed to ask for this information, Smith hung up on her. (Tr. 5) He called back and apologized for getting disconnected. (Tr. 6) However, Renata Burford believed Smith had hung up on her intentionally. (Tr. 6, 10)

3. Complainants then explained the problem with the roof and Smith agreed to come over to their house the following day. (Tr. 6, 10)

4. Smith went to Complainants' home on November 16, 2010. Doris Burford saw Smith pull up to their home. (Tr. 12) She testified that he is Caucasian. (Tr. 12)

5. Smith never came into the house or went onto the roof to assess the damages. Instead, he called Complainants while sitting outside of their home in his truck. (Tr. 6) Doris Burford put Smith on the speakerphone so that Renata Burford could also hear the conversation. (Tr. 6)

6. Smith told Complainants that he had completed the assessment of the roof from his truck and wanted to bring it in to them. (Tr. 6-7) Renata Burford complained and told Smith, "[Y]ou're not about to bring anything in....[Y]ou're supposed to have your ladder and get on my mom's roof and view the damages." She asked Smith how he could write up a proposal without actually seeing the roof. (Tr. 7) She testified that her comments made Smith mad. (Tr. 9)

7. In response, Smith called Renata Burford a "fucking nigger" and said, "Suck my dick, bitch." He then hung up the phone. (Tr. 7, 12) Renata Burford testified that Smith drove off quickly after making the slurs. (Tr. 7)

8. Complainants were shocked at Smith's outburst. Renata Burford was "livid" and couldn't believe Smith had made such comments. (Tr. 8, 10) She testified that she and her mother live in a black community. She could not understand how Smith could provide services and contract to do work there and yet be prejudiced. (Tr. 8, 10)

9. Doris Burford testified that Smith's comments were "awful" and that she "had never heard nothing like that before." She thought it "was just terrible," especially given that Smith was a business-person. (Tr. 12-13)

10. Complainants did not have any further conversations with Smith. (Tr. 9) Instead, Renata Burford contacted the police, who informed her that they could do nothing about the incident. She also reported Respondents to the Better Business Bureau and filed this Complaint with the Commission.

III. CONCLUSIONS OF LAW AND ANALYSIS

Because an Order of Default has been entered in this case, Respondents are 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. CCHR Reg. 235.320. In addition, Complainants need only establish a *prima facie* case of race discrimination in the use of a public accommodation in order to be eligible for an order granting relief. *Id.; Flores v. A Taste of Heaven et al.*, CCHR No. 06-E-32 (Aug. 18, 2010); *Williams v. Funky Buddha Lounge*, CCHR No. 04-P-82 (July 16, 2008).

Section 2-160-070 of the 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 race.[2] "Full use" of a public accommodation means that the services offered to persons who are members of a protected class are offered under the same terms and conditions as are applied to all other persons. CCHR Reg. 520.110.

The CHRO prohibits more than just the discriminatory withholding or denial of a public accommodation. Any person who owns, leases, rents, operates, manages, or in any manner controls a public accommodation also has an affirmative duty to maintain a public accommodation environment free of harassment on the basis of a protected class. CCHR Reg. 520.150(a). Thus slurs and other verbal or physical conduct relating to an individual's race can also constitute a violation of the CHRO regarding full use of a public accommodation. CCHR Reg. 520.150 (b).

To establish such a violation, Complainants must show that the slurs or conduct (1) had the purpose or effect of creating an intimidating, hostile, or offensive environment; (2) had the purpose or effect of unreasonably interfering with their full use of the public accommodation; or (3) otherwise adversely affected their full use of the public accommodation. *Id.* Accordingly, to establish a *prima facie* case here, Complainants must show that they (1) are members of a protected class; (2) sought the use of a public accommodation; (3) were discriminated against concerning the use of such public accommodation, and (4) suffered material harm. *Blakemore v. General Parking*, CCHR No. 99-PA-120 (Feb. 22, 2001).

Complainants' testimony satisfies all of these elements. They are African American. They sought roofing services through the Respondents. During the course of seeking those services, Respondents engaged in discrimination and harassment by directing discriminatory slurs at them. While Respondents made only two such statements—calling them "nigger" and saying "Such my dick, bitch"— that was more than enough to violate the CHRO. See, e.g., *Miller v. Drain Experts et al.*, CCHR No. 97-PA-29 (Apr. 15, 1998), where defaulted respondents were found liable for calling the

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[2] 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 based on Complainants' testimony that Respondents were a company that provided roofing services to the public and had, in fact, done so for one of their neighbors. (Tr. at 5)

complainant a racist name while providing services; see also *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Oct. 19, 1995), a public accommodations case in which the Commission held that using the slur "faggot" in a single instance violated the CHRO because it was sufficiently separating and belittling to create a harassing and hostile environment. Finally, Complainants established that they suffered emotional distress. Complainants testified that they were shocked and angry at Smith's outburst; that the comments were "awful" and that they couldn't believe that someone providing business services in the black community would use such language. Thus Complainants have satisfied their burden of establishing a *prima face* case of discrimination and entitlement to relief.[3]

IV. RELIEF

A. Emotional Distress Damages

Complainants suffered no out-of-pocket losses as a result of the discrimination. The sole remedy they seek is emotional distress damages. The Commission considers several factors in determining emotional distress damages awards. Relatively modest awards have been made in cases where (1) there was negligible or merely conclusive testimony about mental distress; (2) the discriminatory conduct occurred over a brief period of time; (3) there were no prolonged effects from the conduct; (4) there was no medical treatment and few if any physical symptoms; (5) the conduct was not so egregious that one would expect a reasonable person to experience severe emotional distress; and (6) the complainant was not particularly vulnerable. See *Williams, supra*; *Horn v. A-Aero 24 Hour Locksmith*, CCHR No 99-PA-32 (July 19, 2000); *Efstathiou v. Café Kallisto*, CCHR No. 95-PA-1 (May 21, 1997); and *Nash and Demby v. Sallas and Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995). By contrast, larger awards have been made where detailed testimony revealed specific effects from the discrimination; the conduct and the emotional effects took place over a long period of time; there were physical manifestations or psychiatric treatment in addition to the emotional distress; the conduct was particularly egregious and the complainant was vulnerable. See, e.g., *Day v. CTA*, CCHR No. 05-E-115 (Nov. 15, 2010); *Winter v. Chicago Park District*, CCHR No. 97-PA-55 (Oct. 18, 2000).

Complainants' case clearly falls within the first line of cases cited above. Complainants endured a single incident of discrimination. The distress that they testified to was minimal. There were no prolonged side effects, physical symptoms, or psychiatric treatment. Nor did the Complainants establish that they were particularly vulnerable. Thus, while Respondents' conduct violated the CHRO, it does not warrant a large award for emotional distress damages.

For example, in *Craig*, the Commission awarded the complainant $750 in emotional distress damages resulting from a one-time incident of discriminatory slurs based on sexual orientation. In *Horn, supra*, the complainant, an African American woman, called a locksmith after locking her keys in her car. Complainant was told that the business did not serve "jungle bunnies" and was subjected to numerous other derogatory and humiliating comments. Horn testified that she was upset and angry about the derogatory reference to African Americans, experienced stress and sleeplessness as a result, and continued to think about the incident when seeking other types of services. The Commission awarded her $1,000. See also *Efstathiou, supra*, where the complainant was awarded $1,000 in

[3] Respondent Complete Roofing and Tuck Pointing is liable for Smith's discriminatory conduct under an agency theory because Smith was its agent (and apparent owner). See, e.g., *Horn v. A-Aero 24 Hour Locksmith*, CCHR No 99-PA-32 (July 19, 2000), holding a respondent company liable for its owner's CHRO violation). See also *Blakemore v. General Parking*, CCHR No. 99-PA-120 (Feb. 22, 2001), and *Warren and Elbert v. Lofton and Lofton Management et al.*, CCHR No. 07-P-62/63/92 (May 19, 2010).

emotional damages for denial of entry into a restaurant because his companions were African American; *Blakemore, supra*, awarding $1,000 where the respondent yelled at the complainant and treated him differently because of his race; *Macklin v. F&R Concrete et al.*, CCHR No. 95-PA-35 (Nov. 20, 1996), awarding an African American complainant $1,000 for emotional distress when the respondent refusal to provide services based on his race.

Based on this line of cases, the hearing officer recommended $1,000 in emotional distress damages for each Complainant.[4] The Commission agrees and adopts the recommendation.

B. Punitive Damages

The Commission awards punitive damages where a respondent's actions are willful and wanton, malicious, and/or taken in reckless disregard for the rights of the complainant. *Blakemore* and *Horn, supra.* The Commission also imposes punitive damages to deter conduct that violates the CHRO. *Horn, supra.* Awarding punitive damages is particularly important to make a complainant whole when the actual damages are low. *Id.*

Failure to participate in the Commission's proceedings is another factor that supports punitive damages. *Id;* see also *Huff v. American Mgmt. & Rental Svc.,* CCHR No. 97-H-187 (Jan. 20, 1999), awarding punitive damages where a respondent disregarded Commission proceedings.

Ordinarily the Commission considers the income and assets of the respondent in determining the appropriate amount of punitive damages. However, the Commission may award such damages without having a respondent's specific financial information where the respondent fails to appear for the hearing. *Id.*; *Miller, supra.*

Here, Respondents disregarded both the rights of the Complainants and the importance of these proceedings. Respondent Smith wrongly insisted upon seeing Complainants' insurance claim information, presumably so that he could over-charge them. When Complainants objected, he hung up on them over the phone. Then he attempted to evaluate the damage to Complainants' roof without ever bothering to get out of his truck to examine the roof up close. Respondent Smith's lack of professionalism worsened when he lobbed racial and gender-based slurs at Complainants. Moreover, Respondents disregarded several Commission orders and failed to fully participate in these proceedings. As in *Horn*, this cavalier disregard for Complainants rights and these administrative proceedings warrants punitive damages.

The hearing officer recommended punitive damages in the amount of $3,000. The hearing officer did not make clear in her recommendation whether this amount was awarded to each Complainant or to Complainants collectively. Given that each Complainant is an adult and individually incurred harm due to the violation they experienced, the Commission reads her recommendation as intended to award $3,000 in punitive damages to each Complainant. In any event, the Commission believes that result is warranted based on the evidence and reasoning brought out in the hearing and recommended decision.

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[4] Complainant Renata Burford testified that she sought $50,000 in emotional distress damages based on this one incident. While Respondents' conduct was crass, racist, and unlawful, based on a long line of Commission precedent as cited above, it did not warrant such a significant award.

Accordingly, the Commission orders payment of $3,000 in punitive damages to each of the two Complainants.

C. Interest

Section 2-120-510(1) of the Chicago Municipal Code allows an additional award of interest on damages ordered to remedy violations of the Chicago Human Rights Ordinance. Pursuant to Regulation 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 violation. Accordingly, the hearing officer recommended that the Commission award pre-and post judgment interest on all damages awarded in this case, starting from the date of the violation, which was November 16, 2010. The Commission adopts this recommendation.

D. Fine

Section 2-160-120 of the CHRO requires a fine to be assessed against a party found in violation of the ordinance in an amount not less than $100 and not more than $500. The hearing officer recommended a fine in the amount of $500 for the violation set forth above.

The fine and all damages and interest are imposed on both Respondents jointly and severally.

V. SUMMARY AND CONCLUSION

The Commission finds Respondents liable for race discrimination in violation of the Chicago Human Rights Ordinance. As detailed above, the Commission orders Respondents jointly and severally to pay the following relief:

1. Emotional distress damages in the amount of $1,000 and punitive damages in the amount of $3,000 to *each* Complainant, plus pre- and post judgment interest dating from November 16, 2010, for a total of $4,000 in damages plus interest to each Complainant and $8,000 in damages plus interest overall.

2. A fine of $500 to the City of Chicago.

CHICAGO COMMISSION ON HUMAN RELATIONS

Mona Noriega

By: Mona Noriega, Chair and Commissioner
Entered: October 19, 2011