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:

Sherif Mahmoud
Complainant,
v.
Chipotle Mexican Grill Service Co., LLC
d/b/a Chipotle Mexican Grill
Respondent.

Case No.: 12-P-25

Date of Ruling: June 18, 2014
Date Mailed: July 31, 2014

TO:
Sherif Mahmoud
1230 N. State Parkway, #6A
Chicago, IL 60610

Andrew Smith
Messner & Reeves
1430 Wynkoop Street, Ste. 400
Denver, CO 80202

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on June 18, 2014, the Chicago Commission on Human Relations issued a ruling in favor of 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 a fine to the City of Chicago in the amount of $500.[1]

2. To comply with the order of injunctive relief stated in the enclosed ruling.

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.

City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 4th Floor, Chicago, IL 60654
(312) 744-4111 [Voice], (312) 744-1081 [Facsimile], (312) 744-1088 [TTY]

IN THE MATTER OF:

Sherif Mahmoud
Complainant,
v.

Chipotle Mexican Grill Service Co., LLC
d/b/a Chipotle Mexican Grill
Respondent.

Case No.: 12-P-25

Date of Ruling: June 18, 2014

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On June 25, 2012, Complainant Sherif Mahmoud ("Complainant"), appearing *pro se*, filed a Complaint against the Respondent, Chipotle Mexican Grill Service Co., ("Respondent" or "Chipotle"), alleging that Respondent had discriminated against him on the basis of his disability on June 23, 2012, at Respondent's restaurant location at 1166 North State Street, Chicago, Illinois. Specifically, Complainant alleged that the entrance doors into the Chipotle restaurant were too heavy for him to operate independently as a wheelchair user and further asked that Respondent Chipotle be required to install a "door button" at the entrance to Respondent's place of business. On June 29, 2012, the Complainant filed an Amended Complaint, adding details of his disability and the situation he encountered at Respondent's place of business. In the Amended Complaint, Complainant asked that Respondent be ordered to install an automatic door at the restaurant.

On September 12, 2012, Respondent Chipotle filed a Response and Memorandum of Law to Complainant's Complaint. Respondent Chipotle asked the Commission to dismiss Complainant's Complaint, arguing that the restaurant at 1166 North State complied with Chicago's Municipal Code and Building Code and thus no violation of the Chicago Human Rights Ordinance, Chic. Muni. Code § 2-160-070, could exist. Respondent also noted that it had an anti-discrimination policy prohibiting discrimination on the basis of disability and that Complainant had not alleged that he had been unable to access the restaurant.

On September 25, 2012, the Commission issued an Order Denying Respondent's Motion to Dismiss. The Commission found that whether Respondent's facility was fully accessible as required by the CHRO at the time the Complainant attempted to enter the facility was a question of fact that the Commission was required to investigate. Further, the Commission noted that although the CHRO "is not itself an accessibility code and its provisions may not be co-extensive with other laws enforced in other forums, the CHRO does require that public accommodations be available to persons with disabilities under the same terms and conditions as to all other persons."

On February 7, 2013, the Commission issued an Order Finding Substantial Evidence and scheduled a settlement conference. The Commission determined that a settlement conference was unlikely to be productive, and on April 16, 2013, the Commission issued an order commencing the hearing process.

On July 11, 2013, a pre-hearing conference was held. At the conference, Respondent agreed that the Complainant's response to its discovery requests was satisfactory. Complainant agreed he had filed no discovery requests. A schedule was set for filing Pre-Hearing Memoranda and proposed stipulations.

On September 13, 2013, Respondent filed a motion to allow it to present witness testimony at the hearing by telephone or video conferencing. On October 7, 2013, the hearing officer denied this motion. The hearing officer noted that the only Commission precedent for allowing such testimony was *Gilbert and Gray v. 7335 South Shore Condominium Association and Norton*, CCHR No. 01-H-18 and 01-H-27 (Jan. 3, 2007). In that case, the hearing officer allowed the testimony of key individual witnesses by video conferencing at the expense of respondents over the objections of complainants' counsel, but the opinion did not set forth the rationale for the decision to allow testimony by video conferencing. After review of relevant federal and state law on remote testimony, the hearing officer concluded that Respondent did not establish that providing live testimony would present a hardship as required by federal and state rules and precedents and denied Respondent's motion on October 7, 2013.

On October 11, 2013, Respondent filed a motion to continue the hearing and for an order to dismiss Complainant's Complaint for failure to cooperate. In support of that motion, Respondent argued that Complainant did not file his Pre-Hearing Memorandum, did not proffer copies of documents he proposed to submit at the hearing, did not file proposed factual stipulations, and did not respond to Respondent's proposed factual stipulations. A notice of potential sanctions based on Respondent's motion was issued by the hearing officer on October 15, 2013.

On October 15, 2013, Complainant, who was appearing *pro se*, filed his response, stating that he was not calling any witnesses other than himself, had no documents other than those he had submitted in response to Respondent's Request for Production, and was not asking for any monetary compensation. Complainant did not understand he was required to submit a Pre-Hearing Memorandum under those circumstances. Complainant did not address his failure to respond to Respondent's proposed stipulations. On October 23, 2013, Complainant filed a Pre-Hearing Memorandum as required by the hearing officer and noted that he had no objections to Respondent's proposed stipulations.

On October 25, 2013, the hearing officer issued an order denying Respondent's motion to dismiss and for a continuance, noting in particular that dismissal is a drastic step especially in a case where a party is appearing *pro se*.

On October 31, 2013, an administrative hearing was held. The Complainant appeared *pro se*; the Complainant offered his testimony and no other witnesses. The Respondent was represented by counsel; two employees with supervisory responsibilities for the 1166 North State location appeared as witnesses.

On February 4, 2013, the hearing officer issued her Recommended Ruling on Liability and Relief. Respondent filed objections to the Recommended Ruling, which were considered in reaching this Final Ruling.

II. FINDINGS OF FACT

1. Complainant Sherif Mahmoud is a person with a disability. Complainant uses a wheelchair for mobility. AC[1], par. 1. Stip.[2] #2. Tr.[3] p. 4. Complainant had a brain injury which resulted in symptoms that mimic a stroke. AC, par. 1.

2. Respondent Chipotle is a world-wide corporation. Tr. p. 64. The annual report for Chipotle documents the corporation operates 1,410 restaurants worldwide as of December 31, 2012. Tr. p. 64, Respondent's Exh. 5. The net income for Chipotle Mexican Grill, Inc., as noted in its 2012 Annual Report, was $278,000,000. Respondent's Exh. 6. The restaurant at 1166 North State Street is one of approximately 30 Chipotle restaurants operating in the City of Chicago and one of over 100 Chipotle restaurants operating in the State of Illinois. Tr. p. 61-62, Respondent's Exh. 5.

3. Complainant has visited Respondent's restaurant at 1166 North State Street many times. AC., par. 2. Between August 8, 2011, and June 2, 2013, Complainant visited the restaurant between 30-40 times. Tr. pp. 19-20. Respondent's Exh. 3. Complainant visited Respondent's restaurant 12 times after he filed the Complaint on June 29, 2012. Tr. p. 30.

4. At the visits to Respondent's Chipotle restaurant, Complainant was unable to open the door to the restaurant independently because the force of the door was too heavy. AC, par. 3. Complainant had to wait outside for someone, either another customer or sometimes an employee, to open the door for him. AC, par. 3, Tr. p. 7. Non-disabled customers do not have to wait outside. Tr. p. 6.

5. Once inside the facility, Complainant received service like any other customer. Tr. p. 4.

6. Complainant sought to require Respondent Chipotle to install an automated door to the entrance to the facility at 1166 North State Street. AC, par. 5. Complainant believed an automatic door opener was the only method to provide access that he could operate independently. AC, par. 5. Providing a bell at the door would require him to wait until an employee was able to leave his or her responsibilities of providing service to other customers to open the door. Tr. p. 5. Waiting until another patron opened the door for him or until a Chipotle employee saw him outside the restaurant required Complainant to wait for assistance to enter and exit the restaurant, something people without disabilities were not required to do. Tr. pp. 4-5.

7. Rony Waterhouse ("Waterhouse") is an apprentice team leader for Chipotle Restaurants. Tr. p. 34. He has responsibilities for restaurants in Chicago and Indiana, including the location at 1166 North State Street. Tr. p.34. From 2010 to May of 2012, he was general manager of the 1166 North State Street location. Tr. p. 35. When he was the manager, he was at the 1166 North State Street location 5 days a week for about 50 hours a week. Tr. p. 36.

---

[1] "AC" refers to the Amended Complaint filed in this case.
[2] "Stip." refers to the Stipulations filed by Respondent and agreed to by Complainant.
[3] "Tr." refers to the transcript of the October 31, 2013, hearing of this case.

8. Robert Doane ("Doane") is an apprentice facility manager for Respondent. Tr. p. 55. He keeps 29 facilities "in shape," including the facility at 1166 North State Street. Tr. p. 55.

9. The Chipotle restaurant at 1166 North State Street has a double door entry with a small vestibule followed by another set of double doors.[4] Tr. pp. 56, 58. The doors have glass centers with wood frames. Tr. pp. 16, 37, 56. There is about 1.5 feet of wood framing on the bottom and top of the doors. Tr. p. 56.

10. The entry doors at the restaurant lead to the serving line area that is in front of a counter staffed by Chipotle employees. Tr. pp. 17 and 37-38. Waterhouse estimated that the counter was "10 steps" from the entry door, but could not give the distance in meters. Tr. p. 38. The employees at the counter face the restaurant entrance doors. Tr. pp. 17, 38-39. The employees behind the counter are filling orders at hot and cold stations; the register is also there. Tr. pp. 17 and 39. Customers walk down the serving line in front of the counter and tell employees what they want to have for their order. Tr. pp. 49-51. There are usually customers in the serving line; sometimes the line reaches the door. Tr. p. 49. The line moves fast; extra employees are added if there are many customers in line. Tr. pp. 50-51.

11. Customers in the serving line may block the line employees' view of the entry doors according to both Complainant and Waterhouse. Tr. pp. 17-18, 33. Customers seated at tables also may block the employees' view of the entry doors according to both Complainant and Waterhouse. Tr. p. 5, 17, 72. The tables are about 4 feet high, surrounded by stools that are 3 feet high. Tr. p. 72. Doane said there are usually customers seated at the tables because the restaurant is busy. Tr. p. 73. In the restaurant there is a concrete wall about 1.5 feet tall. Tr. p. 73.

12. The entrance at the Chipotle restaurant does not have a bell to notify employees that someone needs assistance. AC, par. 4. Complainant stated that a bell would not provide independent access to the restaurant because he would still have to wait for an employee to hear the bell and leave other duties to open the door. Tr. p. 5.

13. Other customers have assisted Complainant in entering the Respondent restaurant. Tr. pp. 22, 33. Complainant has waited for 5 to 10 minutes for assistance. Tr. p. 4. When the restaurant was busy Complainant has waited outside longer for assistance from employees. Tr. p. 21, Respondent's Exh. 1. Usually other patrons, not Chipotle employees, assisted Complainant to enter the facility. Tr. p. 22.

14. Waterhouse testified that Complainant could have called or faxed Respondent restaurant to ask for food to be prepared and the food would have been given to him outside the restaurant. Tr. p. 40. Waterhouse testified that Complainant could have called Respondent restaurant to ask for an employee to open the doors. Tr. p. 42. Waterhouse said that employees answer the phone in 2-3 rings and answer the phone throughout the day. Tr. p. 43. Waterhouse testified that Complainant could have ordered food online through the website or an "app." Tr. pp. 43-44. If the Complainant had ordered by fax, phone or internet he could have asked that the door be opened for him in the "comments" section of the order. Tr. p. 44. No evidence was offered by Respondent that Respondent's restaurant had signage on its outside entrance regarding these services or displaying a number to call.

[4] Neither Complainant nor Respondent provided a drawing or other visual aid for their descriptions of the restaurant's entrance. Oral descriptions were provided by Complainant and Chipotle employees.

15. Complainant did have a cell phone when he went to the restaurant, but did not have the number of the restaurant nor did he expect an employee would leave his work to assist him. Tr. 25. Complainant did not ask for the telephone number once inside the restaurant nor did he inquire if he could get assistance from employees for future visits. Tr. 26-27.

16. Waterhouse said that employees are trained to assist customers whatever their needs are. Tr. 39. Waterhouse described a customer carrying a dog and required food to be delivered outside who called the restaurant prior to his arrival. Waterhouse described customers who used wheelchairs and were assisted by employees once inside the restaurant. Tr. 39-40. No Respondent Chipotle employee testified that Respondent Chipotle provided any training specifically directed toward providing reasonable accommodations to people with disabilities. Tr. 39-42. Respondent Chipotle did not offer into evidence any Chipotle employee policy on non-discrimination to patrons with disabilities.

17. Waterhouse said Respondent Chipotle's restaurant had at least 10-20 customers entering every 10-15 minutes who could open the door for Complainant. Tr. 42-43. The door opens constantly. Tr. 43.

18. According to Waterhouse, the location at 1166 North State Street had a net income of $44,000 for the month of August 2013. Tr. p. 47, Exh. 3. Waterhouse testified that the restaurant was down one staff member at the time, and said the net profit should be reduced by another $4,000 to account for the monthly salary for that position. Tr. pp. 47-48. August is a high sales month because it is a summer month. Tr. p. 48. Waterhouse testified that other months without high sales would result in an average monthly profit of $15,000 to $20,000. Tr. p. 48.

19. Doane testified that he had measured the opening pressure of the entry doors. Tr. p. 56. He used a tool that is a spring scale that he uses to detect pull and push pressure; the tool is specifically designed and used in the building industry for that purpose. Tr. 58. Doane measured the pressure on the doors at the 1166 location a week and a half before the hearing. Tr. p. 58. The measurement was 7.5-8 pounds of pressure on the exterior doors and 3.5-4 pounds of pressure on the interior doors. Tr. p. 58.

20. Doane received an estimate of $18,414.88 from a vendor to replace the entry doors and install automatic openers at the 1166 North State Street location. Tr. p. 67, Respondent's Exh. 7. The vendor is the same vendor Respondent Chipotle uses for all of its doors, closers and glass repairs. Tr. p. 66. The estimate was dated July 26, 2013, or over a year after the Complainant filed his Complaint on June 25, 2012. C, Respondent's Exh. 7. The vendor was not called as a witness. The document was admitted only for the limited purpose that a quote was received and not for the purpose of proving the quoted price was the normal price for such installations. Tr. p. 67. Doane stated that in his experience while working for Respondent the average cost of installing the double doors with a vestibule in-between without automatic closers was $12,000. Tr. 69. Doane said he had no experience with automatic door closers because Respondent Chipotle had never installed automatic door closers. Tr. 69.

III. CONCLUSIONS OF LAW

The Chicago Human Rights Ordinance ("CHRO") prohibits discrimination based on disability, among other protected classes, concerning the full use of a public accommodation. Section 2-160-070 of the CHRO states:

> 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 of such public accommodation by any individual because of the individual's...disability.

Subpart 500 of the Commission's Regulations clarifies the obligations of persons who control a public accommodation. Specifically, Reg. 520.110 defines the "full use" requirement:

> Full use...means that all parts of the premises open for public use shall be available to persons who are members of a Protected Class...at all times and under the same conditions as the premises are available to all other persons....

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.

Reg. 520.120 provides a definition of "reasonable accommodation" as applied to a public accommodation:

> Reasonable accommodation... means... accommodations...which provide persons with a disability access to the same services, in the same manner as are provided to persons without a disability.

Reg. 520.130 defines what is necessary for a public accommodation to prove that it is an undue hardship to provide either full use or reasonable accommodation to a person with a disability:

> Undue hardship will be proven if the financial costs or administrative changes that are demonstrably attributable to the accommodation of the needs of persons with disabilities would be prohibitively expensive or would unduly affect the nature of the public accommodation.
>
> (a) there must be objective evidence of financial costs, administrative changes, or projected costs or changes which would result from accommodating the needs of persons with disabilities.

These regulations mean that a public accommodation must *fully* accommodate a person with a disability unless the public accommodation shows that full accommodation would cause an undue hardship. In that instance, the public accommodation must still *reasonably* accommodate a person with a disability unless it shows that no reasonable accommodation is possible without undue hardship. *Doering v. Zum Deutchen Eck*, CCHR No. 94-PA-35 (Sept. 14, 1995); *Massingale v. Ford City Mall et al.*, CCHR No. 99-PA-11 (Sept. 14, 2000).

To prove his *prima facie* case of discrimination based on disability, Complainant must show that he (1) is a person with a disability within the meaning of the CHRO; (2) is a qualified individual in that he satisfied all non-discriminatory standards for service; and (3) did not have full use of Chipotle as other patrons without disabilities. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010); *Maat v. String-A-Strand*, CCHR No. 05-P-05 at 4 (Feb. 20, 2008), citing *Doering v. Zum Deutchen Eck*, CCHR No. 94-PA-35 (Sept. 14, 1995, as reissued Sept. 29, 1995). 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.

Once a *prima facie* case of failure to accommodate is made, a respondent has the burden of persuasion to show that the proposed accommodations would cause undue hardship. *Dawson v. YWCA*, CCHR No. 93-E-128 (Jan. 19, 1994) citing *Santiago v. Bickerdike Apts.*, CCHR No. 91-FHO-54-5639 (May 26, 1992) at 22.

IV. DISCUSSION

Complainant has established the elements of a *prima facie* case in this case. He is a person with a physical impairment that impedes his ability to ambulate without use of a wheelchair. He is a qualified individual; qualification to use a restaurant is minimal and requires generally the desire to utilize and pay for the services offered to the public for a fee. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010). Complainant proved that he did not have full use of the public accommodation because he could not access the facility independently. He testified about not being able to open the door by himself. He testified about waiting outside for other patrons to provide him access to the restaurant and said that he usually had to rely on those patrons to get in the restaurant.

The fact that Complainant was able to enter with the help of other patrons does not preclude Complainant from establishing his *prima facie* case. As the Commission noted in *Cotten v. La Luce Restaurant*, "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." When Complainant's access was dependent on others, Respondent did not provide Complainant the "full use" of its restaurant, as required by Section 2-160-070 of the CHRO and the Commission's Regulations, because it offered him access to the restaurant "under different terms than are applied to others." See *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62, at 11 (Oct. 21, 1998). Requiring a person with a disability to rely on the beneficence of strangers does not provide the "benefits of a free and open society" that is to be fostered by the CHRO. See Section 2-160-010, Chic. Muni. Code.

Once the 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.*

Respondent argues in its Objections to the Recommended Ruling that it provides sufficient access for Complainant who must wait outside for another customer to open the door. Respondent contends that Complainant can wait outside the restaurant for an employee to see him or should contact the restaurant to make arrangements for the door to be opened by employees. According to Respondent, in *Cotten v. La Luce Restaurant* and *Maat v. String-a-Strand,* the Commission held that access for customers with disabilities is achieved through human assistance. However, this interpretation is incorrect. The accessibility requirements for public accommodations under the Chicago Human Rights Ordinance that have been described in this ruling provide for full wheelchair access *unless respondent proved that to do so would impose an undue hardship.* Any alternative means of service such as "a portable ramp, a bell or buzzer to call for assistance, curb service" etc., is only acceptable if a public accommodation can prove it cannot provide "full wheelchair access" due to "physical impossibility and/or prohibitive cost." CCHR Regs. 520.105, 520.130. See *Cotten v. La Luce Restaurant, supra*; *Maat v. String-a-Strand, supra.*

Respondent had the opportunity to plead and prove that it was an undue hardship to make the restaurant entrance fully accessible as contemplated by Reg. 520.130, but failed to do so. Reg. 520.130 defines what is necessary for a public accommodation to prove that it is an undue hardship to provide either full use or reasonable accommodation to a person with a disability:

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

Respondent did not claim undue hardship in its response to the Complaint. Additionally, Respondent failed to give notice of any defense of undue hardship in its Pre-Hearing Memorandum.

Also, Respondent did not offer any reliable evidence of the cost of installing an automatic door opener during the hearing. The only cost evidence it provided was one estimate requested by Respondent after litigation had begun and shortly before the hearing. The hearing officer found that the estimate was from a vendor with whom Respondent had an on-going business relationship and regularly used for its many maintenance activities. Respondent did not call the vendor, who is from the Chicago area, as a witness. Rather, Respondent sought to have the estimate admitted to establish the cost of the automatic door opener through Apprentice Facility

Manager Robert Doane, who admitted he had never installed an automatic door while employed by Respondent, and that Respondent did not have automatic doors installed on its facilities.

Even if one were to accept the estimate as a truthful representation of the cost of a normal installation of such equipment, which the hearing officer did not accept, the amount attributable to the installation of the automatic opener in the estimate was only $6,000. As noted, Respondent is a multi-national corporation with nearly $300,000,000 in profits listed in its Annual Report for 2012. (Respondent's Exh. 6) The restaurant at 1166 North State Street, the only restaurant that is the subject of this Complaint, had profits of over $40,000 for August of 2013. (Tr. P. 47) Rony Waterhouse, Apprentice Team Leader, testified that he thought the normal monthly profit at the 1166 North State Street location was $15,000-$20,000; however, no documentation was offered in support of this amount. The hearing officer determined that assuming the net profit for that restaurant was $240,000 per year, a $6,000 capital expenditure would not constitute an undue hardship. No evidence was introduced by Respondent that installation of such doors would impede its ability to offer services to its customers.

Throughout the proceedings in this matter and in its Objections to the Recommended Ruling, Respondent has argued that the City of Chicago Building Code did not require Respondent to install an automatic door at the entrance to its restaurant, and that the City Code took precedence over the Chicago Human Rights Ordinance.

Respondent also argued that neither the Americans with Disabilities Act as amended ("ADA"), 42 U.S.C. §12101 *et seq.*, nor the Illinois Accessibility Code ("IAC"), 71 Ill. Adm. Code 400, required the installation of automatic doors in a case brought pursuant to the CHRO. Respondent did not cite legal authority for that argument because none exists. Regulations implementing the ADA specifically state that the law "does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them." 28 CFR Part 35.103 ("Relationship with Other Laws"). The IAC and the Environmental Barriers Act ("EBA"), 410 ILCS 25/, which provides for the enactment of the IAC, also allow for stricter requirements. The EBA specifies:

> Local Standards. The provisions of this Act and the regulations and standards promulgated hereunder constitute minimum requirements for all governmental units, including home rule units. Any governmental unit may prescribe more stringent requirements to increase and facilitate access to the built environment by environmentally limited persons.

410 ILCS 25/8. ("Local Standards").

Thus, neither the ADA Accessibility Code nor the Illinois Accessibility Code limit the rights to access to public accommodations pursuant to the CHRO.

Moreover, the Commission has repeatedly held that multiple ordinances of the City of Chicago regulate businesses. The Building Code is one of them; the Human Rights Ordinance is another and separate from the Building Code. In addition different City departments enforce different ordinances. That Respondent may have been inspected and found in compliance with other City ordinances does not mean that any of those City departments have certified compliance with the Chicago Human Rights Ordinance or Chicago Fair Housing Ordinance, both of which are enforced only through the Commission on Human Relations under Chapters 1-120, 2-160, and 5-8 of the Chicago Municipal Code. Other departments are not authorized to

enforce or certify compliance with the Human Rights Ordinance or the Fair Housing Ordinance. *Cotten v. La Luce*, CCHR No. 08-P-34 at 9 (Apr. 21, 2010).

Therefore, Respondent failed to meet its burden of proving as an affirmative defense, by objective evidence, that it was an undue hardship to make the restaurant fully accessible.

Even if Respondent had pleaded and proved the affirmative defense of undue hardship to make the restaurant entrance fully accessible, under the CHRO and Reg. 520.105, Respondent still had a duty to provide reasonable accommodations short of full accessibility to the extent that was achievable without undue hardship. Respondent failed to do so.

Respondent attempted to show that it would have provided other services as accommodations if given the chance, such as having an employee open the doors after Complainant notified them via phone, fax or internet that he needed assistance. The hearing officer found that Respondent's attempts in this regard fell far short. Respondent did not prove that it had offered these services to Complainant, either personally or in general. Respondent provided no evidence that signage outside the restaurant indicated that calling a certain number would result in an employee coming to open the door. Respondent provided no evidence that its website or app specifically noted that the door could be opened for a patron with a disability upon request. Respondent provided no evidence that it had a written policy of opening the door upon request or by appointment, or had trained its staff on this policy. The hearing officer determined that Respondent's witnesses testified about *ad hoc* situations where customer service had been offered to a customer with a dog and to customers in wheelchairs once inside the restaurant. *Ad hoc* services do not rise to the level of a policy of providing reasonable accommodations, especially for a company like Respondent with substantial resources.

Additionally, Respondent did not prove that installing a bell would impose an undue hardship. Respondent did not offer any evidence of the cost or effect of installing a bell to alert employees of a customer who needed assistance or whether such a bell would provide reliable service.

The Board of Commissioners agrees with the hearing officer's conclusion that Complainant established that he did not have full access to or use of Respondent's restaurant because of a barrier at the entrance. Respondent failed to show that making its restaurant fully accessible would have been an undue hardship. Additionally, Respondent failed to establish that it provided Complainant a reasonable accommodation when he attempted to access its restaurant or that doing so would pose an undue hardship. Accordingly, the evidence establishes that Respondent violated the Chicago Human Rights Ordinance.

V. REMEDIES

Under the Chicago Municipal Code, Section 2-120-510(l), the Commission may award a prevailing Complainant the following forms of relief:

> [A]n order ... to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant, to hire, reinstate or upgrade the complainant with or without back pay or provide such fringe benefits as the complainant may have been denied ... 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 ...; 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 violations of provisions of Chapter 2-160 and Chapter 5-8.

A. Damages

Complainant specifically did not request damages in his Complaint, pre-hearing memorandum, or at the hearing, stating that his goal was to assure access for himself and for others with disabilities. The hearing officer accepted Complainant's decision to forego damages with reluctance, as damages are one of the tools to assure present and future compliance with the Commission's purposes. However, in this case, Complainant offered no evidence of damages and Respondent did not have an opportunity to oppose any request for damages. Therefore, the hearing officer recommended that no actual damages be awarded. The Commission agrees and adopts the hearing officer's recommendation.

B. Punitive Damages

Punitive damages are appropriate when a respondent's action is shown to be a product of evil motives or intent or when it involves a reckless or callous indifference to the protected rights of others. *Houck v. Inner City Horticultural Foundation,* CCHR N. 97-E-93 (Oct. 21, 1998), quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983), a case under 42 U.S.C. §1983. See also *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998), stating, "the purpose of an award of punitive damages in these kinds of cases is 'to punish [the respondent] for his outrageous conduct and to deter him and others like him from similar conduct in the future.'" See also Restatement (Second) of Torts §908(1) (1979).

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

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

Here, the hearing officer concluded that Respondent engaged appropriately in the judicial process and its employees provided appropriate services to Complainant when Complainant was able to access the restaurant with help from other patrons. Therefore, the hearing officer recommended that no punitive damages be awarded against Respondent. The Commission agrees, finding that the relief and fine awarded herein will be sufficient to punish and deter the discriminatory behavior in which Respondent engaged.

C. Fine

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. The hearing officer recommended a fine of $500. The Commission agrees with the recommendation and orders Respondent to pay a fine of $500.

D. Injunctive Relief

Complainant seeks injunctive relief in that he requested that Respondent be required to provide a door opener that operated automatically at the 1166 North State Street location. Injunctive relief is explicitly authorized by Section 2-120-510(l) of the Chicago Municipal Code. Commission case law also makes it clear that the Commission is authorized to enter injunctive relief to remedy past violations of the CHRO and to prevent future violations. *Maat v. String-A-Strand, supra* at 6, citing *Frazier v. Midlakes Management*, LLC, CCHR No. 03-H-41 (Sept. 15, 2003); *Sellers v. Outland*, CCHR No. 02-H-73 (Oct. 15, 2003); and *Leadership Council for Metropolitan Open Communities v. Souchet*, CCHR No. 98-H-107 (Jan. 17, 2001).

The hearing officer recommended that Respondent be ordered to install an automatic door at the entrance to the North State Street restaurant. Respondent objects to the requirement that an automatic door be installed, arguing that it provides sufficient access for individuals in wheelchairs. Respondent contends that individuals in wheelchairs can wait for assistance by employees or other patrons when lines extend outside the restaurant. The Commission has repeatedly held that full and equal access is achieved through permanent alterations of facilities unless doing so would pose an undue hardship. As the hearing officer pointed out, the estimate Respondent attempted to introduce into evidence showed that the cost of installing an automatic door at the entrance of its State Street location would not pose an undue hardship.

Additionally, the hearing officer recommended that Respondent be ordered to install signage at its entrance with information about alternative services that it provides to individuals with disabilities. The hearing officer also recommended that Respondent ensure that its website is accessible to individuals with disabilities. Further, the hearing officer recommended that Respondent adopt written policies regarding providing services to individuals with disabilities and train its employees regarding the policies. Respondent objects to the recommended

injunctive relief because it was not the subject of the litigation and would be unnecessary if an automatic door is installed.

The Commission has when appropriate ordered respondents found to have violated one of these ordinances to take specific steps to eliminate discriminatory practices and prevent future violations. In addition to steps to restore a complainant's rights, orders of injunctive relief have mandated actions such as training, policy changes, notices, record-keeping, and reporting. See, e.g., *Houck v. Inner City Horticultural Foundation*, *supra* (reinstatement and training); *Walters & Leadership Council for Metropolitan Open Communities v. Koumbis*, CCHR No. 93-H-25 (May 18, 1994) (cease discriminatory practices, record-keeping, posting, training); *Metropolitan Tenants Organization v. Looney*, CCHR No. 96-H-16 (June 18, 1997) (cease discriminatory practices, training); *Leadership Council for Metropolitan Open Communities v. Souchet* (new practices, testing, training, record-keeping, monitoring), CCHR No. 98-H-107 (Jan. 17, 2001); *Pudelek & Weinmann v. Bridgeview Garden Condo. Assn. et al, supra* (training); *Sellers v. Outland, supra.* (cease discriminatory practices, training, notices, reporting); *Cotten v. Eat-A-Pita, supra.* (make facility wheelchair accessible or provide reasonable alternative accommodations); *Rankin v.6954 N. Sheridan, Inc. et al.*, CCHR No. 08-H-49 (Aug. 18, 2010) (non-discrimination notices in advertising); *Roe v. Chicago Transit Authority*, CCHR No. 05-E-115 (Oct. 20, 2010) (training); *Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012) (training); and *Jones v. Lagniappe—A Creole Cajun Joynt LLC et al.*, CCHR No. 10-E-40 (Dec. 19, 2012) (sexual harassment policy).

Section 2-120-510(l) of the Chicago Municipal Code authorizes the Commission "to render a decision upon the conclusion of a hearing, or upon receipt of a hearing officer's recommendation at the conclusion of a hearing, including findings of fact relating to the complaint, and to order such relief *as may be appropriate under the circumstances determined in the hearing.*" [emphasis supplied].

The relief which the Commission is empowered to order pursuant to §2-120-510(l) is extensive and includes injunctive relief:

> Relief may include but is not limited to an order: to cease the illegal conduct complained of;...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;...[and] to take such action as may be necessary to make the individual complainant whole....

In addition, after a hearing officer submits written recommendations including recommended findings of fact and recommended relief, under §2-120-510(l) the Commission "may adopt, reject or modify the recommendations, in whole or in part...."

The Board of Commissioners agrees with the hearing officer's recommendations for injunctive relief, except the recommendations regarding Respondent's website. The Board of Commissioners understands the hearing officer's viewpoint, but does not believe that the website was at issue in this case.

The order for injunctive relief is appropriate to the facts of this case. It is closely tailored to the terms of the Chicago Human Rights Ordinance, to Commission Regulations interpreting the Ordinance, and to previous Commission decisions further interpreting the Ordinance and Regulations and awarding relief. The order gives Respondent another opportunity to come into compliance with the Chicago Human Rights Ordinance and perhaps avoid future discrimination complaints and findings. It is in essence a road map for compliance.

Accordingly, the Commission directs Respondent to take the following actions to remedy its past violation and prevent future violations:

1. **Provide an accessible entrance to the restaurant located at 1166 North State Street which complies with the full use requirement as defined in Commission Regulation 520.110, if able to do so without undue hardship.** If able to do so without undue hardship (as defined in Commission Regulation 520.130), on or before *90 days 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. 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. Respondent must maintain conspicuous signage at the entrance informing the public how to access the entrance.

2. **Provide objective documentary evidence of any undue hardship.** If unable to provide an accessible entrance to the restaurant located at 1166 North State Street which complies with the full use requirement as defined in Commission Regulation 520.110, or any reasonable accommodation due to undue hardship (as defined by Commission Regulation 520.130), on or before *90 days from the date of mailing of this Final Ruling on Liability and Relief*, 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*, a signed certification of Respondent or a qualified professional which sets forth in detail the factual basis for the claimed undue hardship.

    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 the 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 undue hardship is claimed.** If claiming undue hardship to provide an accessible entrance to the restaurant located at 1166 North State Street 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. 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.

   b. 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.

   c. 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.

   d. 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. Within 90 days of the date of mailing of this Final Ruling on Liability and Relief, Respondent shall install signage at its front door and in its restaurant with information about alternative services it provides that could assist people with disabilities, including phone, fax and internet orders, with contact information.

5. Within 60 days of the date of mailing of this Final Ruling on Liability and Relief, Respondent shall adopt written policies for managers and employees to assure that people with disabilities are provided services and assisted when necessary to assure the Respondent's services are available to all customers, including those with disabilities. The policies should outline mandatory steps to be taken to resolve any potential issues that may arise.

6. Within six months of the date of mailing of this Final Ruling on Liability and Relief, Respondent shall train all employees and administrative personnel at Respondent's 1166 North State Street, Chicago, Illinois location on the rights of people with disabilities and about written policies developed in response to #5 above.

7. Within seven months of the date of 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 a copy of the required written policies and a detailed description of the training provided including copies of any training material distributed and any written announcements of the training. 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 Order and Ruling on Liability and Relief and that all reported details are true and correct.

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

9. **Effective period.** This injunctive relief shall remain in effect for *three years* from the date of mailing of this Final Ruling on Liability and Relief for the purpose of Complainant's seeking enforcement of it (by motion pursuant to Reg. 250.220).

E. Attorney Fees

Complainant appeared *pro se*, so attorney fees are not awarded.

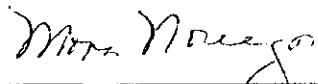
VI. SUMMARY AND CONCLUSION

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

1. Payment to the City of Chicago of a fine of $500;

2. Compliance with the order of injunctive relief described above.

CHICAGO COMMISSION ON HUMAN RELATIONS



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