

City of Chicago
COMMISSION ON HUMAN RELATIONS

ADJUDICATION DIVISION

2003 Activity
Concerning Discrimination Cases
filed under the
Chicago Human Rights Ordinance
and
Chicago Fair Housing Ordinance



Chicago Commission on Human Relations
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City of Chicago
Richard M. Daley, Mayor

Commission on Human Relations
Clarence N. Wood, Chairman

Adjudication of Discrimination Complaints

The Enabling Ordinance of 1990 gave the reorganized Commission on Human Relations powers to enforce the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance. These powers are exercised through the Adjudication Division. The work of the Division is:

- To receive and investigate complaints of discrimination in violation of the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance.
- To facilitate the settlement of cases, where possible.
- To determine, after investigation and hearing, whether discrimination occurred in violation of the City of Chicago ordinances.
- To order remedies if the complainant proves at a hearing that discrimination has occurred.

The orders of the Commission's Adjudication Division carry the force of law. The cooperation of the alleged discriminator in any case where discrimination has been alleged is mandatory, and the Commission has powers of subpoena, default, and negative inference to support its investigations. If the Commission finds, after an administrative hearing, that discrimination occurred, it has the power to order injunctive relief as well as the payment of out-of-pocket damages, emotional distress damages, punitive damages, attorney's fees and costs, and fines.

The role of the Adjudication Division is neutral. It does not serve as either side's lawyer, advisor, or advocate. It is not a prosecutor of the complaint. It does not take the side of either the complainant (the person who filed the complaint) or the respondent (the alleged discriminator).

Filing a Discrimination Complaint

Adjudication intake staff are available during business hours to answer inquiries about filing a complaint under the Chicago Human Rights Ordinance or Chicago Fair Housing Ordinance. Telephone 312/344-4111. Intake staff assist the public with preparation of complaints on a walk-in basis or provide forms for self-preparation of complaints and filing by mail. There is no filing fee.

What is Discrimination?

To win a discrimination case under the City of Chicago ordinances, a complainant must be able to prove by a preponderance of the evidence that:

- The complainant was subjected to unfavorable treatment by a covered individual, business, or government entity (the respondent).
- This conduct was based on the complainant's status in one or more of these protected categories:

Race	Sex	Age
Color	Sexual Orientation	Disability
National Origin	Gender Identity	Source of Income
Ancestry	Marital Status	Military Discharge Status
Religion	Parental Status	

- The conduct was in one of the following covered areas:

Housing	Public Accommodation
Employment	Credit or Bonding Transactions
- The adverse action took place in the City of Chicago.
- The complainant filed the complaint within 180 days of the date of the alleged discriminatory action.
- The complainant was treated differently *because of* his or her protected status, and not for other legitimate, non-discriminatory reasons.

How Cases Proceed

People who believe they have been subjected to discrimination as defined in the City of Chicago ordinances must file written complaints with the Commission following a prescribed form. Once they do so, the Commission requires each respondent to provide a written answer and submit supporting documentation and information. The Commission then investigates the claims and defenses of the parties. An investigator typically interviews the complainant, the respondent/s, and any witnesses. The investigator also gathers relevant documents and information, which may include information about the experiences of other people whose situations are comparable to the complainant's.

The investigator will also talk with the parties about whether they wish to try to settle the case before the investigation is completed. Settlement is voluntary.

If the case does not settle (or otherwise close), the investigator completes the evidence-gathering and writes a report summarizing the evidence. Commission senior staff review the report and determine whether or not there is substantial evidence of discrimination. A finding of "substantial evidence" does not mean that the complainant has won the case, only that there is enough evidence of discrimination to proceed further. If the Commission finds that there is not substantial evidence of discrimination, it dismisses the case; the complainant may request a review of the dismissal.

If the Commission finds that there is substantial evidence of discrimination, it holds a mandatory settlement conference. If the parties do not reach a settlement agreement, the Commission then holds an administrative hearing. The administrative hearing is a trial, but somewhat less formal than in a court. A hearing officer, who is an attorney, presides over the hearing and manages the hearing process. The Commission does not prosecute the case or represent the complainant at this hearing; it is the complainant's responsibility to prove the case and to prove entitlement to injunctive and monetary relief as well as attorney fees and costs. Based on the Hearing Officer's recommendation and the rest of the hearing record, the Commission's Board of Commissioners makes the final determination about whether the complainant has proved that the respondent has violated the Chicago Human Rights Ordinance or Chicago Fair Housing Ordinance. If the Board of Commissioners rules that there has been a violation, it also determines what relief will be awarded to Complainant.

Annual Summary of Adjudication Division Activity

	Housing	Employment	Public Accommodation	Credit	TOTAL
COMPLAINTS FILED	101	194	180	1	476
CASES CLOSED	68	137	135	1	339
Settled	38	71	66	1	176
Complainant Failed to Cooperate	8	20	10		38
Complainant Withdrew Case	11	22	38		71
Lack of Jurisdiction		2	9		11
No Substantial Evidence	9	17	12		38
Ruling After Hearing	2	3			5
CASES FORWARDED TO HEARING STAGE	12	10	12		34
Substantial Evidence	10	5	9		24
Default	2	5	3		10
REQUESTS FOR REVIEW rulings after involuntary dismissal					
Denied	3	4	2		9
Granted	1				1

DISCRIMINATION BASES CLAIMED IN COMPLAINTS FILED

PROTECTED CLASSES	Hsng		Empl		Public Accom		Credit		Total Claims	
Race	29	29%	93	48%	45	25%	1	100%	168	35%
Color	4	4%	4	2%	8	4%			16	3%
National Origin	9	9%	20	10%	8	4%			37	8%
Ancestry	2	2%	8	4%	4	2%			14	3%
Religion	1	1%	5	3%	4	2%			10	2%
Sex	10	10%	64	33%	8	4%			82	17%
Sexual Orientation	5	5%	39	20%	5	3%			49	10%
Gender Identity	0		2	1%	1	.6%			3	.6%
Marital Status	7	7%	2	1%	1	.6%			10	2%
Parental Status	24	24%	5	3%	0				29	6%
Age	5	5%	32	16%	6	3%			43	9%
Disability	23	23%	44	23%	124	69%			191	40%
Source of Income	38	38%	1	.5%	8	4%			47	10%
Military Discharge	0		0		0				0	
Retaliation	0 ¹		6	3%	1	.6%			7	1%
TOTAL COMPLAINTS	101		194		180		1		476	

Percentage figures are based on the percentage of *complaints* containing a *claim* of discrimination on the basis named. A complaint may claim discrimination on more than one basis (e.g. sex and age) arising out of the facts alleged. This is a change from previous annual reports, which showed percentages of the total *bases* claimed.

¹The Chicago Fair Housing Ordinance does not cover retaliation claims.

Substantial Evidence Determinations

	Housing	Employment	Public Accommodation	TOTAL
Substantial Evidence	10	5	9	24
No Substantial Evidence	9	17	12	38
TOTAL FULL INVESTIGATIONS	19	22	21	62

The data above covers only those cases in which a determination of Substantial Evidence or No Substantial Evidence of discrimination was made after a full investigation. This does not include all cases which the Commission completed in 2003. Many cases are settled, withdrawn, or dismissed for other reasons before completion of the full investigation. A finding of Substantial Evidence means that there is sufficient evidence that discrimination may have occurred to enable the case to go forward to mandatory conciliation and an administrative hearing if the case does not settle.

Settlements

A high percentage of discrimination cases close as a result of settlements between the parties. Complainants as a group obtain a great deal more relief through settlements than through awards after administrative hearings. In 2003, for example, 51.6% of closed cases ended with settlements.

Settlement is voluntary between the parties and may occur at any stage of the investigation and adjudication process. When cases settle, the respondents do not admit liability and the Commission makes no judgment as to whether a violation occurred. The Commission does not require or advocate particular settlement terms although staff, conciliators, and hearing officers do encourage and facilitate settlement.

Individual settlement terms vary and, because many cases settle privately between the parties, the Commission does not always know the terms of settlements including their monetary value to complainants. In the interest of promoting settlement in the future, the Commission does not announce or publicize the terms of particular settlements, although parties may choose to do so if they have not agreed to the contrary.

Summary of Administrative Hearing Actions

Hearings Held in 2003	16
Rulings for Respondents (no liability)	2
Liability Rulings for Complainants	6
Damages Awarded to Complainants	\$334,745.58
Fines Awarded to City	\$3,500
Attorney's Fee Rulings for Complainants	2
Fees & Costs Awarded to Complainants	\$10,671.89

Data on hearings and rulings will not match, as some hearings are held in one year with rulings made in the subsequent year. Also, some cases settle after the hearing is held. Attorney's fee petitions are considered only after a ruling finding liability (and only if the complainant was represented by counsel); thus these rulings may occur in a subsequent year.

Summary of Rulings After Administrative Hearings

Housing

Brennan v. Zeeman, CCHR No. 00-H-5 Sexual Orientation

After issuing an Order of Default, the Commission found a landlord liable for sexual orientation discrimination against a gay tenant. The landlord harassed Complainant and his roommate by making derogatory comments such as calling them "faggot" and "queer." The landlord refused to renew the lease after doubling the rent, then rented the unit to a heterosexual tenant at a lower price. The Commission awarded total damages of \$13,134.77, including out-of-pocket reimbursements of \$2,134.77, emotional distress damages of \$5,000, and punitive damages of \$6,000. The Commission fined Respondent \$500 for the violation.

Hoskins v. Campbell, CCHR No. 01-H-101 Source of Income

After issuing an Order of Default, the Commission found a property owner liable for source of income discrimination for rejecting a potential tenant with a Section 8 voucher. When Complainant called the phone number in a newspaper advertisement for an available apartment at the property, a woman answered. Complainant told the woman she was responding to the advertisement and the woman asked how she would pay the rent. When Complainant explained she would use her Section 8 voucher, the woman said, "No, we don't take Section 8. We don't take Section 8. We only take working people. We want working people in the place." Then she slammed down the phone. The Commission awarded total damages of \$1,000, including out-of-pocket reimbursements of \$750 and emotional distress damages of \$250. The Commission fined Respondent \$500 for the violation and awarded attorney's fees of \$5,656.50 and costs of \$85.86.

Sellers v. Outland, CCHR No. 02-H-73
Sexual Harassment

After issuing an Order of Default, the Commission found a landlord liable for sexual harassment of a tenant. The landlord repeatedly demanded sexual favors from Complainant after she moved into her unit, offered to reduce her security deposit in return for sex, sexually assaulted her, and then, in retaliation for resisting his sexual advances, attempted to evict her and her children by issuing unfounded termination notices. The Commission awarded total damages of \$167,076, including out-of-pocket reimbursements of \$7,076, emotional distress damages of \$40,000, and punitive damages of \$120,000. The Commission fined Respondent \$500 for the violation.

Employment

Nuspl v. Marchetti, CCHR No. 98-E-207
Sexual Orientation

In 2002, the Commission found Respondent, a restaurant co-owner, liable for discrimination based on sexual orientation when he subjected Complainant, a kitchen manager, to a hostile working environment by engaging in offensive verbal tirades about gay men which increased in intensity over a relatively short period of time, culminating in a direct attack against Complainant in front of his staff, using expressions derogatory of him as a gay man. In 2002, the Commission awarded Complainant compensatory damages of \$2,500 and imposed a fine of \$1,000. In 2003, the Commission awarded attorney's fees of \$3,837.50 and \$1,122.03 in costs.

Salwierak v. MRI of Chicago, Inc. and Baranski, CCHR No. 99-E-107
Sexual Harassment

The Commission found that a female employee was subjected to sexual harassment in the form of a hostile work environment where, among other things, she was required to retrieve objects from the floor and plug in wires so that her supervisor could remark that she is "on her knees," was subjected to constant offensive remarks about her body and clothes, was repeatedly taunted concerning her sex life, and was touched by her supervisor inappropriately—all of which she made clear was unwelcome conduct. The Commission awarded total damages of \$90,000, including emotional distress damages of \$30,000 and punitive damages awards of \$30,000 against each of the two Respondents. The Commission also imposed a fine of \$500 against each Respondent for the violation. An attorney's fee petition is pending.

Brooks v. Hyde Park Realty, CCHR No. 02-E-116
Age

After issuing an Order of Default, the Commission found an employer liable for age discrimination where it discharged an office manager who was in her fifties after more than a year of employment and only two months after giving her a raise and added responsibility. The employer told her the reason was that business was slow after losing a major account. However, the employer knew of the business slowdown before giving Complainant the raise and added responsibility, yet had Complainant interviewing to hire additional personnel. The employer did not discharge two employees with similar duties who were substantially younger than Complainant, including one who was in her twenties and had only recently begun working for the employer after the loss of the major account was known. The Commission awarded total damages of \$51,230.46, including back pay of \$47,692, accumulated vacation pay of \$1538.46, and emotional distress damages of \$2,000. The Commission imposed a fine of \$500 for the violation. Attorney's fees are pending.

Richardson v. Chicago Area Council of Boy Scouts of America & Carter, CCHR No. 92-E-80
Sexual Orientation

Concluding a long-standing case, the Commission ruled that a gay man who was acting as an employment discrimination tester did not adequately complete his test of the Boy Scouts' hiring practices for "non-expressive" positions, and so dismissed his claim. The Commission had previously ruled in favor of Complainant's claim of sexual orientation discrimination based on the Boy Scouts' explicit statement that it would not give a job to a gay man. However, based on the U.S. Supreme Court's decision in *Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S.Ct. 2446, 147 L.Ed.2d 554 (2000), the Illinois Appellate Court held that, with regard to Complainant's interest in "expressive" positions as a role model or leader within Scouting, the City of Chicago's interest in eradicating employment discrimination would not justify an intrusion on the Boy Scouts' freedom of expressive association guaranteed by the First Amendment to the U.S. Constitution. The Supreme Court in *Dale* held that an expressive position is one in which the presence of a person affects in a significant way the group's ability to advocate its public or private viewpoints. The Boy Scouts' opposition to hiring homosexuals for professional Scouting positions was found by the Appellate Court to be protected under these First Amendment principles. Thus the only remaining issue for the Commission was whether Complainant had sought any "non-expressive" position (such as back-office work). The Commission found that he had not done so, because he had not responded to Respondents' request to submit details of his educational and employment history and so had not established standing to test Respondents' hiring practices as to non-expressive positions.

Bahena v. Adjustable Clamp Company, CCHR No. 99-E-111
Sexual Orientation

The Commission found no liability for sexual orientation discrimination where Complainant did not show that the stated reason for his discharge was a pretext for discrimination. The company stated that it discharged Complainant because he violated its anti-fighting policy by physically participating in a fight with a co-worker. The Commission found that company decision-makers were not aware of the co-worker's prior anti-gay comments to Complainant and so had no notice that an anti-gay motivation may have played a role in causing the fight. Nor was there credible evidence that any of the decision-makers were biased against Complainant based on his sexual orientation. Examples of non-gay workers who were not discharged after a fight did not present situations comparable to Complainant's.

Public Accommodation

Jordan v. National Railroad Passenger Corp. (Amtrak), CCHR No. 99-PA-34
Race

The Commission found Amtrak liable for race discrimination against an African-American man who was in the Amtrak waiting room in Union Station waiting to pick up his employer, who was arriving on a delayed train. Amtrak security officers, acting under security procedures designed to keep homeless people out of the waiting room, were approaching certain individuals and demanding that they provide legitimate reasons for being there. They stated that they approached Complainant because he appeared to be sleeping and looked like a drug dealer they had previously observed. When Complainant refused to explain his presence, the security officers directed him to leave the station or face arrest. Complainant refused to leave. As they were arresting Complainant, one of the security officers struck Complainant around the knee with a baton or "asp," causing injury. The Commission found that the officer's explanation for this use of force was not credible and did not state a legitimate non-discriminatory reason for using the baton. The Commission also found that Amtrak's security policy was being implemented in a racially discriminatory manner. The Commission awarded total damages of \$12,304.35, including out-of-pocket reimbursements of \$304.35, emotional distress damages of \$10,000, and punitive damages of \$2,000. The Commission imposed a fine of \$500 for the violation and awarded attorney's fees; however, the parties settled the case subsequent to the liability ruling.