City of Chicago
COMMISSION ON HUMAN RELATIONS
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IN THE MATTER OF:

Lain Lee
Complainant,
v.

Jewel Food Stores, Inc., d/b/a Jewel-Osco
Respondent.

Case No.: 20-P-09

Date of Ruling: June 9, 2022

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On June 25, 2020, Complainant Lain Lee filed a complaint with the Commission on Human Relations, alleging that Respondent Jewel Food Stores, Inc., discriminated against him and subjected him to harassment because he is black, a person of color and over 50 years of age. Complainant alleged that after he received an order of lobster tails at the seafood counter in Respondent's store, he was followed and questioned by a security guard and a store manager about whether he had purchased the lobster tails. Complainant also alleged that the security officer did not comply with the Coronavirus pandemic (COVID-19) masking requirements then in place in Illinois. Complainant alleged that no other similarly situated customer received the same treatment and harassment.

On August 5, 2020, after receiving an extension of time in which to respond, Respondent answered Complainant's complaint, asserting that Complainant was not discriminated against. Respondent said that Complainant was allowed to purchase the lobster tails and other items that day. Respondent further noted that the security guard that Complainant complained about was a loss prevention employee following customary procedures when high-value items such as sheet cakes or seafood are picked up in the store but are not paid for until the customer reaches the front cash register. Respondent also denied that the security guard failed to follow any masking requirement.

Complainant filed a reply to Respondent's response, asserting that regardless of the policies and rationale for Respondent's actions, Complainant still was the subject of discrimination and harassment due to his race and age.

On December 4, 2020, the Commission issued an Order Finding Substantial Evidence of a violation of the Chicago Human Rights Ordinance as to race discrimination. The Commission found no substantial evidence existed of a violation due to color or age. A settlement conference was set, but settlement efforts were unsuccessful. On May 19, 2021, the Commission issued an Order Appointing Hearing Officer and Commencing Hearing Process.

On June 29, 2021, a pre-hearing conference was held, and a hearing date was set for October 26, 2021, to be continued to October 27, 2021, if necessary. Due to disputes about the production of documents, the need for confidentiality orders, the unavailability of a witness, and

the on-going COVID-19 pandemic, the hearing could not go forward on that date. The hearing was held on January 12-13, 2022.

On April 7, 2022, the hearing officer issued a Recommended Ruling on Liability. On May 5, 2022, Complainant filed objections to the recommended decision of the hearing officer.

II. FINDINGS OF FACT

1. Complainant Lain Lee ("Complainant") is a black man who is over 50 years of age. C., par. 1.[1]

2. Respondent Jewel Food Stores, Inc. ("Respondent") operates food-drug combination stores under the Jewel-Osco name in three Midwestern states in 188 locations. Respondent operates a retail store located at 7530 S. Stony Island. Resp. Statement, p. 1, 3.[2] This store is sometimes referred to in the transcript as Store #230.

3. On April 5, 2020, Complainant went to Respondent's Jewel Store #230, to purchase lobster tails, among other items. C., par. 1[3]; Resp. Statement p. 2, Tr. pp. 20-21. According to the surveillance video taken at the store on the date of the incident introduced into evidence as Complainant's Exhibit A and used extensively by both parties at the hearing, Complainant was first seen at the store at 11:05 a.m. and 45 seconds. Cp. Exh. A, Tr. p. 20. The video has no sound. Tr. p. 154.

4. After entering Respondent's store, Complainant shopped for a while, then went to the seafood counter. C., par. 2, Tr. pp. 28-29; Resp. Statement p. 2. Complainant arrived at the seafood counter at 11:16 a.m. and 16 seconds, asked for ten lobster tails, and waited while they were being wrapped and labeled. C., par. 2, Tr. pp. 28-29, 69, 295; Cp. Exh. A. The video at 11:17 a.m. and 52 seconds shows Complainant at the seafood counter being given his package of lobster tails. Cp. Exh. A, Tr. pp. 76-77. After obtaining the lobster tails, Complainant continued his shopping. C., par. 3.

5. Complainant testified that a male employee (subsequently identified as Norman Lee) at the seafood counter handled his request and did not make any statements to him that were rude or that referenced Complainant's race. Exhibit 1, Tr. p. 77. Complainant could not tell if Norman Lee was black. Tr. p. 63.

6. Norman Lee, the meat/seafood counter employee did not testify at the hearing, although called by Respondent. Tr. p. 7. At the hearing, Respondent's counsel stated that Norman Lee would not attend due to the change of the hearing date by one day. Tr. p. 6. Respondent's counsel further stated that due to the union agreement, Respondent was unable to force Norman Lee to attend the hearing. Tr. p. 6.[4]

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[1] C., par. 1 refers to the complaint filed by Complainant on June 25, 2020. The complaint has two paragraphs marked 1,0 and two paragraphs marked 2. This is the first paragraph marked 1.

[2] Resp. Statement refers to the Respondent's Position Statement filed on August 5, 2020.

[3] This refers to the second paragraph marked 1 in the Complaint.

[4] Complainant had listed Norman Lee as a possible witness in his Pre-hearing Memorandum. Respondent had also listed Norman Lee as a potential witness. At the hearing, when it was announced that Norman Lee would not be present, after discussion with the parties about the need for Norman Lee's testimony, the Hearing Officer told the parties that if at the end of the hearing Mr. Lee's testimony remained an issue, the parties should bring this to the attention of the hearing officer for further discussion. Tr. p. 8. Neither party raised the issue with the Hearing Officer at the end of the hearing.

7. Complainant said that he wore masks and gloves while he was shopping because he was fearful of contracting Covid-19. Tr. p. 19. When asked why he was fearful, Complainant said that Covid-19 was widespread. Tr. p. 19. He did not allege or testify that his health presented a particular vulnerability to catching the disease. Tr. pp. 19 and 26. Complainant testified that he observed the 6-foot social distancing rule while waiting at the seafood counter for his lobster tails. Tr. pp. 25-26.

8. Complainant also testified that his daughter or sister normally shop for his groceries and that this was the first time he had been in Respondent's store. Tr. pp. 114-15, 119.

9. At the hearing, reviewing the video offered into evidence by both parties, Complainant identified only one white customer in the store in his direct examination. Tr. p. 23. The customer identified as white was observed on the video entering the store; no further visuals of the customer on the video were identified by Complainant. Tr. p. 23, Cp. Exh. A. On cross examination, Complainant said that he could not tell if most of the customers in the store that day were black. Tr. p. 61. The hearing officer noted that only one customer was identified as white by Complainant; all other customers shown on the video at the hearing appeared to be black or a color other than white. Cp. Exh. A. Complainant testified that he did not see Respondent's employees follow any white customers around the store. Tr. pp. 41, 101, 121.

10. After receiving the lobster tails and continuing to shop, Complainant headed toward the checkout register. Tr. pp. 30-31. The video shows that at 11:21 a.m. and 35 seconds, as Complainant was leaving an aisle and moving toward the register, Complainant and Chris Jones, a loss prevention officer/security guard, "crossed paths" for a second or two as Chris Jones walked by Complainant. Cp. Exh. A, Tr. pp. 83-85. According to the video, at 11:21 a.m. and 39 seconds, Chris Jones looked at Complainant; Complainant described Chris Jones as "staring" at him. Cp. Exh. A, Tr. pp. 31, 158. Complainant identified Chris Jones as black. Tr. p. 61. According to the video, at 11:21 a.m. and 43 seconds, Complainant stopped his cart and the security guard looked over Complainant's shoulder into his cart; while doing so, Complainant alleged that Chris Jones brushed up against Complainant's shoulder. Tr. pp. 32-33. In his complaint, Complainant did not state that the security guard brushed up against him and described quite a different series of events, including that the security guard stopped him and questioned him about the lobster tails in front of other customers, looked through the bags in Complainant's cart, and suggested that Complainant was stealing. C., par. 3-6. At the hearing, Complainant could not recall if the security guard, Chris Jones, reached into his cart. Tr. p. 93. Complainant did not testify that Chris Jones spoke to him at this time; in fact, Complainant testified that he could not remember what anyone said to him on the day in question. Tr. p. 62. Reviewing the video and Complainant's testimony, the hearing officer found that the security guard did look briefly into the cart, no more than a few seconds, but did not reach into the cart and did not talk to Complainant. The hearing officer found that the video does not clearly show whether the security guard "brushed" or touched Complainant at all. Cp. Exh. A. The security guard was unmasked and scared Complainant. Tr. pp. 32-33.

11. The video showed that by 11:22 a.m. and 20 seconds, Complainant had continued to shop; Complainant testified that he was shopping for treats for his grandchildren. Cp. Exh. A, Tr. pp. 33-34.

12. In a complaint filed with Respondent's claim department, Complainant said that he was stopped by two large men in the store. Tr. p. 91, Resp. Exh. 1. In his complaint filed with the Commission and at the hearing, Complainant confirmed that the security guard, Chris Jones, was the only person who approached him in the store. Tr. p. 91. Complainant testified that Chris Jones was a very large man, indicating that he felt intimidated by Chris Jones, who is 6'3" tall and weighs 255 pounds. Tr. p. 91, Resp. Exh. 11. Complainant's medical records indicated that Complainant was 6'1" tall and weighed 219 pounds as of the date of the medical appointment, July 6, 2021. Tr. p. 231. Per agreement of the parties, Complainant's medical record was not placed into evidence in order to protect Complainant's private medical information. Tr. pp. 227-233.

13. Complainant testified that he did not see the security guard "brush up" against anyone else in the store that day. Tr. p. 100.

14. After the brief interaction with Chris Jones, Complainant continued shopping and placed additional snack items in his cart. Tr. pp. 33, 104; Cp. Exh. A at 11:22 and 20 seconds. The video shows that Complainant was standing in the line for Checkout Register 2 at 11:22 a.m. and 45 seconds after completing his shopping; C., par. 7, Tr. p. 34, Cp. Exh. A.

15. At 11:25 a.m. and 34 seconds, Chris Jones, the security guard, appeared at the end of Register 2. Tr. pp. 36-37, Cp. Exh. A. By 11:24 a.m. and 36 seconds, Complainant was at Register 2 and had placed all of his grocery items, including the ten lobster tails, on the conveyor belt. Tr. p. 35. Complainant's cart was empty, and the cashier was scanning all of his groceries. Tr. p. 35. At 11:25 a.m. and 22 seconds, Complainant had put his payment of cash on the counter. Tr. p. 36, Cp. Exh. A. Complainant then completed the purchase of his groceries. Tr. p. 43, Exh. B.

16. Complainant testified that the security guard "blocked" his exit from the register line and "searched" his grocery bag. Tr. pp. 37, 108. Still photographs taken from Cp. Exh. A show the security guard may have gone slightly into the exit area for Register 2 when another Jewel employee (Sharika Harris, a front-end operations specialist or manager) joined the security guard to bag groceries. Resp. Exh. 4. The hearing officer found that the video at 11:25 a.m. and 39 seconds shows that the guard was standing at the end of the counter where grocery bags are filled and that he did not block Complainant. The hearing officer found that the video did show the security guard looking into Complainant's bagged groceries, but not searching the contents. Complainant could not recall the security guard saying anything to him in the checkout line. Tr. p. 38.

17. At 11:25 a.m. and 39 seconds, the video shows that Sharika Harris joined the security guard at the bagging area of the register. Tr. pp. 39, 159, Cp. Exh. A. Complainant identified Harris as black. Tr. p. 61. Complainant did not know who either the security guard or Harris were at the time of the incident. Tr. p. 39. Complainant thought they were looking into his bags because they thought he was stealing. Tr. p. 39. Complainant was "shook up, scared, and embarrassed. Complainant thought he was going to jail and did not know." Tr. p. 39.

18. The video shows that at 11:25 a.m. and 44 seconds, Harris placed Complainant's bags in his cart. Exh. A, Tr. pp. 40-41. At 11:26 a.m. and 1 second, the security guard walked away. Exh. A, Tr. pp. 40-41.

19. On April 5, 2020, Sharika Harris was a front-end service manager at Jewel Store #230; she is now a front-end operations specialist with responsibility over front end operations at 38 stores. Tr. pp. 326-327. Harris has worked for Jewel for 26 years. Tr. p. 327. Harris identifies as black. Tr. p. 346. Harris recalled the incident at Jewel Store #230 with Complainant. Tr. p. 332.

20. On the date in question, Harris received a call from Norman Lee, the meat/seafood market wrapper. Tr. p. 333. Harris said that Norman Lee alerted her about the lobster tails, and Harris called security. Tr. p. 347. Harris then told Chris Jones that the meat market had informed her that there was a customer coming up with ten lobster tails, and to make sure that he went through the point of sale. Harris did not mention the customer's race to Chris Jones. She identified the customer by clothing. Tr. pp. 333-334.

21. Harris said that if she suspects someone of something, she needs to be the final person there with security when they "accost" a customer. Tr. p. 349.

22. After the security guard reached the register, Harris was flagged by Chris Jones to the register where Complainant was checking out. Harris bagged Complainant's groceries, including the lobster tails, and put the bags in the cart. Tr. pp. 336, 342. The video shows that a man Harris identified as Chris Jones was there at 11:25 a.m. and 37 seconds. Tr. p. 341. Chris Jones tried to look into the bags, but Harris "swatted" him away after Chris Jones "did not get the hint" that there was nothing to pursue. Tr. pp. 352-358, Resp. Exh. 13. Harris did not search the bag. Tr. pp. 336, 348. Harris saw Chris Jones try to open the bag, and she closed the bag. Chris Jones did not reach into the bag or pull items out of the bag. Tr. pp. 337, 353. At the hearing, Harris could not remember any exchange of words between Complainant and Chris Jones at the end of the register. Tr. pp. 337-338, 356. Harris observed Jones leave Register 2 and walk to the exit. Tr. p. 338. Complainant's order was complete, and Harris continued bagging for the next customer. Tr. p. 338. At 11:26 a.m. and 28 seconds, prior to leaving the checkout line, Complainant asked Harris for the security guard's name, and she told Complainant that he was named Chris or Mr. Jones. Tr. p. 343. Complainant then left. Tr. p. 344.

23. Respondent's Exhibit 13 is Harris's report of the events, dated April 20, 2020. Tr. p. 345, Exh. 13. In that report, Harris states that while Chris Jones was still at the register, Complainant said, "You approached me at the back of the line [and] now you are still questioning my lobster tails and why?" Resp. Exh. 13. No response by Chris Jones was noted. Resp. Exh. 13.

24. Harris believes that Chris Jones treated Complainant with courtesy, dignity, and respect on April 5, 2020, based on her observations while at the checkout register. Tr. p. 355, 360.

25. In his complaint, Complainant alleged he was thereafter "detained" by the Jewel-Osco manager and three security guards, who prevented him from leaving the store and searched his groceries after he had paid for them. C., par. 8. In Respondent's response, Respondent states that after Jones, the security guard, left the checkout line where Complainant paid for his groceries, Jones went to the self-checkout counter near the store's exit. Response, p. 2. After Complainant paid for his groceries, Complainant approached Jones at the self-checkout counter and complained about his treatment. Response, p. 2, Resp. Exh. 4, Tr. p. 145. At the hearing, still pictures from the video show Complainant, the security guard, Jones, and a person dressed in a Chicago Police

uniform, near the exit of the store at the self-checkout counter. Tr. pp. 145-147; Resp. Exh. 4. The video does not show Complainant being detained. The hearing officer found that both Complainant's testimony at the hearing and the video offered into evidence by both parties, did not support Complainant's description in his complaint about what happened after Complainant had paid for his groceries. The hearing officer found that Complainant did have words with Jones after Complainant paid for his groceries and prior to leaving the store, but that Jones was the only employee present and that no employee of Respondent searched Complainant's bags or prevented Complainant from leaving the store.

26. Complainant could not recall what anyone said to him on the date of the incident. Tr. 62. Complainant could not recall anyone making any comments to him about "anyone, any race" or the color of his skin. Tr. pp. 63-64. Complainant made no complaints to the customer service desk about his treatment on the day in question. Tr. p. 104.

27. Complainant testified that he suffered emotional injuries as a result of the incident at Jewel. Tr. p. 44. Complainant had a diagnosis of depression prior to the incident in question. Tr. pp. 113, 122, 228. In January 2021, his youngest son was murdered. Tr. pp. 44-45, 113, 228. Complainant tried, but was unable, to make an appointment with a mental health professional due to the COVID-19 pandemic; he talked with personnel from his church instead. Tr. pp. 46, 110. On January 6, 2021, Complainant was able to have a telehealth visit, where he talked about the death of his son, but did not mention the incident at Jewel. Resp. Exh. 3, Tr. p. 113.

28. Respondent stated that after providing Complainant with the ten lobster tails, Meat/Seafood Counter Employee Norman Lee followed the "common practice" when high-value merchandise is given to a customer by alerting Respondent's Front End and Loss Prevention Department that ten lobster tails would be coming to the checkout (front end) in the front of the store in the "near future." Response, Statement of Facts.[5]

29. Respondent has a "common practice" of notifying the front end of high-value merchandise given to customers without paying due to "shrinkage," i.e., loss as a result of a customer abandoning the package after receiving it or shoplifting the item. Tr. pp. 133-134, 237. High-value merchandise includes sheet cakes, seafood, batteries, and baby formula. Tr. pp. 133-135, Response, p. 3. Of Respondent's 188 store locations, the store in question ranks as the 5th worse in terms of "shrink." Response, p. 3.

30. Bob Kelley, District Loss Prevention Manager, testified that one of the 20 Jewel-Osco stores that he is responsible for is the Jewel-Osco in question. Tr. p. 127. Kelley was not in the store on the date the incident with Complainant took place; his only knowledge of the events is from investigations after the incident. Tr. p. 180.

31. The complaint filed by Complainant with Respondent came to Kelley because it had to do with loss prevention. Tr. p. 128. Kelley investigated the allegations of the complaint and talked with Chris Jones, the loss prevention officer, also referred to as a security guard. Tr. p. 132. Kelley had a phone call with Complainant's son/attorney but did not believe Complainant was on the call and therefore, any allegations were not made to

[5] Response refers to Respondent's Response to Complainant's Complaint received by the Commission on August 5, 2020.

Kelley by Complainant himself. Tr. p. 164. Kelley told Complainant's attorney that he would have to speak to Complainant himself. Tr. p. 171.[6]

32. Kelley said that security guards in the stores have many tasks, including safety for customers and employees, detecting shrink,

33. and preventing shrink. Tr. p. 133. Kelley described "shrink" as loss of profits to the business due to shoplifting and "stuff like that." Tr. p. 133. It applies not only to shoplifting, but any time material is missing. Tr. p. 133.

34. Kelley said that it is a "standard practice" that when anyone comes to the store to pick up an expensive item, such as a sheet cake and has not paid for it in the department, for employees to make an announcement over the radio, through a walkie-talkie or intercom system, saying something like "code yellow." Tr. p. 134. This announcement alerts management and security that there is an expensive item leaving a department and going up to the register. Tr. p. 134. This is a standard practice in all of Kelley's city stores. Tr. p. 134. This standard practice applies regardless of race. Tr. p. 135. This applies to any expensive item; and Kelley believed lobster tails were "on the menu." Tr. p. 136.

35. Kelley said that when Complainant received the lobster tails from the seafood counter, the department alerted the loss prevention officer, Chris Jones, and the front-end manager, Sharika Harris. Tr. p. 137.

36. Loss prevention officers receive 80 hours of security training through Respondent's Training Department. Information regarding racial profiling is not in the training materials for loss prevention officers. Tr. p. 138.

37. Loss prevention officers receive a security loss prevention training manual. Resp. Exh. 8, Tr. p. 174. Security Guard Chris Jones would have received this manual. Tr. p. 174. The manual states that associates must not profile a person as a possible shoplifter based on race, color, national origin, gender, religion, age, or general appearance. Resp. Exh. 8, p. 166, Tr. pp. 176-177. The document also contains a code of conduct which states that the company does not tolerate discrimination against, or harassment of, applicants, employees, customers or vendors on the basis of an individual's race, sex, color, religion, national origin, disability or genetic information. Resp. Exh. 8, p. 166, Tr. p. 178. Kelley identified the general policy statement, the certified shoplifting policy procedures and business conduct acknowledgement signed by Chris Jones. Cp. Exh. D, Tr. p. 277.

38. When a loss prevention officer receives an alert, Kelley says that the officer tries to get a visual to see the location of the individual and to keep an eye on the item or items. Tr. p. 138. Kelley says there are different reasons to look into a person's cart to determine the location of the item. An individual might be trying to steal the item or might just leave it in the store where it will spoil. Tr. p. 139.

39. Kelley noted that one of the policies outlined in the training guide is the policy for loss prevention employees to follow when they encounter shoplifting. Resp. Exh. 8, Tr. pp. 188-189. The policy states that any stop, apprehension, or detention of a shoplifter should be made only after the loss prevention employee observes concealment of merchandise

[6] Another report made by Respondent's insurance company appears to have documented settlement attempts and is not made a part of these findings of fact.

and has constantly observed the offender in the act. Resp. Exh. 8, Tr. p. 189. Employees are only authorized to stop, apprehend, or detain customers when a loss prevention officer has observed shoplifting. Resp. Exh. 8, Tr. p. 190. When approaching an individual, a loss prevention employee must be polite and clearly identify themselves when making a stop and must not profile a person as a possible shoplifter based on race, color, national origin, gender, religion, age, or general appearance. Tr. pp. 193-194. Under the policy, store associates and third-party security service personnel must never chase a suspect or stop a shoplifter on the word of another associate. Tr. p. 194. Store associates are only allowed to approach a suspect beyond the last point of purchase but before the suspect exits the store. Tr. p. 195. Confronting a customer is not the same as stopping a customer. Tr. p. 198.

40. Kelley did not believe that Jewel-Osco had a written shrink policy guide for employees. Tr. p. 278. Training on shrink policy would come in the general training and when assigned to a store, through the security manager. Tr. p. 278. The training is not standardized. Tr. p. 279

41. The shrink policy is not the same as the policy for a shoplifting stop, which occurs when a customer leaves the last point of payment without paying for merchandise. Tr. pp. 281, 283. Complainant was never stopped and had paid for his groceries while at the register. Tr. p. 283.

42. After reviewing the video, Kelley said the security guard, Chris Jones, had not violated any policies in the training manual. Kelley's opinion is based on the following factors: Jones did not communicate with Complainant, he looked in Complainant's bag without making any accusations, and left the register. Tr. p. 205. This was not a shoplifting stop because Complainant was not stopped. Tr. pp. 205, 283. Chris Jones did not stop Complainant and ask him about nonpayment. Tr. pp. 205-206. Kelley "did not determine" if Chris Jones communicated with Complainant. Tr. p. 209. Chris Jones spoke to Harris at the bagging station. Tr. p. 208. Prior to the actions at the register, the video revealed the security guard walk past Complainant in the aisle. Tr. pp. 208-209. Complainant did not testify to any discussion with Chris Jones. Tr. pp. 62, 63-64. Complainant testified that he had no recollection of having words with Chris Jones as Complainant was leaving the store. Tr. p. 115.

43. Chris Jones was not present at the hearing. Chris Jones had been subpoenaed by Respondent but failed to respond. In the motion for issuance of a subpoena for Chris Jones, Respondent stated that Jones was the security guard in question during the event, but no longer worked for Respondent. Tr. p. 276, Motion for Subpoena of Chris Jones, December 21, 2021. Complainant did not subpoena Chris Jones. No evidence was offered or adduced as to the reason Chris Jones was no longer employed by Respondent.

44. Mark Jones (no relation to Chris Jones) is a security lead employed by Jewel-Food Stores for 22 years. Tr. pp. 234-235, 247. He is currently employed at the Jewel store located at Roosevelt Road & Ashland Avenue. Tr. p. 236. Prior to that position, he was employed at Respondent's Store #230, where the incident occurred. Tr. pp. 236, 247. As a security lead, Mark Jones monitored the activities of fellow employees and kept the store safe for employees and customers. Tr. pp. 236, 247. All part-time and full-time security guards, also named loss prevention officers, reported to Mark Jones. Tr. pp. 236-237, 247.

45. Mark Jones, who identifies as black, described the standard practice when any customer left a department with unpaid, expensive items. Tr. p. 236-238, 239. The person who gave the customer the high-ticket item was to notify security or management. Tr. pp. 237, 248. This practice was to prevent shrink in the store, that is an item going missing or spoiling; it can include theft. Tr. pp. 237, 248. The race of the customer does not make a difference in the practice. Tr. p. 237.

46. Mark Jones said the shrink practice for high-ticket items usually involved items from the meat department, chef's kitchen, and bakery. Tr. pp. 236-237. The security would then "pay attention" to the customer with the high-ticket item from a distance or by monitoring the video camera. Tr. pp. 248, 249-250. Cameras are placed in Respondent's store to keep an eye on staff and customers, including, e.g., for loss prevention and slip-and-falls. Tr. p. 248. The customer can also be observed by the security guard using "our eyesight." Tr. p. 248. If a security guard is walking though the store as part of the job, they cannot simultaneously view the video in the security office. Tr. p. 258. The security guard also can walk by a cart and "take a peek"; that is part of a security guard's job and is done all the time. Tr. p. 251. The security guard is not accusing the customer of anything, just doing his job. Tr. 251. The practice does not allow a security guard to look through or touch the bags of groceries when walking by a cart. Tr. p. 252.

47. Mark Jones had worked with Chris Jones. Mark Jones never heard Chris Jones make racist statements. Mark Jones identified Chris Jones as black. Tr. p. 239.

48. Mark Jones was told to investigate the incident between Complainant and Chris Jones because of the allegations that Chris Jones looked into Complainant's bag after Complainant had ordered ten lobster tails. Tr. p. 240. Mark Jones viewed the video available of the incident and talked to the store associate, Norman Lee, who had notified security about the high-ticket item that was given to Complainant. Tr. p. 241. Mark Jones investigated the incident a week after it occurred; he signed his investigative report on July 27, 2020. Tr. pp. 252-253.

49. In order to complete his investigation, Mark Jones viewed the video, identified the customer (Complainant) and followed Complainant on video through the store. Tr. p. 243. Mark Jones also obtained a statement of events from Norman Lee. Norman Lee signed his statement, and his signature was witnessed by Mark Jones. Tr. p. 247.[7]

50. Mark Jones said that Respondent's shoplifting policy was to observe the customer conceal the merchandise, keep sight of the customer until he passes the last point of purchase, and then approach the customer. Tr. p. 257. The shoplifting policy does not apply when a customer merely leaves a department with an unpaid high-ticket item, but when high-ticket items leave departments unpaid, it is an indicator to "take a peek." Tr. p. 260.

51. Rebecca Young is a human resources manager for Jewel-Osco; she has responsibility for Store #230. Tr. p. 289. Young has worked for Jewel-Osco for over 20 years, including as a bakery manager. Tr. pp. 290-292. She is responsible for overseeing a variety of human resources tasks, including employee disciplinary actions, union grievances, the ethics or policy violations complaint line for employees, guiding store directors on disciplinary

[7] The statement by Norman Lee was not admitted because Norman Lee was not present at the hearing.

decisions, and staffing and training for management positions. Tr. p. 290. Young identifies as black. Tr. p. 298.

52. Young has never been a loss prevention officer nor has she trained loss prevention officers. Tr. p. 308.

53. As a former bakery manager, Young is familiar with the practice with respect to unpaid, expensive items that leave the department. Tr. p. 292. Once a customer left the department without paying for an item, if there was loss prevention staff in the store, an employee would notify Loss Prevention, usually using a code. Tr. pp. 292-293, 316. Some stores just call the front-end manager. Tr. pp. 293, 316. Security or loss prevention are alerted based on the high value of the unpaid item, not on the race of the customer. Tr. pp. 294, 319. Customers should not be profiled based on "race, gender, religion, age, [or] anything, just the products there." Tr. p. 320.

54. Young identified Norman Lee as black, and as a wrapper in the meat department. Tr. p. 295. Norman Lee is a union member and Young stated that as a union member, Norman Lee could not be compelled to testify or "participate in anything" according to the collective bargaining agreement. Tr. p. 296.

55. Young identified a photo identification card form from Chris Jones, who Young further identified as a security officer for Jewel-Osco. Young could not say whether Chris Jones was still employed by Jewel. Tr. p. 299. Young further identified a certificate that indicated that Chris Jones had completed training in loss prevention. Tr. pp. 300-301.

56. Young investigated the incident with Complainant at Jewel Store #230 on April 5, 2020. Young reviewed the investigations of others, including the loss prevention district manager, as part of her investigation. Tr. p. 309. In the investigation of the incident on April 5, 2020, Young reviewed the store video. Tr. p. 310. Young did not review the employee handbook or training manual as part of her investigation. Tr. p. 311, Resp. Exh. 7 and 8. As a result of her investigation, Young concluded that there was no policy violation. Tr. p. 304. Young also recommended no discipline for Chris Jones. Tr. p. 312. Young believed that Chris Jones's actions displayed courtesy, dignity, and respect toward Complainant, as required by the employee handbook. Tr. p. 323.

57. Young noted that the mask mandate for employees and vendors went into effect on April 20, 2020; the mask mandate went into effect for customers on May 1, 2020, after the governor of Illinois issued a mask mandate. Tr. pp. 304-305. Neither requirement was in effect on April 5, 2020, the date of the incident.

58. One of Young's responsibilities was investigating discrimination complaints; she has never received any complaints against Chris Jones or Store Manager Sharika Harris. Tr. pp. 306-7.

59. Young stated that at the time of the incident, Chris Jones's height was 6'3", and his weight was 255 pounds. Tr. p. 307.

60. Complainant offered into evidence documents obtained from Respondent with information from other Jewel Food stores that identified customers who were questioned as possible shoplifters by race, among other identifying details such as name, sex, age, etc. Tr. pp. 269-272. No additional analysis was completed on these documents, and

Store #230 was not compared to other Jewel Food store reports of people questioned as shoplifters, either at the store in question or from stores in majority-white areas. No evidence was submitted as to the demographics (race, in particular) of the shoppers of other stores as compared to Store #230. Respondent's witness, Kelley, testified that the identifying information on the form was used to determine if certain shoplifters were repeat offenders. Tr. pp. 280-281. Complainant asserted that the identification of race in these documents was a critical issue. Tr. p. 271. Complainant submitted a form from one Jewel Food store, not Store #230, to show that Jewel lists race as one characteristic on the report. Tr. pp. 272, 275. Cp. Exh. I. Exhibit I lists the following characteristics of one person stopped for shoplifting: name [redacted], address [redacted], age, sex, race, hair color, eye color, other (thin, heavy, scars, e.g.).

IV. CONCLUSIONS OF LAW

1. Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination in the City of Chicago with respect to a public accommodation on the basis of race and other protected categories.[8] Respondent is a covered public accommodation pursuant to Section 2-160-070 because it is a business in the City of Chicago that sells, provides, or offers products and services to the general public.

2. Complainant in this case could prove discrimination under the direct or indirect method. See, e.g., *Sturgies v. Target Department Store*, CCHR No. 08-P-57 (Dec. 16, 2009).

3. Complainant provided no proof of discrimination under the direct evidence method.

4. Under the indirect method of proof, Complainant has the burden to prove "by a preponderance of the evidence that sufficient facts exist to imply discrimination in the absence of a credible, nondiscriminatory explanation for the Respondent's actions." *Sohn and Cohen v. Costello and Horwich*, CCHR No. 91-PA-19 (Oct. 20, 1993). The elements of a *prima facie* case under the indirect method are as follows: (1) that the complainant was a member of a protected class, (2) that the complainant sought to use the public accommodation at a time when it was open and available to the public, (3) that the complainant met all legitimate, non-discriminatory criteria for access to the public accommodation, and (4) that the complainant was denied full use of the public accommodation or that others not of his protected class were treated more favorably.

5. Complainant did not establish a *prima facie* case of discrimination. He did establish that he was a member of a protected class, that he sought to use a public accommodation when it was open to the public and that he met the non-discriminatory criteria for access to the public accommodation. Complainant did not establish that he was denied full use of the public accommodation due to the actions of Respondent's employees or that other customers, who were not black, were treated more favorably.

6. Even if Complainant had established a *prima facie* case, Respondent articulated a legitimate, non-discriminatory reason for its actions in following its standard practice of following high-value items to the place of payment in order to avoid loss. See, *Sturgies v. Target Department Store, supra*. Once Respondent established this legitimate practice, the burden of proof shifted to Complainant to prove that the reason offered by Respondent was pretextual. *Id.*

[8] Following an amendment of the CHRO, effective June 4, 2022, discrimination in the use of a public accommodation is now prohibited under Section 6-010-070 of the Chicago Human Rights Ordinance.

Complainant did not meet his burden of proving that Respondent's articulated reason was pretextual.

V. DISCUSSION

Section 2-160-070 of the Chicago Human Rights Ordinance states, in pertinent part: 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 race .... A complainant has the initial burden of establishing a *prima facie* case of discrimination in violation of the ordinance. *Williams v. Bally Total Fitness Corp.*, CCHR No. 05-P-94 (May 16, 2007).

A complainant may establish a *prima facie* case by two methods: direct evidence of the discriminatory intent or the indirect method based on inference drawn from the facts proven in the case. Under the direct evidence method, a complainant who is a member of a protected class may meet this burden by establishing with credible evidence that the respondent directly stated or otherwise indicated that the complainant was being refused service or offered different service due to being a member of a protected class. *Sturgies v. Target Department Store*, CCHR No. 08-P-57 (Dec. 16, 2009); *Blakemore v. Dominick's Finer Foods*, CCHR No. 01-P-51 (Oct. 18, 2006). Complainant offered no direct evidence of discriminatory intent. To the contrary, Complainant testified that no security guard or other employee of Respondent explicitly said he was being monitored in the store due to his race. There were no other statements or actions by Respondent, taken together or separately, on which to base a finding of direct evidence that the reason Complainant's actions in the store were monitored was due to his race. *Id.*

In cases where a complainant cannot provide direct evidence of discriminatory intent, the complainant must rely on inferences drawn from the actions or statements of the respondent. The Commission has adopted for this purpose the *McDonnell-Douglas* test formulated by the U.S. Supreme Court in *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973). Under this test, the complainant must first establish a *prima facie* case of discrimination: (1) that he was a member of the protected class, (2) that he wanted to utilize the public accommodation when it was open to the public and met the legitimate criteria for using the public accommodation, (3) that he was denied the full use of the public accommodation, or (4) that others not of the complainant's protected class were treated more favorably. Once a complainant establishes a *prima facie* case, the burden shifts to the respondent to articulate a legitimate, nondiscriminatory basis for the actions alleged to be discriminatory. *Mahaffey v. University of Chicago Hospitals*, CCHR No. 93-E-221 (July 22, 1998). If a nondiscriminatory basis is articulated, then the burden shifts back to the complainant to establish that the articulated basis for the actions is pretextual. *Chimpoulis and Richardson v. J & 0 Corp. et al.*, CCHR No. 97-E-123/127 (Sept. 20, 2000); *Perez v. Kmart Auto Service et al.*, CCHR No. 95-PA-19/28 (Nov. 20, 1996).

Complainant proved he was a member of a protected class, that Respondent was open to the public, and that Complainant met the criteria for shopping at Respondent's establishment. Even accepting as credible all of the evidence Complainant offered, however, Complainant did not prove the last element of the *prima facie* case: That his full use and enjoyment of the Jewel Food store were withheld, denied, curtailed, or limited in any way or that he was treated less favorably because he is black.

Complainant shopped in the store before and after he received the ten lobster tails, before and after his cart was eyed by the security guard, and he was able to complete his purchases without interference. That Complainant was briefly monitored after receiving high value

merchandise did not interfere with his ability to shop, as confirmed by his own testimony. Complainant was not stopped by store personnel either in the aisle or at the check-out line, and the monitoring in both instances lasted mere seconds. Complainant was not followed around the store contrary to store policy as was the complainant in *Blakemore v. Dominick's Finer Foods, supra.* Respondent's monitoring of Complainant following the shrink practice was similar to actions described by the Commission as a "nuisance" where a complainant, who was black, was asked multiple times by restaurant staff who were Guatemalan whether the complainant was ready to pay. *Blakemore v. Antojitos Guatemaltecos Restaurant,* CCHR No. 01-PA-5 (Apr. 20, 2005). Commission decisions have long held that "full use" provisions apply to actions which are not "trivial" in nature, but rather are invidious, long-lasting or sufficiently pervasive to state an adverse action. *Blakemore v. Starbucks Coffee Co.,* CCHR No. 07-P-13/91 (Sept. 7, 2008).

Nor did Complainant prove that store customers who are not black were treated more favorably. To establish that another customer was treated more favorably due to race, Complainant would have to prove that the store or its employees at least did not monitor another customer who was of another race while the customer was shopping after that customer received a high-value item. See *Blakemore v. Dominick's Finer Foods, supra.* Complainant testified that he saw only one identifiably white customer on the day of the incident and that was at the entrance to the store prior to the customer shopping in the store. No other testimony or evidence of more favorable practices was offered.

Even if Complainant had established a *prima facie* case, Respondent articulated a legitimate, nondiscriminatory basis for its actions, which Complainant must then show is illegitimate or pretextual. *Blakemore v. Dominick's Finer Foods, supra.* Respondent established by credible testimony by the store manager, the district loss prevention manager, the security lead for the store, and the human resources manager for Jewel, including the store in question, that it was a standard practice to alert the front end of the store when a high-value item left the meat, deli or bakery departments without payment, in order to avoid "shrink," e.g., loss or theft. Respondent further established that employees are trained about the practice while at their store and that store personnel follow this practice on a regular basis. Complainant did not offer any proof to meet his burden of showing the shrink monitoring practice was illegitimate or pretextual.

The fact that Respondent noted the race of shoplifting suspects does not automatically mean that race discrimination is taking place. It is not reasonable to infer, without additional evidence, that Respondent's practices are racially based. *See Blakemore v. Kinko's,* CCHR No. 01-P-77 (Dec. 6, 2001). The Commission has recognized that "poor management, including failure to set clear policies or enforce them" does not "always equate with discriminatory practices." *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006). See also, *Holman v. Funky Buddha, Inc., d/b/a Funky Buddha Lounge,* CCHR No. 06-P-62 (May 21, 2008) (Security guard's use of excessive force in violation of club policy did not provide circumstantial evidence of discriminatory *animus*). Complainant offered no evidence that Respondent's proffered explanations for its shrink policy and identification of shoplifters are pretextual or that Respondent acted with discriminatory intent in enforcing its practices.

Blakemore v. Dominick's Finer Foods

Complainant relies extensively on *Blakemore v. Dominick's Finer Foods*, CCHR No. 01-P-51 (Oct. 18, 2006), asserting that the facts are "substantially similar" and that the only difference is that the actions in this case were captured on video. Cp. Post-Hearing Brief, p. 2.

While surface facts in *Blakemore v. Dominick's Finer Foods* are similar, there are some substantial differences.

In the *Blakemore v. Dominick's Finer Foods* case, which was on appeal to the Commission and subsequently remanded to the hearing officer for further consideration, the complainant said he was surveilled by a security guard while shopping in a store and alleged that white customers were not similarly surveilled. *Id.* The Commission found that this guard's surveillance violated the store's existing security policy of using the surveillance video system which could be used to see any activities in the store and instead, went into the aisles to follow the complainant throughout the store. *Id.* Further, in *Blakemore v. Dominick's Finer Foods*, the respondent presented no evidence from any employee on duty at the time of the incident to counter the complainant's statement that white people were present throughout the store and that the complainant did not see any of those white people being followed. *Id.* Further, the respondent in *Blakemore* did not present any "evidence that could support a legitimate, non-discriminatory reason for the guard's conduct." *Id.*

In the totality of the particular circumstances found in *Blakemore v. Dominick's Finer Foods*, the Commission determined it could take notice of "the commonly-known and widespread stereotype that African-Americans, especially those that are male, are more likely than others to commit crimes such as shoplifting, and consequently as more likely to be *subjected to intrusive and intimidating monitoring as occurred in this case*." (Emphasis added.)

In remanding the case, the Commission concluded that a "deviation from the store policy and the failure to establish any legitimate non-discriminatory reason for [the deviation] is sufficient to support an inference of race discrimination." *Id.*

In weighing the evidence where parties have strongly held and sometimes contradictory statements, such as in this case, the hearing officer must determine the credibility of witnesses and is free to disregard, in whole or in part, the testimony of witnesses found to lack credibility. *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006); and *Lanham v. Logan Square Chamber of Commerce*, CCHR No. 16-P-12 (June 8, 2017). In the present case, the hearing officer found in many instances that Complainant had conflicting statements in his complaint with the Commission, in the internal complaint with Respondent, and his testimony at the hearing. In some of his testimony, Complainant directly contradicted earlier statements. Finally, the video introduced into evidence by Complainant directly and clearly contradicted earlier statements by Complainant that he was stopped or blocked by Respondent's security guard, that more than one guard stopped him, and that the security guard questioned him in front of other customers about the lobster tails prior to paying for the merchandise.

Based on the video evidence from the store on the date in question, introduced as Complainant's Exhibit A and the testimony at the hearing, the hearing officer found that the loss prevention officer initiated two brief encounters with Complainant; once in the aisle and once at the register. Complainant testified that he could not recall the loss prevention officer talking to him. This is not the "intrusive and intimidating monitoring" that the Commission addressed in *Blakemore*, where that complainant was followed closely around the store on more than one occasion, including the date of the incident that was the basis of the complaint.

Also, in contrast to *Blakemore v. Dominick's Finer Foods,* Complainant did not testify that he observed other white customers except for one customer at the entrance to the store. In *Blakemore*, the complainant testified that he saw white customers throughout the store and that those customers were not surveilled as he was. In this case, Complainant noted one white

customer, so his statement that he saw no other white customers being treated differently could only apply to this one customer who was last seen by Complainant as the customer was entering the store, far away from the deli, meat, and bakery counters.

In addition, in contrast to *Blakemore v. Dominick's Finer Foods*, in this case Respondent presented credible evidence from four witnesses that the "shrink" practice was the standard practice when high-value merchandise left certain departments in Jewel-Osco stores without being paid for, and that Chris Jones, the loss prevention officer, had followed the standard practice. All of Respondent's witnesses concurred that the basis for initiating a review of the items was the amount of the unpaid item which left the department, or "what was in the cart, not who was pushing it." The practice did not require the loss prevention officer to stay in one particular place; rather, the officer was to keep an eye on the item and "peeking" in the basket was part of the practice.

Missing witness rule.

Complainant cites the "missing witness" rule as the reason to assume that Chris Jones had an *animus* toward Complainant's race. Cp. Post-Hearing Brief, p. 5. Complainant says that Respondent's failure to produce Chris Jones, the loss prevention employee at Respondent's Store #230, should require the Commission to assume that Chris Jones applied a discriminatory racial motive by subjecting the Complainant to "intrusive monitoring." Complainant noted that the Commission in *Blakemore v. Dominick's Finer Foods* reasoned that the missing witness rule is "based on the principle that failure of a party to produce evidence favorable to it gives rise to a presumption against that party." *Id.* However, there are requirements to invoking the missing witness rule that are not present in Complainant's analysis. The missing witness at issue,[9] Chris Jones, a former employee, was not within the control of Respondent. Chris Jones failed to respond to the subpoena the Commission issued at Respondent's request. Complainant did not subpoena Chris Jones, list him as a potential witness, or make a demand for his appearance of an opposing party employee. Cp. Pre-Hearing Memorandum.

Illinois law has the following requirements to invoke the missing witness rule:

1. The witness was under the control of the opposing party and could have been produced by reasonable diligence.
2. The witness was not equally available to an adverse party.
3. A reasonably prudent person or entity under the same or similar circumstances would have produced the witness if he or it believed the testimony would be favorable to him or it.
4. No reasonable excuse for the failure has been shown.

See Illinois Pattern Jury Instructions 5.00 and cases cited therein.

The Commission in *Blakemore v. Dominick's Finer Foods, supra,* noted that the missing witness rule was applicable to that case. As the Commission stated:

> The rule is based on the principle that failure of a party to produce evidence favorable to it gives rise to a presumption against that party. The missing witness rule has been

[9] Norman Lee also did not appear, although subpoenaed by Respondent. Norman Lee is an employee of Respondent and is represented by a union. Respondent stated that it could not force Normal Lee to testify pursuant to the collective bargaining agreement. Complainant did not invoke the missing witness rule with regard to Norman Lee and has thus abandoned this argument in relation to Norman Lee.

recognized in Illinois and applied to an Illinois administrative agency hearing. *Board of Regents of Regency Universities v. Illinois Labor Relations Board*, et al., 208 Ill.App.3d 220, 566 N.E.2d 963 (1991), citing *Tepper v. Campo*, 398 Ill. 466, 76 N.E.2d 490 (1947).

In *Blakemore v. Dominick's Finer Foods, supra,* the Commission found that the missing witness rule applied due to the particular circumstances of that case:

> In this case, Dominick's presented no evidence that could support a legitimate, non-discriminatory reason for the guard's conduct. As previously noted, Dominick's failed to produce as a witness the security guard or any manager or other store employee who observed any aspect of the incident. There was only evidence that a policy prohibiting such conduct was in place at the time, accompanied by the speculative declaration of a human resources representative that no one would have violated the policy. The facts as found by the Hearing Officer belie that assertion.

The Commission has found that where a party provided sufficient credible evidence of certain facts, the fact that there may be additional witnesses to that fact does not mean that an adverse inference must be applied. *Sturgies v. Target Department Store, supra.*

In this case, the hearing officer found that the missing witness rule is not applicable. The witness was equally available to be subpoenaed by either party; Respondent attempted to produce the witness; and Respondent's explanations for its failure to produce the witness (he was no longer an employee and refused to accept the subpoena) were reasonable. In addition, there was credible evidence from other witnesses about Chris Jones' activities, and about the standard practice followed by the guard to monitor the premises to avoid "shrink," from several witnesses. Complainant himself testified that he remembered no conversation with Chris Jones or anyone else using racially explicit language. The hearing officer agreed with Respondent's recognition that the security guard's behavior might have been overzealous (Resp. Post-hearing Brief, p.29); however, "disrespectful behavior alone is not actionable under the CHRO in the absence of discrimination based on a protected class." See *Virella v. Target Corporation,* CCHR No. 17-P-50 (Feb. 13, 2020), and cases cited therein.

Under these circumstances, the missing witness rule does not apply.

COVID-19.

Complainant testified that he was very frightened about the prospect of contracting COVID-19 from unmasked employees and customers failing to observe the 6-foot distance between customers. Complainant did not testify that he has a disability of any sort that made him more likely to acquire the disease; Complainant only stated that he was concerned about the disease because it was so widespread. Although this concern is understandable, Complainant's concern about the disease is not a basis for a discrimination claim unless it is based on one of the protected classes in Section 2-160-070 of the Chicago Human Rights Ordinance which prohibits discrimination with respect to the use of a public accommodation on the basis of race and other protected categories, including disability.

Complainant was nervous about going outdoors during the pandemic, he was in a store he was not familiar with, and he was not used to shopping for himself, all of which could make for an unsettling experience. However, this justifiable fear cannot substitute for proof of a basis for a claim before the Commission. In addition, as noted in the Findings of Facts, state masking requirements did not go into effect until weeks after the incident.

Race of Respondent's employees.

Respondent at various times presented evidence that most of its witnesses identified as black, and that Norman Lee and Chris Jones also identified as black. As the Commission has found on numerous occasions, the fact that a respondent or its employees are of the same race as the complainant does not mean that discrimination cannot exist. See, *e.g., Blakemore v. Dominick's Finer Foods, supra.*

Training of Respondent's employees.

Respondent introduced significant evidence that Chris Jones was trained in the policies Respondent expected all employees to follow and that he had signed statements that he understood those policies. This by itself is insufficient to establish that Chris Jones complied with these policies. As the Commission noted in *Blakemore v. Dominick's Finer Foods*, speculation that employees understood and followed a respondent's policies is insufficient to establish that as a fact. In this case, with regard to the shrink practice, Respondent had substantial proof from other witnesses that the security guard did follow that practice and Respondent had a legitimate, non-discriminatory reason for the shrink practice, as discussed above.

In his Objections, Complainant restates his arguments and asserts that the hearing officer erred in ruling that Complainant failed to prove by a preponderance of the evidence that Respondent Jewel Food Stores, Inc. discriminated against him based on his race. Complainant maintains that contrary to the hearing officer's determination, Respondent Jewel Food Stores failed to articulate a legitimate non-discriminatory reason for its treatment of Complainant. He further argues that he did, in fact, state a *prima facie* case of race discrimination.

In reviewing a party's objections to a hearing officer's recommended decision, the Commission will not simply re-weigh the credibility of witnesses; the Commission will not set aside the hearing officer's finding of facts merely because another interpretation of the facts is plausible. *Mahaffey v. University of Chicago Hospitals et al.,* CCHR NO. 93-E-221 (Jul. 22, 1998). See also, *DeHoyos v. La Rabida Children's Hospital et al.,* CCHR No. 10-E-102 (June 18, 2014).

The Commission agrees with the hearing officer that the evidence brought out in the hearing does not support a determination that Complainant was subjected to discriminatory treatment in Respondent's store because of his race. Accordingly, because Complainant has failed to establish a *prima facie* case of discrimination, the burden of proof does not shift to Jewel Food Stores, and there is no need to engage in any additional analysis of its motivations. The Commission finds that Complainant cannot show a violation of the Chicago Human Rights Ordinance.

VII. CONCLUSION

For the reasons stated above, the Commission finds that Complainant Lain Lee has not proved by a preponderance of the evidence that Respondent Jewel Food Stores, Inc. d/b/a Jewel-Osco, discriminated against him in the use and enjoyment of its public accommodation based on his race. The Commission finds that Respondent Jewel Food Stores, Inc. d/b/a Jewel-Osco has not violated the Chicago Human Rights Ordinance as alleged in the Complaint.

CHICAGO COMMISSION ON HUMAN RELATIONS

By:
Entered: June 9, 2022