



- to leave the cab and she did so after she wrote down the driver's taxicab number. Respondent was working for Globe Taxi, a Respondent which was previously dismissed from this case. (Tr.8-9)
3. Morrow then got into another cab and called the City of Chicago Department of Consumer Services to complain about the driver of Cab #1357, who was Respondent Tumala. Both Consumer Services and the Commission on Human Relations provided Morrow with the name of the driver for Globe Taxi who was driving Cab #1357 on the date that she attempted to use his cab. (Tr.15)
  4. Morrow told the second taxi driver what happened and the cab number of the driver about whom she had called to complain. (Tr.10) The driver of the second taxi told Morrow that Cab #1357 was right in front of them. Both the cab in which Morrow was a passenger and Respondent's cab went to Oak Park, Illinois. Morrow was traveling to 220 North Harvey in Oak Park and the cab driven by the Respondent went to 320 North Harvey in Oak Park. The taxicab in which Morrow was a passenger drove to Oak Park behind Respondent's cab. Morrow observed a man, now known to her as John Blasi ("Blasi"), exit Respondent's cab. Morrow told Blasi that when she attempted to enter Respondent's cab, Respondent wanted a fare and a half. Blasi stated that the Respondent asked him to pay only straight meter and he paid it. (Tr.12-13) Blasi is a white male. Blasi told Morrow that Respondent had never requested anything other than a straight fare. (Tr.13)
  5. As a result of filing her Complaint against Respondent, Morrow incurred an expense about \$50 for taxicabs to pursue the Complaint. (Tr.18)
  6. Morrow testified that she had prior bad experiences with cab drivers because she was an African-American and they did not provide her with the same service provided to Caucasian passengers. (Tr.20-21)
  7. When the Respondent attempted to charge her a higher fare than he charged Blasi, she was dressed in business clothes. She began to think it was unsafe for an African-American woman to take a cab. The incident with Respondent was the third negative experience she had in attempting to take a taxicab. (Tr.22)
  8. When she went to the PTO meeting, she was crying and thought to herself that she had to do something. At the PTO meeting they were discussing the racial gap between white and black students. (Tr.24)
  9. She felt embarrassed when she next saw Blasi, because she knew she was dependent on him. (Tr.26)
  10. After the incident with Respondent, when she considered herself as an African-American woman in relation to her Caucasian neighbors, she thought of the things she did not share in common "no matter how we may dress the same, the big house, the prestigious education, the ranking and important job, some barriers are still there." When asked what barriers she was talking about, Morrow responded, "The privilege of taking a cab home from work late to get to the PTO meeting." She also stated, "Even in simple daily life, I have to keep facing people who think that I'm less, and I can either feel helpless or attempt the burden of putting part of my life and resources into stepping up to say it's wrong and doing the right thing.

That can be demoralizing....” Morrow testified that if she were a white male she could put her time and resources into other things. (Tr.28-29)

11. The incident still bothers Morrow and she thinks about it every time she takes a cab. She testified that it costs African-Americans more to live and that “has a real impact on our lives.” When asked how the incident with Respondent affected her life, she stated there is a “need to be ever vigilant” and that “it is just tiring.”(Tr. pp. 30-31) She felt isolated because she was the “the only adult of color on those two blocks of Harvey Street....” She testified, “It is deeply demeaning to have put squarely before me what I want so badly to overcome, that many in this society will continue to always apply the hurtful status of lesser human....” (Tr.33)
12. Morrow had to take time off work for three hearings with the City’s Department of Human Services, five hearings for appointments with the State of Illinois Department of Human Rights, and four appointments or visits with the Chicago Commission on Human Relations. (Tr.34)
13. After talking to Blasi, Morrow realized that the Respondent was willing to go to Oak Park but that he did not want to take her to Oak Park. Respondent was willing to take a white male to “the exact same place for less money.”( Tr.36)

### **C. CONCLUSIONS OF LAW**

1. Chapter 2-160-010 of the Chicago Municipal Code provides in relevant part as follows:

It is the policy of the City of Chicago to assure that all persons within its jurisdiction shall have equal access to public services and shall be protected in the enjoyment of civil rights, and to promote mutual understanding and respect among all who live and work within this City.

2. Chapter 1-160-070 of the Chicago Municipal Code provides:

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, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income.

3. Section 2-160-020 (1) of the Chicago Municipal Code defines a public accommodation as:

...a place, business establishment or agency that sells, leases, provides or offers any product, facility, or service to the general public....

4. Because the Commission has entered an Order of Default, pursuant to Reg. 215.240 Respondent is deemed to have admitted the allegations of the Complaint and to have waived any defenses to the allegations including defenses concerning the Complaint’s sufficiency. The Administrative Hearing was held only for the purpose of allowing the Complainant to establish a *prima facie* case to demonstrate that she is entitled to appropriate relief. Although Respondent may not contest the sufficiency of the Complainant, the Commission must

nevertheless determine whether the Complainant has demonstrated a *prima facie* case of race and sex discrimination. Complainant may make her *prima facie* case through her Complaint alone or may augment the Complaint with testimony if needed. See also *Moulden v. Frontier Communications et.al.*, CCHR No. 97-E-156 (Aug. 19, 1998).

5. In assessing claims of discrimination, the Commission has followed the indirect method or disparate treatment method of proof as set out in *McDonnell Douglas v. Green*, 411 U.S. 792, 73 S.Ct. 1817 (1973). That method has been applied to discrimination claims involving public accommodations and the Commission has set forth the elements for a *prima facie* case of disparate treatment based on race by a public accommodation as follows: The complainant is a member of a protected class and the respondent was aware of that fact; the complainant sought the services of a public establishment when the establishment was open for services; the complainant met all the non-discriminatory criteria for such services; and the complainant was denied or offered limited or inferior services or otherwise discriminated against by the respondent due to the complainant's race. *Robinson v. Crazy Horse Too*, CCHR No. 97-PA-89 (Oct. 20, 1999), citing *Bell/Parks/Barnes v. 7-11 Convenience Store*, CCHR No. 97-PA-68/70/72 (July 28, 1999); *Carter v. CV Snack Shop*, CCHR 98-PA-3 (Nov. 18, 1998); *Perez v. Kmart Auto Service*, CCHR No. 95-PA-19/28 (Nov. 20, 1996); *Parker v. American Airport Limousine Corporation*, CCHR No. 93-PA-36 at 12 (Feb. 26, 1996); and *Jenkins v. Artists Restaurant*, CCHR No. 90-PA-14 at 14 (Aug. 14, 1991). See also *Brown v. Emil Denmark Cadillac*, CCHR NO. 96-PA-76 (Nov. 18, 1998), setting forth the elements of a *prima facie* case for a public accommodation discrimination claim based on race and sex; and *Horn v. A-Aero 24 Hour Locksmith et al.*, CCHR No. 99-PA-32 (July 19, 2000), setting forth the standards for both the direct and indirect methods of proving race discrimination in a public accommodation.
6. Complainant Valerie Morrow, an African-American female, established a *prima facie* case of public accommodation discrimination based on race and sex, based on her sworn Complaint augmented by her testimony that when she entered Respondent Surrender Tumala's cab at Washington & Clark Street in Chicago, Illinois, she was told that the fare would be a meter and a half to go to 220 N. Harvey, Oak Park, Illinois. John Blasi, a white male, was quoted and paid a fare to travel in Respondent's cab from the same starting point to nearly the same destination for a straight fare, which is 50% less for the use of the same public accommodation than Morrow was asked to pay. This evidence was sufficient to establish a *prima facie* case that the Respondent required her to pay more money for her taxicab ride was because she is African-American and female.
7. Specifically, Morrow established that (1) she is a member of two protected classes under the Ordinance, as she is African-American and female; (2) she attempted to obtain the full and equal use of a public accommodation, which in this case was transportation to her destination in Respondent's taxicab; (3) Respondent knew of Morrow's interest in using the taxicab for purpose of transportation to her destination in Oak Park; (4) Morrow met all the non-discriminatory criteria for use of that service; and (5) Respondent offered to take Morrow to her home in Oak Park only at a greater price than he was willing to charge a Caucasian male for the identical service.
8. Because Morrow provided evidence sufficient to establish a *prima facie* case of race and sex discrimination, the only issue remaining is whether that evidence is credible. See *Robinson, supra.*; *Perez, supra.*; and *King v. Houston and Taylor*, CCHR. No. 92-II-62 (Mar. 16, 1994).

The Commission concludes, based on the Hearing Officer's assessment and recommendation, that Morrow's testimony was credible and the Commission finds that her testimony established a *prima facie* case that she was subjected to less favorable terms and conditions of service concerning a public accommodation on the basis of her race and sex because of Respondent's intentional discrimination.

9. Pursuant to Section 240.630 of the Commission's Rules and Regulations, Morrow as a prevailing Complainant is entitled to an award of reasonable attorneys fees and costs incurred with the prosecution of her Complaint.

## **D. RELIEF**

### **1. Out-of-Pocket Damages**

Morrow testified that she spent approximately \$50 in taxicab fare to travel to and from the Commission's office to pursue her Complaint and that she would not have been required to spend this money but for Respondent's racial and gender discrimination. The cost to pursue ones rights under the Ordinance may be included as an element of damages. *Williams v. O'Neal*, CCHR No.96-H-73 (June 18, 1997). The Commission awards Morrow \$50 for the expenses she incurred to enforce her rights with respect to Respondent's discrimination. These are the only out-of-pocket damages requested by Morrow.

### **2. Emotional Distress Damages**

Morrow has requested emotional distress damages of at least \$5,000. Morrow argues that this amount of compensation is necessary because "Respondent's discrimination was blatant and intentional." Complainant's Brief In Support Of Damages, p. 7.

Morrow relied on the Commission decision in *Houck v. Inner City Horticultural Foundation*, CCHR No. 97-E-93 (Oct. 23, 1998) to support her \$5,000 request. In *Houck*, the complainant was discharged after only one week of employment because of her sexual orientation. This incident created and intensified emotional distress she had experienced after other instances of rejection. It also raised a defensiveness in Houck about dealing with children after her employer expressed concern about Houck going on a field trip with children served by that respondent's program. Houck experienced feelings of suicide, loss of self-esteem, and despair. Houck was awarded emotional distress damages of \$5,000.

Morrow also relied on *Hussian v. Decker*, CCHR No. 93-II-13 (Nov. 15, 1995). In that case the complainant, Hussian, was forced to listen to several explicit comments of an unwanted sexual nature after she moved into an apartment. There also were several unexplained unauthorized entries into Hussian's apartment. Hussian was awarded \$5,000 for emotional distress damages arising from this sexual harassment.

Morrow's testimony was that she was crying when she went to her PTO meeting after Respondent had discriminated against her, particularly because a racial gap between white and black students was being discussed at this meeting. She was embarrassed when she asked Blasi for his help in pursuing her case since she knew she was dependent on him.

She continued to think that she was different as an African-American woman and that there

were many things she could not share with her neighbors “no matter how we may dress the same, the big house, the prestigious education, the ranking and important job, some barriers are still there.” She also testified that “even in simple daily life, I have to keep facing people who think I’m less, and I can either feel helpless or attempt the burden of putting part of my life and resources into stepping up to say it’s wrong and doing the right thing.” Morrow further testified that if she were a white male she could have put her time and resources into other things. Morrow testified that “the need to be ever vigilant is tiring.”

Morrow’s testimony in support of emotional distress damages showed that she suffered substantial emotional distress both on the date she was the victim of the race and sex discrimination and for a significant period thereafter. The discrimination made her feel both inferior and helpless compared to her Caucasian neighbors. She believed that there were daily barriers and that the discrimination she encountered in her life was not something similarly-situated white men would ever have to deal with. Morrow also testified to previous incidents of race and gender discrimination with other cab drivers before the discrimination on which this case is based. The incident with Respondent still bothers her every time she takes a cab.

Morrow’s testimony established that she continued to internalize the effects of Respondent’s discrimination up to and including the present and that this discrimination profoundly affected, and continues to affect, many aspects of her life, particularly from a psychological standpoint. The Commission finds that Morrow testified truthfully to her emotional distress from Respondent’s discrimination and that thoughts of being a “lesser human” remained with her as result of this incident. Based on the Morrow’s testimony in this case, the Commission awards emotional distress damages of \$5,000.

### **3. Punitive Damages**

Morrow proposed an award of \$5,000 of punitive damages. The Commission has awarded punitive damages where a respondent’s actions are wilful and wanton, malicious, and recklessly in disregard of the rights of the individual who was the victim of the discrimination. See, e.g., *Houck v. Inner City Horticultural Foundation, supra.*; *Boyd v. Williams*, CCHR No.92-II-72 (June 16, 1993); *Collins & Ali v. Magdenovski*, CCHR No.91-FHO-70-5655 (Sept. 16, 1992); and *Akangbe v. 1428 West Fargo Condominium Association*, CCHR No. 91-FHO-7-5595 (Mar. 25, 1992).

The Commission agrees that an awarded of punitive damages is required both to punish this violation and to deter similar violations of the Chicago Human Rights Ordinance in the future. The discrimination in this case was willful and wanton. This Respondent deliberately subjected an African-American woman to less favorable terms and conditions for use of his taxicab service than for a clearly similarly-situated white man. He intentionally denied this Complainant equal service.

When Respondent decided to drive a cab for a living, he agreed to provide equal service to all patrons who had a need for it. Morrow lived in on Harvey Avenue in Oak Park, Illinois, a suburban community bordering the City of Chicago, and knew that she was required to pay the fare at the meter rate, not at a fare and half. Within minutes after agreeing to take Morrow to Oak Park only for a fare based on a meter and a half, Respondent took Blasi to the same location where Morrow wanted to go for a straight meter fare.

In this case, Respondent failed to appear at the Conciliation Conference. Also, neither Respondent, nor anyone else on his behalf, appeared at the Pre-Hearing Conference or the

Administrative Hearing. Such failures to participate in Commission proceedings can be considered in awarding punitive damages. See, e.g., *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62 (Oct. 20, 1998).

Ordinarily, the Commission considers the income and assets of a respondent in determining the appropriate amount of the punitive damages, but when a respondent does not appear at the Administrative Hearing, the Commission may award punitive damages without regard to the respondent's financial circumstances. *Miller v. Drain Experts & Derkits*, CCHR No. 97-PA-29 (Apr. 15, 1998). The Commission does note that Respondent is (or was at the time) a taxicab driver and as such is likely to be a person of modest means.

The Hearing Officer recommended and the Commission awards \$3,000 as punitive damages. Morrow was not denied the right to take Respondent's cab but she was going to be charged 50% more than Blasi for the same ride. As the Commission indicated in the *Miller* case, "In public accommodation cases where actual damages are not high, punitive damages may be particular necessary to ensure a meaningful deterrent." *Miller, supra*, at p.12. In *Miller*, the Commission awarded \$2,500 in punitive damages in a situation where direct racist comments were made. In *Rottman v. Spanola*, CCHR No. 93-H-21 (Mar. 20, 1996), the Commission awarded \$2,500 in punitive damages where Spanola engaged in improper sexual conduct and interfered with Spanola's enjoyment of her own home, and there was a finding that Spanola's conduct was "egregious." In *Williams v. Banks*, CCHR No. 92-H-169 (Mar. 15, 1995), the Commission awarded \$2,000 as punitive damages where the respondent in that case engaged in sexually discriminatory behavior which included nailing the complainant's door shut and hitting her several times.

In *Horn V. A-Aero 24-Hour Locksmith et al., supra*, Horn locked her car keys in her car. She called A-Aero Locksmith and was told that credit cards would be accepted. However, when she gave her address, she was told that she would have to pay in cash. When Horn called back, she was told that A-Aero did not provide lockout service and that the other person she had talked with had lied "because we don't like jungle bunnies." When Horn called other telephone numbers listed in the advertisement she was mocked in a humiliating manner. *Id.* at p.3. The Commission determined that \$3,000 was the proper amount of punitive damages in that employees of A-Aero used an explicit anti-African-American epithet and "explicitly ridiculed civil rights." *Id.* at p.13. The instant case involves a similar single, egregious discriminatory incident--albeit without direct racial epithets but nevertheless with blatant disparate treatment based on race and sex.

Morrow's counsel, who did not request any award of punitive damages until the post-hearing brief was filed, suggests that the sum of \$5,000 is required in this case and cites *Wright V. Mims*, CCHR No 95-II-12 (Mar. 19, 1997). In *Wright*, however, the respondent's conduct was even more aggravated than in the instant case. Wright not allowed to move into rental housing based on parental status, after she had already paid deposits and taken other move-in steps. As a result of that respondent's blatantly discriminatory action, Wright was left with no money to obtain other housing, her entire family was disrupted and nearly became homeless, and her work was disrupted as well.

The Commission agrees with the Hearing Officer that \$3,000 is an appropriate punitive damages award sufficient to punish and deter the discriminatory conduct that occurred in this case.

**4. Fine**

Section 2-160-120 of the Ordinance provides for a maximum fine of \$500 for each offense. A maximum fine is appropriate in this case because the differential treatment was willful and egregious, and so the Commission imposes a fine against Respondent in the amount of \$500 for the Ordinance violation.

**5. Interest**

Section 2-120-510(1) of the Chicago Municipal Code provides for payment of interest on damages awarded to complainants. Pursuant to Commission Reg. 240.700, the Commission awards pre- and post-judgment interest at the prime rate, adjusted quarterly, and compounded annually from the date of the Ordinance violation. In recent years, the Commission has routinely awarded pre- and post-judgment interest on its awards of monetary relief, e.g. *Steward v. Campbell's Cleaning Servs. et al.*, CCHR No. 96-E-170 (June 18, 1997); *Griffiths v. DePaul University*, CCHR No. 95-E-224 (Apr. 19, 2000); *Trujillo v. Cuauhtemoc Rest.*, CCHR No. 01-PA-52 (May 15, 2002). The Hearing Officer recommended that interest be awarded from the date of the violation, which is November 14, 2002. That recommendation is accepted and such interest is awarded.

**6. Attorney Fees and Costs**

Reasonable attorney fees and associated costs are also awarded to Complainant. Pursuant to Commission Regulation 240.630, Complainant may submit her petition for attorney fees and costs, Respondent may respond, and the Hearing Officer will issue first and final recommended decisions for action by the Board of Commissioners.

**E. CONCLUSION**

For the reasons set forth herein, the Commission finds that Respondent Surrender Tumala, identified as the Driver of Cab #1357, violated the Chicago Human Rights Ordinance as alleged in the Complaint herein. The Commission awards out-of-pocket damages of \$50, emotional distress damages of \$5,000, and punitive damages of \$3,000, for a total damages award of \$8,050, plus pre- and post-judgment interest on the foregoing damages from November 14, 2002. The Commission fines Respondent \$500 and awards Complainant reasonable attorney fees and associated costs incurred in the prosecution of her Complaint, subject to submission of an acceptable petition pursuant to Reg. 240.630.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: \_\_\_\_\_  
Clarence N. Wood, Chair/Commissioner