



City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 4th Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Anthony Cotten
Complainant,

v.

Pizzeria Milan Restaurant
Respondent.

Case No.: 13-P-70

Date of Ruling: December 17, 2014

Date Mailed: January 16, 2014

TO:

Anthony Cotten
6517 S. Bell
Chicago, IL 60636

J. Edgar Perez, Owner
Pizzeria Milan
1314 W. 18th Street
Chicago, IL 60608

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on December 17, 2014, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondent violated the Chicago Human Rights Ordinance. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission orders Respondent:

1. To pay to Complainant Anthony Cotten emotional distress and punitive damages in the amount of \$600, plus interest on that amount from October 7, 2013, in accordance with Commission Regulation 240.700.
2. To comply with the order of injunctive relief stated in the enclosed ruling.
3. To pay a fine to the City of Chicago in the amount of \$100.¹

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law.

CHICAGO COMMISSION ON HUMAN RELATIONS

¹**COMPLIANCE INFORMATION:** Parties must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs, unless another date is specified. See Reg. 250.210. Enforcement procedures for failure to comply are stated in Reg. 250.220.

Payments of damages and interest are to be made directly to Complainant. **Payments of fines** are to be made by check or money order payable to City of Chicago, delivered to the Commission at the above address, to the attention of the Deputy Commissioner for Adjudication and including a reference to this case name and number.

Interest on damages is calculated pursuant to Reg. 240.700, at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates." The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually.

**CITY OF CHICAGO
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 4th Floor, Chicago, IL 60654
(312) 744-4111 (Voice), 312/744-1081 (Facsimile), (312) 744-1088 (TTY/TDD)**

IN THE MATTER OF)	
)	
Anthony Cotten,)	
Complainant,)	
)	
v.)	CCHR No.: 13-P-70
)	
Pizzeria Milan Restaurant,)	Date of Ruling: December 17, 2014
Respondent)	

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On October 21, 2013, Complainant Anthony Cotten (Complainant) filed a Complaint with the Chicago Commission on Human Relations (the Commission) alleging that Respondent Pizzeria Milan Restaurant (Respondent), located at 1314 W. 18th Street, Chicago, Illinois, discriminated against him due to his disability. Specifically, Complainant, who uses a wheelchair, alleged that Respondent's restaurant was physically inaccessible to him and did not offer services to him under the same terms and conditions that services were offered to other customers without disabilities.

Complainant's Complaint was sent by the Commission to Respondent on October 25, 2013, to an address listed with the Illinois Secretary of State for Respondent's President, J. Edgar Perez (Perez): 1648 W. 18th Street, Chicago, Illinois, 60608. No Verified Response was received from Respondent. On December 4, 2013, the Commission issued Respondent an Order to Respond and Notice of Potential Default; a copy of the order was sent to Respondent at 1648 W. 18th Street, Chicago, Illinois 60608. Although Respondent was ordered to respond to Complainant's Complaint by December 20, 2013, Respondent did not respond. On January 2, 2014, the Commission sent a Second Order to Respond and Notice of Potential Default to Perez, requiring Respondent to respond to the Complaint by January 16, 2014. Again, the Commission received no response from Respondent.

On January 30, 2014, a Commission Investigator spoke with Perez, who confirmed he had received a copy of the Complaint and said that his lawyer advised him not to respond to the Complaint until he received a second notice. The Commission Investigator informed Perez that he was required to file a Verified Response and suggested that if Respondent needed additional time to prepare the Verified Response he could request an extension in writing. No motion for an extension or Verified Response was filed by Respondent.

On March 13, 2014, the Commission issued an Order of Default which notified Respondent that pursuant to the Order, Respondent was deemed to have admitted the allegations of the Complaint and to have waived any defenses to the allegations, including defenses concerning the Complaint's insufficiency. Respondent was also notified that the hearing in the matter would be held only for the purpose of allowing Complainant to establish a *prima facie* case and to establish the nature and amount of relief to be awarded. Respondent was informed that although it could not contest the sufficiency of the Complaint or present any evidence in defense, it could present evidence as to whether the relief sought by Complainant was reasonable and supported by the evidence.

On April 8, 2014, the Commission issued an Order commencing the hearing process.

On April 14, 2014, the hearing officer issued an Order detailing certain procedural requirements and noting May 13, 2014 as the date of the Pre-hearing Conference. Although the Order was sent to Respondent at 1648 W. 18th Street, Chicago Illinois 60608, it was returned to the hearing officer by the United States Postal Service as undeliverable. Subsequently, an additional Order was sent to Respondent at the restaurant's address: 1314 W. 18th Street, Chicago, Illinois.

A Conference was held on May 13, 2014. Both parties were present; Respondent was represented by Perez. During the hearing, Perez acknowledged that he had notice of the Complaint, had spoken to a Commission Investigator, had received the hearing officer's Order at the Restaurant's address, and that he operated the restaurant located at 1314 W. 18th Street, Chicago, Illinois 60608. A hearing was set for July 8, 2014.

On July 8, 2014, Respondent was present but Complainant failed to appear. In light of Complainant's failure to appear, a Notice of Involuntary Dismissal and Imposition of Sanctions was issued to Complainant. Complainant was given 28 days to file a Request for Review of the dismissal.

On July 29, 2014, Complainant filed a Request for Review, stating that he had missed the hearing on July 8, 2014 because his brother had passed away unexpectedly on July 6, 2014. Complainant included supporting documentation. On August 7, 2014, the hearing officer issued an Order reversing the Order of Dismissal and Sanctions and setting the Administrative Hearing (Hearing) for September 23, 2014.

The Hearing in this matter was held on September 23, 2014. Complainant and Respondent, through its representative Perez, were present. An interpreter was provided for Perez. Neither party was represented by counsel.

On November 3, 2014, the hearing officer issued her Recommended Ruling on Liability and Relief, notifying the parties of the deadline to file and serve any objections. No objections were received.

II. FINDINGS OF FACT

1. Complainant Anthony Cotten has a disability and uses a wheelchair for mobility. C, par. 1.¹
2. Respondent Pizzeria Milan is a restaurant open to the public, located at 1314 W. 18th Street, Chicago, Illinois 60608. C. Respondent Pizzeria Milan Corporation is registered with the Secretary of State as a corporation and its president is listed as J. Edgar Percz. His address on that website is listed as 1648 W. 18th Street, Chicago, Illinois 60608.²
3. On October 7, 2013, Complainant and his friend, Mildred Elam (“friend”), went to Respondent’s restaurant for a bite to eat. C., par. 3, Tr. p. 6.
4. When Complainant and his friend arrived at Respondent’s restaurant, Complainant determined that the restaurant was not accessible due to 2 or 3 stairs. C, par. 3, Tr., p. 6. Complainant asked his friend, who does not use a wheelchair, to go inside to see if there was an accessible way for him to enter the restaurant or if the restaurant had a ramp. C., par. 3, Tr., p. 6. Complainant’s friend went inside the restaurant to ask if the Respondent restaurant had an accessible entrance. C, par. 3, Tr., p. 6.
5. When his friend returned, she told Complainant that she had talked with a male employee who said the restaurant did not have an accessible entrance, ramp or way for Complainant to enter. C, par. 4, Tr., p. 7. After talking with the employee, Complainant’s friend returned, told him he could not enter and asked him if he wanted anything to eat. C, par. 4, Tr., p. 7. Complainant’s friend returned inside to eat while he waited outside. Tr. p. 7.
6. The experience left Complainant feeling embarrassed and emotionally sad. Tr., p. 8. He felt like a second-class citizen. Tr., p. 8. The experience made him feel like something was wrong with him. Tr., p. 8. He felt like the people in the restaurant did not really care about him because no one came out to talk to him or offer any accommodation. Tr., p. 8.
7. Respondent’s representative stated that he never said Complainant could not come in to his restaurant. Tr., p. 8. Respondent and other businesses on 18th Street are working on this problem with their alderman, Danny Solis. Tr., p. 11. Alderman Solis has told the business owners that there are other businesses in the same situation, with two or more steps. Tr., p. 11-12. Alderman Solis has told the business owners that these are old buildings and they need an architect to design the appropriate entrance for these buildings so they will get approval from the City’s Department of Buildings. Tr., p. 12, 17. Alderman Solis is sending architects and building inspectors to see where the accessible entrances will be made. Tr., p. 17.

¹ Findings of fact based on the Complainant’s Complaint are cited as “C” followed by a paragraph number if appropriate. Findings of fact based on the Hearing transcript are cited as “Tr.” followed by a page number.

² <http://www.ilsos.gov/corporatelle/corporatellecontroller>

8. Respondent did not believe there was discrimination because it was not just his building that was not accessible. Tr., p. 12.
9. Respondent said Access Living³ is also working with the business community. Tr., p. 13-14. Respondent (through the interpreter) read a letter from Access Living that thanked Respondent for his interest in the issue and pledged to work with him on accommodations. Tr., p. 14. Respondent said all of the businesses have been to meetings with Access Living because the businesses have the same problem. Tr., p. 15.
10. Respondent's representative said the Chamber of Commerce is also working on this issue. Tr., p. 18.
11. Respondent said that it was his goal to assure that no one felt discriminated against and everyone can come into his restaurant. Tr., p. 15. Respondent said someone using a wheelchair came to eat at his restaurant the week before the Hearing, and someone from the restaurant went outside and took care of him. Tr., p. 19. Respondent recognized that it is better for the customer to come inside, sit at a table and leave happy. Tr., p. 19.

III. APPLICABLE LEGAL STANDARDS

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

No person that owns, leases, rents, operates, manages or in any manner controls a public accommodation shall withhold, deny, curtail, limit or discriminate concerning the full use of such public accommodation by any individual because of the individual's...disability...Section 2-160-020(c) of the CHRO defines "disability" in part as "a determinable physical or mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder..."

Subpart 500 of the Commission's Regulations clarifies the obligations of persons who control a public accommodation.⁴ Specifically, Reg. 520.110 defines the "full use" requirement:

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

³ Access Living of Metropolitan Chicago is an independent living center advocating for the rights of people with disabilities.

⁴ All subsequent references to the applicable CCHR Regulation will be referred to as "Reg."

The CHRO and corresponding regulations balance the requirement of providing full use of a public accommodation to people with disabilities with the practicalities of making that possible. Accordingly, Reg. 520.105 states:

No person who owns, leases, rents, operates, manages, or in any manner controls a public accommodation shall fail to fully accommodate a person with a disability unless such person can prove that the facilities or services cannot be made fully accessible without undue hardship. In such a case, the owner, lessor, renter, operator, manager, or other person in control must reasonably accommodate persons with disabilities unless such person in control can prove that he or she cannot reasonably accommodate the person with a disability without undue hardship.

Reg. 520.120 provides a definition of “reasonable accommodation” as ones “which provide persons with a disability access to the same services, in the same manner as are provided to persons without a disability.”

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

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

In order to prove a *prima facie* case of public accommodation discrimination based on disability, a complainant must prove that: 1) he is a person with a disability within the meaning of the Chicago Human Rights Ordinance (“CHRO”), 2) he is a qualified individual who has established all of the non-discriminatory requirements for service, and 3) he did not have full use of the public accommodation as other patrons without disabilities. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010); *Maat v. String-A-Strand*, CCHR No. 05-P-05 (Feb. 20, 2008).

If a complainant establishes these elements by a preponderance of the evidence, a respondent may prove by a preponderance of the evidence that providing full use of its public accommodation would cause undue hardship. See Reg 520.105. However, even if that initial showing of undue hardship is made, a respondent must also establish that (1) it reasonably accommodated the complainant or (2) it could not reasonably accommodate the complainant without undue hardship. *Id.*, See also *Cotten v. Taj Mahal*, CCHR No. 13-P-82 (Oct. 15, 2014) citing *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 (Aug. 16, 2006).

IV. DISCUSSION

Complainant has met his burden of establishing the elements of a *prima facie* case. He is a person with a disability who uses a wheelchair for mobility. He is a qualified individual; qualification to use a restaurant is minimal and requires generally the desire to utilize and pay for the services offered to the public for a fee. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (Apr. 21, 2010). Complainant proved that he did not have physical access to Respondent's restaurant because of his own observation of two to three steps at the entrance and because his friend was told by Respondent's employee that no accessible entrance into the Restaurant was available; the lack of accessibility was confirmed by Respondent. As the Commission noted in *Cotten v. La Luce Restaurant, supra*, "an individual may be deprived of the full use of a facility where he or she cannot readily enter the front entrance in a wheelchair because of the existence of a barrier." Complainant also established by his testimony that Respondent's services were not offered to him through reasonable alternative means. On the day in question, Respondent's employees did not come out to inquire of Complainant if he needed service.

Once the Complainant has established the elements of a *prima facie* case, Respondent must prove by a preponderance of the evidence that there is no accommodation that could reasonably provide the independent access required by Complainant and the CHRO, or that providing the accommodation would impose an undue hardship on Respondent. Because the Commission had issued an Order of Default against this Respondent, Respondent was subject to the effects of default listed in Reg. 235.320: "A defaulted 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.⁵ The Hearing was limited to allowing Complainant to establish a *prima facie* case and to establish the nature and amount of relief to be awarded. Respondent also appeared at the Hearing and had an opportunity to present evidence and argument about the relief to be awarded. Reg. 235.320.

The Commission has the authority to order structural alterations to make a facility wheelchair accessible unless making the facility accessible would impose an "undue hardship." In making the determination about what, if any, structural alterations will be required, the Commission is not bound by other federal or state law. *Cotten v. Lou Mitchell's*, CCHR No. 06-P-9 (Dec. 16, 2009). Older facilities are not "grandfathered" or otherwise exempt from accessibility requirements of CHRO and Reg. 520.105, which are in addition to any Building Code or other City ordinance requirements. *Cotten v. La Luce Restaurant, Inc.*, CCHR No. 08-P-34 (Apr. 21, 2010). The Commission also has the authority to order that services be provided by reasonable alternative means and to post a conspicuous notice of the services it offers to people with disabilities. *Cotten v. Taylor Street Food and Liquors*, CCHR No. 07-P-12 (July 16, 2008).

⁵ Respondent was served at the address of its President, who acknowledged to Commission personnel prior to the Order of Default being issued that he had received the Complaint and had relied on the advice of his attorney not to respond. Chapter 2-120-150(e) of the Chicago Municipal Code requires that the "person against whom a complaint is made shall be given a copy thereof within 10 days after it is filed...." Therefore, as Respondent's President acknowledged, a copy was "given" to Respondent as required by the Ordinance.

A respondent claiming that making its facility accessible would be an “undue hardship” must prove that “the financial costs or administrative changes that are demonstrably attributable to the accommodation of the needs of persons with disabilities would be prohibitively expensive or would unduly affect the nature of the public accommodation.”

Factors to be considered include, but are not limited to:

- (a) the nature and cost of the accommodation;
- (b) the overall financial resources of the public accommodation, including the resources of any parent organization;
- (c) the effect on expenses and resources, or the impact otherwise of such accommodation on the operation of the public accommodation; and
- (d) the type of operation or operations of the public accommodation.

Reg. 520.130

The hearing officer found that Respondent’s representative testified credibly at the Hearing about meetings he has had with his alderman and with a disability rights group about the inaccessibility of his business and other businesses in the area. He also testified that he recognized that his restaurant was inaccessible and that he had begun talking with other businesses, organizations and governmental officials about remedying that problem. However, Respondent did not provide any evidence of the cost and/or feasibility of providing an accessible entrance, nor did he show any plans for such alterations.

The Commission agrees with the hearing officer’s finding that as Complainant has established a *prima facie* case, and Respondent has not provided evidence that the inaccessibility had been rectified, both damages and injunctive relief ordered against the Respondent are appropriate in this case.

V. REMEDIES

Upon determining that a violation of the CHRO has occurred, the Commission may award the prevailing complainant relief as set forth in §2-120-510(l) of the Chicago Municipal Code:

...[T]o order such relief as may be appropriate under the circumstances determined in the hearing. Relief may include but is not limited to an order: to cease the illegal conduct complained of; to pay actual damages, as reasonably determined by the Commission, for injury or loss suffered by the complainant... to admit the complainant to a public accommodation; to extend to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of the respondent; to pay to the complainant all or a portion of the costs, including reasonable attorney fees, expert witness fees, witness fees and duplicating costs incurred in pursuing the complaint before the commission or at any stage of judicial review; to take such action as may be necessary to make the individual complainant whole, including, but not limited to, awards of interest on the complainant’s actual damages and back pay from the date of the civil rights violation. These remedies shall be cumulative, and in

addition to any fines imposed for violation of provisions of Chapter 2-160 and Chapter 5-8...

a. Emotional Distress Damages

In his Complaint and at the Hearing, Complainant did not ask for a specific amount of damages. In his Pre-Hearing Memorandum, Complainant said he sought \$1,000 in damages for emotional distress. Complainant did not seek or testify regarding damages for any particular out-of-pocket expenses, so damages will be limited to damages for emotional distress.

The Commission has repeatedly held that damages for emotional harm can be awarded as part of an award of actual damages. *Jones v. Shaheed*, CCHR No. 00-H-82 (March 17, 2004); *Nash/Demby v. Sallas & Sallas Realty*, CCHR No. 92-H-128 (May 17, 1995). “Emotional distress damages are awarded in order to fully compensate a complainant for the emotional distress, humiliation, shame, embarrassment and mental anguish resulting from a respondent’s unlawful conduct.” *Winter v. Chicago Park District, et al.*, CCHR Case No. 97-PA-55, at 16 (Oct. 18, 2000).

The amount of the award for emotional distress depends on several factors, including but not limited to, the vulnerability of the complainant, the egregiousness of the discrimination, the severity of the mental distress and whether it was accompanied by physical manifestations and/or medical or psychiatric treatment, and the duration of the discriminatory conduct and the effect of the distress. *Steward v. Campbell’s Cleaning, et al.*, CCHR No. 96-E-170, at 13 (June 18, 1997); See also *Cotten v. Taj Mahal Restaurant*, CCHR No. 13-P-82 (Oct. 15, 2014). A complainant’s testimony standing alone may be sufficient to establish that he or she suffered emotional distress damages and is entitled to damages. *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62, at 11 (Oct. 21, 1998).

Emotional distress damages awarded by the Commission have varied, from amounts such as \$50,000, the amount ordered in *Winter*, to far smaller amounts. In *Winter*, the complainant was awarded substantial damages for emotional distress because she was forced to toilet herself in view of other people due to the inaccessibility of the respondent’s facilities and, as a result, suffered on-going mental health consequences. In *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 (Aug. 16, 2006), the Commission awarded \$1,000 in emotional distress damages to a complainant with a disability who was not able to access a restaurant although the complainant offered “sparse evidence” of inconvenience. See also *Cotten v. 162 North Franklin, LLC, d/b/a Eppy’s Deli and Café*, CCHR No. 08-P-35 (Sept. 15, 2009) (complainant awarded \$500 in emotional distress damages where he encountered an inaccessible entrance, but experienced no contact with employees and no slurs, the incident was brief and complainant provided minimal testimony); *Cotten v. Addiction Sports Bar & Lounge*, CCHR No. 07-P-109 (Oct. 21, 2009) (complainant awarded \$1.00 where location was inaccessible but respondent’s staff worked to minimize complainant’s inconvenience); *Cotten v. Arnold’s Restaurant*, CCHR No. 08-P-24 (Aug. 18, 2010) (complainant awarded \$500 where location’s restroom was inaccessible but complainant was not subjected to rude behavior and his testimony was minimal); and *Cotten v. Top Notch Beeburger, Inc.*, CCHR No. 09-P-31 (Feb. 16, 2011) (complainant awarded \$500 where restroom was inaccessible and complainant feared soiling himself).

The hearing officer noted that Complainant testified minimally about the single, brief incident. He testified that he was embarrassed and felt like a second-class citizen. Tr., p. 8. Complainant had no direct contact with Respondent's employees.

The hearing officer determined that Complainant's testimony supports a minimal award of damages for emotional distress in the amount of \$500. Further, the hearing officer determined that this amount is similar to awards in other cases where discriminatory encounters have been brief, testimony to support the amount of damages sought has been limited, and there was no direct contact with respondents. The Commission agrees and adopts the hearing officer's recommendation.

b. Punitive Damages

Punitive damages may also be awarded against a respondent to punish the wrongdoer and deter that party and others from committing similar acts in the future. *Nash/Demby, supra*. Punitive damages may be awarded when a respondent's actions were willful, wanton, or taken in reckless disregard of the complainant's rights. *Warren, et al., v. Lofton and Lofton Management, et al.*, 07-P-62/63/92 (July 24, 2009). The Commission has noted that the "purpose of the award of punitive damages ... is to punish [the respondent] for his outrageous conduct and to deter him and other like him from similar conduct in the future." *Blacher v. Eugene Washington Youth & Family Svcs.*, CCHR No. 95-E-261 (Aug. 19, 1998). Punitive damages may be particularly necessary in cases where damages are modest to ensure a meaningful deterrent. *Miller v. Drain Experts & Earl Derkits*, CCHR No. 97-PA-29 (Apr. 15, 1998). One factor that may be considered in the award of punitive damages is whether the respondent disregarded the Commission's processes, but where the respondent's conduct was found not to be egregious, the single fact that the respondent defaulted is not enough to warrant the imposition of punitive damages. *Blakemore v. General Parking*, CCHR No. 99-PA-120 (Feb. 21, 2001).

In determining the amount of punitive damages to be awarded, the size and profitability of Respondent's business are factors that normally would be considered. *Hanson v. Association of Volleyball Professionals*, CCHR No. 97-PA-62 (Oct. 21, 1998). Respondent did not present any evidence regarding its financial condition although the Order of Default did specify that Respondent could present evidence as to the relief to be awarded. Reg. 235.320.

While Respondent failed to cooperate with all of the Commission's initial processes, Respondent did appear at the pre-hearing and Hearing *pro se*. Further, Respondent testified credibly at the Hearing that he was acting on legal advice. He also admitted inaccessibility was a problem and testified that he was taking steps to rectify it.

The hearing officer determined that a minimal award of \$100 in punitive damages is warranted in this case in light of the testimony from Respondent that he is working toward remedying the inaccessibility of his restaurant and Respondent's efforts to cooperate with all Commission procedures following the default judgment entered due to his failure to file a Verified Response. The Commission adopts the hearing officer's recommendation and orders payment of \$100 in punitive damages.

c. Injunctive Relief

Section 2-120-510(l) authorizes the Commission to order injunctive relief to remedy a violation of the CHRO. *See Mahmoud v. Chipotle Mexican Grill Restaurant Co., LLC*, CCHR No. 12-P-25 (June 18, 2014) and cases cited therein. The Commission is authorized to order injunctive relief *sua sponte* in order to remedy and prevent future discrimination. *Cotten v. La Luce Restaurant*, CCHR No. 08-P-34 (April 21, 2010). The Commission has ordered respondents found to have violated the CHRO to take specific steps to eliminate discriminatory practices and prevent future violations. Such steps have included training, notices, and structural changes. In *Mahmoud v. Chipotle Mexican Grill, supra*, the respondent was ordered to provide full use of the restaurant with an accessible entrance if feasible without undue hardship, signage, reasonable accommodations (doorbell or buzzer, signage), and training of staff on accessibility features and reasonable accommodations. In *Cotten v. La Luce Restaurant, supra*, the respondent was ordered to provide a permanent accessible entrance or, if installing a permanent ramp would impose an undue hardship, obtain an adequate portable ramp, buzzer and signage. In *Manzanares v. Lalo's Restaurant*, CCHR No. 10-P-18 (May 16, 2012), a restaurant club owner who curtailed full use of its facility due to the complainant's transsexual status was ordered to adopt a written anti-discrimination policy to prevent future gender discrimination, distribute that policy to its staff, and provide mandatory training to its administrative personnel and employees on the rights of people of all protected classes. Proof of completion of these compliance activities was to be provided to the Commission according to a set time schedule. *See also Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009) (respondent ordered to provide a permanent accessible entrance, or if installing a permanent ramp would impose an undue hardship, obtain an adequate portable ramp, buzzer and signage); *Maat v. String-A-Strand*, CCHR No. 05-P-5 (Feb. 20, 2008) (respondent ordered to provide accessible entrance and volunteer at agency that assisted people with disabilities).

In this case, the hearing officer determined that Respondent's restaurant was inaccessible and its employees failed to offer any reasonable accommodations. Therefore, the following injunctive relief order is appropriate to further the Commission's goal of facilitating the integration of all protected classes into places of public accommodation. Reg. 510.100.

The order for injunctive relief is appropriate to the facts of this case. It is closely tailored to the terms of the Chicago Human Rights Ordinance and the Commission Regulations. Further, this order of relief is modeled on prior Commission rulings, including: *Mahmoud v. Chipotle Mexican Grill, supra*; *Cotten v. Eat-A-Pita, supra*; and *Cotten v. CCI Industries, Inc.*, CCHR No. 07-P-109 (Feb. 19, 2010).

Accordingly, the Commission adopts the hearing officer's recommendation as to injunctive relief and orders Respondent to take the following actions to remedy its past violation and prevent future violations:

1. **Provide a permanent accessible entrance if able to do so without undue hardship.** If able to do so without undue hardship, as defined by Reg. 520.130, *on or before 90 days from the date of mailing of this Final Ruling on Liability and Relief*, Respondent must file with the Commission and serve on Complainant documentary evidence that Respondent has made permanent alterations sufficient to provide "full use," as defined by Reg. 520.110, by making at least one public entrance to the business accessible to people using wheelchairs or with physical impairments. The documentary evidence must include a certification signed by Respondent's authorized representative or a qualified professional drawing describing the alterations made. Respondent must maintain conspicuous signage at the entrance informing the public how to access the accessible entrance to the restaurant. The accessible entrance must be a public entrance and, if not the main entrance, must be substantially equivalent to other public entrances.

2. **Provide objective documentary evidence of any undue hardship.** If unable to provide a permanent accessible entrance or any reasonable accommodation due to undue hardship, as defined by Reg. 520.130, *on or before 90 days from the date of mailing of this Final Ruling on Liability and Relief*, Respondent must file with the Commission and serve on Complainant, the following objective documentary evidence of undue hardship:

- a. If the undue hardship is based on physical infeasibility or the requirements of other applicable laws, then Respondent must provide a signed certification of Respondent or a qualified professional which sets forth in detail the factual basis for the claimed undue hardship.⁶
- b. If the undue hardship is based on prohibitively high cost:
 - i. A signed certification of a qualified professional describing and itemizing the cost of the least expensive physically and legally feasible alterations which would make the entrance fully accessible or the cost of least expensive reasonable accommodations required to comply with this order.
 - ii. Adequate documentation of all available financial resources of Respondent, which may include: (a) a photocopy of Respondent's last annual federal tax return filed for business, or (b) a CPA-certified financial statement completed within the calendar year prior to submission. *Complainant is ordered not to disclose this financial information to any other person except as necessary to seek enforcement of the relief awarded in this case. Similarly, the Commission shall not disclose this financial information to the public except as necessary to*

⁶ A professional would be an architect or other professional with expertise in accessibility modifications.

seek enforcement of the relief awarded in this case, or as otherwise required by law.

3. **Make reasonable accommodations.** If Respondent claims that undue hardship prevents it from making one public entrance accessible which complies with the full use requirement as defined by Commission Regulation 520.110, *on or before 90 days after the date of mailing of the Commission's Final Ruling on Liability and Relief*, the Respondent must take the following steps to provide reasonable accommodations within the meaning of Reg. 520.120:
 - a. File with the Commission and serve on Complainant documentary evidence of the purchase of an adequate portable ramp and certification that staff on all shifts are trained and able to utilize the ramp if required. If it is not feasible to use a portable ramp (for example, the incline to be ramped is too steep), Respondent must provide a signed certification by Respondent's authorized representative or a qualified professional detailing why use of a portable ramp is not feasible.
 - b. Install and maintain a doorbell or buzzer at each public entrance which can be utilized by a person using a wheelchair or with mobility impairments and which is adequate to summon staff to the entrance for the purpose of deploying the portable ramp or providing alternative service. The doorbell or buzzer must be accompanied by conspicuous signage that it is a means for people with disabilities to seek assistance.
 - c. Maintain exterior signage conspicuously displaying a telephone number which may be used to contact staff during business hours to request deployment of the ramp or alternative service (carryout, delivery service, e.g.). If services such as carryout or delivery service are provided to the general public by internet, the signage must also include applicable website and electronic mail addresses.
 - d. Provide other or alternative reasonable accommodations as feasible without undue hardship to enable a person who uses a wheelchair or who has other impairments to access the services Respondent provides to the general public in a manner which is as equivalent as possible. Such measures may include carryout or curbside service, other physical changes, or changes in rules, policies, practices or procedures.
 - e. Ensure that Respondent's staff is trained and supervised to deploy a portable ramp if a portable ramp is used, to respond to the doorbell or buzzer, and to provide equivalent service and/or reasonable accommodations consistent with Respondent's plan for compliance with the CHRO.
4. **Adopt written policies.** Within 60 days of the date of mailing of this Final Ruling on Liability and Relief, Respondent shall adopt written policies for managers and employees to assure that people with disabilities are provided

services and assisted when necessary to assure that Respondent's services are available to all customers, including those with disabilities. The policies should outline mandatory steps to be taken to resolve any policy issues that may arise.

5. **Train employees on policies.** Within 90 days of the date of this Final Ruling on Liability and Relief, all employees and administrative personnel at Respondent's restaurant shall attend a mandatory training on the Respondent's policy adopted in response to #4 above and on the rights of people in all protected classes.
6. **File a report on compliance with order of injunctive relief.** Within 120 days of the date of the mailing of the Commission's Final Ruling on Liability and Relief, Respondent shall file with the Commission and serve on Complainant, a report detailing the steps taken to comply with this order of injunctive relief. The report shall include a copy of the required written policies and a detailed description of the training provided including copies of any training materials distributed and any written announcements of training issued to managers and employees. Finally, the report shall include an affidavit of an owner or manager authorized to bind Respondent, affirming that Respondent has complied with all requirements of the order of injunctive relief in this Final Ruling on Liability and Relief and that all reported details are true and correct.
7. **Extension of Time.** Respondent may seek a short extension of time to meet any deadline set with regard to this order for injunctive relief, by filing and serving a motion pursuant to the procedures set forth in Commission Regulations 210.310 and 210.320. (The hearing officer need not be served.) The motion must establish good cause for the extension. The Compliance Committee of the Commission shall rule on the motion by mail.
8. **Effective period.** The injunctive relief shall remain in effect for three years from the date of mailing of the Final Ruling on Liability and Relief, should enforcement proceedings of the Ruling be necessary (by motion pursuant to Regulation 250.220).

d. Fines

Section 2-160-120 of the CHRO provides that any person who violates any provision of the ordinance as determined by the Commission shall be fined not less than \$100 and not more than \$1,000 for each offense. The Commission has assessed the maximum fine where the respondent failed to participate in the administrative hearing process, requiring default proceedings, and failed to present any mitigating circumstances or evidence of efforts to comply with the CHRO. *Cotten v. Eat-A-Pita, supra*; See also *Cotten v. Taj Mahal Restaurant*, CCHR No. 13-P-82 (Oct. 15, 2014).

The hearing officer recommended a fine against Respondent of \$100. In light of the facts of this case and Respondent's testimony acknowledging that inaccessibility was a problem and that he was taking steps to rectify it, the Commission agrees with the hearing officer and orders Respondent to pay \$100.

e. Interest

In order to make complainants whole, the CHRO provides for the payment of interest for certain damages, including damages for emotional distress. CHRO 2-120-500(l). Pursuant to Reg. 240.700, the Commission routinely awards pre- and post-judgment interest at the prime rate, adjusted quarterly from the date of the violation and compounded annually from the date of the violation. In this case, the Commission orders payment of such interest from the date of the violation, discriminatory act, October 7, 2013.

f. Attorney Fees and Costs

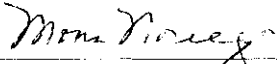
Complainant appeared *pro so*, so attorney fees and costs are not recommended.

VI. CONCLUSION

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

1. Actual damages in the amount of \$500 to Complainant.
2. Punitive damages in the amount of \$100 to Complainant.
3. Interest on the damages from the date of the violation.
4. Injunctive relief as described above.
5. A fine of \$100 to the Commission.

CHICAGO COMMISSION ON HUMAN RELATIONS


By Mona Noriega, Chair and Commissioner
Entered: December 17, 2014