



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
Complainants,

v.

Teloloapan Grocery
Respondent.

Case No.: 14-P-18

Date of Ruling: August 13, 2015

Date Mailed: September 9, 2015

TO:
Anthony Cotten
6517 S. Bell
Chicago, IL 60636

Fidel Hernandez
Teloloapan Grocery
2027 S. California
Chicago, IL 60608

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on August 13, 2015, the Chicago Commission on Human Relations issued a ruling in favor of Complainants 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 damages in the amount of \$1, plus interest on that amount from February 20, 2014, 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
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IN THE MATTER OF)	
)	
Anthony Cotten,)	
Complainant,)	
)	
v.)	CCHR No. 14-P-18
)	
Teloloapan Grocery,)	
Respondent.)	

FINAL RULING ON LIABILITY AND RELIEF

I. Introduction

On February 26, 2014, Complainant Anthony Cotten filed this Complaint with the Chicago Commission on Human Relations (the “Commission”) alleging discrimination on the basis of disability. Specifically, Complainant, who uses a wheelchair for mobility, alleged that on February 20, 2014, Respondent Teloloapan Grocery, located at 2027 S. California Avenue, Chicago, Illinois, discriminated against him due to his disability because its grocery store was physically inaccessible to him and it did not offer services to him under the same terms and conditions that services were offered to other customers without a disability.

Complainant’s Complaint was sent by the Commission to Respondent Teloloapan Grocery. On March 25, 2014, Respondent filed a Verified Response. In the response, Fidel Hernandez, owner of Teloloapan Grocery, denied that Respondent had discriminated against the Complainant. Hernandez further stated that he did not even know who Complainant was and that Complainant could have asked for assistance, but did not. Hernandez also stated that he believed Complainant was just “targeting” small businesses to get money.

On September 17, 2014, the Commission issued an Order Finding Substantial Evidence. On September 26, 2014, the Commission issued an Order appointing the Hearing Officer and commencing the hearing process. A Pre-Hearing Conference was set for October 30, 2014, at the Commission’s offices. On October 3, 2014, the Hearing Officer issued an Order detailing certain procedural requirements; the Order also stated that October 30, 2014, was the date of the Pre-hearing Conference.

On October 30, 2014, a Pre-hearing was held. Respondent was present; Complainant was not. On October 30, 2014, a Notice of Involuntary Dismissal and Imposition of Monetary Sanctions was issued against Complainant by the Hearing Officer. Complainant was given 28 days to request a review.

On November 5, 2014, Complainant filed a Request for Review. Complainant stated that he was unable to attend the October 30, 2014, Pre-hearing because he was ill. Attached to his request was a letter from his doctor dated October 31, 2014, stating that on October 30, 2014, Complainant was under her care for an “exacerbation of his condition” and unable to attend the hearing. Respondent filed no response to Complainant’s Request for Review.

On November 6, 2014, the Hearing Officer issued an Order reversing the involuntary dismissal and imposing sanctions. In that Order, the Hearing Officer stated that Complainant’s failure to attend due to health reasons had become habitual, that he was very familiar with Commission processes and staff, and that he was well aware that he could call the Commission to notify them ahead of time that he would be unable to attend a scheduled matter. Finally, the Hearing Officer noted: “Complainant is hereby warned that the Commission may consider imposing sanctions against him for expenses should the Complainant miss another proceeding and fail to alert the Commission prior to the proceeding.” A Pre-hearing Conference was set for December 2, 2014.

Prior to the date set for the Pre-hearing Conference, the Hearing Officer was hospitalized; notice was given prior to the Pre-hearing, and the Pre-hearing was rescheduled for January 8, 2015. Both parties attended the January 8, 2015, Pre-hearing. At the Pre-hearing, a Spanish-language interpreter was provided for Respondent. A hearing was scheduled for April 2, 2015. Prior to the hearing, the Respondent was notified by Order that if Teloloapan Grocery was a corporation under Illinois law that it must be represented by an attorney.

On April 1, 2015, Complainant notified the Commission that he would not be able to attend the hearing set for April 2, 2015, due to health issues. A continuance was granted by Order dated April 1, 2015. Complainant was reminded that a request for a continuance must be made in writing and comply with Commission regulations. The hearing was set for April 16, 2015.

On April 16, 2015, a Hearing was held. Both Complainant and Mr. Hernandez, owner of the Respondent Teloloapan grocery, were present. Craig Sanders, a friend of Complainant, presented testimony. Mr. Hernandez’s daughter, Griselda Hernandez-Treto, also presented testimony. A Spanish-language interpreter was provided by the Commission. Neither party was represented by counsel. No other witnesses were present.

On June 3, 2015, 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. Tr., p. 8.¹

2. Respondent Teloloapan Grocery is a grocery store open to the public located at 2027 S. California Avenue, Chicago, Illinois. C.² Respondent Teloloapan Grocery is owned by Fidel Hernandez; Respondent is not registered as a corporation in Illinois. Tr., p. 6; <http://www.ilsos.gov/corporatellc/>

3. On February 20, 2014, Complainant and his friend, Craig Sanders (“friend”), went to the Respondent grocery. Tr., p. 8. Complainant wished to purchase some items. *Id.*

4. When Complainant and his friend arrived at the Respondent grocery, Complainant observed that the store was not accessible because there were two large stairs at the entrance. Tr., p. 6. Complainant asked his friend, who does not have a mobility impairment, to go inside to see if there was an accessible entrance to the store or alternatively, to see whether the store had a portable ramp. C., par. 3, Tr., p. 6. Complainant’s friend went inside the store to ask if the Respondent grocery had a portable ramp or an accessible entrance. Tr., pp. 8-9.

5. When his friend returned after about five minutes, he told Complainant that he had spoken with an employee who said the store did not have an accessible entrance or portable ramp to allow Complainant to enter. Tr., p. 9. Complainant’s friend then asked him if he wanted him to purchase anything in the store, and Complainant told him he needed some razors. Tr., p. 9. Complainant’s friend returned to the store while Complainant waited outside. Tr., p. 9. After about five minutes, Complainant’s friend returned with some razors from the store and asked Complainant if they were acceptable. Tr., p. 9. Complainant said they were acceptable and Complainant’s friend returned to the store to make the purchase. Tr., p. 9.

6. Complainant’s friend testified that he and Complainant stopped at the store and, when they saw Complainant could not enter, the friend went inside. Tr., p. 10. Complainant’s friend asked an employee in the store if they had a ramp and the employee said they did not. Tr., p. 11. The friend went out and told Complainant there was no ramp and asked if he should get what Complainant needed. Tr., p. 11. The friend then went in and made a purchase for Complainant. Tr., p. 11.

7. Complainant did not testify about his feelings and emotions regarding the incident, nor did his Complaint state how the inaccessibility of Respondent’s store affected him.

8. Mr. Hernandez’s daughter, Griselda Hernandez-Treto, testified that her father was a good person, who got along with everyone in their “little community,” including people with and without disabilities. Tr., p. 13. The daughter said her father taught her brother and her to treat everyone fairly. Tr., p. 13.

¹ “Tr.” refers to the transcript from the hearing on April 16, 2015. “P.” refers to the page number of that transcript.

² “C.” refers to the complaint filed by Complainant.

9. Mr. Hernandez testified that he has been in business at that location for four years. Tr., p. 17. He also testified that his store does not sell razors. Tr., p. 10.

10. Mr. Hernandez introduced into evidence a picture of the front of the store and a ramp over the front steps. Respondent Exh. 1. According to an invoice Mr. Hernandez introduced into evidence, the ramp was purchased for \$200 on January 9, 2015. Exh. 2. The ramp was purchased to transport merchandise into the store, such as boxes of pop. Mr. Hernandez said the ramp made it easier to get through the entrance for the people who were carrying things into his store. Tr., p. 21. When the ramp was not in use, Mr. Hernandez kept the ramp inside the store so that it would remain clean. Tr. p. 19.

10. Mr. Hernandez testified that people who used wheelchairs entered Respondent store before he purchased the ramp. Tr., p. 18. He was not sure how people in wheelchairs negotiated the two stairs to enter his store. Tr., p. 18. Ms. Hernandez-Treto also testified that there are only two stairs to the store; people in wheelchairs turned around and “someone” pulled them into the store. Tr., p. 20. There was no sign outside the store telling potential customers that the store has a ramp; customers just knew about it. Tr., p. 20.

11. The ramp was not described by Respondent’s representatives at the hearing. The photo of a ramp introduced into evidence showed a portable ramp with a slight barrier (less than 3”) on either side. Respondent Exh. 1. The photo showed the ramp had no handrails. *Id.* Both Mr. Hernandez and Ms. Hernandez-Treto were standing on the ramp. *Id.* The invoice stated that the ramp was 36” wide by 48” long. Respondent Exh. 2. From the photograph, the stairs appeared to be at least 6-7” high for each stair, for a total rise of at least 12-14” inches. Respondent Exh. 1.

12. The photograph showed that no signage was posted at the front door of Respondent’s store that alerted potential customers that a portable ramp existed. Respondent Exh. 1. No sign was evident that was there a bell to push or phone number to call for assistance in entering the store. *Id.* The door to the store opens outward onto a small, irregularly shaped landing, impeding the pathway into the store for any person with a mobility impairment, or who used a wheelchair, who would attempt to access the store independently. *Id.*

13. Neither Mr. Hernandez nor Ms. Hernandez-Treto knew who worked at the store the day Complainant stopped by, February 20, 2014. The family members (father, mother, daughter and son) do not work regular hours; it could have been any member of the family. Tr. p. 22. When the Complainant’s friend was questioned by Ms. Hernandez-Treto about whether the person he talked with in the store could understand English, Complainant’s friend stated that another person, a short male with dark hair who was in the store, translated his request for a ramp to the woman behind the counter and the woman stated that no ramp existed. Tr., pp. 23-24. Mr. Hernandez stated that had the person translating been his son, the son would have taken the ramp out for Complainant’s use. Tr., p. 25. Ms. Hernandez-Treto said that her mother does not speak English. Tr., p. 23-24.

14. Mr. Hernandez admitted that Respondent’s Verified Answer to Complainant’s Complaint stated that the store aisles were too small for a wheelchair to pass through. Tr., p. 26.

Mr. Hernandez agreed the aisles were narrow, but said customers in wheelchairs have come into the Respondent store. Tr., p. 26.

III. Applicable Legal Standards

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

No person that owns, leases, rents, operates or 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 Chicago Human Rights Ordinance defines “disability” in part as “a determinable physical or mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder”

Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination in a public accommodation operating in the City of Chicago. “Public accommodation” includes a place or business establishment located in the City of Chicago that sells, provides, or offers to the general public products and services. Section 2-160-020(i).

Section 2-160-070 provides that a public accommodation must not “deny, curtail, limit or discriminate concerning the full use of such public accommodation.” “Full use” is defined by CCHR Reg. 520.110 to mean:

... all parts of the premises open to the public shall be available to persons who are members of a Protected Class [including persons with disabilities] at all times and under the same conditions as the premises are available to all other persons and that the services offered to persons who are members of a Protected Class shall be offered under the same terms and conditions as are applied to all other persons.

The CHRO and corresponding regulations attempt to balance the requirement of providing full use of a public accommodation to persons with disabilities with the practical realities of making that possible. Accordingly, Regulation 520.105 allows Respondent the opportunity to plead and prove that making its facilities fully accessible would create an undue hardship:

No person who owns, leases, rents, operates, 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.

“Undue hardship’ will be established “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.” CCHR Reg. 520.130. 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. CCHR Reg. 520.130.

In order to prove a *prima facie* case of discrimination based on disability, a complainant must prove that: 1) he is a person with a disability within the meaning of the 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. Pizzeria Milan Restaurant*, CCHR No. 13-P-70 (Dec. 17, 2014); *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).

Once the Complainant established the elements of a *prima facie* case by a preponderance of the evidence, Respondent may prove by a preponderance of the evidence that providing full use of its public accommodation would cause undue hardship. See CCHR 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. *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 at 3 (Aug. 16, 2006).

A “reasonable Accommodation” is defined as “... accommodations (physical changes or changes in rules, policies, practices or procedures) which provide persons with a disability access to the same services, in the same manner as are provided to persons without a disability.” CCHR Reg. 520.120.

IV. Discussion

Complainant has established the elements of a *prima facie* case in this case. He is a person with physical impairments. He is a qualified individual; qualification to use a retail store 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 the public accommodation, because of his observations and because his friend was told by Respondent’s employee that no accessible entrance or ramp was available. 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 full retail services were not offered to him through reasonable alternative means.

Once the Complainant established the elements of a *prima facie* case, Respondent must prove by a preponderance of the evidence that providing full use of its public accommodation would cause an undue hardship. See Commission Regulation 520.105 and *Maat v. El Novillo Steak House*, CCHR No. 05-P-31 at 3 (Aug. 16, 2006). However, even if that initial showing of undue hardship is made, a respondent must also establish that (1) it reasonably accommodated the complainant, or (2) it could not reasonably accommodate the complainant without undue hardship. *Id.*

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 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

Respondent was unable to prove by a preponderance of the evidence that it provided Complainant full use of its services by accessible access. Moreover, Respondent provided no evidence that constructing a permanent ramp would impose an undue hardship on Respondent. Therefore, Respondent failed to meet its burden of proving as an affirmative defense, by objective evidence, that it was an undue hardship to make the store fully accessible.

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

Respondent’s owner, Mr. Hernandez, testified credibly about the purchase of a portable ramp. Mr. Hernandez, introduced evidence that he had purchased a portable ramp on January 9, 2015, 11 months *after* the date Complainant attempted to purchase items in the store. If the store had another ramp prior to January 9, 2015, the store’s owner, Mr. Hernandez, did not offer testimony of an earlier ramp’s existence. Nor did Mr. Hernandez refute Complainant’s friend’s testimony that he was told that the store did not have a ramp.

Additionally, Respondent did not provide evidence that the ramp, by itself, would provide independent and safe access to the store’s entry. The ramp may not be safe for wheelchair use. The photograph introduced into evidence by Respondent’s owner showed a ramp designed to assist delivery of goods into the store; no evidence was introduced that it was usable by a person using a wheelchair to enter the store or had ever been used by a person using

a wheelchair. In addition, the photograph shows the door to Respondent's store opens outward, obstructing the path of travel for anyone in a wheelchair attempting to independently access the store. No signage was posted on the door that was visible in the photograph (which by necessity must have been taken after the date of purchase on January 9, 2015) about the existence of the ramp, how to contact employees inside the store, or other reasonable accommodations offered to potential customers with mobility impairments.

No evidence was provided by Respondent that Respondent store's employees offered to assist Complainant in any manner. Complainant's friend did testify that he went back into the store to look for razors, was allowed to bring razors outside to show Complainant, and then returned to the store to make a purchase. This showed that Respondent store's employees did alter its services somewhat by agreeing to let Complainant's friend take unpaid merchandise outside to allow Complainant to approve of the selection. However, this alone did not provide access to all of Respondent's goods and services.

Thus, Respondent did not meet its burden of showing that it provided the services either by independent access or by reasonable accommodations.

In his Verified Response and again at the Hearing, Respondent's owner, Mr. Hernandez, said that Complainant was just "targeting small businesses." Complainant has indeed filed suit against a number of businesses, but, as in this case, proved that his rights to access those businesses under the Commission's ordinance and regulations as a person with a disability have been violated. See *Cotten v. Pizzeria Milan Restaurant, supra*; *Cotten v. Arnold Restaurant*, CCHR No. 08-P-24 (Aug. 18, 2010).

As Complainant has established a *prima facie* case, and Respondent has not provided evidence that Respondent's store was accessible or that services were fully provided to Complainant on the date in question, both damages and injunctive relief ordered against the Respondent are appropriate in this case. The Board of Commissioners agrees with the Hearing Officer's conclusion.

V. Remedies

The Commission has broad powers to order relief to compensate complainants and to make complainants whole. CHRO, Section 2-120-510(1). Relief may include damages for injury or loss, admission to the public accommodation, punitive damages, and interest on actual damages. Further, the Commission has the power to discourage respondents from engaging in similar conduct by issuing injunctive relief and assessing fines. CHRO, Section 2-120-510(1).

A victim of public accommodations discrimination may be entitled 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 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 from the date of the civil rights violation.... These remedies shall be cumulative, and in addition to any fines imposed for violations.... CHRO, Section 2-120-510(l).

a. Actual Damages

In his Complaint and at the Hearing, Complainant did not ask for a specific amount of damages. Complainant filed no pre-hearing memorandum specifying the damages he sought. His complaint did not describe any emotional harm and he offered no testimony about any emotional distress he endured as a result of the incident. Complainant did not testify that Respondent's employees were rude or dismissive to him. Finally, Complainant did not seek or testify regarding damages for any particular out-of-pocket expenses.

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 (Mar. 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 (June 18, 1997). 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). Nevertheless, a complainant is not automatically entitled to emotional distress damages without proving the extent of the emotional distress he sustained. See, *Cotten v. Addiction Sports Bar & Lounge*, CCHR No. 07-P-109 (Oct. 21, 2009). The Commission has previously noted that "it is not necessary to award damages merely because a complainant has proved the discrimination underlying [his] claim." *Id.*

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. In *Cotten v. Eat-A-Pita*, CCHR No. 07-P-08 (May 20, 2009), the complainant was awarded \$500 in emotional distress damages due to the lack of any personal contact with the respondent's personnel, the brief duration of the event, and the

complainant's minimal testimony about his general feelings as a wheelchair user when confronting inaccessible accommodations. 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 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. 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 Beefburger, Inc.*, CCHR No. 09-P-31 (Feb. 16, 2011) (complainant awarded \$500 where restroom was inaccessible and complainant feared soiling himself). In *Cotten v. Addiction Sports Bar & Lounge*, the Commission awarded complainant \$1.00 in emotional distress damages in light of his sparse testimony as to the impact of the discrimination, the lack of any documentary or visual manifestation of his distress, and the respondent's efforts to mitigate and minimize the inconvenience, leading to complainant ultimately making a purchase through his friend who did not have a mobility disability.

As noted above, Complainant did not provide *any* testimony about any emotional distress as a result of the incident; his Complaint was similarly silent in that regard. Complainant had no direct contact with Respondent's employees. Complainant's friend did testify that he was allowed to bring unpaid razors out of the store to allow Complainant to approve the selection. While this was a very minimal accommodation of Complainant's disability, it did show that Respondent's employees were willing to work with Complainant to assist him in completing his purchase.

The Hearing Officer determined that Complainant's evidence supported a very minimal emotional distress damages award in the amount of \$100. The Hearing Officer determined that this amount was smaller than awards in other cases where discriminatory encounters have been brief and there was no direct contact with respondents, but in which complainants provided some credible testimony to support an award of emotional distress damages. The Commission disagrees with the Hearing Officer's emotional damages award. In light of prior precedent and Complainant's failure to request any damages or to present any evidence to substantiate an emotional damages award, the Commission awards Complainant an emotional damages award in the amount of \$1.00.

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.*, CCHR Case No. 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).

No punitive damages are recommended in this case. There is no evidence that Respondent's employees' actions were willful, wanton, or taken in reckless disregard of Complainant's rights. Indeed, Respondent's employees allowed Complainant's friend to leave the store with unpaid razors for Complainant to approve. Respondent cooperated with all of the Commission's initial processes and appeared at the Pre-hearing and Hearing *pro se*. The Commission agrees with the Hearing Officer's approach and adopts the recommendation.

c. Injunctive Relief

Section 2-120-510(l) authorizes the Commission to order injunctive relief to remedy a violation of the Chicago Human Rights Ordinance. See *Mahmoud v. Chipotle Mexican Grill Restaurant Co., LLC*, CCHR No. 12-P-025 (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 (Apr. 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. See also, *Cotten v. Eat-A-Pita*, CCHR No. 07-P-108 (May 20, 2009); *Maat v. String-A-Strand*, CCHR No. 05-P-5 (Feb. 20, 2008).

In this case, Respondent's store was inaccessible and its employees failed to offer other than a minimal reasonable accommodation. Therefore it is appropriate that the following injunctive relief be ordered in order to further the Commission's goal of facilitating the integration of all protected classes into places of public accommodation. CCHR Reg. 510.100.

- 1. Provide a permanent accessible entrance if able to do so without undue hardship.** Within 90 days of the date of mailing of the Commission's Final Ruling on Liability and Relief, the Respondent must file with the Commission and serve on Complainant documentary evidence that Respondent has made permanent alterations sufficient to make at least one public entrance to the business which provides "full use" as defined by Commission Regulations 520.110 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 the Respondent claims that it would impose any undue hardship (as defined by Commission Regulation 520.130) to make **any** public entrance accessible which complies with the full use requirement as defined by Commission Regulation 520.110 or to provide for any accommodations listed in paragraph 2 above, within 90 days of the date mailing of the Commission's Final Ruling on Liability and Relief, the Respondent shall file with the Commission and serve on Complainant the following 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 professional³ which sets forth in detail the factual basis for the claimed undue hardship.
 - b. If the undue hardship is based on prohibitively high cost, the Respondent must provide:
 - 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 one public 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 photocopy of Respondent's last annual federal tax return filed for the business or a CPA-certified financial statement completed within the calendar year prior to the 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, Complainant shall not disclose this financial information to the public except as necessary to seek enforcement of the relief awarded in this case or as otherwise required by law.

³ A professional would be an architect or other professional with expertise in accessibility modifications.

3. **Provide 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 CCHR 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 employees 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. The ramp previously purchased by Respondent to transport goods must be reviewed by a qualified professional to determine whether it would constitute an "adequate portable ramp" for the purposes of providing access to people with mobility impairments, including people using wheelchairs.
 - b. Install and maintain a doorbell or buzzer near each public entrance which is accessible to and 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 (carry-out, delivery service, e.g.). If services such as 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.
 - c. 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 Human Rights Ordinance.

4. **Adopt written policies.** Within 60 days of the date of mailing of the Commission's Order, the 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 the Commission's Order, 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 the Commission's 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 Complainant seek enforcement of the Ruling (by motion pursuant to Regulation 250.220).

d. Fines

Section 2-160-120 of the Chicago Human Rights Ordinance 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. Every day that a violation shall continue constitutes a separate and distinct offense. The Hearing Officer recommended that a fine of \$100 be assessed in this case against Respondent. Respondent has shown a willingness to work with Complainant and has participated in all of the Commission proceedings, thus

justifying the minimum fine. The Commission agrees with the Hearing Officer and orders Respondent to pay \$100.

e. Interest

In order to make complainants whole, the Chicago Human Rights Ordinance provides for the payment of interest for certain damages, including damages for emotional distress. CHRO 2-120-500(1); CCHR Reg. 240.700. In this case, the Commission orders payment of such interest from the date of the discriminatory act, February 20, 2014. CCHR Reg. 240.700.

f. Attorney Fees and Costs

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

VI. Conclusion

For the reasons stated above, the Commission finds Respondent Teloloapan Grocery liable for public accommodation discrimination based on disability, in violation of Chapter 2-160-70 of the Chicago Human Rights Ordinance, and orders the following relief:

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

CHICAGO COMMISSION ON HUMAN RELATIONS



By Mona Noriega, Chair and Commissioner

Entered: August 13, 2015