





1. On April 8, 2006, Complainant, an African-American, drove her car up to pump No. 16 at Respondent's gas station for the purpose of purchasing gas for her car.

2. After Complainant got out of her car, she attempted to put gas into her car by selecting the grade of gas and punching the button on the card reader indicating that she intended to pay for her gas inside the gas station.

3. After seeing the pump re-set to all zeros in the gas sale area of the pump, Complainant pressed the nozzle, but no gas came out of the gas hose.

4. After making similar attempts to pump gas into her car, Complainant asked two Caucasian customers at different gas pumps near her whether they were having difficulty with pumping gas. Both customers indicated that they were not having trouble pumping gas from their pumps.

5. Complainant thereafter went into the gas station and explained her problem with the pump in front of other customers. An attendant named Amanda responded by telling Complainant that if she pre-paid for her gas, then the pump would work. Complainant then responded that there was no pre-pay sign on the pump, and Amanda repeated her statement to Complainant that the pump would work if Complainant would pre-pay for her gas.

6. After Complainant was told a second time that she had to pre-pay for her gas, Complainant paid the attendant \$7.00 and left the gas station after making a comment to the attendant that she believed the pump was not turned on because Complainant was Black. Complainant thereafter went to her car and was able to pump \$7.00 in gas into her car.

7. On April 9, 2006, Complainant called Respondent's gas station and spoke to Linda Singley, a manager of the gas station. During the conversation, Complainant told Singley that she was unable to pump gas out of her pump, and Singley replied that there was a problem with the pump. Complainant disputed Singley's statement that there was a problem with the pump.

8. At all times pertinent to the instant Complaint, none of the 16 pumps at Respondent's gas station were designated a pre-pay pump requiring pre-payment for all gas purchases.

9. At all times pertinent to the instant Complaint, all gas pumps at Respondent's station operated under a system in which the customer would raise the handle on the gas grade and push a button to indicate that the customer would be paying for the gas inside of the gas station. If both items were accomplished, a bell sets off on the inside of the gas station and the attendant then pushes a button to authorize the customer to pump gas. The authorization triggers the pump to reset the gas sale indicator to all zeros, and the customer may then pump gas. If the gas pump had re-set to all 000s, then the attendant had pushed all of the buttons that he or she needed to push to authorize the gas pump to work.

10. At all times pertinent to the instant Complaint, pump 16 at Respondent's gas station was a Gilbarco pump, which had two separate components consisting of the physical pump and the card reader section where the customer was required to push a button indicating the type of payment and whether said payment would be done inside or outside of the gas station. Moreover, if the card reader of Gilbarco pump was not working correctly, the pump could still function by an attendant authorizing the pump to dispense a specific amount of gas that had been pre-paid by the customer.

11. At the time Complainant experienced trouble with pump 16, the buttons on pump 16 were not responding appropriately, which required that Complainant either pre-pay to obtain gas at pump 16 or move her car to a different pump.

12. During the period between April 8 and April 10, 2006, 52 customers at Respondent's gas station made pre-pay purchases of gasoline. Four of those customers, including Complainant, were at pump 16. The record is silent as to the race of the 51 other customers during this period of time who made pre-pay purchases of gasoline.

### **Conclusions of Law**

1. Complainant is an individual claiming to have been aggrieved by a denial of the full and equal enjoyment of the facility and services of a public accommodation on the basis of race discrimination prohibited by section 5-102(A) of the Human Rights Act, 775 ILCS 5/5-102(A).

2. Respondent is a place of public accommodation as that term is defined under the Human Rights Act, 775 ILCS 5/5-101A)(1).

3. Complainant has established a *prima facie* case of unlawful discrimination in the full and equal enjoyment of public accommodations when it required Complainant to pre-pay for her gas purchase.

4. Respondent has articulated a neutral, non-discriminatory reason for its decision to ask Complainant to pre-pay for her gasoline.

5. Complainant has not established that Respondent's reason for asking her to pre-pay for her gasoline was a pretext for race discrimination.

### **Determination**

Complainant failed to establish by a preponderance of the evidence that she was the victim of race discrimination when Respondent asked her to pre-pay for her gasoline purchase at Respondent's gas station.

### **Discussion**

In a case alleging discrimination based on race, the Commission and the courts have applied a three-step analysis to determine whether there has been a violation of the Human Rights Act. (See, for example, *Canady and Caterpillar, Inc.*, IHRC, ALS No. S-8795, March 17, 1998) and *Loyola University of Chicago v. Illinois Human Rights Commission*, 149 Ill.App.3d 8, 500 N.E.2d 639, 102 Ill.Dec. 746 (1<sup>st</sup> Dist., 3<sup>rd</sup> Div. 1986).) Under this approach, a complainant must first establish a *prima facie* case of unlawful discrimination by a preponderance of the

evidence. Then, the burden shifts to the respondent to articulate a legitimate non-discriminatory reason for its action taken against the complainant. If the respondent is successful in its articulation, the presumption of unlawful discrimination is no longer present in the case (see, *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981)), and the complainant is required to prove by a preponderance of the evidence that the respondent's articulated, non-discriminatory reason is a pretext for unlawful discrimination.

While this three-step process has been used primarily in an employment setting, the Commission has approved of its use in resolving cases alleging discriminatory denials in the use and enjoyment of public places of accommodation. (See, for example, *Davis and Ben Schwartz Food Mart*, 23 Ill. HRC Rep. 2 (1986).) Typically, a *prima facie* case of a denial or refusal to afford full and equal enjoyment of a place of public accommodation requires a complainant to show that: (1) she is a member of a protected class; (2) she was denied the full and equal enjoyment of the subject facility; and (3) others not within the protected class were afforded full enjoyment of the facility. See, *Davis, and Hornick v. Noyes*, 708 F.2d 321 (7<sup>th</sup> Cir. 1983).

In the instant case, Complainant has attempted to establish a *prima facie* case of race discrimination by asserting that Respondent's attendant required that she pre-pay for her gas purchase, while allowing non-African-Americans to pump gas in their cars without having to pre-pay for said gas. Based on this testimony alone, I agree with Complainant that she has established a *prima facie* case of discrimination, even though there was no testimony that other customers using her pump were allowed to do so without having to pre-pay for their gas. This is so, since Complainant claimed and Respondent agreed that the decision to allow anyone to pump gas from any pump at Respondent's gas station rested with the gas station attendant who was required to push a button to authorize the dispensing of gas once the customer had indicated that he or she would be pumping gas. Thus, under Respondent's system, the

customers were under the discretion of the gas station attendant who had the power to push or not push the button allowing for the pump to operate.

This, of course, assumes that the pump and card reader were operating appropriately, and Respondent, in its explanation, asserts that the card reader had apparently malfunctioned at the time Complainant was attempting to put gas into her car. On its face, this explanation provides me with a race-neutral reason for why Complainant had to pre-pay for her gas, and Complainant has not seriously argued that this articulation, if believable, would not be sufficient to satisfy Respondent's burden of production under *Burdine*. Thus, the only real question remaining in the case is whether Complainant has shown by a preponderance of the evidence that Respondent's articulation is a pretext for race discrimination with respect to affording her the full or equal access to Respondent's gas station.

In this regard, Complainant disputes Respondent's claim that the pump was malfunctioning at the time of her purchase since she claims that the pump was acting like it was ready to begin dispensing gas because it had registered all zeros in the amount of sale section of the pump. Thus, according to Complainant, the problem was not with the pump, but rather with the gas station attendant who had failed to perform some task that would have allowed Complainant to pump gas without having to pre-pay for it. However, Respondent's Director of Information Technology (David Caudill) disputed Complainant's suggestion that the gas station attendant intentionally withheld approval of Complainant's gas pump by testifying that: (1) the Gilbarco pump at issue in the instant case had a history of malfunctioning card readers, that, for various reasons, could force on occasion the customer to pre-pay for gas; (2) the gas station attendant's request that Complainant pre-pay at her pump was an attempt to save Complainant the time and trouble of having to move her car to a different pump and then come in the station to pay for her purchase; and more important (3) the fact that the pump had re-set to all zeros

meant that the gas station attendant had in fact pushed the correct button to authorize the pump to dispense gas without having to pre-pay for it. (Tr. at pg. 77.)

Thus, in light of Caudill's testimony and Complainant's burden of establishing pretext, it was incumbent on Complainant to produce some evidence supporting her theory that the gas station attendant had intentionally withheld authorization for Complainant to pump gas into her car without having to pre-pay for the gas. Indeed, Complainant continues to assert in her brief that the attendant did not "turn on" the fuel pump, and the record does not otherwise establish why pump 16 did not work for Complainant. However, in light of the fact that the pump registered all zeros, Complainant has not suggested what other button, device or gizmo that the attendant should have pushed, pulled or maneuvered in order to authorize pump 16 to pump gas without a customer having to pre-pay for it. Accordingly, because the attendant apparently did everything on her end to authorize Complainant to pump gas into her car without having to pre-pay for it, I find that Complainant's race could not have been the reason why pump 16 did not allow her to pump gas without making a pre-payment. Indeed, it appears that an unexplained malfunction in the card reader section of the pump was the more likely reason why Complainant could not operate pump 16 without having to make a pre-payment.

One more matter, and then we are done. During the public hearing, Complainant suggested that the attendant harbored an irrational theory that, because of Complainant's race, Complainant would not pay for her gas if allowed to pump gas without making a prepayment. In a sense, Complainant's factual scenario is essentially similar to the customer in *Davis* who was asked to submit to a check of her purse before entering into Respondent's store. There, the Commission found no violation of the public accommodation provisions of the Human Rights Act even though Complainant testified that other women with purses were not searched. (*Davis* 23 Ill. HRC Rep. at p.10.) Significantly, the Commission, after observing that retail establishments have a statutory privilege to make reasonable inquiries to prevent or detect theft, engrafted a

“materiality” element by questioning whether there could ever be a denial of a full or equal access to a retail establishment, where a customer is only briefly detained, but allowed to shop freely in the store once the encounter ended. (*Id.*) Arguably, the same materiality question is present in the instant case where Complainant was eventually allowed to make her purchase of gasoline after she was briefly stopped from pumping her gas. However, I need not rest the instant decision on such a finding since Complainant has not shown that Respondent’s explanation for why she was forced to pre-pay for her gas was a pretext for race discrimination.

**Recommendation**

For all of the above reasons, it is recommended that the instant Complaint and the underlying Charge of Discrimination of Alyce Lyle be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 23RD DAY OF DECEMBER, 2009