This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 7/27/05

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
JULIE GILL,	)	
	)	
	)	
Complainant,	)	
	)	**Charge No.: 2003 CP 2903**
and	)	
	)	**ALS No.: 05-012**
LIFETIME FITNESS, INC.,	)	
	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

On January 11, 2005, the Illinois Department of Human Rights filed a Petition for an Order of Default on behalf of Complainant, Julie Gill. That Petition alleged that Complainant perfected her charge of discrimination on April 2, 2003, and thereafter, Respondent, Lifetime Fitness, Inc., although given multiple opportunities to do so, did not file a verified response to that charge. The Petition further alleged that on October 15, 2004, The Department issued a Notice of Default to the Respondent, and that no Request for Review was filed. On January 26, 2005, the Commission entered said order of Default and referred the matter for a hearing on damages by an Administrative Law Judge. Notice of the hearing issued on February 8, 2004.

A hearing on damages was held on March 24, 2005. Despite having been served with notice of that hearing, Respondent did not appear through Counsel, although it did send a lay observer. There was no request for posthearing briefing. The matter is ready for decision.

FINDINGS OF FACT

The following findings of fact were derived from the record file in this case and from the evidence presented at the damages hearing.

1. Complainant, Julie Gill, shared a home with Andre Kilpatrick. Both Ms. Gill and Mr. Kilpatrick are African-Americans. Ms. Gill was a member of Respondent's Health Club. Respondent's policies provided that a member of the household of a Health Club member was eligible for family membership status, and would not be required to pay an individual fee each time he used the facility.

2. Subsequent to the time the Ms. Gill purchased her membership, she and Mr. Kilpatrick made attempts to obtain a credential giving him family membership status, but were put off by Respondent's staff at each attempt.

3. On March 26, 2003, Complainant and Mr. Kilpatrick had entered the facility and were enjoying the hot tub when Respondent's manager accosted them when he "threw a sheet of paper" at them and complained that, because Mr. Kilpatrick was not a member, they should not be in the hot tub area. To the best of Complainant's knowledge, no rule had been broken.

4. Complainant and Mr. Kilpatrick prepared to leave, but Respondent's employee, identified only as "Mike," called the Naperville police, who, after thirty or forty minutes, determined that there was no police matter and left. Complainant found the entire episode to be humiliating.

5. The following day, Complainant arrived at Respondent's facilities, where she observed a "posty note" placed on Respondent's computer "for everyone to see that Julie Gill is not welcomed in the club."

6. Similarly situated, non-black individuals who used Respondent's facilities were not subject to the treatment which was the subject of the charge.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" and Respondent is a "place of public accommodation" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5-103(b) and 5-101 respectively.

2. The Commission has jurisdiction over the parties and the subject matter of the action. Because of the default order entered in this matter, Respondent has admitted the allegations of the Department Charge that the Complainant was denied full and equal enjoyment of Respondent's services in its place of public accommodation in violation of Section 5-102 (a) of the Illinois Human Rights Act when, from some time in February, 2003 to and including March 26, 2003, Complainant was denied the full and equal enjoyment of Respondent's facility on account of her race.

3. Where Complainant has demonstrated emotional suffering as a result of Respondent's unlawful acts, she is entitled to damages.

DISCUSSION

As a result of the default order, Respondent is deemed to have admitted the allegations of the complaint. ***Bielecki and Illinois Family Planning Council***, 40 Ill. HRC Rep. 109 (1988). Accordingly, a finding of liability against Respondent is appropriate. The only remaining issues involve Complainant's damages.

During the time that Complainant was a paid member of Respondent's health club, Respondent, through its employees, engaged in a pattern of racially discriminatory behavior. Some of those episodes involved isolated incidents, such as the March 26, 2003 incident involving the Naperville police. Others, including the failure to extend Complainant's family membership privileges to a member of her household, were part of a pattern which continued throughout the duration of her membership.

As a result of the March 26 incident, as well as the placing of the "posty note" barring

her from the premises where it could be seen by others, Complainant testified that she suffered acute humiliation. Her testimony further demonstrates that these episodes, combined with the pattern of other discriminatory acts, resulted in a period of depression, as well as continuing stress in her role as a parent, as she felt unable to respond to her children's repeated requests to know why they could not go to the Respondent's facilities. Finally, Complainant has also alleged that she cut off her long hair as a result of the conduct of Respondent, and that she gained weight as a result of not being able to work out at Respondent's facilities. I do not find that these final matters can be attributed to Respondent on this record.

The Illinois Human Rights Act at 775 ILCS 5/8B-104(B) provides that actual damages may be awarded as a remedy. "Actual Damages" have been interpreted to include "compensation for emotional harm and mental suffering." ***Fire & Police Comm'rs v. Human Rights Comm'n,*** 167 Ill. App. 3d 384, 133 Ill.Dec. 810, 541 N.E.2d 1248 (Ill App. 1 Dist 1989) Further illuminating the question of emotional damages, the Court *in* ***ISS International Service System v. Illinois Human Rights Comm'n*****,** 272 Ill.App. 3d 969**,** 209 Ill. Dec. 414, 651 N.E. 2d 592 (Ill. App. 1 Dist 1995) urged the Commission, in evaluating these damages, to examine the injury caused by the offending party "closely."

In ***Fire & Police Comm'rs v. Human Rights Comm'n,*** (supra), the Court sustained an award for $10,000.00 for emotional damages arising out of a continuing pattern of racial harassment toward an African-American police officer. While the conduct here was not as outrageous as the conduct in that case, both in terms of its nature (harassment versus discrimination) and its duration, it was nevertheless both unlawful and sustained. Further, in that case the charge was filed in 1982, more than twenty years prior to the instant matter, and inflation suggests that that award would be significantly greater if determined at the present time. Considering the insult to Complainant's dignity caused the Complainant by Respondent's conduct, and its damage to her sense of well-being, I find that $10,000.00 should compensate

Complainant for her emotional distress in this cause.

Finally, even though Complainant did not specifically request it at the damages hearing, there are other types of relief that are appropriate in this situation. Respondent should be ordered to cease and desist from further unlawful discrimination on the basis of race, and its employees should receive appropriate training to ensure that this is the case.

RECOMMENDATION

Based upon the foregoing, it is recommended that the complaint in this matter be sustained in its entirety and that an order be entered awarding Complainant the following relief:

A. That Respondent pay to Complainant the sum of $ 10,000.00 as emotional distress damages;

B. That Respondent be ordered to cease and desist from further unlawful discrimination on the basis of race.

C. In addition to desisting from further actions that are unlawful under the Illinois Human Rights Act, Respondent, including its managers, supervisors and employees, shall be referred to the Illinois Department of Human Rights Training Institute (or any similar program specified by the Department) to receive such training as is necessary to prevent future civil rights violations, with all expenses for such training to be borne by Respondent;

HUMAN RIGHTS COMMISSION

BY:_____
MARY KENNEDY
CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: April 18, 2005