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:	)	
	)	
ANDRE KILPATRICK,	)	
	)	
	)	
Complainant,	)	
	)	**Charge No.: 2003 CP 2904**
and	)	
	)	**ALS No.: 05-011**
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, Andre Kilpatrick. That Petition alleged that Respondent, Lifetime Fitness, Inc., discriminated against Complainant on the basis of his race and when it denied him use of its public accommodation. 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, Andre Kilpatrick, shared a home with Julie Gill. 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 not required

to pay an individual fee of $20.00 each time he used the facility.

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

3. On March 23, 2003, Complainant and Ms. Gill had entered the facility and were enjoying the hot tub when Respondent's manager accosted them by "slamming" a piece of paper on the deck of the hot tub. The manager proceeded to point his finger in Ms. Gill's face and complain loudly that he was sick of her breaking the rules. Ms. Gill responded with an epithet, and the manager threatened to call the police. To the best of Complainant's knowledge, no rule had been broken.

4. Complainant, who at the time of the occurrence in question was on probation, became fearful that if the police were called it would appear that he "was guilty of something," and that, even though he had not committed any offense, he might be taken into custody.

5. Complainant and Ms. Gill went to the dressing room and prepared to leave. While they were in the dressing room, the manager came in and spoke with them. Complainant asked why the manager had accosted them, and whether he was racially motivated. Upon that question, the manager replied "Don't you dare play the race card with me" and "I'm calling the police." Whereupon, he did, in fact, call the police.

6. Complainant and Ms. Gill finished dressing and went to the lobby, where they awaited the arrival of the Naperville Police. The officer arrived, and inquired of the parties as to the reason for the call. After Complainant showed the officer his receipt for $20.00 for his admission to the club, the officer determined that there was no police matter to be resolved and left. Throughout the time that the police were present, Complainant observed bystanders gawking at the participants. In addition to having been fearful, Complainant found the entire episode to be humiliating.

7. Complainant made at least two subsequent visits to the club. One one occasion, another of Respondent's employees approached him and told him that Respondent could not have "th[at] type of incident," referring to the episode of March 26. On each occasion Complainant's presence was challenged, notwithstanding his payment of the $20.00 admission fee, and eventually Steve, a manager at the club, proposed to refund Ms. Gill's dues so that neither she nor Complainant would return.

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, and on two occasions thereafter, Complainant was denied the full and equal enjoyment of Respondent's facility on account of his race.

3. Where Complainant has demonstrated economic loss and emotional suffering as a result of Respondent's unlawful acts, he 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.

At the hearing, Complainant characterized his request for damages as being for "punitive" damages. Punitive damages are not available under the Illinois Human Rights Act. Viewed in the context of the entire case, however, it is apparent that this characterization represents a layman's attempt to couch his request in legal terms, and should not be regarded as a limitation on my authority to recommend appropriate relief. The totality of the record convinces me that Respondent is entitled to both economic and non-economic damagespf3 0..

During the time that Julie Gill was a paid member of Respondent's health club, Complainant was entitled to family membership status, pursuant to Respondent's own policies. 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 Ms. Gill's family membership privileges to Complainant, were part of a pattern which continued throughout the duration of the period in question.

As a result of the March 26 incident in which the Naperville Police were summoned to the lobby of Respondent's facility, Complainant testified that he suffered public humiliation, particularly when he had to produce his receipt to demonstrate that he had in fact paid for the use of the facility. Not only was the episode humiliating, but, given his probationary status, his fear that the confrontation could escalate into incarceration, however brief, was well founded. The subsequent episode in which another of Respondent's employees approached him and told him that Respondent could not have "th[at] type of incident" serves to underscore the public nature of Respondent's conduct toward Complainant and the resulting embarrassment. His testimony further demonstrates that these episodes, combined with the pattern of other discriminatory acts, resulted in a period of depression. Finally, Complainant has also alleged that he gained weight as a result of not being able to work out at Respondent's facilities. Based on this record, however, I do not find that this final matter can be attributed to Respondent.

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 egregious, 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 significant and public assault upon Complainant's dignity caused by Respondent's conduct, and its resultant anxiety and continuing damage to his sense of well-being, I find that $15,000.00 should compensate Complainant for his emotional distress in this cause.

Additionally, Complainant has testified that as a result of not receiving a family membership credential, he paid $20.00 for the use of the facility each time he went. Although he testified that he went "almost on a daily basis" the record is not specific as to the number of times he appeared and paid the fee. I do, however, find in the record testimony regarding at least four separate visits, and therefore, I find that Complainant is entitled to $80.00 in economic damages.

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 $15,000.00 as emotional distress damages;

B. That Respondent pay to Complainant the sum of $80.00 as economic damages.

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

D. 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 27, 2005