



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 12/11/06

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
YOLANDA MORRIS,)	
)	Charge No.: 2005CP3401
Complainant,)	EEOC No.: N/A
)	ALS No.: 06-134
and)	
)	
KENTUCKY FRIED CHICKEN,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes before me following a public hearing on damages held on August 14, 2006, after the Commission entered a Default Order against the Respondent on May 3, 2006. Complainant appeared with her attorney. Respondent did not appear, nor did anyone on its behalf. Complainant was given the opportunity to submit a post-hearing brief and petition for fees, but declined to do so. This matter is now ready for disposition.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Findings of Fact

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

1. Complainant filed Charge Number 2005CP3401 with the Illinois Department of Human Rights ("Department") on May 12, 2005.

2. The charge alleges that Respondent denied Complainant of the full and equal enjoyment of Respondent's facility on April 3, 2005 due to her physical handicap (mobility impairment).
3. On April 12, 2006, the Department filed a Petition for Hearing to Determine Complainant's Damages.
4. On May 3, 2006, the Commission entered a Default Order and referred the matter to the Administrative Law Section for a hearing on damages.
5. On May 26, 2006, an order was entered that set this matter for a status hearing on July 6, 2006.
6. On July 6, 2006, Complainant appeared with her attorney. Respondent failed to appear. An order was entered that set this matter for a public hearing on damages on August 14, 2006.
7. On August 14, 2006, Complainant appeared with her attorney. Respondent neither called nor appeared. Complainant presented her case on damages.
8. Complainant suffers from a physical disability regarding her legs. She has severe arthritis and trauma damage.
9. Complainant has been confined to a wheelchair since November 1998.
10. Complainant also suffers from depression, which predated the leg problems, but which subsequent to the leg problems relates, at least in part, to her feelings regarding her disability.
11. Complainant is embarrassed to be in a wheelchair and is upset because she can no longer perform the work for which she was trained.
12. Since becoming physically disabled, Complainant's income has been cut in half.
13. Since becoming physically disabled, Complainant has difficulty socializing with friends, especially those with cars, because she can no longer fit into the cars.

14. To go places, Complainant must contact a special service and give twenty-four (24) hour prior notice. She then has to contact her friends and ask them to join her in the handicapped truck.
15. On April 3, 2005, Complainant, in her wheelchair, purchased a chicken dinner at Respondent's counter and went to a table in the seating area of the Ford City Mall where her husband was seated.
16. Upon opening the meal, Complainant noticed the cole slaw was very dry.
17. Complainant, using her mobile wheelchair, went back to Respondent's counter.
18. Complainant asked the counter person to change it and was told she would have to wait five (5) to ten (10) minutes.
19. Complainant motorized herself out of the way so other customers could come through.
20. After approximately fifteen (15) minutes, the manger came out of the backroom and walked toward the front area at or near where Complainant was waiting in her wheelchair.
21. When Complainant explained to the manager why she was waiting, he told her, in a nasty, mad tone that she would probably have to wait another thirty (30) minutes and that she could just sit there.
22. Complainant then asked the manager for a refund.
23. The manager, speaking in a loud, rude manner in front of other customers, told Complainant she was not going to get anything back.
24. The manager stated several times: "That is why you're crippled and in a wheelchair and God is punishing you. I hope you stay the same and never walk again."
25. A woman stopped and asked the manager what he was saying to Complainant. He responded by telling the woman it was none of her business. The woman told the

manager that what he was saying to Complainant was wrong. The woman told Complainant she was sorry and left.

26. A security guard from the Ford City Mall came over to Complainant and the manager and discussed a refund.

27. The manager said he would not give Complainant a refund and then continued to call Complainant a cripple and hoped God would punish her.

28. The security guard told the manager to refund Complainant her money and told the manager that his statements to Complainant were cruel.

29. The manager gave Complainant a refund by throwing the money across the table at her.

30. Complainant went to the Ford City Mall's customer service and filed a complaint.

31. Complainant felt shocked and embarrassed by the manager's conduct and statements. His statements made her feel that others must perceive her as a cripple.

32. Shortly after the incident, Complainant experienced severe anxiety and had nightmares of the incident almost every day.

33. Complainant continues to experience nightmares two or three days per week.

34. From time to time, and at the hearing, Complainant sees the manager's face as he yells that she is crippled.

35. Complainant talks to her husband, who is also disabled, about the nightmares.

36. Complainant has been in therapy for at least four years, beginning several years prior to the incident.

37. Complainant attends therapy sessions once a week for her depression.

38. Complainant takes Ativan for her panic attacks and depression medications.

39. Complainant's depression worsened after the incident.

40. After the incident, Complainant spent, and continues to spend, much of her therapy sessions discussing the incident and how it makes her feel about her disability.
41. The incident has made her anxious and exacerbated her panic attacks.
42. Complainant now relies on her husband to take the lead when they are out in public because she fears this type of incident will happen again.
43. Complainant feels even more insecure in her wheelchair than she did prior to the incident.
44. Complainant's self-esteem is shattered.
45. This incident makes Complainant worry when she goes out because she is concerned with how other people perceive her in her wheelchair.
46. Complainant requested \$75,000.00 in damages, although she does not know if that amount will make her whole.
47. Complainant has experienced emotional distress damages in the amount of \$20,000.00.

Conclusions of Law

1. Respondent is an "operator" of a "place of public accommodation" as those terms are defined in the Illinois Human Rights Act, 775 ILCS 5/5-101(A) and (B).
2. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B).
3. The Commission has jurisdiction over the parties and the subject matter of this action.
4. In accordance with the Commission's May 3, 2006 Default Order, Respondent is liable for violations of the Illinois Human Rights Act that prohibit discrimination based on physical handicap.

5. Complainant has proven by a preponderance of the evidence that she has suffered emotional distress from the actions of Respondent's manager of such magnitude that she is entitled to an award of emotional distress damages.

6. In light of the finding of liability against Respondent, it should be ordered to cease and desist from any discriminatory conduct based on physical handicap.

Discussion

In accordance with the Commission's Default Order, this matter proceeded to a damages only public hearing. Complainant testified on her own behalf. Exhibit 1, an incident report prepared by Complainant at the Ford City Mall, was introduced and admitted into evidence.

Emotional Distress

It is apparent from the record that Complainant suffered a severe emotional reaction to Respondent's discriminatory statements regarding her physical disability. The degree of emotional distress was significantly over and above that which would be expected from "the mere fact of a civil rights violation" and is therefore compensable under the Illinois Human Rights Act. **Harris and Vinylgrain Industries of Illinois**, ___ Ill. HRC Rep. ___, (1996CA1087, Aug. 1, 2001).

In public accommodations cases, the Commission has granted emotional distress damages where there is little financial loss, when it is absolutely clear from the record that the recovery of pecuniary loss will not adequately compensate a complainant. **Donna Jacobs and Ruebel's Adventures**, ___ Ill. HRC Rep. ___, (2002SP0123, Nov. 18, 2003).

The probative factors in determining the amount of an emotional distress award are the nature and duration of the suffering experienced by complainant. **Smith v. Cook County Sheriff's Office**, 19 Ill. HRC Rep. 131 (1985).

The incident in this case involves Respondent's manager stating repeatedly to Complainant in a loud, angry tone, and in the presence of other customers and mall personnel: "That is why you're crippled and in a wheelchair and God is punishing you. I hope you stay the same and never walk again." Thereafter, Respondent's manager threw refund money at the Complainant.

There are several Commission public accommodation cases where emotional distress damages have been awarded. Upon review of these cases, it is apparent the Commission makes a distinction between a single act of discrimination and sustained discriminatory conduct over time. **Simpson and Dewey's Restaurant**, 40 Ill. HRC Rep. 35 (1988); See also **Pridgett and Stuart Clothing Store-Chicago**, ___ Ill. HRC Rep. ___, (1984CF1475, July 26, 1991). In this case, although there was only a single incident, the discriminatory statements were repeated several times in front of many people. Accordingly, the rationale found in prior cases that limit emotional distress damages because of a single act are distinguishable from this case.

In addition, this case is distinguishable from other Commission cases because the emotional condition in which Respondent found Complainant was extremely fragile. It is not a respondent's conduct *per se*, but rather the reaction of a complainant to a respondent's conduct, that justifies emotional distress damages award. **Kuhlman and Korner House**, ___ Ill. HRC Rep. ___, (1996CP2474, Nov. 24, 1997). The Commission subscribes to the "eggshell skull" principle; the perpetrator takes the victim's condition in which she is found, to include the victim's emotional state. **Palumbo and Palos Community Hospital**, ___ Ill. HRC Rep. ___, (1996CA0145, Jan. 10, 2000). Under this principle, similar conduct against two different victims may result in greater damage to one than to the other because the emotional state of one is more fragile than that of the other.

Prior to this incident, Complainant suffered from chronic depression and panic attacks. She attended regular therapy sessions for several years. Complainant was also taking Ativan for a panic disorder and depression medications. Her therapy sessions related, at least in part, to her insecure and embarrassed feeling regarding her physical disability.

Complainant testified she felt her depression coming back after the incident. There was evidence the incident exacerbated her panic attacks. Complainant also testified that she experienced daily nightmares where she saw the manager's face and heard him yelling at her. In addition, Complainant testified that she experiences those nightmares today at least three or four days per week. She speaks to her husband about the nightmares. In her weekly therapy sessions, Complainant discusses these nightmares and her insecurities related to her disability.

Further, the insecure thoughts she experienced when first confined to a wheelchair have returned and worsened. Complainant testified to being embarrassed to take the lead when she goes out and now relies on her husband because she fears a similar incident will occur again. Moreover, although Complainant previously worried about how others perceived her in her wheelchair, this incident has triggered even greater ruminations and insecurities.

The results of this case should also differ from many prior Commission public accommodation cases where emotional distress damages were awarded because many of those cases are several years old. The awards vary, but seem to average around \$3,500.00. **Kuhlman and Korner House**, ___ Ill. HRC Rep. ___, (1996CP2474, Nov. 24, 1997) (\$3,500.00 award for emotional distress caused by denial of service at bar/restaurant on the basis of physical handicap discrimination); **Simpson and Dewey's Restaurant**, 40 Ill. HRC Rep. 35 (1988) (\$2,000.00 award for emotional distress caused by being denied service in a restaurant on the basis of race discrimination); **Johnson**

and Ranch Steak House, ___ *Ill. HRC Rep.* ___, (1985CP0110-112, Mar. 2, 1987) (\$2,500.00 emotional distress award caused by first refusal and then begrudging service based on physical handicap). The facts of this case and those found in **Johnson** are similar. Since the **Johnson** case is almost twenty (20) years old, the emotional distress award in this case should be adjusted substantially to reflect the economic realities of our time.

In contrast, in 2004, the Commission awarded \$6,500.00 for emotional distress damages caused by denial of full and equal enjoyment of a public facility based on race discrimination. **Porter and Treasure Island Foods, Inc.**, ___ *Ill. HRC Rep* ___, (2001CP0652, Ap. 8, 2004). Additionally, in 2003, the Commission awarded emotional distress damages of \$10,000.00 in a public accommodation case analogous to this case. **Donna Jacobs and Ruebel's Adventures**, ___ *Ill. HRC Rep.* ___, (2002SP0123, Nov. 18, 2003).

Respondent's statements to Complainant were ugly and cruel. The statements were designed to, and indeed did, cause Complainant severe emotional pain. The statements were repeated several times in front of other customers and mall personnel. The statements were loud enough and cruel enough to lead perfect strangers to approach and scold Respondent's manager, as well as to apologize to Complainant for the manager's hurtful statements.

It was evident from the substance of Complainant's testimony, and her demeanor, that the nature and duration of her suffering was great; her self-esteem was, and is, shattered. At least up until the hearing date, Respondent's conduct had a lingering impact on Complainant's life and feelings about herself. The lingering impact could be much longer or even permanent.

In sum, based on the record in this case and Commission precedent, I find Complainant has met her burden of proof; an award of \$20,000.00 for emotional distress damages is appropriate.

Cease and Desist

Since a Default Order has been entered and there has been a finding of liability against Respondent, Respondent should be ordered to cease and desist from discrimination based on physical handicap in the future. See **Magraff and Alexopolis**, ___ Ill. HRC Rep. ___ (1990CN0209, Nov. 8, 1993).

Recommendation

It is recommended that the Commission:

- (1) award Complainant emotional distress damages in the amount of \$20,000.00;
- (2) order Respondent to cease and desist from any discrimination based on physical handicap in the future.

HUMAN RIGHTS COMMISSION

BY: _____

**REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: October 1, 2006