

City of Chicago
COMMISSION ON HUMAN RELATIONS

ADJUDICATION DIVISION

2007 Activity
Concerning Discrimination Cases
filed under the
Chicago Human Rights Ordinance
and
Chicago Fair Housing Ordinance



Chicago Commission on Human Relations
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City of Chicago
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Adjudication of Discrimination Complaints

The Enabling Ordinance of 1990 gave the reorganized Commission on Human Relations powers to enforce the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance. These powers are exercised through the Adjudication Division. The work of the Division is:

- To receive and investigate complaints of discrimination in violation of the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance.
- To facilitate the settlement of cases, where possible.
- To determine, after investigation and hearing, whether discrimination occurred in violation of the City of Chicago ordinances.
- To order remedies if the complainant proves at a hearing that discrimination has occurred.

The orders of the Commission's Adjudication Division carry the force of law. If the Commission rules, after an administrative hearing, that discrimination occurred, it has the power to order injunctive relief as well as the payment of out-of-pocket damages, emotional distress damages, punitive damages, attorney's fees and costs, and fines.

The role of the Adjudication Division is neutral. It does not serve as either side's lawyer, advisor, or advocate. It is not a prosecutor of the case. It does not take the side of either the complainant (the person who filed the complaint) or the respondent (the alleged violator).

Adjudication on the Web

See the Commission on Human Relations web site at www.cityofchicago.org/humanrelations for more information about Chicago's discrimination ordinances and their enforcement, including –

- The Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance
- The Commission on Human Relations Enabling Ordinance
- The regulations governing enforcement of these ordinances
- Information on how to research Commission case law
- A *Board Rulings Digest* summarizing decisions about violations and remedies ordered
- A complaint form and other frequently-used forms for complainants and respondents
- A *Guide to Discrimination Complaints* in English and Spanish
- Information and forms to help complainants prepare, file, and prove a complaint
- Information and forms to help respondents respond to a complaint
- Information about other discrimination laws and enforcement agencies

What is Discrimination?

In general, to prevail in a discrimination case under the City of Chicago ordinances, a complainant must be able to prove by a preponderance of the evidence that:

- The complainant was subjected to *adverse treatment* by a covered individual, business, or government entity (the respondent).
- This conduct was based on the complainant's status in one or more of these *protected categories*:

Race	Sex	Age
Color	Sexual Orientation	Disability
National Origin	Gender Identity	Source of Income
Ancestry	Marital Status	Military Discharge Status
Religion	Parental Status	

- The conduct was in one of the following *covered areas*:

Housing	Public Accommodations
Employment	Credit or Bonding Transactions

- The adverse action took place *in the City of Chicago*.
- The complainant filed the complaint within *180 days* of the alleged discriminatory action.
- The complainant was treated differently *because of* his or her protected status, and not for other legitimate, non-discriminatory reasons.

Filing a Discrimination Complaint

Adjudication intake staff are available during announced business hours to answer inquiries about filing a complaint under the Chicago Human Rights Ordinance or Chicago Fair Housing Ordinance. Those interested should telephone 312/344-4111 for current information. Intake staff assist the public with preparation of complaints on a walk-in basis or provide forms for self-preparation of complaints and filing by mail. There is no filing fee.

A complaint form, along with additional information about the ordinances and the adjudication process, can be found on the Commission's web site: www.cityofchicago.org/humanrelations.

How Cases Proceed

People who believe they have been subjected to discrimination as defined in the City of Chicago ordinances must file written complaints with the Commission following a prescribed form. Once they do so, the Commission notifies each named respondent and sets a deadline to submit a written response and any documents that support the respondent's position. The complainant also receives a deadline to reply to any response and to submit any documentation that supports the allegations of the complaint.

The Commission will offer the parties the opportunity to try to settle the case before the investigation is completed. Settlement is voluntary. The Commission does not propose or advocate particular settlement terms, but may write up the agreed terms of settlement for the parties' signature.

If the case does not settle or otherwise close at the pleading stage, the investigator completes any additional evidence-gathering that may be needed and compiles the evidence for review by senior staff of the Commission. This is typically accomplished by interviewing witnesses and examining relevant documents or sites. The investigator may seek information about the experiences of other people whose situations are comparable to the complainant's. The Commission has subpoena power along with the power to sanction parties that fail to cooperate with the investigation.

Commission senior staff then determine whether or not there is substantial evidence of discrimination. A finding of "substantial evidence" does not mean that the complainant has won the case, only that there is enough evidence of a violation for the case to go forward. If the Commission finds that there is not substantial evidence of an ordinance violation, it dismisses the case. The complainant may request a review of the dismissal.

If the Commission finds that there is substantial evidence of discrimination (or retaliation if applicable), it notifies the parties that the case will proceed to an administrative hearing. Again, the parties may attempt to settle the case prior to the hearing.

The administrative hearing is a trial, but somewhat less formal than in a court. A hearing officer, who is an attorney appointed by the Commission, presides over the hearing and manages the hearing process. The Commission does not prosecute the case or represent the complainant at this hearing. It is entirely the complainant's responsibility to prove the case and to prove entitlement to injunctive and monetary relief as well as attorney fees and costs. Pre-hearing discovery and subpoena procedures are available to the parties to aid in obtaining evidence to support their positions.

Based on the hearing officer's recommendation and the hearing record, the Board of Commissioners makes the final determination as to whether the complainant has proved that the respondent has violated the Chicago Human Rights Ordinance or the Chicago Fair Housing Ordinance. If the Board rules that there has been a violation, it also determines what relief will be awarded to the complainant.

Relief may include a fine for each violation, an order to take steps to eliminate discriminatory practices, an award of damages to be paid to the complainant, and an order to pay the complainant's attorney fees.

Commission final orders awarding or denying relief have the force of law, can be appealed to the state court on a common law *certiorari* petition, and are enforceable by obtaining a state court judgment.

Annual Summary of Adjudication Division Activity

	Housing	Employment	Public Accommodation	Credit	TOTAL
COMPLAINTS FILED	54	100	118	0	272
Staff-Assisted	35	78	76	0	189
Self-Prepared	19	22	42	0	83
CASES FORWARDED TO HEARING STAGE	13	12	31	0	56
Substantial Evidence	12	11	27	0	50
Default (at investigation stage)	1	1	4	0	6
CASES CLOSED	90	194	127	1	412
Settled	18	38	63	0	138
Complainant Withdrew Case	17	17	15	0	49
Complainant Failed to Cooperate	10	38	7	0	54
Lack of Jurisdiction	1	13	4	0	22
No Substantial Evidence	45	98	33	1	166
Ruling After Hearing	0	4	4	0	8
REQUESTS FOR REVIEW after involuntary dismissal	8	17	6	0	31
Denied	8	17	5	0	30
Granted	0	0	1	0	1

Although the number of new discrimination complaints filed in 2007 was somewhat higher than in 2006, the number of completed investigations and post-investigation proceedings remained strong. This resulted in continued progress to reduce investigator caseloads to manageable levels and to reduce the number of delayed investigations.

Discrimination Bases Claimed in Complaints Filed

PROTECTED CLASSES	Hsng.	%	Empl.	%	Public Accom.	%	Credit	%	Total Claims	%
Race	12	22%	46	46%	44	37%			102	37%
Color	0	0%	1	1%	4	3%			5	2%
National Origin	6	11%	13	13%	3	3%			22	8%
Ancestry	1	2%	8	8%	0	0%			9	3%
Religion	1	2%	3	3%	1	1%			5	2%
Sex	5	9%	30	30%	7	6%			42	15%
Sexual Orientation	2	4%	7	7%	6	5%			15	6%
Gender Identity	0	0%	1	1%	4	3%			5	2%
Marital Status	7	13%	1	1%	1	1%			9	3%
Parental Status	6	11%	4	4%	0	0%			10	4%
Age	2	4%	21	21%	2	2%			25	9%
Disability	14	26%	20	20%	68	58%			102	37%
Source of Income	22	41%	0	0%	2	2%			24	9%
Military Discharge	0	0%	2	2%	0	0%			2	1%
Retaliation ¹	1	2%	10	10%	1	1%			12	4%
TOTAL COMPLAINTS	54	X	100	X	118	X	0	X	272	X

The percentage figures in the chart above show the percentage of *complaints* containing a *claim* of discrimination on the basis named. A complaint may claim discrimination on more than one basis (e.g. sex and age) arising out of the facts alleged. Thus the number of claims usually exceeds the number of complaints.

In 2007, disability tied with race as the most frequently named discrimination basis in complaints, due to a large volume of complaints alleging disability discrimination in public accommodations. At 68 such claims, it was the largest single type of case filed in 2007. These complaints typically concern the wheelchair accessibility of storefront businesses.

The actual number of race discrimination claims rose from 87 in 2006 to 102 in 2007. Race was the most

¹Retaliation is prohibited in the Chicago Human Rights Ordinance but not in the Chicago Fair Housing Ordinance. Therefore, retaliation claims in housing discrimination cases are dismissed without investigation.

frequently named basis in employment discrimination complaints. Race was also second after disability in public accommodation complaints, and third after source of income and disability in housing discrimination complaints.

Sexual orientation continued to comprise a smaller proportion of claims, at 6% overall in 2007 and 7% in 2006 compared to 13% in 2005. This may be due to the amendment of the Illinois Human Rights Act in 2005 to cover sexual orientation discrimination, offering claimants another way to pursue such cases.

After race, the most frequently named bases in employment discrimination complaints were sex at 30%, age at 21%, disability at 20%, and national origin at 13%.

Source of income was again the most frequently-named basis in housing discrimination complaints although, at 41% of new complaints, the proportion and number declined from 52% in 2006. These claims usually involve individuals who use Section 8 vouchers to support some part of their rent. Disability was the next most frequently named basis in housing discrimination complaints at 26%, followed by race at 22%. Next were marital status at 13% and parental status and national origin, both at 11%.

Gender identity discrimination, the most recently added basis in the City’s ordinances, was claimed in four public accommodation discrimination complaints and one employment discrimination complaint in 2007, continuing the trend that these claims arise mainly with respect to public accommodations.

Substantial Evidence Determinations

The data below covers only those cases in which a determination of either “substantial evidence” or “no substantial evidence” of discrimination (or retaliation) was made after a full investigation. A finding of substantial evidence means there is sufficient evidence, if believed, to support a finding that an ordinance violation occurred. A substantial evidence finding allows the case to go forward to an administrative hearing and Board of Commissioners ruling if the case does not settle.

	Housing	Employment	Public Accommodation	Credit	TOTAL
Substantial Evidence	12	11	27	0	50
No Substantial Evidence	45	98	33	1	177
TOTAL FULL INVESTIGATIONS	57	109	60	1	227

The total number of completed full investigations remained high in 2007 after increasing by 68% in 2006 compared to 2005. The proportion of completed investigations which resulted in a substantial evidence finding declined in 2007, to 21% compared to 27% in 2006. With another 6 cases proceeding to hearing based on an order of default, this means that 12% or 56 dispositions of the investigation stage resulted in the case going forward to the hearing stage.

These figures do not cover all cases which the Commission completed in 2007. Just under half of cases are settled, withdrawn, or dismissed for other reasons before completion of a full investigation.

However, in 2007, 51% of dispositions of the investigation stage were based on a completed full investigation, compared to 47% in 2006, 30% in 2005, and 20% in 2004.

Settlements

A high percentage of discrimination cases conclude by means of settlements between the parties. Complainants as a group obtain a great deal more monetary and other relief through settlements than through orders issued after administrative hearings. In 2007, for example, 30% of closed cases were resolved by settlement, compared to 2% concluded with liability findings and orders for relief.

Settlement is voluntary between the parties and may occur at any stage of the investigation or hearing process. In 2007, 75% of settlements occurred at the investigation stage and 25% at the hearing stage (that is, after a finding of substantial evidence or order of default). When cases settle, the respondents do not admit liability and the Commission makes no determination as to whether a violation occurred. The Commission is not a party to the settlement and does not require or advocate particular settlement terms. However, Commission staff, mediators, and hearing officers do encourage and facilitate settlement.

Individual settlement terms vary and, because many cases settle privately between the parties, the Commission often does not know the terms of settlements including their monetary value to complainants. In the interest of promoting settlement in the future, the Commission does not announce or publicize the terms of particular settlements, although parties may choose to do so if they have not agreed to the contrary as part of the settlement terms.

Rulings After Administrative Hearings

The Board of Commissioners issued eight final rulings on discrimination complaints in 2007. All such rulings occur after an administrative hearing conducted by an independent hearing officer who issues a recommended decision. The 2007 rulings are summarized below. Six were in favor of Complainants and two were in favor of Respondents.

Employment Discrimination Cases

Feinstein v. Premiere Connections, LLC et al., CCHR No. 02-E-215 (Jan. 17, 2007)
Sexual Harassment

The Board found *quid pro quo* sexual harassment where the owner of a business caused the termination of Complainant's employment and refused to pay her all compensation due, after she discontinued a dating relationship with him which initially was consensual. The Board imposed the maximum fine of \$500 each for the two offenses found. The Board awarded \$34,413 in back pay for the six month period before Complainant redirected her efforts to developing her own business rather than searching for another job, \$2,500 as emotional distress damages, and \$7,500 as punitive damages.

Bellamy v. Neopolitan Lighthouse, CCHR No. 03-E-190 (Apr. 18, 2007)
Sexual Orientation Discrimination

The Board found sexual orientation discrimination in terms and conditions of employment where an openly lesbian employee was required by Respondent's executive director not to express her sexual orientation in the workplace, including not mentioning or sharing photographs of her partner. Heterosexual employees including

the executive director were able to discuss their personal lives freely including their families, children, and marital status. Respondent's conduct was found not to constitute a constructive discharge, however. The Board imposed a fine of \$100 and ordered damages of \$25,000 for emotional distress based on Complainant's convincing evidence of the psychological toll resulting from the discriminatory conduct.

Manning v. AQ Pizza LLC & Alhakim, CCHR No. 06-E-17 (Sep. 19, 2007)
Sexual Harassment, Race Discrimination, Retaliation

After an order of default, the Board found that Complainant established a *prima facie* case of sexual harassment, race harassment, and retaliation. The manager of the pizza restaurant where Complainant worked for about six weeks subjected her to repeated sexual advances which included exposing himself and physical assault, addressed her in racially derogatory terms, then terminated her employment when she continued to refuse sexual activity. After Complainant filed her complaint, the manager left a racially and sexually derogatory message about it on Complainant's voice mail. The Board imposed fines totaling \$2,000, at \$500 for the initial discrimination and \$500 for the retaliation, against both the company that operated the restaurant and the manager individually. The Board ordered damage payments of \$500 for lost wages, \$15,000 for emotional distress, plus \$30,000 as punitive damages against the manager. Attorney fees are pending.

Hernandez v. Colonial Medical Center and Correa, CCHR No. 05-E-14 (Nov. 28, 2007)
Discrimination Claimed: Color

The Board found no harassment based on color where Complainant, who is black and Panamanian, claimed that a co-worker had treated her rudely and called her derogatory names referencing her dark skin color. Based on the hearing officer's assessment of witness credibility, Complainant failed to prove that the derogatory slurs occurred or that when she complained about the co-worker to management, she had complained of harassment based on her skin color.

Public Accommodation Discrimination Cases

Lapa v. Polish Army Veterans Association et al., CCHR No. 02-PA-27 (March 21, 2007)
Sexual Orientation

The Board found sexual orientation discrimination where officers of the Respondent organization, in whose building Complainant rented office space, created a hostile environment by repeatedly directing perjorative and vulgar references to him as homosexual and failed to take corrective action after Complainant complained about this treatment. The Board found no violation in connection with the termination of Complainant's lease because he had a long history of failure to pay rent and issuing rent checks returned for insufficient funds, so his tenancy would have been terminated even if his sexual orientation had not been considered. The Board awarded \$2,400 in emotional distress damages and \$4,000 in punitive damages for the harassment, apportioned among the Respondents based on their level of culpability, and imposed fines ranging from \$100-\$500 against each Respondent. Attorney fees were pending at year-end.

Blakemore, Evans, Shepard, and Turner v. Bitritto Enterprises, Inc. d/b/a Cold Stone Creamery #0430 and Ernst, CCHR Nos. 06-P-12, 13, 14, 15, 24 (Mar. 21, 2007)
Race Discrimination

After an order of default, the Board found a *prima facie* case of race discrimination where African-American customers of an ice cream shop were not given coupons the store manager was dispensing to similarly-situated white customers, then were told to leave and never return by the store manager, who stated they made her feel uncomfortable and threatened to call police. The Board also found a *prima facie* case of retaliation where, after receiving notice of filing of the race discrimination complaint, the store manager refused to allow one Complainant to re-enter the store and threatened to call police. The Board imposed fines of \$300 against the business and \$400 against the store manager. The Board awarded \$1,000 each in emotional distress damages to the three prevailing Complainants for the race discrimination, apportioned 50% against the business and 50%

against the store manager, plus an additional \$1,000 to the Complainant who experienced retaliation, assessed against the store manager. One Complainant's case was dismissed due to arriving at the hearing two hours late, responding rudely and profanely to the hearing officer and refusing to comply with her instructions, and showing disrespect for Commission rules and procedures.

Morrow v. Tumala, CCHR No. 03-P-2 (Apr. 18, 2007)
Race and Sex Discrimination

After an order of default, the Board found a *prima facie* case of race and sex discrimination where a female, African-American taxicab passenger was told by the driver that she must pay at the rate of a meter and a half to travel from downtown Chicago to her home in Oak Park. After she refused, exited the cab, and hailed another cab to take her to Oak Park, she told the driver of the second cab what happened. The second driver observed the cab with the number Complainant mentioned right in front of them, with a passenger inside. Complainant saw the cab drop off the white, male passenger in Oak Park, one block from Complainant's home. The passenger told Complainant he was asked to pay only straight meter, not a meter and a half. The Board awarded Complainant \$50 in out-of-pocket damages for travel costs to pursue her claim at the Commission, \$5,000 as emotional distress damages, and \$3,000 as punitive damages. The Board imposed a fine of \$500.

Williams v. Bally Total Fitness Corp., CCHR No. 05-P-94 (May 16, 2007)
Discrimination Claimed: Race

Based on the hearing officer's assessment of the credibility of Complainant and Respondent's witnesses, the Board found that Complainant failed to establish that the actions of an employee of a health club facility which Complainant frequented had curtailed his use of that public accommodation because of his race in connection with an incident when the employee attempted to enforce the club's closing policy by standing near Complainant and telling him it was time to leave.

Housing Discrimination Cases

There were no Board rulings in housing discrimination cases in 2007.

Other Hearing Stage Activity

Post-investigation adjudication activity remained at a fairly high level in 2007. At year-end, the Commission's docket included 20 complaints scheduled for mandatory mediation after a substantial evidence finding and 33 complaints in the administrative hearing or Board ruling process, for a total of 53 cases pending in post-investigation proceedings, compared to 50 at the end of 2006 and 34 at the end of 2005.

In addition to the Board rulings described above, 18 cases were resolved by settlement in the context of the mandatory conciliation conference. This was 34% of the 53 conciliation conferences held in 2007. These settlements made it unnecessary to initiate the administrative hearing process. For comparison, there were 21 settlements at conciliation in 2006 and 6 in 2005.

Another 16 cases were settled during the administrative hearing or pre-hearing process in 2007, compared to 12 in 2006 and 8 in 2005. As a result of these settlements, full administrative hearings and/or Board rulings were not necessary. Seven more cases which had been forwarded to the hearing stage were dismissed due to complainant withdrawal or failure to appear for scheduled proceedings.

Reduction of Investigation Backlog

The Commission has been concerned for some years about the length of time it has taken to complete the full investigation of many complaints. In 2007, the Commission built on the progress made in 2005 and 2006 to further reduce the volume and age of pending investigations as well as the size of investigator caseloads. By the end of 2007 the number of pending investigations was reduced to 303, compared to 796 at the end of 2004. The number of investigations pending for more than one year was reduced from 528 to 150 over the same three-year period, and the average individual investigator caseload dropped from 72 to 30. The Commission is working to reduce this volume further during 2008 and to streamline its procedures in order to prevent future buildup of caseload and reach the goal of completing most investigations within a few months of complaint filing.