



**City of Chicago**  
**COMMISSION ON HUMAN RELATIONS**  
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654  
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

**IN THE MATTER OF:**

Charles Harris  
**Complainant,**

v.

Dunkin Donuts, Baskin Robbins and a Female  
Cashier  
**Respondents.**

**Case No.:** 05-P-97

**Date Mailed:** August 22, 2008

**TO:**

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**FINAL ORDER**

YOU ARE HEREBY NOTIFIED that, on July 16, 2008, the Chicago Commission on Human Relations issued a ruling in favor of Respondents in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby **DISMISSED**.

Pursuant to Commission Regulations 100(15) and 250.150, Complainant may seek review of this Order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law.

CHICAGO COMMISSION ON HUMAN RELATIONS  
Dana V. Starks, Chair and Commissioner



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## **FINAL RULING ON LIABILITY AND RELIEF**

### **I PROCEDURAL HISTORY**

Complainant Charles Harris filed a Complaint against Dunkin' Donuts, Baskin Robbins, and a female cashier (sometimes collectively referred to as "Respondents") alleging that Respondents discriminated against him because of his race and sex. The Commission found substantial evidence of race and sex discrimination. An administrative hearing was held on January 22, 2008; both parties were represented by counsel. No objections were filed to the First Recommended Decision.

Respondents' filed a motion requesting that the Hearing Officer take a negative inference against Complainant because his counsel failed to produce any documents in response to a Request to Produce Documents. Complainant did not introduce any documents during the hearing or call any witnesses other than Complainant himself. The Hearing Officer therefore found no prejudice to Respondents and declined to issue any sanctions, including any negative inference, under Commission Regulation 240.463. Although Complainant's counsel should have formally responded to the Request to Produce Documents, even if there were no responsive documents to be produced, there is no relevant negative inference to be drawn.

### **II FINDINGS OF FACT**

Adopting the Hearing Officer's recommendations, the Commission makes the following factual findings:

1. Complainant Charles Harris, a 76 year-old African-American male, went to Dunkin' Donuts to drink coffee and eat donuts on August 19, 2005 at 5:44 p.m. The store was located in the vicinity of 4767 North Milwaukee, Chicago, Illinois. (Tr. 9-10,13). It is combined with a Baskin Robbins store (Complaint, ¶2)
2. Complainant told the female cashier who waited on him that he wanted to use the restroom. She told him there was no water in the restroom and would not allow him to use it. A Caucasian woman entered the store, asked to be buzzed into the restroom, and was allowed to enter it. After the woman exited the restroom, Complainant asked her if she was an employee of Dunkin' Donuts, to which she replied in the negative. (Tr.14,16)
3. Vasha Patel has been the owner and manager of the Dunkin' Donuts store in question since

1991. Patel testified that, as required by franchise headquarters, shift leaders are trained to perform certain functions every ten minutes, such as taking the indoor and outdoor temperatures and checking the restroom and tables. Any issue such as disrepair must be noted in the daily log. (Tr. 27-28, 30) The logs are maintained for three or four years. Exhibits 2 and 3, which are admitted into evidence, are logs kept by the Dunkin' Donuts store of which Patel was the manager and Complainant a customer. (Tr.28-29) Entries are made in the log books every day of the week. (Tr.32)

4. There is an entry in the Manager's Red Book for August 18, 2005 that a plumber should be called to fix the cabinet door and faucet in the restroom. (Respondents' Exhibit 3, August 18, 2005). Patel testified that there is a notation that Respondents did call a plumber to fix the restroom. (Tr.35) There is another entry for August 19 in the Manager's Red Book stating that there was "no water in toilet" and "close pm out of order." (Respondents' Exhibit 3, August 19, 2005) Patel testified that Respondents had been having a problem with the faucet leaking and not getting hot water. The restroom room was open for the morning rush hour on August 19. (Tr. 36) The plumber told Respondents he would return with some materials to perform the repairs and that during that time, the restroom would not be open. (Tr. 36) Patel testified that the water was shut off in the afternoon and evening, so the restroom was closed to the public. Respondents put a sign on the restroom door announcing this. (Tr.37-38) During the afternoon of August 19, the repairman told Patel that there was a problem with both the hot and cold water and with the boiler, and that he needed to shut off the water. (Tr. 57, 60) Patel testified that the repairman finished the work on August 20, but there is nothing in the log book that reflects when he came to start the repairs. (Tr.62, 84) On August 20, 2005, water was leaking "all over the floor" so the restroom remained closed. The repair job was completed at night on August 20, 2005. (Tr.37-38) Patel stated that she took photographs depicting the problems in the restroom before she even knew that Harris had filed a Complaint. (Tr.51) Patel did not hear the conversation between her employee and Harris relating to his request to use the restroom. (Tr.54) Patel testified without objection that her employee told her that the Caucasian woman who came into the store and requested to use the restroom was told that it was out of order, but she actually requested entry into the restroom to look for her keys. Patel testified that she was told the woman had been at the store earlier that morning and thought she may have left her keys in the restroom. She was allowed into the restroom to look for them. (Tr.90-91)
5. There is a notation in the log book on August 19, 2005 which states "out of order" under the category Rest Rooms. (Tr.55) There is also a notation on the same day there was no water in the restroom and that the water was shut off. (Tr. 55-56) There is no notation in the log that there was any problem with the restroom on August 9. (Tr.94)
6. Dexter Quade, a customer at the store and a retired Chicago police officer, wrote a letter dated August 21, 2005, in which he stated that he had been at the Dunkin' Donuts store at 4867 N. Milwaukee, Chicago Illinois on August 19, 2005. The letter, Respondents' Exhibit 4, was admitted without objection. (Tr. 42) Quade wrote that an African-American male had entered the Dunkin' Donuts at 4:45 p.m. When the man "got into a shouting incident" with an employee, Quade asked what the problem was. The cashier stated that the man wanted to use the restroom but the clerk had told him it was out of order. Quade said there was a sign on the restroom door which stated that it was "out of order."(Respondents' Exhibit 4).
7. Ruth Reed, an African-American female, worked at Dunkin' Donuts during the time in question. She was responsible for cleaning the restroom and taking out the garbage. She usually worked

from 1:00 p.m. until 5:00 or 6:00 p.m., and was working on August 19, 2005. Reed testified that on that evening, the restroom was not open to customers, and there was a sign up stating it was out of order. (Tr.98-100,125) Reed testified that the restroom was not working during Complainant's visit to the store. (Tr.100,121-122)

8. Reed testified that a woman who had visited the store during the morning of August 19 returned in the afternoon, stating that she had lost her keys. She asked to go into the restroom to look for her keys and was buzzed in.
9. Reed testified that she saw the sign stating the restroom was out of order on August 19. The sign had been put up by the manager, Vasha. Reed testified that Exhibit 1A, a photograph of the restroom, accurately portrayed its condition on August 19, 2005. She heard Complainant request to use the restroom, and the sign was up stating that it was out of order. (Tr.102) Reed testified that when Susan, a Dunkin' Donuts employee, told Complainant the restroom was out of order, he became angry. (Tr.103) Reed testified that there was no running water in the restroom at the time. (Tr.127-128) José was repairing the restroom that afternoon while she was at work.
10. José Rodriguez worked for Mega & Deco Realty. He testified that he repaired the water and cabinet in the restroom of the Dunkin' Donuts store at 4868 North Milwaukee in August 2005. He identified Exhibit 1A as showing the restroom he repaired. Rodriguez was told of the problem with the restroom by Vasha. He told an employee at Dunkin' Donuts that day that he had to shut the water off and that he was going to buy a new cabinet. (Tr. 139-140) Rodriguez told the employees at Dunkin' Donuts to put up a sign that the restroom was not working. Rodriguez did not remember the exact day he told them to put the sign up, nor did he remember the exact day he made the repairs. (Tr.141-142) He stated that the water was leaking and that is why he shut the water off after 3:00 p.m. (Tr. 144)

### **III CONCLUSIONS OF LAW**

1. Section 2-160-010 of the Chicago Municipal Code provides in relevant part as follows:

It is the policy of the City of Chicago to assure that all persons within its jurisdiction shall have equal access to public services and shall be protected in the enjoyment of civil rights, and to promote mutual understanding and respect among all who live and work within this City

Section 2-160-070 provides:

No person that owns, leases, rents, operates, manages or in any manner controls a public accommodation shall withhold deny, curtail, limit or discriminate concerning the full use of such public accommodation by any individual because of the individual's race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income.

Section 2-160-020(j) of the Municipal Code defines a public accommodation as "a place, business establishment or agency that sells, leases, provides or offers any product, facility, or service to the general public..."

Dunkin' Donuts and Baskin Robbins are business establishments that provide or offer services

to the general public. Commission Regulation 510.110 specifically lists restaurants as an example of a public accommodation.

2. It is undisputed that the restroom at Dunkin' Donuts was generally open to either to all members of the public or at least to customers of Dunkin' Donuts. As such, it is a public accommodation.
3. Complainant established a *prima facie* case of race and sex discrimination. Respondents had a duty not to discriminate with respect to the provision of a public accommodation. *Craig v. New Crystal Restaurant*, CCHR No. 92-PA-40 (Nov. 18, 1995). Complainant's testimony was sufficient to support an inference that the reason he was not allowed to use the restroom was because he is male and African-American under the indirect evidence standards established by *McDonnell Douglas v. Green*, 411 U.S. 792, 73 S.C. 1817 (1973), and followed by the Commission: (1) As an African-American male, Complainant is a member of a protected class under the Chicago Human Rights Ordinance; (2) Complainant requested to use the restroom at Dunkin' Donuts and was not permitted to do so; (3) Complainant met all objective non-discriminatory qualifications for the use of the restroom in that he was a customer of Dunkin' Donuts; and (4) Complainant saw a Caucasian woman buzzed into the restroom after he was denied permission to use it. See *Trujillo v. Cuauhtemoc Restaurant*, CCHR No. 01-PA-52 (May 15, 2002); *Blakemore v. General Parking*, CCHR No. 01-PA-52 (Feb. 21, 2001); *Brown v. Emil Denmark Cadillac*, CCHR No. 96-PA-14 (Nov. 18, 1998).
4. Respondents had the burden of proof to show that Complainant was not denied the use of the restroom because of his sex or race, by articulating one or more legitimate non-discriminatory reasons for the denial. Respondents met this burden. Dunkin' Donuts kept log books which showed that there was a problem with the restroom and that during the afternoons of August 18 and 19, 2005 (and on other dates), a sign was displayed stating that the restroom was out of order. Respondents' Exhibits 2 and 3 were admitted without objection as business records. The Rush Ready Checklist for August 19, 2005 clearly and unequivocally stated that the restroom was closed "pm" and was out of order. The entries for that date further reflect there was no water in the toilet.
5. The testimony and exhibits were consistent that the restroom at the Dunkin' Donuts store needed repairs and was closed to all customers when Complainant requested to use it. Both Patel and Reed testified that a sign was put up in the afternoon of August 19, 2005 indicating that the restroom was out of order. Quade, a retired Chicago police officer, submitted a letter dated August 21, 2005, which was admitted without objection. Quade stated that on August 19, 2005, he heard an African-American customer request to use the restroom and this customer was told that it was out of order. Quade also stated that there was a sign up which stated the restroom was out of order. Reed, an African-American woman who worked at Dunkin' Donuts on August 19, 2005, credibly testified that she heard the Caucasian woman request to use the restroom solely to look for her keys which she had lost earlier that day. Rodriguez, who did the repairs on the Dunkin Donuts restroom, could not remember when in August 2005 he made those repairs. He did testify that a sign was put up stating the restroom was out of order and that Exhibit 1A is a photograph of the restroom he repaired. Reed identified the same photograph as accurately portraying the condition of the restroom on August 19, 2005, and also that she saw Rodriguez repairing the bathroom on August 19.
6. In light of the legitimate, non-discriminatory reasons articulated and supported with evidence, Complainant had the burden to establish that Respondents' defense was a pretext for

discrimination. *Chimpoulis and Richardson v. J. & O. Corp. et al.*, CCHR No. 97-E-123/127 (Sept. 20, 2000). Complainant failed to establish any credible basis to conclude that Reed falsely testified that the restroom was out of order on August 19, 2005 in the afternoon or that she heard the Caucasian woman ask to use the restroom only to look for her keys. Nor did Complainant establish a basis to reject the testimony of Patel, the owner of the Dunkin' Donuts franchise, as to the need for repairs in the restroom on August 19, 2005 and that the restroom was closed to the general public in the afternoon. Reed's and Patel's testimony was corroborated by the log books and by Quade's letter.

7. Complainant argued that the entries for August 19, 2005 could have been fabricated after that date, but there is no credible evidence in the record to support that position. Furthermore, the log books were admitted without objection. If Complainant's counsel believed that the entries in the log book were fabricated, an objection should have been made as to their admissibility into evidence rather than allowing their introduction as records kept in the ordinary course of business.
8. The original log books were present at the hearing. There were no markings which showed any erasures or anything that might establish that representatives of Dunkin' Donuts falsely created the entries which stated that the restroom was out of order and needed repair after Complainant's request to use the bathroom was denied. Complainant's counsel attempted to argue that the restroom was really out of order on August 9, 2005, not August 19, but the log books for August 9 were examined and there were no entries showing the restroom was out of order or closed to the public on that day. Respondents' evidence articulated and supported legitimate non-discriminatory reasons why Complainant was not permitted to use the restroom at Dunkin' Donuts on the occasion in question. No credible evidence of pretext was introduced at the hearing.

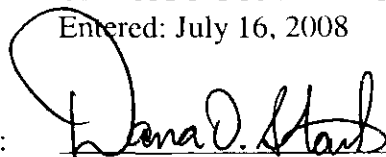
#### IV CONCLUSION

For the reasons set forth herein, the Commission finds in favor of Respondents Dunkin' Donuts, Baskin Robbins, and a female cashier and against Complainant Charles Harris on his race and sex discrimination claim. Accordingly, the Complaint must be dismissed.

CHICAGO COMMISSION ON HUMAN RELATIONS

Entered: July 16, 2008

By:



Dana V. Starks, Chair and Commissioner