



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:

Darryl Williams
Complainant,
v.

First American Bank
Respondent.

Case No.: 05-P-130

Date Mailed: August 22, 2008

TO:

Darryl Williams
333 N. Michigan Ave., #932
Chicago, IL 60601

Cheryl Blackwell Bryson
Duane Morris LLP
190 S. LaSalle Street, Ste. 3700
Chicago, IL 60603

FINAL ORDER

YOU ARE HEREBY NOTIFIED that, on July 16, 2008, the Chicago Commission on Human Relations issued a ruling in favor of Respondent 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

1. INTRODUCTION

On November 30, 2005, Complainant Darryl Williams filed a complaint against Respondent First American Bank alleging that, on November 25, 2005, Respondent denied Complainant use of its restroom because he is male. On September 17, 2007, the Commission mailed an Order Finding Substantial Evidence with respect to the claim of sex discrimination. An administrative hearing was held on February 21, 2008 and March 4, 2008. Both parties filed post-hearing briefs. On May 8, 2008, the hearing officer issued his First Recommended Decision. Neither party filed objections to the First Recommended Decision.

2. FINDINGS OF FACT

The incident that is the subject of the Complaint occurred at Respondent's Wabash Branch, located at Wabash Avenue just south of Roosevelt Road, on November 25, 2005. Teller Supervisor Joel Shute testified that Complainant entered the bank through the rear door from the parking lot and walked past the teller line toward the front door. According to Mr. Shute, Complainant did not stop but stated that he was going to use the washroom. Mr. Shute told Complainant that the bank was not letting members of the public use the washroom. (Tr. 25-26) Mr. Shute testified that Complainant had used the restroom on prior occasions. (Tr. 28) However, according to Mr. Shute, when Complainant entered the bank on November 25, 2005, he was not acting like a customer. (Tr. 326-27)

Mr. Shute testified that Branch Manager Aisha Scott approached and asked Complainant if there was an issue or problem. According to Mr. Shute, Complainant responded that Mr. Shute was not allowing him to use the restroom. Ms. Scott confirmed the policy of which Mr. Shute had previously informed Complainant, and Complainant replied that he was a customer and pulled a transaction from his pocket. Mr. Shute testified that Ms. Scott told Complainant that if he was conducting a transaction, he could use the washroom, but Complainant declined the offer stating that he would let the Commission sort things out. (Tr. 328-29)

When called in Complainant's case-in-chief, Ms. Scott testified that she overheard the discussion between Complainant and Mr. Shute and walked from her desk to the teller line, introduced herself, and asked Complainant if there was a problem. According to Ms. Scott, Complainant replied that Mr. Shute would not allow him to use the washroom, that he was a customer, and that Mr. Shute should have asked him if he was doing business with the bank. Ms. Scott asked if Complainant was there to transact business, and Complainant smirked and pulled a transaction out of his pocket.

According to Ms. Scott, she told Complainant twice that he was welcome to use the restroom but Complainant said something about letting a body like a court handle the situation, took Ms. Scott's card, and stated that she would be receiving something in the mail. (Tr. 61-62, 65-66)

Recalled as a witness in Respondent's case-in-chief, Ms. Scott elaborated on her earlier testimony. She related that she was sitting at her desk, noticed Complainant enter, and heard him say that he was going to use the washroom. She heard Mr. Shute tell Complainant that the bank was not allowing customers to use the washroom and heard Complainant protest that he had used it previously. Ms. Scott testified that she approached the teller line, introduced herself, and asked Complainant if there was a problem. Complainant replied that Mr. Shute would not allow him to use the restroom. According to Ms. Scott, she replied that Mr. Shute was correct and Complainant stated that he had used the restroom before. Ms. Scott asked Complainant if he was a customer. Complainant replied that he was and Ms. Scott asked if he was there to transact business, to which Complainant smirked and pulled out a transaction and said that he was. Ms. Scott testified that she told Complainant that he was welcome to use the washroom, but Complainant complained that Mr. Shute had not asked him if he was a customer transacting business. Ms. Scott reiterated that Complainant was welcome to use the restroom, but Complainant asked for a copy of the written restroom policy. Ms. Scott replied that there was no written policy and Complainant stated that Mr. Shute had not allowed him to use the restroom, he would leave it at that, Ms. Scott would hear from him through the mail, and he would take the matter to the Commission. (Tr. 184-88, 292093)

Complainant did not testify in his case-in-chief. Indeed, in his case-in-chief, Complainant offered no evidence that Respondent denied him use of the restroom. Had Respondent simply rested its case-in-chief after Complainant rested, the record would have contained no evidence that Complainant had been denied use of a public accommodation and his case would have been dismissed. However, in its case-in-chief, Respondent called Complainant as a witness and, in response to Respondent's questions, Complainant went through the complaint and affirmed its accuracy.

The complaint alleged as follows: While making a transaction, Complainant asked Mr. Shute if he could use the restroom and Mr. Shute replied that customers were not allowed to use it. Complainant asked to speak with a manager and Ms. Scott told Complainant that to use the restroom a person had to be a customer performing a transaction, but that even under those circumstances, bank personnel exercised discretion as to who might use the restroom.

The record thus presents a conflict in the evidence as to whether Complainant was denied use of the restroom, as alleged in the Complaint and affirmed by Complainant in his testimony, or whether Ms. Scott offered to allow Complainant to use the restroom and he declined, as testified to by Ms. Scott and Mr. Shute. The Commission adopts the hearing officer's finding that the testimony of Ms. Scott and Mr. Shute is more credible than that of Complainant and concludes that it is more likely than not that Ms. Scott offered Complainant the use of the restroom and he declined the offer.

As indicated above, Complainant did not testify in his case-in-chief or offer any evidence that he was denied use of the restroom. His testimony in Respondent's case-in-chief consisted solely of affirming that the allegations in his complaint were accurate. The allegations of the complaint, however, are inconsistent with the events as captured by Respondent's security cameras. (Comp. Ex. A, Resp. Ex. 8) In particular, the security photos show that the discussion concerning the restroom occurred before Complainant performed a transaction. The security photos show that Complainant's transaction took place after Ms. Scott had returned to her desk. (Resp. Ex. 8, photos time-stamped 15:56:28, 15:58:03, 15:59:28, 16:00:30) Complainant argues that the photos show Ms. Scott present

during his transaction because the time stamp on the photos in which Ms. Scott appears overlaps with the time stamp on his deposit slip. (Resp. Ex. 10) However, the unrebutted testimony of Ms. Scott established that the clocks on the security cameras and the computer system that processes deposits were not synchronized. (Tr. 88) Therefore, the overlap in the time stamps is of no probative value.

Ms. Scott's testimony and Mr. Shute's testimony are corroborated by the accounts of the incident that each wrote contemporaneously and independently. (Resp. Exs. 7 and 9) Most significantly, Complainant was previously untruthful in his representations in this case. At the pre-hearing conference, during discussion of Respondent's motion to compel, Complainant represented that he had never received Respondent's document request or its motion for sanctions. These representations were shown to be false and, in an order dated February 19, 2008, the hearing officer found that Complainant had made material misrepresentations and sanctioned him with an order to pay Respondent's attorney fees. Complainant's conduct in this proceeding substantially undermines the credibility of his testimony.

Accordingly, the Commission finds the testimony of Mr. Shute and Ms. Scott more credible than that of Complainant.¹ The Commission finds that it is more likely than not that Ms. Scott told Complainant that he was welcome to use the restroom and that Complainant declined the offer.

Immediately after Complainant left the bank, a woman entered from the parking lot door. Complainant's Complaint alleged that as he exited the bank, a young black woman asked him if the bank had a restroom and he replied that it did. Complainant waited in his car to see if Respondent would allow the woman to use the restroom. When the woman came out, Complainant asked her and she said that she was allowed to use the restroom, that she was not a customer, and that she was not conducting a transaction. The complaint further alleged that the woman gave Complainant her name and phone number when he told her what he had been through with the bank.

Ms. Scott testified that the woman entered the bank and told Mr. Shute that her husband had just been in the bank and that she needed to use the restroom. Ms. Scott related that she intervened and the woman told her that her husband had been in the bank and took a little long and she needed to use the restroom. Ms. Scott allowed the woman to use the restroom. (Tr. 188-80) Ms. Scott testified that she allowed the woman to use the restroom because the woman indicated that she was Complainant's wife, had been waiting in the car, and needed to use the washroom. She gave the woman the benefit of the doubt that her story was genuine. (Tr. 94, 104-06) Ms. Scott testified that she would have done the same thing if the individual had been a male and had stated that his partner had just been in the bank and he needed to use the restroom. (Tr. 309)

Maria Mora, an account representative, testified that she was present in the bank during the incident. She related that after Complainant left the bank, a woman entered, said her husband had just conducted a transaction in the bank, and asked to use the restroom. According to Ms. Mora, Ms. Scott granted the request.

The Commission finds the testimony of Ms. Scott and Ms. Mora to be credible. The testimony was also undisputed. The woman was not called to testify. Complainant has no personal knowledge of what the woman represented to Ms. Scott, as he was not present for the conversation. The allegations

¹Respondent also offered testimony of its two other employees who were present during the incident in question but their testimony was less detailed, which reflects the distance they were from the incident .

of the complaint as to what the woman told Complainant after she left the bank are hearsay. Accordingly, the Commission finds that it is more likely than not that the woman represented herself to be Complainant's wife and that this representation induced Ms. Scott to grant her request to use the restroom.

Ms. Scott testified that when the Wabash Branch opened, people would come in off the street and ask to use the restroom, and they would be escorted to the restroom. At some point, according to Ms. Scott, a woman who used the restroom left tissue and urine on the floor, and thereafter Ms. Scott decided to restrict the restroom to customers transacting business. (Tr. 180-83) When cross-examined by Complainant in his case-in-chief, Ms. Scott testified, "There wasn't necessarily a new policy in place. It was a policy that we had talked about as far as letting customers or the public use the restroom." (Tr. 62) Immediately thereafter, she testified, "We did have a policy of that at that time. The day that you [Complainant] came in to transact or to do business is when I learned after reaching the teller line that, yes, we did have a policy in place." (Tr. 62) Thereafter, she testified, "No, not that day [November 25, 2005]. I am saying that the day you came in, that policy was actually in effect." (Tr. 63) However, Ms. Scott could not give the date that the restroom policy changed. (Tr. 63)

Mr. Shute testified that he allowed others to use the restroom prior to November 25, 2005. He could not recall if the current restroom policy was in effect at the time he allowed such restroom use. (Tr. 48-49) He also could not specify when the policy took effect. (Tr. 49) Ms. Mora testified that the restroom policy was in effect since the branch opened. (Tr. 378)

3. CONCLUSIONS OF LAW

Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination in public accommodations on the basis of, *inter alia*, sex. Respondent is covered by Section 2-160-070, because Respondent is a business establishment that offers to the general public products and services. Chicago Municipal Code §2-160-020(i). Indeed, the Commission's regulations expressly include banks among its examples of public accommodations. Reg. 510.110(e) However, Respondent contends that its restroom was not a public accommodation because it was not open to the general public.

Respondent is correct that under well-established Commission precedent, the relevant inquiry is whether the particular function or facility at issue is open to the general public, as opposed to whether the respondent generally offers products or services to the public. See, e.g., *Sandy v. Columbia College Chicago*, CCHR Case No. 03-P-177 (June 24, 2004); *Saadah v. Chicago Dept. of Consumer Services*, CCHR No. 01-PA-84/93/95 (Jan. 30, 2002); *Kenny v. Loyola Univ.*, CCHR Case No. 01-PA-44 (Sept. 24, 2001); *Blakemore v. Chicago Dept. of Consumer Services*, CCHR Case No. 99-PA-9/12/20 (Nov. 29, 1999). Such a determination must be made based on the record in the particular case. See *Winter v. Roosevelt Univ.*, CCHR Case No. 94-PA-72 (Apr. 18, 1995).

The record in this case does not establish that use of the restroom at the Wabash Branch was or was not open to the general public as a matter of general bank policy. Ms. Scott and Mr. Shute both testified that when the branch opened, the restroom was open to the general public. Mr. Shute testified that prior to November 25, 2005, he had allowed others to use the restroom and could not specify whether the purported policy restricting the restroom to customers transacting business was in effect at the time. He also could not even estimate when the purported policy took effect. Ms. Scott also could not specify when the purported policy took effect. Ms. Mora testified incorrectly that the policy had been effect since the branch opened.

There was no written policy restricting the restroom to customers transacting business. Nowhere was there a posting that use of the restroom was so restricted. Ms. Scott's testimony concerning the purported policy is very telling. Initially, she testified that she learned of the policy when she reached the teller line at the time of the incident. Then she stated that what she meant to say was that the policy was in effect at the time of the incident. This was after stating that the policy was not new but had been talked about. The testimony concerning the purported policy is too vague to receive much probative weight. Most significantly, although there is no dispute that for some time after the branch opened members of the public were allowed to use the restroom, there is no evidence that after a particular point in time anyone was denied access to the restroom because he or she was not a customer transacting business.

Despite the uncertainty as to whether there was a bank policy limiting restroom access to customers transacting business at the bank, all of Respondent's staff testified that on the day in question, access to the restroom was being restricted to customers transacting business although it was a service available to such customers and persons accompanying them. As such, restroom use was, at minimum, an aspect of the public accommodations the bank was offering, so that the Commission has jurisdiction to consider whether discrimination occurred.

Restricting restroom access to customers transacting business at the time in question is not inherently discriminatory and is a common practice of many businesses. However, if male customers are treated less favorably than female customers with respect to restroom access, the Chicago Human Rights Ordinance is certainly implicated.

Complainant may establish a *prima facie* case of public accommodation discrimination by proving that he is a member of a protected class, that he sought the use of a public accommodation, that Respondent denied, withheld, curtailed or limited Complainant's use of the accommodation or that he was otherwise discriminated against concerning use of the accommodation, and that similarly-situated persons not in Complainant's protected class were treated more favorably. See, e.g., *Trujillo v. Cuauhtemoc Restaurant*, CCHR Case No. 01-PA-52 (May 15, 2002); *Blakemore v. Inter-Parking, Inc.*, CCHR Case No. 99-PA-120 (Feb. 22, 2001); *Carter v. CV Snack Shop*, CCHR No. 98-PA-3 (Nov. 18, 1998).

Complainant has not met his burden to establish a *prima facie* case of sex discrimination. As discussed in the Findings of Fact, the hearing officer found it more likely than not that Ms. Scott did offer Complainant use of the restroom and Complainant declined the offer. Thus, Complainant has failed to prove that Respondent actually denied, withheld, curtailed, or limited Complainant's use of the restroom in any material respect. All that happened to Complainant was that he was required to confirm that he was a customer of the bank before he was allowed to use the restroom, after he entered the bank in a manner which did not make it clear that he was a customer. That in itself is not discriminatory, nor is it sufficiently invidious, long-lasting, or pervasive in nature so as to constitute an adverse action. See *Blakemore v. Gogola et al.*, CCHR No. 04-P-84 (Apr. 12, 2005); *Blakemore v. Antojitos Guatemaltecos Restaurant*, CCHR No. 01-PA-5 (Apr. 20, 2005); *Love v. Chicago Police Dept. et al.*, CCHR No. 01-PA-34 (July 22, 2005); *Stark v. Chicago Transit Authority*, CCHR No. 04-P-17 (Dec. 19, 2005); and *Blakemore v. Chicago Dept. of Consumer Services et al.*, 98-PA-42 (Dec. 22, 1999).

More importantly, Complainant has failed to prove that similarly-situated women were treated more favorably, i.e. that they were allowed to use the restroom even though they did not appear to be customers transacting business. Complainant's sole comparator is the woman who came into the bank immediately after he left. Yet the undisputed evidence shows that she was given access to the restroom

because she represented herself to have been Complainant's wife, and Ms. Scott testified credibly that she would have granted access to that individual had the individual been a male representing that he was Complainant's partner. Thus, there is no evidence that similarly-situated persons not in Complainant's protected class were treated more favorably than Complainant with regard to restroom access. Complainant has thus not proven a *prima facie* case of sex discrimination with respect to a public accommodation.

By order dated February 19, 2008, the hearing officer ordered Complainant to pay Respondent's attorney fees of \$600 incurred because of his misrepresentations at the pre-hearing conference and his failure to comply with the order of January 29, 2008. Complainant has not filed any request for review of that interlocutory order. Accordingly, the order that Complainant pay Respondent attorney fees of \$600 is reaffirmed.

4. CONCLUSION

For these reasons, the Commission finds for Respondent and so DISMISSES the Complaint.

CHICAGO COMMISSION ON HUMAN RELATIONS
Entered: July 16, 2008

By: 

Dana V. Starks, Chair and Commissioner