

CITY OF NEW YORK  
COMMISSION ON HUMAN RIGHTS

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In the Matter of

Complaint No. M-P-D-15-1031611

COMMISSION ON HUMAN RIGHTS  
ex rel. THOMAS GIBSON,

OATH Index No. 279/17

Petitioner,  
-against-

NEW YORK CITY FRIED CHICKEN  
CORP. and "JOHN DOE,"

Respondents.  
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**DECISION AND ORDER**

On January 15, 2015, the Law Enforcement Bureau of the New York City Commission on Human Rights (the "Bureau") initiated this disability discrimination case by filing a verified complaint ("Complaint") on behalf of Thomas Gibson ("Complainant"). Complainant is blind and requires the use of a service dog to walk. (*See* Office of Administrative Trials and Hearings ("OATH") Transcript ("Tr.") at 22:10-23:10.) The Bureau alleges that New York City Fried Chicken, Corp. ("Fried Chicken Corp."), a restaurant located in Manhattan, and "John Doe," an unnamed employee or owner of the restaurant (collectively, "Respondents"), discriminated against Complainant by ordering him to leave the restaurant because of the presence of his service dog. (Compl. ¶¶ 4-5.) The Bureau claims that Complainant was denied the privileges, advantages, and facilities of a place of public accommodation and was made to feel unwelcome in violation of § 8-107(4) of the New York City Human Rights Law ("NYCHRL"), codified as N.Y.C. Admin. Code Tit. 8. (*Id.* ¶ 6.)

Respondents failed to file a verified answer to the Complaint by February 22, 2015, as required under § 8-111 of the NYCHRL. (Bureau Hearing Ex. (“Bureau Ex.”) D.) The Bureau followed up with three letters warning Respondents that a failure to file a verified answer would prompt an investigation and could ultimately result in a default judgment. (*Id.*) On June 11, 2015, the Bureau received a one-page letter responding to Complainant’s allegations with no verified answer attached. (*See* Bureau Exs. D, E, F, G.) Respondents’ letter included an undiscernible signature and did not identify the signatory. (*See* Bureau Exs. G, H.) The Bureau sent three more letters and called Respondents requesting that they file a verified answer consistent with the Commission’s rules, but Respondents failed to respond. (*See* Bureau Exs. I, K, L.) Respondents also failed to appear at a settlement conference held on September 7, 2016. *See In re Comm’n on Human Rights ex rel. Gibson v. N.Y.C. Fried Chicken, Corp.*, OATH Index No. 279/17, R&R, 2016 WL 7975749, at \*1 (Dec. 29, 2016). On September 29, 2016, the Bureau filed a motion to declare Respondents in default. (*See* Bureau Ex. U; Bureau Comments Ex. 1.)

On October 25, 2016, the case was tried before Administrative Law Judge Noel R. Garcia at OATH. (Tr. 1.) Respondents failed to appear and Judge Garcia declared Respondents to be in default. (*Id.* at 15:21; *see* Bureau Ex. S.) The hearing proceeded as an inquest. (Tr. 15:22.) Following the hearing, Judge Garcia issued a report and recommendation dated December 29, 2016 (“Report and Recommendation”): (1) finding that Respondents were properly served with the notice of trial; (2) finding that Respondents discriminated against Complainant because of his use of a service animal and that Respondents denied Complainant a reasonable accommodation for his disability; (3) recommending an award of \$10,000.00 as compensatory damages for emotional distress; (4) recommending a civil penalty of \$10,000.00; and (5) recommending that

Respondents be ordered to participate in anti-discrimination training and create and implement a store policy in compliance with the NYCHRL. *Gibson*, 2016 WL 7975749, at \*1, 8.

The Bureau submitted timely written comments and objections to the Report and Recommendation. (*See* Bureau Comments); *see also* 47 RCNY § 1-76. In its comments, the Bureau requested that the Commission increase the compensatory damages award to \$25,000.00 and the civil penalty to \$25,000.00. (Bureau Comments 3.) Respondents did not submit comments. (*See* Letter from Zoey S. Chenitz, dated Apr. 5, 2017.)

For the reasons set forth in this Decision and Order, the Commission holds that Respondents are liable for violating § 8-107(4)<sup>1</sup> of the NYCHRL and orders that Respondent Fried Chicken Corp.: (1) pay Complainant \$13,000.00 in emotional distress damages; (2) pay a civil penalty of \$18,000.00; (3) ensure that all of its staff undergo training on the NYCHRL; and (4) submit written anti-discrimination policies to the Bureau for approval and post them in a prominent location in its workplace.

## **I. STANDARD OF REVIEW**

In reviewing a report and recommendation, the Commission may accept, reject, or modify, in whole or in part, the findings or recommendations made by the administrative law judge. The Commission has the final authority to determine “whether there are sufficient facts in the record to support the Administrative Law Judge’s decision, and whether the Administrative Law Judge correctly applied the New York City Human Rights Law to the facts.” *N.Y.C.*

*Comm’n on Human Rights v. Ancient Order of Hibernians in Am., Inc.*, Compl. No. MPA-0362,

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<sup>1</sup> Judge Garcia found that Respondents had discriminated against Complainant on the basis of disability and denied him a reasonable accommodation, in violation of NYCHRL §§ 8-107(4) and 8-107(15), respectively. *Gibson*, 2016 WL 7975749, at \*1. The underlying Complaint does not include claims brought under § 8-107(15). The Commission, therefore, limits its review to the claim of disability discrimination under § 8-107(4). (*See* Bureau Comments 3 n.2.)

Dec. & Order, 1992 WL 814982, at \*1 (Oct. 27, 1992); *see also In re Cutri v. N.Y.C. Comm'n on Human Rights*, 113 A.D.3d 608, 609 (2d Dep't 2014) ("As the Commission bears responsibility for rendering the ultimate determination, it was not required to adopt the recommendation of the Administrative Law Judge assigned to the proceeding..."); *In re Orlic v. Gatling*, 44 A.D.3d 955, 957 (2d Dep't 2007) ("it is the Commission, not the Administrative Law Judge, that bears responsibility for rendering the ultimate factual determinations"). The Commission reviews a report and recommendation and the parties' comments and objections *de novo* as to findings of fact and conclusions of law. *In re Comm'n on Human Rights ex rel. Stamm v. E&E Bagels*, OATH Index No. 803/14, Dec. & Order, 2016 WL 1644879, at \*2 (Apr. 20, 2016); *In re Comm'n on Human Rights ex rel. Howe v. Best Apartments, Inc.*, OATH Index No. 2602/14, 2016 WL 1050864, at \*3 (Mar. 14, 2016); *In re Comm'n on Human Rights v. CU 29 Copper Rest. & Bar*, OATH Index No. 647/15, Dec. & Order, 2015 WL 7260570, at \*2 (Oct. 28, 2015).

## **II. THE EVIDENTIARY RECORD**

During the hearing, the Bureau presented testimony from two witnesses, Complainant and Adam Nobles. The documentary evidence includes the Complaint and affidavit of service, dated January 22, 2015 (Bureau Ex. A); the service animal license for Complainant's dog (Bureau Ex. B); the affidavit of Adam Nobles (Bureau Ex. C); six warning letters from the Bureau to Respondents requesting a verified answer, respectively dated March 4, 2015, April 17, 2015, May 28, 2015, June 25, 2015, November 6, 2015, and December 2, 2015 (Bureau Exs. D, E, F, I, K, L); the unverified letter sent by Respondents to the Bureau, dated June 3, 2015 (Bureau Exs. G, H); a letter from Complainant to the Bureau, dated July 14, 2015, rebutting claims made in Respondents' June 3, 2015 letter (Bureau Ex. J); the Bureau's probable cause determination and affidavit of service, dated January 12, 2016 (Bureau Ex. M); Respondents'



New York Department of State business listing (Bureau Ex. N); the notice of referral to OATH and affirmation of service, dated August 4, 2016 (Bureau Ex. O); the notice of settlement conference and affirmation of service, dated August 11, 2016 (Bureau Ex. P); the notice of trial and affirmation of service, dated September 8, 2016 (Bureau Ex. S); the notice of motion to declare Respondents in default with affirmation of service by mail, dated September 29, 2016, and affidavit of in-person service, dated October 19, 2016 (Bureau Exs. U, W); mailing envelopes for notices sent to Respondents, marked as returned to sender or refused (Bureau Exs. Q, R, T, V); corporate records & business registrations, financial information, lien filing record, and New York judgment records for the Respondents (Bureau Ex. X); and customer reviews, photographs of the restaurant's interior, and maps depicting the restaurant's location (*id.*).

Complainant testified that he is “totally blind” and had lost all ability to see by December 2002. (Tr. 22:11-13.) As a result, Complainant uses a service dog to safely navigate public spaces. (*Id.* at 23:4-10.) Complainant testified that his dog, Opus, is well trained, has a calm and quiet demeanor, and wears a harness that clearly indicates that he is a service dog. (*Id.* at 23:11-25:17.)

On December 29, 2014, Complainant entered Fried Chicken Corp. with Opus and his best friend, Adam Nobles. (*Id.* at 27:19-29:7.) During their meal, Mr. Nobles left the restaurant to go outside, at which time Respondent “Doe” loudly told Complainant, “[h]ey you with the dog, you need to get out of here. No dogs are allowed in my restaurant.” (*Id.* at 31:3-9.) Complainant explained to Respondent “Doe” that Opus is a service animal and stated that it would violate the Americans with Disabilities Act to try to remove them from the restaurant. (*Id.* at 31:8-11.) Respondent “Doe” indicated that he “did not care.” (*Id.* at 31:22.) Complainant reiterated to Respondent “Doe” that Opus was a service animal and further stated that he would not leave

until he and Mr. Nobles had finished their meal. (*Id.* at 31:13-17.) While this conversation continued, Mr. Nobles reentered the restaurant and attempted to explain to Respondent “Doe” that Opus was a service animal, stating that federal regulations required that the dog be allowed in the restaurant. (*Id.* at 32:4, 57:24-58:3.) As the two men left after finishing their meal, Respondent “Doe” told Complainant, “I don’t ever want to see you in my restaurant again. Do not come back.” (*Id.* at 32:8-9.) At this point, Complainant informed Respondent “Doe” that he would be filing a complaint at the Commission. (*Id.* at 32:11-12.) According to Complainant, Respondent “Doe” responded by stating, “I don’t care.” (*Id.* at 32:13-14.)

Complainant testified to feeling “extremely upset,” “angry,” and “embarrassed” and that Respondent “Doe’s” comments made him feel “truly unwelcome.” (*Id.* at 36:15-16, 39:3-16.) He described that the incident caused him to start crying when he returned home and that he became embarrassed for his best friend to see him so emotional. (*Id.* at 39:14-19.) Complainant further testified that Respondent “Doe’s” comments brought back feelings that his self-worth was diminished because of his disability. (*Id.* at 36:24-25.) He described having feelings of depression, nightmares, and difficulty sleeping for several months after the incident. (*Id.* at 42:14, 44:8-10.) On account of the incident, Complainant did not go out to any new restaurants for six months and has since altered his routine such that he calls or sends someone ahead to new restaurants before eating there to notify the restaurant of his service animal and ensure that there will not be any problems. (*Id.* at 43:4-44:5.)

Mr. Nobles provided testimony that corroborated Complainant’s version of events. He stated that he heard Complainant explain to Respondent “Doe” that Opus was a service animal more than three times. (*Id.* at 59:9.) He further testified that Complainant left the restaurant “very upset, visibly shaken,” and “very depressed acting.” (*Id.* at 60:3-8.) Mr. Nobles additionally

testified to Complainant's changed routine for eating at new restaurants and confirmed that he was aware that Complainant experienced sleep difficulties and nightmares as a result of Respondents' conduct. (*Id.* at 60:21-61:2.)

### **III. DISCUSSION**

#### **A. Legal Standard**

The NYCHRL expressly states that it "shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed." N.Y.C. Admin. Code § 8-130. Pursuant to the Local Civil Rights Restoration Act of 2005, "[i]nterpretations of New York state or federal statutes with similar wording may be used to aid in interpretation of the New York City Human Rights Law, viewing similarly worded provisions of federal and state civil rights laws as a floor below which the City's Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise." N.Y.C. Local Law No. 85 ¶ 1 (2005). Similarly, case law interpreting analogous anti-discrimination statutes under state and federal law, though perhaps persuasive, is not precedential in the interpretation of the NYCHRL. *See Albinio v. City of N.Y.*, 23 N.Y.3d 65, 73 (2014) ("the New York City Council's 2005 amendment to the NYCHRL was, in part, an effort to emphasize the broader remedial scope of the NYCHRL in comparison with its state and federal counterparts and, therefore, to curtail courts' reliance on case law interpreting textually analogous state and federal statutes.").

#### **B. Respondent N.Y.C. Fried Chicken Corp. Discriminated Against Complainant in Violation of § 8-107(4)(a) of the NYCHRL**

The Bureau charges that Respondents unlawfully discriminated against Complainant on the basis of his disability in violation of § 8-107(4)(a) of the NYCHRL, which makes it unlawful

for a public accommodation, such as a restaurant, “to refuse, withhold from or deny . . . the full and equal enjoyment, on equal terms and conditions, of any of [its] accommodations, advantages, services, facilities or privileges” because of a person’s disability. N.Y.C. Admin. Code § 8-107(4)(a); *see Stamm*, 2016 WL 1644879, at \*7 (holding restaurant to be a place of public accommodation).

Even in a case of default, “[t]he Bureau bears the burden of establishing a *prima facie* case of disparate treatment based on disability.” *Stamm*, 2016 WL 1644879, at \*4. To make out a *prima facie* case under § 8-107(4), the Bureau must establish that:

- (1) complainant is a member of a protected class as defined by the NYCHRL;
- (2) respondent directly or indirectly refused, withheld from, or denied an accommodation, advantage, facility, or privilege thereof based, in whole or in part, on complainant’s membership in a protected group; and
- (3) respondent acted in such a manner and circumstances as to give rise to the inference that its actions constituted discrimination in violation of Section 8-107(4).

*Id.* Alternatively, the Bureau may establish its case with direct evidence of discrimination motivated in whole or in part by the complainant’s protected status. *Id.* Notably, any allegation in the complaint not specifically denied in a verified answer is deemed admitted, absent a showing of good cause. N.Y.C. Admin. Code § 8-111(c); 47 RCNY § 1-14(b).

Here, both the hearing evidence and the uncontested allegations in the Complaint amply support a finding that Respondents unlawfully discriminated against Complainant. Complainant is blind, which qualifies as a disability under NYCHRL § 8-102(16)(a). *See, e.g., Blair v. White Top Car Serv.*, Compl. No. FH388121588-DN, Dec. & Order (Nov. 14, 1991). Furthermore, the undisputed testimony at the hearing established that Complainant was expressly told that he was unwelcome in Respondents’ restaurant because of his service dog and was barred from returning. (Tr. 31:4-32:9); *see Stamm*, 2016 WL 1644879, at \*4 (finding that being made to leave a restaurant and feel unwelcome on account of one’s disability violated NYCHRL § 8-107(4)).

Indeed, Respondents' unverified letter admitted that Complainant was asked to leave the restaurant with his dog. (Bureau Ex. G.) Their discrimination based on Complainant's service animal is akin to discrimination based on his disability. *See, e.g., ISS Action Sec. v. N.Y.C. Comm'n on Human Rights*, 114 A.D.3d 943, 944 (2d Dep't 2014) (finding that there was substantial evidence of disability discrimination where person with a service dog was denied access to a building).

The Bureau having established its *prima facie* case, the burden falls to Respondents to establish "a clear and specific non-discriminatory reason to justify [their] actions." *Stamm*, 2016 WL 1644879, at \*7. Here, Respondents have defaulted by failing to provide a verified answer or appear at the hearing. (Tr. 15:21.) While Respondents' letter provides an alternative explanation of events alleged in the Complaint, claiming that "there was a family with a child having lunch" and "the child was very scared of the dog," the Commission does not afford it any weight, particularly in light of the Bureau's repeated requests for a verified answer and when compared to the credible, sworn testimony of Complainant and Mr. Nobles. (*See* Bureau Exs. G, I, K, L); *see also 1346 Park Place HDFC v. Wright*, 34 N.Y.S.3d 561, 563 (2d Dep't 2016) (finding that "a party may treat a defectively verified, or unverified, pleading as a nullity if the party gives notice with due diligence" to their opposing party.). In failing to participate in the investigatory and adjudicative processes, Respondents have forgone their opportunity to rebut the Bureau's *prima facie* case and are liable for violating § 8-107(4)(a) of the NYCHRL. *See* N.Y.C. Admin. Code § 8-107(13)(a) (making employer strictly liable for its employees' violations of, among other provisions, § 8-107(4)).

#### **IV. DAMAGES, PENALTIES, AND REMEDIAL ACTION**

Where the Commission finds that respondents have engaged in an unlawful discriminatory practice, the NYCHRL authorizes the Commission to order respondents to cease and desist from such practices and order such other “affirmative action as, in the judgment of the commission, will effectuate the purposes of” the NYCHRL. N.Y.C. Admin. Code § 8-120(a). The Commission may also award damages to complainants. *See id.* § 8-120(a)(8). In addition, the Commission may impose civil penalties of not more than \$125,000.00, unless the “unlawful discriminatory practice was the result of the respondent’s willful, wanton or malicious act,” in which case a civil penalty of not more than \$250,000.00 may be imposed. *Id.* § 8-126(a); *see In re Comm’n on Human Rights ex rel. Cardenas v. Automatic Meter Reading Corp.*, OATH Index No. 1240/13, Dec. & Order, 2015 WL 7260567, at \*15 (Oct. 28, 2015) (finding \$250,000.00 civil penalty appropriate where respondent engaged in willful and wanton sexual harassment over a three-year period). Civil penalties are paid to the general fund of the City of New York. N.Y.C. Admin. Code § 8-127(a). In this case, the Commission concludes that damages and penalties should be imposed solely against the corporate respondent, Fried Chicken Corp.

##### **A. Compensatory Damages**

In his Report and Recommendation, Judge Garcia recommended that the Commission award Complainant \$10,000.00 in emotional distress damages. The Bureau, both at the hearing and in its comments, requested an award of \$25,000.00 based on Respondents’ consistent failure to participate in this case. (Bureau Comments 3, 10.)

When valuing compensatory damages in a particular case, the Commission assesses the nature of the violation, the amount of harm indicated by the evidentiary record, and awards that have been issued for similar harms. *In re Comm’n on Human Rights ex rel. Carol T. v. Mutual*

*Apartments, Inc.*, OATH Index No. 2399/14, Dec. & Order, 2018 WL 1899647, at \*9 (Apr. 12, 2018); see *Sch. Bd. of Educ. of Chapel of Redeemer Lutheran Church v. N.Y.C. Comm'n on Human Rights*, 188 A.D.2d 653, 654 (2d Dep't 1992). Other factors that may be relevant to valuing emotional distress damages include "the duration of a complainant's condition, its severity or consequences, any physical manifestations, and any medical treatment." *Carol T.*, 2018 WL 1899647, at \*9 (quoting *N.Y.C. Transit Auth. v. State Div. of Human Rights*, 78 N.Y.2d 207, 218 (1991)).

Complainant has provided detailed, credible testimony as to the emotional harm that he suffered at the hands of Respondents. In addition to feeling "extremely upset," "angry," and "embarrassed," Complainant testified that after this incident he began to feel as though his self-worth was diminished by his disability. (Tr. 36:15-25, 39:16.) He described that the incident "ripped [him] to the core" and negatively impacted his Christmas visit to New York City. (*Id.* at 42:10-16.) When Complainant returned to his mother's home in New Jersey the night of the incident, he cried and found himself without any appetite. (*Id.* at 41:4-7.) For a period of at least six months, Complainant felt depressed and would not visit any new restaurants. (*Id.* at 42:17-21, 44:1-5.) As of the date of the hearing, he testified to feeling apprehensive about going to new restaurants and, to avoid the indignity of repeating his experience at Fried Chicken Corp., he either calls ahead or sends someone into a new restaurant to make sure there will not be any issues with his service dog. (*Id.* at 43:5-19.) After facing Respondents' discrimination, Complainant was unable to sleep without relying on medication for about six to eight months and he experienced recurrent nightmares in which he relived the discrimination at Respondents' restaurant. (*Id.* at 44:6-14.)

Complainant's feelings of being perceived as unequal on account of his disability are similar to those of the complainant in *Riverbay Corp. v. N.Y.C. Commission on Human Rights*, No. 260832/10, 2011 WL 11554353 (Sup. Ct. Bronx Cty. Sept. 9, 2011). In *Riverbay*, the complainant was awarded \$15,000.00 in emotional distress damages after the respondent discriminated against him based on his disability. As a result, the complainant described that he was made to feel "isolated" and like a "second-class citizen." *Id.* at \*4. Similarly, Respondents' hostility toward Complainant in this case caused him to feel like he doesn't "have value like everyone else" and that he's "a lesser person." (Tr. 38:4-6.)

This case also resembles *In re Commission on Human Rights ex rel. De La Rosa v. Manhattan and Bronx Surface Transportation Authority*, OATH Index No. 1141/04, Dec. & Order, 2005 WL 5632050 (Mar. 1, 2005). In that case, the respondent bus driver discriminated against the complainants based on their disabilities, hurling vulgarities at them, wishing that "physical harm befall them, demeaning them in front of the other passengers and refusing to assist them off the bus." *Id.* at \*1. As a result, the complainants experienced anxiety that inhibited them from continuing to take public transportation for short trips and left them feeling helpless about their ability to care for their child. Based on the record in that case, the Commission awarded emotional distress damages of \$10,000.00 to the husband and \$12,000.00 to the wife, respectively. *Id.* at \*2. Similar to this case, the complainants in *De La Rosa* were publicly humiliated by a provider of public accommodation and refused the right to basic services on account of their disabilities. Like Complainant, who now avoids visiting restaurants unless he receives advanced assurances that he will be served with his service dog, the *De La Rosa* complainants opted to forgo certain public transit services because of the indignities they suffered.



The physical manifestations of emotional harm that Complainant experienced also resemble that described in *Munson v. Diamond*, No. 15-Civ-425, 2017 WL 4862789, at \*1 (S.D.N.Y. Oct. 26, 2017). In that case, the court awarded \$15,000.00 in emotional distress damages after the plaintiff was sexually harassed by her supervisor, resulting in her constructive discharge. The plaintiff in that case attested that “she ‘experienced and continue[s] to experience distress, mental anguish, loss of self-esteem, anxiety, disturbed sleep, stomach problems, embarrassment, and migraines,’” as a result of the defendant’s conduct. *Id.* at \*8. Here, Complainant similarly describes a loss of self-esteem, embarrassment, apprehension about potential future discrimination, disturbed sleep, and crying. He does not, however, describe additional physical manifestations such as the stomach problems and headaches experienced by the plaintiff in *Munson*.

After reviewing the full record in light of comparable cases, the Commission finds it appropriate to award \$13,000.00 in emotional distress damages.

#### **B. Civil Penalties**

Judge Garcia recommended civil penalties of \$10,000.00, noting that while Respondent “Doe” did not use particularly offensive language, “his tone and demeanor were aggressive and unwelcoming.” *Gibson*, 2016 WL 7975749, at \*8. He further notes that as a restaurant that serves the public, Respondents’ conduct may have a significant public impact. *Id.* The Bureau has requested a larger award of \$25,000.00, arguing that the willfulness of Respondents’ conduct and their failure to cooperate with the Bureau’s investigation constitute aggravating factors that warrant a heightened penalty. (Bureau Comments 9.)

To determine whether the imposition of a civil penalty will vindicate the public interest, as well as to determine the size of such penalty, the Commission may consider several factors,

including, but not limited to: (1) respondents' size and financial resources; (2) the sophistication of respondents' enterprise; (3) the ability of respondents to obtain counsel; (4) the willfulness of the violation; (5) respondents' cooperation with the Bureau investigation and OATH hearing; and (6) the impact on the public of issuing civil penalties. *See, e.g., Carol T.*, 2018 WL 1899647, at \*12; *In re Comm'n on Human Rights v. A Nanny on the Net*, OATH Index Nos. 1364/14 & 1365/14, Dec. & Order, 2017 WL 694027, at \*8 (Feb. 10, 2017).

Respondents' refusal to cooperate in this proceeding warrants a robust civil penalty. The Bureau presented ample evidence that Respondents were provided with actual notice and opportunity to appear in this case and yet refused to do so. The Bureau provided the affidavit of a process server who delivered the Bureau's motion for default to Fried Chicken Corp. and was advised by the person at the counter that the papers would be "thrown in the trash." (Bureau Ex. W.) Such egregious disregard for the Commission and the NYCHRL requires a heightened civil penalty. *See In re Comm'n on Human Rights v. Tantillo*, OATH Index Nos. 105/11, 106/11 & 107/11, Dec. & Order, 2011 WL 7809914, at \*2 (May 23, 2011) (imposing civil penalty of \$20,000.00 because of respondents' failure to participate in Commission proceedings).

Because of Respondents' refusal to cooperate with the Bureau's investigation or discovery, the record of their size and resources is necessarily limited. Nonetheless, the record reflects that Respondents operate a single restaurant, which has been in business since 2004 in Manhattan's Garment District. (*See* Bureau Exs. N & X.)

The undisputed testimony also indicates that Respondents' discriminatory conduct was willful. First, Respondents were immediately on notice that Opus was a service dog because of the harness he wore. (Tr. 24:19-22.) Complainant and Mr. Nobles repeatedly informed Respondent "Doe" that Opus is a service dog and that not allowing Opus in the restaurant would

violate the law. (*Id.* at 31:9-32:5, 59:6-9.) Respondents' continued mistreatment of Complainant is indicative of willfulness. See *In re Comm'n on Human Rights ex rel. Agosto v. Am. Constr. Assocs.*, OATH Index No. 1964/15, Am. Dec. & Order, 2017 WL 1335244, at \*12 (Apr. 5, 2017) (finding respondent's conduct to be willful where respondent acted intentionally and with disregard for complainant's rights and for the harm that his conduct would cause) (citing to *Smith v. Wade*, 461 U.S. 30, 39 n.8 (1983)).

Respondents' restaurant is located near Penn Station, Port Authority, and Times Square in one of the busiest areas in New York City. As such, their discriminatory conduct is likely to impact large numbers of New York residents and tourists. (*See* Bureau Ex. X.) In light of this large potential impact, the refusal of Respondents to cooperate with the Bureau's investigation, the willfulness of their discriminatory conduct, and penalties in comparable cases, the Commission concludes that a civil penalty of \$18,000.00 should be imposed. See, e.g., *In re Comm'n on Human Rights ex rel. Martinez v. Joseph "J.P." Musso Home Improvement*, OATH Index No. 2167/14, 2017 WL 4510797, at \*13 (Sept. 29, 2017) (\$18,000.00 in civil penalties); *Agosto*, 2017 WL 1335244, at \*13 (\$20,000.00 in civil penalties); *Tantillo*, 2011 WL 7809914, at \*2 (\$20,000.00 in civil penalties).

### **C. Remedial Action**

Additionally, Judge Garcia recommended that the Commission order Respondents to undergo mandatory anti-discrimination training and that they create a store policy in compliance with the NYCHRL. *Gibson*, 2016 WL 7975749, at \*8. The Commission agrees. As set forth below, all staff of Respondent Fried Chicken Corp. are required to attend a Commission-led training. In addition, Respondent Fried Chicken Corp. must develop and post anti-discrimination policies in the restaurant, consistent with the NYCHRL.

## V. CONCLUSION

FOR THE REASONS DISCUSSED HEREIN, IT IS HEREBY ORDERED that Respondents immediately cease and desist from engaging in discriminatory conduct.

IT IS FURTHER ORDERED that no later than 60 calendar days after service of this Order Respondent Fried Chicken Corp. pay Complainant \$13,000.00 in emotional distress damages, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries, a bank certified or business check made payable to Thomas Gibson, including a written reference to OATH Index No. 279/17.

IT IS FURTHER ORDERED that no later than 60 calendar days after service of this Order Respondent Fried Chicken Corp. pay a civil penalty of \$18,000.00 to the City of New York, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries, a bank certified or business check made payable to the City of New York, including a written reference to OATH Index No. 279/17.

IT IS FURTHER ORDERED that no later than 60 calendar days after service of this Order all staff of Respondent Fried Chicken Corp. register for a Commission-led training on the NYCHRL, to be completed no later than 120 days after service of this Order. A schedule of available trainings may be obtained by calling the Director of Training and Development at (212) 416-0193 or emailing [trainings@cchr.nyc.gov](mailto:trainings@cchr.nyc.gov).

IT IS FURTHER ORDERED that no later than 60 calendar days after service of this order Respondent Fried Chicken Corp. submit written anti-discrimination policies to the Bureau for its approval. Upon receiving approval for its policies, Respondent Fried Chicken Corp. must post those policies in a prominent location in its workplace and provide copies of the policies to all employees in their primary language.

Failure to comply with any of the foregoing provisions in a timely manner shall constitute non-compliance with a Commission Order. In addition to any civil penalties that may be assessed against it, Respondent Fried Chicken Corp. shall pay a civil penalty of \$100.00 per day for every day the violation continues. N.Y.C. Admin. Code § 8-124. Furthermore, failure to abide by this Order may result in criminal penalties. *Id.* at § 8-129.

Dated: New York, New York  
September 25 2018

**SO ORDERED:**  
**New York City Commission on Human Rights**



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Carmelyn F. Malalis  
Commissioner/Chair

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