

**COOK COUNTY COMMISSION ON HUMAN RIGHTS**

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Chicago, Illinois 60602

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Ayonna COLLINS, Complainant	)	Case No. 2012PA004
	)	
v.	)	Entered: December 5, 2013
	)	
ST. FRANCIS HOSPITAL and	)	
MISERICORDIA, Respondents	)	

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**ORDER**

Complainant Ayonna Collins (“Collins”) brought this action on May 17, 2012 against Respondents St. Francis Hospital (“St. Francis”) and Misericordia (“Misericordia”), for unlawful discrimination in the use of a public accommodation on the basis of race and disability in violation of Section 42-37(a) of the Cook County Code of Ordinances (“County Code”). Collins alleges that she was detained and searched by a Misericordia employee while exiting the Misericordia gift shop at St. Francis Hospital. Compl., ¶¶ I, II. Having fully investigated Collins’s allegations, this Commission now dismisses her complaint for lack of substantial evidence of a violation of the Cook County Human Rights Ordinance (“Human Rights Ordinance”).

**Background**

Misericordia is a non-profit, charitable organization founded to provide care for individuals with developmental disabilities. Misericordia Questionnaire No. 4; *see also* Misericordia, “About Misericordia,” online at <http://www.misericordia.com/about/default.aspx> (last visited Dec. 3, 2013). St. Francis Hospital in Evanston, Illinois, allows Misericordia to operate a gift shop on premises. Misericordia Questionnaire No. 4; St. Francis Questionnaire No. 2. This gift shop is staffed by Misericordia personnel and residents. Misericordia Questionnaire No. 4. All of the proceeds from the gift shop go to Misericordia. *Id.* And St. Francis Hospital exercises no control over Misericordia or its agents in the operation of the store. *Id.*; St. Francis Questionnaire No. 4.

On January 19, 2012, Collins, her young son and her caregiver went to the Misericordia gift shop in St. Francis Hospital. Compl. ¶ II.B; Misericordia Resp. ¶ II.B. All three are black, and Collins uses a wheelchair as a result of paraplegia and cerebral palsy. Compl. ¶¶ II, II.B. On that day, Misericordia staffed the gift shop with two individuals: a white and non-disabled development manager named Kris McDonell (“McDonell”) and a white and disabled

Misericordia resident.<sup>1</sup> Immediately outside of the entrance of the gift shop, Misericordia had a basket or table of baked goods for sale. Misericordia Questionnaire No. 6; Collins Interview (Apr. 5, 2013). The parties agree that Collins had picked up one of the baked goods (accounts vary between a cake or a loaf of bread) from this area and was holding it when she entered the store. *Id.*

From here, the parties' accounts diverge significantly. Collins told the Commission staff that McDonell was on the phone but stared at her when she entered the store. Collins Interview (Apr. 5, 2013). Collins says she set down the baked good she was carrying inside the store, purchasing a bag of chips or pretzels instead and then tried to leave the gift shop. *Id.* Outside of the gift shop, Collins says that McDonell shouted, "What did you do with that cake you had?" *Id.* Collins believes that McDonell did not notice that she had set down the baked good earlier because McDonell was on the phone. *Id.* According to Collins, McDonell caught up to Collins outside of the gift shop, grabbed her upper arm and rifled through her coat and purse in the lobby of St. Francis Hospital for over five minutes as a crowd formed. *Id.* In Collins's version of events, when McDonell eventually realized that Collins did not have any unpaid for merchandise, Collins said to McDonell something to the effect of, "Just because we are black does not mean we steal." *Id.*

Collins's caregiver told the Commission staff a slightly different story. In his version, McDonell put her hand in front of Collins on her way out of the store to stop her from leaving. Walker Interview (Mar. 11, 2013). The caregiver did not remember McDonell grabbing Collins, a confrontation in the lobby or McDonell searching Collins's purse, but he did say that McDonell moved Collins's coat out of her lap to see if she was carrying any merchandise before letting her leave the gift shop. *Id.*

Perhaps unsurprisingly, Misericordia's story is different yet. In its version, at no point did McDonell accuse Collins of stealing or detain and search her. Misericordia Questionnaire No. 6. According to Misericordia, after Collins purchased the bag of chips or pretzels, she was still holding the baked good she had picked up earlier, and McDonell asked her if she would also like to purchase it. *Id.* Collins allegedly responded, "No. Do you think I am going to steal it?" *Id.* McDonell demurred and then Collins supposedly informed McDonell that Collins's caregiver would return the baked goods to the table outside. *Id.* In an interview with Commission staff, McDonell reiterated that she never touched or searched Collins inside or outside of the store, nor did McDonell even suspect Collins of shoplifting. McDonell Interview (Oct. 9, 2013). McDonell did say, however, that she walked out of the gift shop with Collins after Collins's made her purchase in order to make sure that Collins did not have any trouble egressing in her wheelchair. *Id.*

Fortuitously, the events of January 19, 2012, were also captured by a surveillance camera system. The camera is situated above and behind the cash register area in the Misericordia/St. Francis Hospital gift shop and points toward the doorway of the store. The video shows in

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<sup>1</sup> All parties agree that the Misericordia resident who was present in the Misericordia gift shop in St. Francis Hospital during the events of January 19, 2012, played no role whatsoever in those events.

relevant part that:

<u>Time stamp</u>	<u>Description</u>
11:18:25	McDonell is standing behind the cash register talking on a cellphone.
11:18:25	Collins, her son and caregiver enter the store. Collins goes to the area in front of the cash register and remains there until she leaves.
11:19:50	Collins's caregiver goes back towards the doorway and leaves the camera's view.
11:20:05	Collins's caregiver returns, and another unidentified individual (race unknown) walks into the gift shop behind him.
11:20:30	The unidentified individual leaves the gift shop without making a purchase.
11:21:30	Collins, her son and caregiver begin to exit the gift shop after a transaction at the cash register with McDonell.
11:21:40	McDonell leaves the register area and heads toward the doorway.
11:21:48	McDonell and Collins both stop near the doorway of the store. McDonell is standing behind Collins. McDonnell is not touching Collins, nor is she blocking Collins's exit.
11:22:00	Collins moves further toward the doorway and she and her party leave the camera's view.
11:22:03	McDonell moves further toward the doorway and she leaves the camera's view.
11:22:18	McDonell walks back into the camera's view from the doorway and heads back to the cash register area, while still on the phone.

There is no audio to verify either party's alleged conversations with one another, but what the video images show is that McDonell is on her phone and behind the register for much of the time that Collins was in the gift shop. When Collins leaves the gift shop, McDonell also walks towards the exit, but only after initially sitting down behind the register for a moment. When McDonell gets up to head for the doorway of the store, she walks the longer way around the cash register towards the exit rather than directly pursuing Collins. The video does not rule out the possibility that McDonnell detained and searched Collins after her purchase in the gift store, but if this occurred, it would have been during the 15-18 seconds when Collins and McDonell were together off camera.

## Discussion

The Cook County Human Rights Ordinance (the “Human Rights Ordinance”) states that:

No person that owns, leases, rents, operates, manages, or in any manner controls a public accommodation in Cook County shall withhold, deny, curtail, limit, or discriminate concerning the full use of such public accommodation by any individual on the basis of unlawful discrimination.

County Code, § 42-37(a). The Human Rights Ordinance defines “unlawful discrimination” to include discrimination on the basis of, *inter alia*, race and disability. *Id.* at § 42-31. The Commission must answer three questions to find substantial evidence of a violation of this provision of the Human Rights Ordinance. First, the Commission must discern that the respondent “owns, leases, rents, operates, manages, or in any [other] manner controls” a public accommodation. Second, the Commission must find that the complainant’s full use of that public accommodation has been limited. And third, the limitation on the complainant’s full use of the public accommodation must be because of unlawful discrimination.

The answer to the first question requires that the Commission dismiss Collins’s complaint with respect to St. Francis Hospital. Neither Misericordia nor St. Francis Hospital dispute that the Misericordia gift shop in St. Francis Hospital is a public accommodation. Misericordia Resp. ¶ II.A; St. Francis Resp. ¶ II.A. But the Commission’s investigation shows that St. Francis Hospital does not control the store in such a manner as to be liable for a violation of the Human Rights Ordinance when unlawful discrimination interferes with a complainant’s full use of it; Misericordia does. Misericordia Questionnaire No. 4; St. Francis Questionnaire Nos. 2, 4.

As to the second question, the technical answer is deceptively non-determinative of the remaining claim against Misericordia. After all, the Commission’s investigation shows that Collins was able to physically enter the Misericordia’s facility and successfully engaged in a commercial transaction there. But the question of *full use*, at least under the Human Rights Ordinance, requires a more robust analysis. The language of the Human Rights Ordinance is not so confined as to require that the Commission overlook respondents who relent to grant access or take the money of those few protected persons who are willing endure a respondent’s overt hostility.

The difficulty at this stage of the case is that with the parties telling such dramatically different stories, the Commission cannot easily determine whether Collins was subjected to any conditions so pernicious as to render her physical and economic access something less than full use. While the surveillance video produced by Misericordia and even the testimony of her caregiver cast doubts on Collins’s version of events (*e.g.*, her caregiver did not corroborate Collins’s allegation that McDonnell grabbed her arm and the surveillance video renders Collins’s claim that she was detained and searched for five minutes in front of a gathering crowd a mathematical impossibility), what is left might still support a claim under the Human Rights Ordinance, but for the fatal flaw in Collins’s case discussed below. Assuming the remaining

facts otherwise advanced by Collins in her interview could be found after an administrative hearing, the Commission could determine that even a 20-second detention and search after visiting a store is sufficiently humiliating to discourage the use and to limit the full enjoyment of a public accommodation.

Instead, it is the answer to the third question that requires that Collins's claim against Misericordia proceed no further. There is not substantial evidence that even if Misericordia limited Collins's full use of the gift shop in St. Francis Hospital, it did so out of animus towards Collins's for her race or disability. Collins made no specific allegation in her version of the events that she was detained and searched *because* she is disabled. To the contrary, if the Commission credits Collins's allegations alone and discounts all conflicting assertions, there is only substantial evidence that Collins was detained and searched *and* she is disabled. That is insufficient to prevail on a claim for disability discrimination. Laudable as it would be for the government to protect disabled people from suffering bad outcomes whatever their cause, the Human Rights Ordinance only provides the disabled with legal recourse when they suffer a bad outcome *because they are disabled*.

The same is true of Collins's claim for racial discrimination. Taking only the facts favorable to Collins's claim, the Commission's investigation can only determine that she was detained and searched *and* she is black. There is not substantial evidence to establish that if she was detained and searched, it was *because* she is black. Collins's statement that McDonell was staring at her is insufficient to establish even a *prima facie* case of race discrimination. Collins candidly admitted in her interview with Commission staff that McDonell searched her because McDonell did not see that she had put down the baked good she had come into the shop carrying. That is not the same thing as saying that McDonell searched Collins because she is black. Even if the Commission were to fully discount Misericordia's version of events and accept only Collins's, it would not be inconsistent with the conclusion that McDonell would have stared at, detained and searched a white customer who entered the store carrying an item of merchandise and left without McDonell seeing him put it down.

To say that the Commission's investigation of Collins's claim did not find substantial evidence of a violation of the Human Rights Ordinance is not to say that the Commission does not believe that Collins's felt uncomfortable in the Misericordia gift shop at St. Francis Hospital. Whether or not McDonnell actually stared at Collins (or actually detained and searched her), the social dynamic of a black customer in a store feeling as if he or she is being more closely monitored remains regrettably familiar. *See, e.g.*, Wikipedia, "Shopping While Black," online at [http://en.wikipedia.org/wiki/Shopping\\_while\\_black](http://en.wikipedia.org/wiki/Shopping_while_black) (last visited Dec. 4, 2013) It is instructive that two parties to exactly the same four minute interaction can have such markedly different experiences of it. Even though there is no legal remedy from this Commission for Collins's injury, Misericordia must appreciate that Collins felt unwelcome during her visit to their gift shop in St. Francis Hospital. To the extent that such discomfort was attributable in any way to Collins's perception, accurate or not, that McDonell assumed the worst about her, it should come as no surprise that behavior that McDonell may have intended as helpful, such as making sure that a customer in a wheelchair could safely egress a shop, would be received as threatening. Relief from pending litigation should not be interpreted as relief from continued engagement in difficult and open conversations about the pernicious interplay of internalized stereotypes,

unconscious bias, racial experience and misunderstanding.

**Conclusion**

For the foregoing reasons, the Commission orders that complaint 2012PA004 be DISMISSED for LACK OF SUBSTANTIAL EVIDENCE of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), any party may file a request for reconsideration with the Commission within 30 days of the date of this order.

December 5, 2013

By delegation:

A handwritten signature in black ink, appearing to read 'R. Hakim', is written over a horizontal line.

Ranjit Hakim  
Executive Director of the Cook County  
Commission on Human Rights