

**COOK COUNTY COMMISSION ON HUMAN RIGHTS**

69 West Washington, Suite 3040  
Chicago, Illinois 60602

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Louise DAVENPORT, Complainant	)	Case No. 2011PA003
	)	
v.	)	Entered: February 5, 2014
	)	
INTERSTATE BLOOD BANK, INC. <sup>1</sup>	)	
Respondent	)	

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**ORDER**

On April 13, 2011, Complainant Louise Davenport (“Davenport”) filed a complaint with the Cook County Commission on Human Rights (“Commission”). The complaint alleges that Respondent Interstate Blood Bank, Inc. (“IBB”) violated the Cook County Human Rights Ordinance (“Human Rights Ordinance”) when it refused to purchase Davenport’s blood because she is homeless. The Human Rights Ordinance prohibits discrimination in the full use of a public accommodation in Cook County on the basis of unlawful discrimination. See Cook County Code of Ordinances (“County Code”), § 42-37(a). Unlawful discrimination includes, *inter alia*, discrimination by a respondent on the basis of a complainant’s housing status. *Id.* at § 42-31. The Commission, however, dismisses Davenport’s complaint because mandatory federal regulations precipitated IBB’s refusal to accommodate Davenport. A public accommodation doing business in Cook County cannot be faulted for abiding by federal law. To the extent that federal law itself may be discriminatory, the issue must be addressed in the first instance by those expert scientists, researchers and policymakers at the U.S. Food and Drug Administration (“FDA”) and elsewhere responsible for the federal regulation of blood banks and biological products, not the investigators and attorneys of this local Commission.

**Background**

IBB is located in the Albany Park neighborhood of Chicago, Illinois, where it pays donors for blood plasma donations.<sup>2</sup> See Ltr. of Larry Moss (Sept. 20, 2011). IBB in turn sells this blood product to biomedical and biomechanical manufacturers. *Id.* IBB is a for-profit

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<sup>1</sup> The complaint as originally filed named the respondent as “Interstate Blood Services.” The Commission has substituted the correct name of “Interstate Blood Bank, Inc.”

<sup>2</sup> Participants in the for-profit blood and blood product supply industry may take the view that donors are being compensated for their time in making a donation and not directly for the sale of their blood. See, e.g., The Interstate Companies, “Plasma Step-by-Step,” online at <http://www.interstatebloodbank.com/plasmastep.asp> (last visited Feb. 4, 2014) (“After your donation, you will be compensated for your time.”). The distinction may be of interest to medical ethicists, see, e.g., Catherine Tay and Sim Leng, “Biomedical Ethics and Medical Law in Blood Transfusion Practice” 15-17 (Armour Publishing 2010), but is of no consequence to the Commission’s decision here.

affiliate of the Interstate Companies, a national supplier of human blood and blood components. *See id.*; The Interstate Companies, “Welcome to the Interstate Companies,” online at <http://www.interstatebloodbank.com/plasmastep.asp> (last visited Feb. 4, 2014).

On December 23, 2010, Davenport visited IBB in an attempt to sell her plasma. *See* Compl. ¶ II.A, B. Davenport was asked to provide an address. *Id.* at ¶ II.B. She provided two: a mailing address at the U.S. Post Office located at 433 W. Harrison in Chicago, Illinois, and a second at 400 S. Wacker. *Id.* The Commission’s investigation shows that 400 S. Wacker is not the address of a particular residential building, but rather, as Davenport characterizes it in her complaint, the approximate location of “a spot on lower Wacker Drive.” *Id.*

The parties disagree about whether IBB staff ever indicated to Davenport that these two non-residential addresses were acceptable, but it is uncontested that IBB did not purchase Davenport’s blood on December 23, 2010. Questionnaire Resp. No. 5; *compare id.* at Exh. 1 *with* Compl. ¶ II.C. Davenport alleges that IBB requested that she produce a social security card and a piece of mail before she could proceed further. Compl. ¶ II.D.

Davenport returned to IBB with both items on January 13, 2011. *Id.* At this point, Davenport alleges that IBB informed her that she could not sell her blood unless she could produce a piece of mail from a residential address. *Id.* at ¶ II.E. Davenport stated that she cannot receive mail where she resides on lower Wacker Drive but that she can receive mail at the post office on Harrison. *Id.* at ¶ II.F. IBB contests a few of the details in Davenport’s version of events, but ultimately all parties agree that Davenport was not allowed to sell her blood to IBB because IBB could not accept 400 S. Wacker as a residential address. *See id.* at ¶ II.I; Questionnaire Resp. No. 5, Exh. 1.

## Discussion

The Human Rights Ordinance prohibits any person “that owns, leases, rents, operates, manages, or in any manner controls a public accommodation in Cook County” from “withhold[ing], deny[ing], curtail[ing], limit[ing], or discriminat[ing] 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, *inter alia*, discrimination on the basis of housing status. *Id.* at § 42-31.

That IBB operates as a for-profit company that pays donors (unlike non-profit blood banks that rely on volunteer-donor, such as the Red Cross) does not prevent IBB from being a public accommodation under the Human Rights Ordinance. As used in the Human Rights Ordinance, the term “[p]ublic accommodation” means any “person, place, business establishment, or agency that sells, leases, provides, or offers any product, facility, or service to the general public in Cook County, regardless of ownership or operation.” *Id.* at § 42-31. The Commission’s investigation finds that IBB is a business establishment that engages in the commercial exchange of money for blood plasma with donors in Cook County. That IBB would prefer to engage in those commercial exchanges with certain donors and not others does not render IBB a private club beyond the purview of antidiscrimination laws any more than a fast food chain that insists on shirts and shoes for service. Both are sufficiently open to the general public to be public accommodations for the purpose of the Human Rights Ordinance. IBB can

be selective about its donors, but in the ordinary course, cannot refuse to engage in a commercial exchange with a donor because of his or her age, ancestry, color, disability, gender identity, housing status, marital status, military discharge status, national origin, parental status, race, religion, sex, sexual orientation or source of income.

The Human Rights Ordinance, however, is not the only law applicable to the way in which IBB conducts its business in Cook County. Federal law defines blood components or derivatives as “biological products” and requires that any person introducing such products into interstate commerce be licensed by the FDA to do so. *See* 42 U.S.C. § 262(a), (i). As a condition of licensure, FDA regulations require that companies trafficking in biological products, such as IBB, obtain and maintain donor records, including “[t]he donor’s address provided at the time of donation where the donor may be contacted within 8 weeks after donation.” 21 C.F.R. § 606.160(b)(1)(x). These records requirements relate, *inter alia*, to regulations pertaining to the individualized traceability of the donor of blood and plasma products. *Id.* at §§ 640.32, 640.64(d) (“Each unit of blood and plasma shall be so marked or identified by number or other symbol so as to relate it directly to the donor.”). As required by federal law, IBB has developed over 1,500 pages of standard operating procedures for blood and plasma donations with the oversight and approval of the FDA in an attempt to conform with various federal rules and industry norms, including the donor residency requirement. *See also id.* at § 606.100 (requiring standard operating procedures of federal licensees).

The Commission’s investigation finds that IBB declined to do business with Davenport, not because of any particularized antipathy towards her as a homeless individual, but rather because federal law does not allow IBB to purchase or sell blood plasma when it does not have the required record of where the donor of that blood plasma can be reliably contacted. It was not unreasonable for IBB to conclude that the address of a post office or Davenport’s approximate physical location along lower Wacker Drive did not comply with federal law.<sup>3</sup> The Commission contacted several non-profit blood banks that represented that they also have non-transient residency requirements for unpaid blood donors as a result of federal law.

While federal rules regarding the residence of blood donors impact non-homeless individuals as well,<sup>4</sup> the Commission is aware that these particular federal rules work to the particular disadvantage of a disadvantaged group. The suspicion may be that like federal rules establishing a *de facto* prohibition against gay men from donating blood, the non-transient residency requirement has more solid footing in unwarranted stereotypes than medical science. *Cf.* U.S. Department of Health and Human Services, “Blood Donations from Men Who Have Sex with Other Men Questions and Answers” online at

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<sup>3</sup> As part of this investigation, the Commission has had mail that it posted to Davenport at her 433 W. Harrison address returned as undeliverable. Similarly, during visits on January 27, 2014 and February 3, 2014 by Commission staff to inspect the location of 400 S. Wacker, no individual, Davenport or otherwise, could be located and there did not appear to be a reliable method for contacting an individual who might use that location as a residence when he or she is not physically present.

<sup>4</sup> The industry practice is also to treat short-term housing, such as hotels and motels, as insufficiently permanent to comply with federal law. *See* International Quality Plasma Program, “Community Based Donor Standard” 4 (Rev. 2009), online at [http://www.pptaglobal.org/images/IQPP\\_Community-based\\_V3\\_0.pdf](http://www.pptaglobal.org/images/IQPP_Community-based_V3_0.pdf) (last visited Feb. 4, 2014)

<http://www.fda.gov/biologicsbloodvaccines/bloodbloodproducts/questionsaboutblood/ucm108186.htm> (last visited Feb. 4, 2014); American Medical Association, "AMA opposes lifetime ban on gay men donating blood," AMA Wire, online at <http://www.ama-assn.org/ams/pub/amawire/2013-july-03/2013-july-03-gibt.shtml> (last visited Feb. 4, 2014).

Major issues of public health are beyond the ken of the Commission's expertise, but dissatisfaction with federal blood donation requirements has some intuitive appeal. After all, as a theoretical matter, it is equally possible that a homeowner could move from the address of her residence and be impossible to locate less than two months after selling her plasma as it is that a homeless individual could credibly commit to be in the same physical place, whether or not that place has an official postal destination address, every day for two months so as to be perfectly locatable. Federal law, so the argument would go, better addresses the admittedly important public health concerns about commerce in blood and other biological products with the existing testing requirements that apply without regard to the permanence (or impermanence) of a donor's residence. *See, e.g., id.* at §§ 610.40, 640.5, 640.33, 640.67.

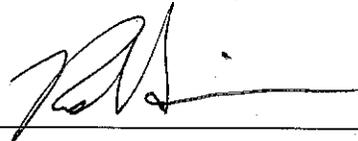
Whatever discomfort one may have with this particular federal law, the appropriate response is not for the Commission to unilaterally punish Cook County businesses for complying with the arguably discriminatory mandates of another regulator. Doing so would not incentivize the creation of a public accommodation free from discrimination; rather, the Commission would only succeed in jeopardizing IBB's existence and the federal licenses of any other blood banks or vendors of biological products operating within its jurisdiction. Instead, the disparate impact of federal regulations on homeless (and other) individuals, to the extent that they exist, should be part of the considered policy debate that is taking place at the FDA and elsewhere in the federal government. *See* Associated Press and Alexandria Fisher, "Illinois Congressman Joins Push to End Ban on Gay Blood Donors," NBC Chicago, online at <http://www.nbcchicago.com/blogs/ward-room/Illinois-Congressman-Joins-Push-to-End-Ban-on-Gay-Blood-Donors-218217362.html> (last visited Feb. 4, 2014).

### Conclusion

For the foregoing reasons, the Commission orders that complaint 2011PA003 be DISMISSED for LACK OF SUBSTANTIAL EVIDENCE of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), either party may file a request for reconsideration with the Commission within 30 days of this order.

February 5, 2014

By delegation:



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