

COOK COUNTY COMMISSION ON HUMAN RIGHTS
69 West Washington Street, Suite 3040
Chicago, Illinois 60602

Joanne NUGENT)

v.)

JEWEL OSCO, INC.)

Case No. 2015PA002

Entered: November 9, 2015

ORDER OF DISMISSAL

On February 23, 2015, Complainant Joanne Nugent (“Nugent”) filed the above-captioned complaint with the Cook County Commission on Human Rights (“Commission”) against Respondent Jewel Osco, Inc. (“Jewel”), a supermarket chain headquartered in Itasca, Illinois. As the Commission learned during the course of this investigation, Nugent is a serial litigant, and the parties are no strangers to one another. Prior to filing this complaint, Nugent filed at least two complaints against Jewel with the Illinois Department of Human Rights (“IDHR”) for issues pertaining to service dogs: the first, a December 2013 complaint arising from an alleged August 21, 2013 incident at a Jewel store involving Nugent’s dog (IDHR Case No. 2014CP1484), and the second, an April 11, 2014 complaint arising from an alleged June 24, 2013 incident at a different Jewel store involving the same dog (IDHR Case No. 2013CP3856). IDHR dismissed both of these complaints for insufficient evidence of discrimination.

In the case pending before this Commission, Nugent alleges that Jewel violated the Cook County Human Rights Ordinance (“Human Rights Ordinance”) by refusing to let her shop at the store located at 1500 S. Lee Street in Des Plaines, Illinois (“Des Plaines Jewel”), on an unspecified date in July 2014, with her dog. *See* Cook County Code of Ordinances (“County Code”), § 42-37(a) (requiring public accommodations to reasonably accommodate use by disabled customers). Nugent alleges that she needed the dog because she is a diabetic and the dog warns her of glucose imbalances. Compl. ¶¶ 1-2. Nugent further alleges that since July 2014, Jewel has violated the anti-retaliation provision of the Human Rights Ordinance by making her feel uncomfortable while shopping at the Des Plaines store. County Code, § 42-41(a). Nugent theorizes that Jewel is retaliating against her for having filed a complaint with IDHR against that store in June 2013. Compl. ¶ 3.

The Commission completed an exhaustive investigation into Nugent’s allegations, but now concludes that there is a lack of substantial evidence to support either the discrimination or retaliation claims. With respect to the first claim, the Commission cannot find that Jewel denied Nugent a reasonable accommodation because Nugent failed to provide the Commission with sufficient evidence to support the legal conclusion that her dog is a trained service dog whose presence stores must allow as an accommodation to disabled customers. With respect to the second claim, by filing her retaliation claim arising from participation in an IDHR matter with

this Commission, instead of with IDHR, the claim is subjected to a slightly more rigorous legal standard. On the evidence gathered as part of this investigation, Nugent’s retaliation claim fails to meet this higher standard of good faith opposition.

For these reasons, demonstrated below, the Commission dismisses Nugent’s complaint in full based on lack of substantial evidence of a violation of the Human Rights Ordinance.

BACKGROUND

Nugent and Her Dog

Nugent is diabetic. Compl. ¶ 1; Cp. Q. Resp. No. 1. She manages this condition by using insulin, but she still has symptomatic hypoglycemia. *Id.*; Investig. Rep., Exh. H (April 29, 2014 note from Nugent’s treating physician) (confirming Nugent’s diagnosis, insulin treatment and “symptomatic hypoglycemia”). Hypoglycemia is the condition of having abnormally low blood sugar (*i.e.* glucose). Low blood sugar typically results in feelings of shakiness, irritability, dizziness and confusion, while severe hypoglycemia may result in the loss of consciousness. *See* American Diabetes Association, “Hypoglycemia,” online at: <http://www.diabetes.org/living-with-diabetes/treatment-and-care/blood-glucose-control/hypoglycemia-low-blood.html> (visited Sept. 30, 2015).

Nugent alleges that her dog – Bonnie – detects and warns Nugent of impending glucose imbalances.¹ Compl. ¶ 2. In addition, Nugent’s treating physician reports that Nugent has told him that her dog has helped “on several occasions” to warn Nugent that she was hypoglycemic, “so that . . . [Nugent could] . . . then eat sugar and relieve herself of these symptoms.” Investig. Rep., Exh. H.

Nugent maintains that her dog’s ability to assist her with glucose imbalances is both innate and the product of training. Cp. Q. Resp. No. 2. Although Nugent was specifically asked, as part of this investigation, to provide a detailed description of any time that her dog demonstrated its alleged innate ability to detect and warn of glucose imbalances, Nugent did not provide such evidence. Cp. Q. (2d) Resp. No. 2. As to the dog’s training, Nugent maintains that she trained Bonnie herself about five years ago, when the dog was six to eight months old. *Id.* at No. 1. As best as this Commission can gather,² Nugent explained her training regime as

¹ In response to questions by Commission staff regarding what actions her dog performs to assist her, Nugent also stated that Bonnie “probably” will not leave her side if she passes out. Cp. Q. Resp. No. 3. Nugent further stated that the dog will “scratch me and alert someone” to help. *Id.* Beyond assisting with diabetes or hypoglycemia, near the end of the Commission’s investigation, Nugent claimed in a supplemental questionnaire that her dog is “also a service dog for depression, anxiety [and] sleep apnea.” Cp. Q. (2d) Resp. No. 1. Whether this is true or not, Nugent’s depression, anxiety and sleep apnea are not issues in this case according to the complaint that Nugent filed with this Commission.

² When asked to explain in detail the specific actions she took to train her dog to assist her with glucose imbalances, Nugent described the entire training process as follows:

I would test my glucose levels at different levels then I would test and take my blood sugar at high levels and then did the same things with lower, much lower levels[;] she [*i.e.* Bonnie] recognizes the chemical imbalances either high or low. I pissed in a cup for awhile hid it[;] she would find the scent.

consisting of testing her blood sugar to determine if it was too high or too low and then urinating into a cup. *Id.* at No. 1.b. Nugent would then hide the cup of urine and wait for her dog to find it, purportedly by the scent of the glucose concentration in the urine. *Id.*

Prior IDHR Complaints

Over the course of the last two years, Nugent has filed at least two disability discrimination claims against Jewel with the Commission's sister agency at the state (*i.e.* the Illinois Department of Human Rights) based on Jewel's refusal to let Nugent bring Bonnie shopping.

IDHR '1484

In the first IDHR complaint to come to this Commission's attention, Nugent complained that on August 21, 2013, while shopping at the Des Plaines Jewel with her dog, two Jewel employees approached her to tell her that the dog's presence was a health code violation. *See* Investig. Rep., Exh. D (IDHR records re: Complaint No. 2014CP1484). These employees allegedly told Nugent that the manager wanted her to leave and threatened to call the police. *Id.* Nugent filed this Complaint No. 2014CP1484 ("1484") with IDHR on December 5, 2013. Of note, in that case, Nugent alleged that Bonnie helped her with her arthritis. IDHR's investigation of complaint '1484 includes no mention whatsoever of Nugent's diabetes or Bonnie's alleged glucose-sniffing ability. *Id.* In addition, while Nugent alleged in that IDHR complaint that the altercation with the two Des Plaines Jewel employees took place on August 21, 2013, during the investigation of that complaint, Nugent told IDHR staff that the incident in question occurred on June 24, 2013. *Id.* ('1484 Investig. Rep., p. 2).

On June 24, 2014, IDHR dismissed complaint '1484 for a lack of substantial evidence to support a claim of disability discrimination. *Id.*; Investig. Rep., Exh. L (June 4, 2015 email from Rp. counsel to Commission staff). One of IDHR's stated reasons for this dismissal was that Nugent "admitted that her dog had not been trained as a service dog." *Id.* at Exh. D ('1484 Investig. Rep., p.4).³

IDHR '3856

In the second IDHR complaint to come to this Commission's attention, Nugent complained that on June 24, 2013, while shopping with her dog at a different Jewel store located at 8730 West Dempster Street in Niles, Illinois ("Niles Jewel"), another store manager told her that Bonnie's presence was a health code violation and threatened to call the police unless Nugent left. *See* Investig. Rep. Exh. B (IDHR records re: Complaint No. 2013CP3856). In that

Cp. Q. (2d) Resp. No. 1.b.

³ IDHR also concluded that there was no evidence showing that Nugent was denied service based on her disability or use of a support dog: Nugent was not asked about her dog until it became disruptive and threatening, and Nugent admitted she was allowed to make her purchase, and then decided to leave before speaking with a manager because she was nervous. Investig. Rep. Exh. D ('1484 Investig. Rep., p. 4). According to Rick Schroyer, then Assistant Director of the Des Plaines Jewel, Nugent came into the store with a dog in a bag. After a customer complained that the dog was barking, a pharmacy employee came to help, and the dog tried to bite the Jewel employee. *Id.* at p. 3.

case, like the one pending here, Nugent did allege that Bonnie aided her with her hypoglycemia. *Id.*

Curiously, there is some debate as to whether Nugent filed this Complaint No. 2013CP3856 (“’3856”) on April 11, 2014 or on June 21, 2013.⁴ Because it strikes this Commission as implausible that Nugent would have filed a discrimination complaint before the date of the discrimination alleged in that complaint, the Commission will presume for the purpose of rendering this order that Nugent filed complaint ’3856 with IDHR on April 11, 2014. Either way, IDHR dismissed complaint ’3856 on June 23, 2014, after concluding that Nugent’s admission that Bonnie was not trained disqualified Bonnie from being considered a *bona fide* service animal whose presence the Niles Jewel was legally obligated to accommodate. *See id.* (’3856 Investig. Rep., p 4).

Same Claim; Different Forum

Nugent’s complaint pending before this Commission picks up shortly after IDHR’s dismissal of complaints ’1484 and ’3856. The instant complaint describes an incident that allegedly occurred on an unspecified day in July 2014. Nugent claims that she once again brought Bonnie with her to shop at the Des Plaines Jewel, when a Jewel cashier, named Mary Clare McBride (“McBride”) supposedly told Nugent to take her dog and leave the store. Compl. ¶¶ 4-5. Nugent further alleges that she then heard McBride tell some Jewel store managers, “there she is.” According to Nugent, those managers responded to McBride’s identification by moving towards Nugent, staring at her, and surrounding her in a manner that intimidated Nugent. Compl. ¶ 7; Cp. Q. Resp. No. 7. At that point, and before she was able to make a purchase, Nugent left the store with Bonnie because she was embarrassed. Compl. ¶ 8; Cp. Q. Resp. No. 7.

Nugent also stated that during this July 2014 visit to the Des Plaines Jewel, Bonnie was not wearing anything to identify the dog as a service animal, but Nugent does contend that she showed one of the employees who questioned her the dog’s “paperwork.”⁵ Cp. Q. Resp. No. 4. Nugent explained to the Commission during the course of this investigation that the “paperwork” she mentioned providing when questioned about Bonnie’s presence in the grocery store was a copy of a card from the Illinois Attorney General’s Office describing the state law governing

⁴ The IDHR case file for complaint ’3856 contains contradictory information. The face of the complaint itself states that it was filed on April 11 2014, but the letter from IDHR purporting to effectuate service of that complaint on Jewel is dated several weeks earlier on March 21, 2014. Investig. Rep., Exh. B (IDHR records re: complaint ’3856). Other documents show that Nugent filed the complaint ’3856 on June 21, 2013 – even though it alleged (predicted?) discrimination that, per Nugent’s own allegations, would not occur until several days later on June 24, 2013. *See id.* (’3856 Investig. Rep.) (noting this anomaly).

⁵ Later, adding to this allegation about the July 2014 episode, Nugent claimed that she gave this paperwork to a Des Plaines Jewel employee named “Lojo,” who told her that he was a store manager. Cp. Q. (2d) Resp. No. 3 (adding, too, that the “real” store manager later called Nugent and told her that Lojo was really just a cashier). This part of Nugent’s account of the July 2014 incident at the Des Plaines Jewel is identical to allegations that she made in a separate complaint she filed at the Commission, which alleges discrimination at the Niles Jewel by a clerk named “Lojo.” *Nugent v. Jewel Osco Inc.*, No. 2015PA003 (April 14, 2015) (dismissing complaint alleging disability discrimination involving shopping with her dog at the Niles Jewel due to an identical claim pending at IDHR). That complaint included these allegations: “I showed them [Alamous and another Jewel employee named Lojo] paperwork from the Illinois Attorney General’s office . . .” (Compl. ¶¶ 6-7), and “[t]he next day, I received a call from a man named Tom, who said that he, not Lojo, was the store manager[.]” (Compl. ¶ 10).

service dogs in public places. Cp. Q. (2d) Resp. No. 3. The card described by Nugent is the “Service Animal Quick Reference Card,” which includes the legal definition of a service animal as any dog “that is specifically trained to do work or perform a task for the benefit of a person with a disability.” See *Investig. Rep.*, Exh. D (showing that Nugent provided a copy of this card to IDHR staff during their investigation of complaint ’1484). The card further states that service dogs are not required to have special licenses or identification, and that businesses may ask owners only two questions: if the dog “is required because of a disability and what tasks or work [the dog] is trained to perform”. *Id.* Nugent stated that she first obtained the Illinois Attorney General’s service dog reference card four years ago, *i.e.* sometime in 2011. Cp. Q. (2d) Resp. No. 4.b.

Jewel denies the substance of Nugent’s allegations regarding her July 2014 visit to the Des Plaines Jewel. See *Resp.* ¶¶ 4-5, 7-8. Jewel states that it conducted an internal investigation immediately after receiving Nugent’s complaint in this matter, which was filed with the Commission on February 23, 2015. That investigation found no one with any knowledge of the alleged July 2014 incident. *Pos. St.*, p. 2. Jewel Loss Prevention Manager Mary Junger (“Junger”) interviewed McBride in March 2015. *Id.* According to Junger’s case report, McBride said “she never kicked anyone out of the store with a service dog and never pointed at a customer [and] she does not even know [who] Nugent is.” *Investig. Rep.*, Exh. A (March 27, 2015 Jewel Security/Loss Prevention Case Report Summary) (“Jewel Case Report”). See also *id.* (McBride’s March 24, 2015 written statement, attachment to Jewel Case Report).

Commission staff also interviewed McBride, who confirmed her denial and lack of knowledge. See *McBride Interview* (May 13, 2015) (stating that she has never asked a customer with a dog to leave the store, has never pointed at any female customer and said, “there she is,” and she does not know who Nugent is). The Commission’s investigation also did not uncover any other Des Plaines Jewel managers who were present at, or have any knowledge of, the alleged July 2014 incident. Nugent told Commission staff that “Tim” was one of the managers surrounding her on that day. Cp. Q. Resp. No. 8. Tim Antor (“Antor”) is currently Director of the Des Plaines Jewel, but he did not start in this position until November 2014. *Antor Interview* (May 27, 2015). Prior to that, Antor was the store director at a Jewel in Arlington Heights. Antor told Commission investigators that he was not at the Des Plaines Jewel in any capacity in July 2014. *Id.* Antor further stated that he is not aware of any time that McBride asked any customer to leave because the customer was accompanied by a dog, nor of any time when McBride pointed at someone and said to store managers, “there she is.” *Id.*

Dan Sims (“Sims”), an attorney in Jewel’s Labor Relations & Employment Law division at the corporate headquarters (and Respondent’s counsel in the matter pending before this Commission), stated that under Jewel policy, if an incident like the one alleged had occurred, the Director of the Des Plaines Jewel (*i.e.* the on-site store manager) would have been made aware of it. *Investig. Rep.*, Exh. K (April 30, 2015 email from Rp. counsel to Commission staff). Sims identified Jason Seed (“Seed”) as the Director of the Des Plaines Jewel in July 2014, but said that Seed resigned from Jewel in October 2014 (before this complaint was filed). *Id.* Commission staff was unable to reach Seed at his last known telephone number. *Investig. Rep.*, p. 4. The Assistant Director of the Des Plaines Jewel at this time was Rick Schroyer (“Schroyer”). Schroyer was not in the store in July 2014, however, because he was on a leave of absence.

Investig. Rep., Exhs. M, N (June 9, 2015 and June 22, 2015 emails from Rp. counsel to Commission staff).

Ongoing Retaliation

Nugent's complaint before this Commission further alleges that since the alleged July 2014 incident at the Des Plaines Jewel described above, McBride stares at Nugent and talks about her to the other cashiers. Compl. ¶ 10. Nugent alleges that the employees at the Des Plaines Jewel are no longer friendly to her. *Id.* In addition, Nugent claims that on at least two occasions when she entered the Des Plaines Jewel without her dog since July 2014, the managers again surrounded her and made her feel so uncomfortable that she had to leave before making any purchases.⁶ Compl. ¶ 12; Cp. Q. Resp. No. 9. Nugent speculates in her complaint to this Commission that this frosty reception (along with the hostile treatment by Des Plaines Jewel employees during her July 2014 visit described above) is an attempt to punish her for filing a discrimination complaint against Jewel in June 2013. Compl. ¶ 3 ("In June 2013, I filed a discrimination complaint with the IDHR against Respondent, which caused Respondent to act out adversely against me by throwing me out of the store with my service dog and by Mari Claire [sic] pointing at me when I come to Respondent.")

Jewel also denies these allegations. Resp. ¶¶ 3, 10, 12. This denial was corroborated by each Des Plaines Jewel employee interviewed as part of this investigation. McBride denied treating any customer this way and continued to assert that she does not know who Nugent is. McBride Interview (May 13, 2015). McBride's manager at the Des Plaines Jewel, Antor similarly denied that any Jewel employee took the actions that Nugent has accused them of.⁷ Antor Interview (May 27, 2015).

DISCUSSION

A. Disability Discrimination Claim

The Human Rights Ordinance prohibits owners and managers of public accommodations in Cook County from denying any person the full use of that public accommodation on the basis of, *inter alia*, that person's disability. County Code, § 42-37(a).⁸ The Commission has

⁶ Throughout the course of this Commission's investigation of Nugent's pending claims, Nugent contacted Commission staff to report additional alleged slights by employees of the Des Plaines Jewel. On August 27, 2015, Nugent called the Commission to allege that McBride accused Nugent of stealing two days earlier. And on the evening of September 8, 2015, Nugent left several voicemail messages for Commission staff, claiming that on one or more occasions recently, McBride gave her "dirty looks" when Nugent was shopping at the Des Plaines Jewel.

⁷ Antor also told Commission investigators that he does not know who Nugent is, but did state during his interview with the Commission that he recognizes her name from seeing it on a complaint filed against the Des Plaines Jewel with IDHR sometime around February 2015. Antor Interview (May 27, 2015).

⁸ Section 42-37(a) provides in full:

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.

interpreted this provision of the Human Rights Ordinance as requiring stores to provide reasonable accommodations for disabled patrons so that they can enjoy the same “full use” as non-disabled patrons. *See Smith v. McCafferty’s Pub*, 2002PA029, *9-10 (CCHRC Nov. 18, 2004). Where a store would ordinarily prohibit pets, the Commission has concluded that waiving this rule for a service animal relied upon by a disabled patron is a reasonable accommodation, the denial of which may be unlawful. *See Orozco v. Jewel Food & Liquor*, 2014PA001, *5-6 (Sept. 3, 2015). Nugent alleges that Jewel violated the Human Rights Ordinance by preventing her from shopping at the Des Plaines Jewel with her dog on an unspecified date in July 2014.

This claim is problematic for a number of reasons. First, all claims under the Human Rights Ordinance must be filed within 180 days of the date of the alleged violation. County Code, § 42-34(b). Nugent does not recall the exact day in July 2014 when she was first allegedly surrounded by managers at the Des Plaines Jewel and forced to flee with her dog, but 180 days from July 31, 2014 is January 27, 2015. Nugent did not file this complaint with the Commission until almost a month later on February 23, 2015.⁹

Second, Nugent’s allegations are contradictory. Whatever the evidence gathered as part of this investigation, the Commission would be hard pressed to conclude that requiring Jewel to allow Nugent to shop with her dog is a reasonable way of making that public accommodation accessible to a disabled patron, when Nugent herself alleges that she has shopped at the Des Plaines Jewel on multiple occasions without her dog. *See* Compl. ¶ 12. This fatal flaw is exacerbated by the evidence the Commission gathered from another witness who corroborated that Nugent frequently went to the store without her dog. *See* Warner Interview (June 18, 2015) (stating that witness frequently saw Nugent at the Des Plaines Jewel, usually without her dog).

But the central problem with Nugent’s claim is that it is dependent on Bonnie being a service dog. The evidence gathered by the Commission does not support this conclusion.

The Illinois Department of Human Relations has twice determined that Bonnie is not a service animal based on Nugent’s supposed admissions to IDHR staff. *See* Investig. Rep., Exhs B, D (documents related to complaints ’1484 and ’3856). Nonetheless, this Commission will discount Nugent’s admissions to IDHR that Bonnie is not a service dog to undertake its own analysis of this question under the County’s ordinance because it may be different from the state agency’s analysis under the state law. In addition, because whether a dog qualifies as a “service animal” is a legal issue, Jewel’s admission that Bonnie is a service dog (*see* Resp. ¶ 6) has no binding impact on the Commission’s decision here.

The Commission recently determined that, for claims under the local Human Rights Ordinance, what qualifies as a “service dog” or “service animal” should be determined pursuant to the same criteria used to enforce similar disability discrimination provisions under the federal

County Code, § 42-37(a). Unlawful discrimination is defined to include discrimination based on a person’s disability. *Id.* at § 42-31.

⁹ Commission staff drafted a complaint on Nugent’s behalf on January 15, 2015. Investig. Rep., Exh. I. Nugent did not file this complaint with the Commission by January 27, 2015, but instead requested that Commission staff undertake additional revisions of the complaint on February 9, 2015. *Id.* at Exh. J. Respondent never raised the statute of limitations as a defense to Nugent’s complaint.

Americans with Disabilities Act (“ADA”). *See Orozco*, 2014PA001 at *7 (citing 28 C.F.R. § 36.104). In other words, to prevail under the County’s Human Rights Ordinance, a complainant must provide evidence that:

- (1) The dog has been individually trained to do work or perform tasks for the benefit of an individual with a disability, and
- (2) The work or tasks performed by the dog is directly related to the complainant’s disability.

Id.

Thus, Nugent’s bare assertion that Bonnie has the innate ability to detect her glucose level is not a sufficient basis from which the Commission can conclude that Bonnie is a service animal. *See id.* at *7-8; *Ayyad-Ramallo v. Marine Terrace Assocs. LLC*, No. 13-CV-7038, 2014 U.S. Dist. LEXIS 74411, *31 (E.D.N.Y. May 30, 2014) (even if a dog actually did have the innate ability to sniff out chemical changes that accompany low blood sugar, it was not a “service animal” under the ADA if it had not been trained to alert its owner to low blood sugar levels). There must be some evidence that Bonnie was trained to do work that benefits Nugent and that the task or work Bonnie was trained to perform is directly related to Nugent’s disability.

That evidence does not have to come from a third-party, professional dog trainer. As the Commission stated in the *Orozco* case:

The Commission will accept non-professional training of service animals so long as the training bears some indicia of reliability and is sufficiently particularized to focus on work or tasks that would be of benefit to a disabled person. Further, the work or tasks that the dog is trained to do must be directly related to that person’s disability.

2014PA001 at *8.

In *Orozco*, the Commission found substantial evidence that this test was satisfied where the complainant provided detailed information that she trained her dog to give her a clear advance signal of an oncoming epileptic seizure. *Orozco* first clearly described two incidents where the dog provided this type of warning on its own. Next, right after she had a seizure, she intentionally used treats to direct him to follow the back of her leg, nudging her with his nose on her calf, and she did this repeatedly to reinforce the association. *Id.* at *2, 8.

There is general agreement on the process of training a diabetes-alert dog.¹⁰ Consistent with the type of training deemed adequate in *Orozco*, the required components of this kind of training can be described as follows:

¹⁰ That is to say that there is general agreement among those experts who believe that such training is possible. There is still ample controversy and a lack of scientific consensus that dogs can be trained to detect and alert

1. First, exposing the dog and directing the dog's attention to the owner's scent at the time of a glucose imbalance.
2. Second, directing the dog to use some kind of signal when there is a glucose imbalance reaching a certain level. This includes two parts:
 - (i) Deciding on a signal – whether something the dog is already doing (*e.g.*, barking in a certain way) or something the owner teaches the dog to do at such times (*e.g.*, nudge the back of her leg), and then
 - (ii) Rewarding the dog for performing that signal appropriately by using positive reinforcement (*i.e.* a treat) when it does so.
3. Third, repeating that process until the dog regularly and automatically responds to the identified condition by the agreed-upon signaling behavior, thus warning the owner of the condition.

See, e.g., Medical News Today, “Medical detection dogs: how they could save our lives in a sniff” (Nov. 20, 2013), online at: <http://www.medicalnewstoday.com/articles/269099.php> (visited Oct. 15, 2015) (interview with Ralph Hendrix, Executive Director of Dogs4Diabetics, explaining the process of training diabetic-alert dogs). The training regimen is designed first to teach dogs to recognize the scent of the diabetic owner's breath or sweat when he or she is hypoglycemic and then, using a series of reward-based exercises, to train the dogs to perform a specific action to alert the owner to this fact. *Id.*

In this case, Nugent claims that she herself trained her dog to detect and warn her of glucose imbalances. Cp. Q. Resp. No. 2. But, when asked to explain in detail the specific actions she took to train Bonnie for this purpose, Nugent only described performing (an unusual version of) the first step. In essence, Nugent says that she prepared samples of her urine when her blood sugar was either too high or too low, hid these samples, and then asked her dog to locate them by their scent. Cp. Q. (2d) Resp. No.1.b.

Nugent's self-described action has some similarity to the kind of scent-training that is often used as the first step of the process for training diabetic-alert dogs. This kind of training

diabetics for low blood sugar. *Compare* National Health Service, UK, “Dogs ‘Warn Diabetics’ After Smelling Low Blood Sugar,” online at: <http://www.nhs.uk/news/2013/08August/Pages/Dogs-warn-diabetics-after-smelling-low-blood-sugar.aspx> (visited Oct. 9, 2015) (small study appearing to confirm owners' perception that their professionally-trained dogs could detect and warn of hypoglycemia), with K. Deilinger, *et. al.*, “Can Trained Dogs Detect a Hypoglycemic Scent in Patients with Type 1 Diabetes?” *Diabetes Care* Vol. 13 (July 2013), online at: <http://care.diabetesjournals.org/content/36/7/e98.short> (visited Oct. 9, 2015) (in first controlled study of anecdotal belief that dogs can be trained to smell diabetics' low blood sugar levels, trained dogs were unable to correctly identify skin swabs of patients during hypoglycemia). The Commission need not take a side in this controversy based on the facts of this case because even if the Commission were to assume that such training was possible, Nugent has not shown that she undertook such training in the first place.

proceeds from the assumption that dogs can be trained to recognize their owners' blood sugar levels by smelling the owners' breath or sweat. To obtain a sample for scent-training, typically the owner will swab pieces of cloth with his or her sweat during an episode of high or low blood sugar, and then freeze that sample for later use by the trainer (who may be a professional or the owner following instructions). *See, e.g.*, DiabeticAlertDog.com, Scent Training Forum, "Collecting, Storing and Handling Scent Samples," online at: <http://www.diabeticalertdog.com/forum/read.php?6,5986,5986#msg-5986> (visited Oct. 15, 2015); Ida McCabe, Diabetic Alert Dog Trainer, "Capturing a Sample For Training a Diabetic Alert Dog," online at: http://www.articlecity.com/articles/pets_and_animals/article_2803.shtml (visited Oct. 15, 2015). The Commission's research did not uncover any scent-training instructions for owners that advised using urine samples for this purpose. This is unsurprising. Presumably, the owner of a service dog is not planning on urinating while walking about in a public place and would train the dog to rely on chemical scents emitted by other bodily fluids for the purpose of detecting hypoglycemia.

The actions described by Nugent are further inadequate because they do not provide evidence that she trained Bonnie to perform a task that would assist Nugent if she became hypoglycemic. For example, Nugent did not identify any action she took to teach Bonnie how to signal her to alert her of falling (or rising) blood sugar. Nor did Nugent describe ever using rewards to encourage the target behavior in Bonnie, or engaging in any repetition of the recognition-signal-reward process. Such reinforcement is an inherent part of any dog-training process.

In sum, despite repeated opportunities to do so, Nugent has not provided the Commission with sufficient facts to show that her dog was trained to perform work required by her disability. As such, Nugent has failed to show that Bonnie qualified as a service animal whose presence Jewel was required to accommodate under the County's Human Rights Ordinance.

B. Retaliation Claim

Even if Nugent's treatment at the Des Plaines Jewel in July 2014 was not disability discrimination, she claims that she was surrounded by Jewel employees and treated unkindly on subsequent occasions in retaliation for filing a discrimination complaint against Jewel with IDHR in June 2013. Compl. ¶3. The County's Human Rights Ordinance prohibits such retaliation. Specifically, the local ordinance provides:

No person shall retaliate against any person because that person [1] in good faith has opposed that which the person reasonably believed to be unlawful discrimination . . . or [2] has made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this article.

County Code, § 42-41(a).

To proceed with a claim for unlawful retaliation, a complainant must have substantial evidence to establish that (1) she sought to exercise a right protected by the Human Rights Ordinance; (2) she suffered adverse treatment that is reasonably likely to deter the complainant

or others from engaging in protected activity; and (3) there is a causal connection between the protected activity and the adverse treatment. *Porreca v. Anderson*, 2011E011, *27 (CCHRC July 10, 2015); *Robinson v. CEDA*, 2012E015, *4-5 (CCHRC July 25, 2014); *Washington v. Cook County*, 2005E065, *4 (CCHRC Sept. 26, 2013).

Once again, Nugent's claim was flawed from the outset and further weakened by the facts adduced by the Commission through the course of its investigation. To begin, Nugent alleges that Jewel employees were retaliating against her for a complaint that she filed with IDHR in June 2013. *See* Compl. ¶ 3. Unfortunately, although Nugent filed numerous complaints against Jewel with IDHR, none of them were filed in June 2013.

This could have been the end of the Commission's inquiry into this claim but, out of an abundance of caution and in an effort to give a *pro se* litigant every opportunity to state a claim, the Commission undertook a labor-intensive analysis of IDHR case files in an attempt to discern what complaint Nugent might have been referring to. Jewel suggested complaint '3856 because, although it was filed with IDHR in April 2014, it arose out of alleged conduct in June 2013. The problem with assuming that Nugent was referring to complaint '3856 is that this IDHR matter concerned the Niles Jewel. *See* Investig. Rep. Exh. B. Jewel is a large corporation with more than 100 store locations in the Chicagoland area. *See* Jewel-Osco, "Our Story," online at: <http://www.jewelosco.com/our-company/traditions-history/> (visited Oct. 7, 2015); Vault, "Jewel Osco Inc. Overview," online at: <http://www.vault.com/company-profiles/retail/jewel-osco/company-overview.aspx> (visited Oct. 7, 2015). IDHR serves complaints involving alleged discrimination at Jewel stores on Jewel's corporate headquarters in Itasca, Illinois. Specifically, IDHR served notice of Nugent's IDHR complaints against Jewel on Stacey J. Brown ("Brown"), Jewel's Director of Labor Relations & Employment Law. *See, e.g.*, Investig. Rep., Exh. B. When Jewel receives such a complaint, its corporate loss prevention department interviews potentially knowledgeable employees at the specific Jewel store named in the complaint. Investig. Rep., Exh. K (April 30, 2015 email from Rp. counsel to Commission staff). Thus, there is no reason to assume that Jewel employees at the Des Plaines Jewel store would know about an IDHR complaint filed against the Niles Jewel.

The Commission identified IDHR complaint '1484 as another possibility because it involved the Des Plaines Jewel. But notably, that complaint was not filed with IDHR in June 2013 and did not even involve alleged conduct in June 2013 (unless Nugent's subsequent recollection revising the date of the alleged incident from August 21, 2013 to June 24, 2013 is credited). Also while that case, like the one pending here, involves Jewel's refusal to allow Nugent to shop with her dog, in complaint '1484, Nugent characterized Bonnie as assisting her to cope with arthritis. There is no mention of Nugent being diabetic or hypoglycemic. *See* Investig. Rep., Exh. D.

Fortunately, the Commission does not have to solve the mystery of what, if any, IDHR case Nugent believes is the basis of Jewel's alleged retaliation against her because the evidence gathered in this Commission's investigation shows that Nugent could not have engaged in protected activity under the County's Human Rights Ordinance by filing *any* of the service dog complaints she filed with IDHR since 2011. Government agencies that investigate and adjudicate discrimination claims, like this Commission, extend extraordinary protections to the parties and witnesses that participate in the agency's proceedings. The Human Rights

Ordinance, for example, provides absolute protection against retaliation to anyone who “has made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this article” (*i.e.* the Human Rights Ordinance). County Code, § 42-41(a) (participation clause). Similarly, the Illinois Department of Human Rights provides absolute protection against retaliation to those same persons when they participate in a proceeding under the Illinois Human Rights Act. *See* 775 ILCS 5/6-101.

However, when a litigant chooses to pursue a retaliation claim based on participation in a different agency’s process, as Nugent has here, the Human Rights Ordinance only extends qualified protection against retaliation. That is to say, the participant in another agency’s proceeding will only be protected from retaliation under the County’s Human Rights Ordinance if that opposition, in the opinion of this Commission, was “in good faith.” *See* County Code, § 42-41(a) (opposition clause). To meet this threshold, the complaint that is the basis for the retaliation claim must have been made in “good faith” to oppose conduct that the complainant “reasonably believed” was unlawful discrimination. *See* County Code, § 42-41(a); *Porreca*, 2011E011 at *28. A complainant must show that, when she engaged in the opposition, she had a sincere and objectively reasonable belief that the conduct she opposed violated the discrimination law. *See Magyar v. St. Joseph Reg’l Med. Ctr.*, 544 F.3d 766, 771 (7th Cir. 2008) (citing *Hamner v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 224 F.3d 701, 706-07 (7th Cir. 2000)).

The inquiry is whether, at the time Nugent filed the relevant IDHR complaint, she had a good faith, objectively reasonable belief that her complaint alleged conduct which constitutes unlawful disability discrimination. Nugent filed several IDHR claims asserting Jewel’s failure to provide a reasonable accommodation of her disabilities because she was told to leave a store with her service dog. Drilling down further, there must be substantial evidence that, at the time she filed her IDHR claim(s), Nugent had a sincere and reasonable belief that Bonnie was a service dog.

Regardless of which IDHR claim Nugent intended to describe in her complaint to this Commission, she cannot meet this standard. Nugent has long known that the legal requirement for service dogs includes training. Throughout the course of this investigation and in reviewing the IDHR case files, Nugent has repeatedly described using (and distributing to Jewel employees) the Illinois Attorney General’s “Service Animal Quick Reference Card.” This card, which Nugent told Commission investigators she has had since 2011, defines service animal as any dog “that is *specifically trained* to do work or perform a task for the benefit of a person with a disability.” *See* Investig. Rep., Exh. D (IDHR documents re: complaint ’1484) (copy of the card provided by Nugent to IDHR) (emphasis supplied); Cp. Q. (2d) Resp. No. 4.b.

Nugent filed her IDHR claim about her service dog incident at the Des Plaines Jewel (*i.e.* complaint ’1484) in December 2014, and she filed another IDHR service dog claim, involving the Niles Jewel (*i.e.* complaint ’3856) in April 2014. Thus, both claims were filed long after Nugent was aware of the legal definition and training requirement for service dogs. Yet in both investigations, IDHR investigators claimed that Nugent admitted that Bonnie had not been

trained to perform any task related to Nugent's disabilities.¹¹ Even if, as she does now, Nugent had a sincere belief that her dog was a trained service dog at the time that she filed those complaints with IDHR, that belief was not objectively reasonable. As explained above, what Nugent describes as her training method does not come close to showing that her dog was trained to do the task of warning her of glucose imbalances to assist with diabetes. Thus, regardless of which IDHR claim Nugent intended to rely on, her retaliation claim before this Commission fails the good faith test. While the result might have been different if Nugent had filed this retaliation claim with IDHR, failure of the good faith test is fatal for her retaliation claim before this Commission.

CONCLUSION

For the foregoing reasons, the Commission orders that Complaint No. 2015PA002 pending before this Commission 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 the date of this order.

November 9, 2015

By delegation:



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

¹¹ This result is even clearer if Nugent meant to reference IDHR complaint '1484 in her retaliation claim pending before this Commission. This is because in '1484, Nugent claimed that her disability was arthritis and that her dog was trained to help with this disability. A review of the IDHR investigation file for '1484 shows that Nugent did not provide any information to support this claim; she did not even describe what task her dog allegedly performed to assist with her arthritis. IDHR dismissed both cases for lack of substantial evidence of discrimination, concluding that Nugent had admitted her service dog was not trained. Investig. Rep. Exh. B (IDHR documents re: complaint '3856); Investig. Rep. Exh. D (IDHR documents re: complaint '1484). While it is not clear what legal test IDHR used for that conclusion, IDHR's investigation files reflect that Nugent did not provide any information to support to her bare allegation that her dog was trained as a service dog.