

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

Crystal OROZCO)	
)	
v.)	Case No. 2014PA001
)	
SUMMIT FOOD AND LIQUOR)	Entered: September 3, 2015
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)	
)	

EVIDENTIARY DETERMINATION

On November 26, 2014, Complainant Crystal Orozco (“Orozco”) filed the above-captioned complaint with the Cook County Commission on Human Rights (“Commission”) against Respondent Summit Food and Liquor (“Summit”), a convenience store located in Summit, Illinois, and owned and operated by Dhanvadan Khatiwala (“Khatiwala”). Orozco alleges that Summit violated the Cook County Human Rights Ordinance (“Human Rights Ordinance”) when Khatiwala refused to accommodate her disability by letting her shop in the store with her service dog and made a derogatory comment about her national origin. *See* Cook County Code of Ordinances (“County Code”), § 42-37(a).

The Commission has completed its investigation of Orozco’s complaint and finds sufficient evidence of disability discrimination to merit further proceedings on that charge. The Commission, however, dismisses Orozco’s claim of national origin discrimination for a lack of substantial evidence.

BACKGROUND

Orozco alleges that she suffers from both epilepsy and an anxiety disorder. Compl. ¶ 2; Cp. Q. Resp. No. 1.C. As part of this investigation, Orozco produced evidence, in the form of a letter from her treating physician, that she has epilepsy. Investig. Rep., Exh. A (doctor’s note dated August 6, 2014). This condition causes Orozco to have occasional and unpredictable tremors and seizures. *Id.*; Cp. Q. Resp. No. 1.A. Orozco did not produce similar evidence in support of her claim to suffer from an anxiety disorder.

Marley, The Dog

Orozco alleges that she relies on a service dog to keep her safe in public by alerting her when she is about to have an epileptic seizure. Compl. ¶ 3. *See also* Investig. Rep., Exh. A (doctor’s note stating that Orozco “uses a service dog who needs to be with her at all times in case of seizure”). Orozco further attests that her service dog’s presence helps her cope with her anxiety in public settings. Cp. Q. Resp. No. 6.

Orozco uses Marley, a Maltese-Poodle mix, as her service dog.¹ Orozco Interview (June 3, 2015). Orozco did not acquire Marley as a service dog nor has Marley received any formal training by a service dog organization or professional trainer beyond ordinary obedience classes.² *Id.* Nonetheless, Orozco believes that Marley has an innate ability to detect an oncoming seizure. *Id.*

In an interview with Commission investigators, Orozco described an incident shortly after she got Marley: one or two minutes before Orozco had an epileptic seizure, Marley got “antsy” and whined, walking back and forth. *Id.* Two months later, Orozco noticed that Marley was engaged in the same unusual behavior immediately before Orozco had another seizure.³ *Id.* Orozco believed that if Marley could reliably alert her before an epileptic seizure, Orozco could use those few moments to sit or lay down in a protected place and minimize the harm of having a seizure when out and about in public. *Id.* To that end, Orozco told Commission investigators that she trained Marley to give a clear signal when he anticipated that Orozco was about to have an epileptic seizure. She claims that she did this by using treats to direct Marley to follow the back of her leg, nudging her with his nose on her calf. Orozco said that she would do this right after she had a seizure, repeating the process to reinforce the association so that Marley would eventually start nudging the back of Orozco’s leg when he sensed a seizure coming on. *Id.*

Orozco obtained a service dog license for Marley from the City of Chula Vista, California, where Orozco lived until 2011 or 2012. *Id.* See also Investig. Rep., Exh. B. (photograph of Marley’s service dog tag). Commission investigators contacted the Chula Vista Animal Shelter (“Shelter”), which issued this license to Marley, to inquire about the requirements for obtaining such a license. An employee of the Shelter indicated that, first, the dog must be a resident of the City of Chula Vista, and, second, the dog’s owner must provide a doctor’s note indicating that the dog provides a service to a person to assist with his or her disability. Milo Interview (May 22, 2015). There is no requirement that the dog receive any special training to obtain the license, nor does the Shelter provide such training. *Id.*

Marley Visits Summit

On June 6, 2014, Orozco attempted to shop at Summit. Compl. ¶ 4; Orozco Interview (June 3, 2015). Khatiwala – Summit’s owner and sole employee – was working. See Rp. Q. Resp. No. 1; Khatiwala Interview (July 2, 2015). The two parties have very different recollections of what occurred during this visit.

¹ A Maltese-Poodle mix is a small dog. See Investig. Rep., Exh. C (photograph of Marley). Orozco states that she is frequently questioned about whether Marley is a service dog because he is not a Golden Retriever or Labrador. Orozco Interview (June 3, 2015).

² Orozco acquired Marley as a three-month old puppy via a Craigslist posting. The dog was not advertised or described as a service dog. Orozco Interview (June 3, 2015). Marley did, however, take an obedience course from PetSmart after Orozco acquired him. *Id.*

³ Orozco’s counsel indicated that Orozco conducted Internet research and learned that some dogs can detect seizures by smelling chemical changes in a person’s body before and after such an event. Investig. Rep., Exh. F. (Ltr. from Cp. Attorney to Commission Investigator (May 8, 2015)). The Commission will not generally treat as evidence assertions in letters by attorneys who do not have firsthand knowledge of an event, absent a verification or affidavit by such a witness corroborating the attorney’s version of those events.

Orozco alleges that she was accompanied by Marley (her dog) and Arlene Huerta (“Huerta,” her mother). Compl. ¶ 4; Orozco Interview (June 3, 2015). Orozco claims that when she tried to enter the store, Khatiwala told her that she could not bring her dog inside. Compl. ¶ 5; Orozco Interview (June 3, 2015). Orozco says that she explained that Marley is a service animal, and is identified as such by the tag on his collar. Compl. ¶ 6. Orozco offered to show this tag to Khatiwala, but, according to Orozco, Khatiwala refused to look at Marley’s collar and became louder, repeating that Orozco needed to leave the dog outside. *Id.* at ¶ 7; Orozco Interview (June 3, 2015). Orozco says that she told Khatiwala that she needed the service animal for medical assistance and that Marley must stay with her, but when Khatiwala insisted that Marley leave, Orozco did as well. Compl. ¶¶ 8, 10.

Orozco is of Mexican national origin. Orozco Interview (June 3, 2015). At the height of the parties’ conflict and before leaving the store, Orozco says that she asked Khatiwala for a business card. Compl. ¶ 9; Orozco Interview (June 3, 2015). Orozco claims that he replied, “Sorry, I don’t speak Mexican,” which Orozco found inappropriate and shocking.⁴ *Id.*

Khatiwala tells a very different version of these events. According to him, when Orozco came into Summit on June 6, 2014, she did not appear to be disabled and her small dog did not appear to be a service animal: it had no collar or vest and was not on a leash or in a harness. Khatiwala Interview (July 2, 2015) (denying that Orozco tried to show him the dog’s collar). *See also* Pos. St. ¶¶ 1-2. Curiously though, Khatiwala told Commission investigators that he, nevertheless, believed that Orozco’s dog was a service animal. Khatiwala Interview (July 2, 2015).

Khatiwala denies that he asked Orozco or Marley to leave as soon as they walked in. *Id.*; Pos. St. ¶ 2. Instead, Khatiwala’s recollection is that he only asked Orozco to keep the dog under control and not allow it to run free in the store. *Id.* According to Khatiwala, Orozco’s unleashed dog wandered down the food aisle of the store unattended while Orozco and Huerta remained near the register. Khatiwala Interview (July 2, 2015); Pos. St. ¶ 3. Khatiwala says that he asked Orozco to remove the dog from the area where it was running in the aisle because there were glass shelves and bottles that might break and hurt the dog. Khatiwala Interview (July 2, 2015); Pos. St. ¶ 4. Next, Khatiwala told Commission investigators that Orozco’s dog urinated on the floor, and when Khatiwala confronted Orozco about that, Huerta raised her voice at him. Khatiwala Interview (July 2, 2015).

Khatiwala self-identifies as an Indian whose native language is Gujarati. *Id.*; Rp. Q. Resp. No. 2. He denies that he told Orozco “I don’t speak Mexican.” Resp. ¶ 9; Khatiwala Interview (July 2, 2015). Instead, Khatiwala says that during this argument he thought that Orozco and Huerta were speaking “Puerto Rican” to him and he asked them to speak English so that he could understand them. Khatiwala Interview (July 2, 2015).

It was at that point in Khatiwala’s narrative that Khatiwala may have told Orozco to take the unleashed dog out of the store. The Position Statement that Respondent filed with the Commission indicates that Khatiwala finally asked Orozco to remove her dog from the store

⁴ Orozco alleges that she was so upset by this experience that she had an anxiety attack on the way home. Compl. ¶ 11.

after Marley urinated on the floor, but Khatiwala, himself, told Commission investigators during his interview that he never asked Orozco, Huerta or Marley to leave at any time. *Compare* Pos. St. ¶ 5 *with* Khatiwala Interview (July 2, 2015).⁵ Whether she was asked to leave or not, Khatiwala told Commission investigators that Orozco made no purchases and after approximately three minutes in the store retrieved her dog and left the store with her mother. Khatiwala Interview (July 2, 2015); Pos. St. ¶ 6. Khatiwala added that when he looked out of the window into the parking lot, he saw Orozco’s dog running free, still unleashed, some 75 feet away from Orozco. Khatiwala Interview (July 2, 2015); Pos. St. ¶ 8.

Khatiwala directed the Commission investigator to another witness who could (and did) corroborate his account of the events at Summit on June 6, 2014. *See* Khatiwala Interview (July 2, 2015). Natalia Poleti (“Poleti”) lives next door to Summit and is a regular customer. Poleti Interview (July 2, 2015). Poleti claims that she was shopping at Summit on the date in question, and recalls seeing one older and one younger woman together in the store with a small white dog who was running unrestrained through the store and then urinated on the floor next to the register. *Id.* Poleti told Commission investigators that when Khatiwala confronted the younger woman about this, the older woman became very angry and both women left the store with the dog still unrestrained. *Id.* Poleti did not hear Khatiwala say “I don’t speak Mexican.” *Id.* Instead, she says she heard Orozco and Huerta speaking in Spanish and calling Khatiwala a “fucking old man” in Spanish.⁶ *Id.*

(Not surprisingly) Orozco contests Khatiwala and Poleti’s version of the events. In response, Orozco testified that Marley is potty trained and did not urinate or defecate at Summit. Orozco Interview (June 3, 2015); Cp. Q. Resp. No. 4. Further, Orozco asserts that Marley was never off the leash in the store or in the parking lot. Cp. Q. Resp. No. 2. Orozco’s mother spoke with Commission investigators to confirm her daughter’s account and deny that either woman insulted Khatiwala. Huerta Interview (June 24, 2015). Both Orozco and Huerta told Commission investigators that Khatiwala was the only person in the store at the time, and neither recall seeing Poleti. *Id.*; Orozco Interview (June 3, 2015).

Summit’s Relevant Store Policies

At the time in question, Summit did not have any written policies and procedures about providing accommodations to people with disabilities. Rp. Q. Resp. No. 5. The unwritten policy was to make certain that people with disabilities were treated with respect and courtesy and had equal access to the store in comparison to non-disabled patrons. *Id.*

Summit did, however, have a written policy of sorts regarding allowing animals into the store. Rp. Q. Resp. No. 6. This policy was memorialized in a sign showing a photograph of a

⁵ There are additional differences between Summit’s Position Statement and Khatiwala’s testimony. For example, Respondent’s pleading indicates that Marley defecated in the aisle at Summit on June 6, 2014, Pos. St. ¶ 5, but Khatiwala told Commission investigators that Marley only urinated in the store and specifically denied that the dog also defecated. Khatiwala Interview (July 2, 2015). To the extent that these contradictions are material, Khatiwala’s credibility as a witness can be explored at a hearing.

⁶ Poleti was born in South America and testified that Spanish is her first language. Poleti Interview (July 2, 2015). She also asserted that “100 percent” of Summit’s customers are Latino. *Id.* The Commission takes notice of the fact that Summit, Illinois is approximately 67 percent Latino according to U.S. Census data.

dog wearing a service animal vest and bearing the words: “Service animals only please.” Investig. Rep. Exh. D (photograph of sign at Summit). This sign has been posted on the outside of Summit’s front door for approximately 2½ years. Khatiwala Interview (July 2, 2015). Poleti also told Commission investigators that the sign is there. Poleti Interview (July 2, 2015). But Orozco denies seeing it during her visit on June 6, 2014. Orozco Interview (June 3, 2015).

DISCUSSION

The Human Rights Ordinance prohibits unlawful discrimination in public accommodations using broad terms:

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) (emphasis added). A public accommodation can violate this provision of the Human Rights Ordinance by, *inter alia*, being particularly unwelcoming to customers of a particular national origin or by failing to reasonably accommodate a customer with a disability. *See also id.* at § 42-31 (defining “unlawful discrimination” to include protected classes based on disability and national origin).

I. Disability Discrimination Claim

The Commission has interpreted section 42-37(a) as requiring stores and other places of public accommodation in Cook County to provide reasonable accommodations for disabled patrons so they can enjoy the same “full use” as non-disabled patrons. *See Smith v. McCafferty’s Pub*, 2002PA029, *9-10 (CCHRC Nov. 18, 2004) (in the first decision recognizing this duty, the Commission reasoned that “[w]ithout such an interpretation, the goals of the Ordinance would be severely undercut”). Orozco alleges that Summit violated this provision by preventing her from being accompanied by her service dog in the store on June 6, 2014.

A. Prima Facie Case of Discrimination

In order to prevail on this claim, Orozco has to be able to prove that:

- 1) She has a disability, as defined in the Human Rights Ordinance;
- 2) Summit is a public accommodation, as defined in the Human Rights Ordinance;
- 3) Orozco satisfied all non-discriminatory standards for service at Summit, and would have been able to enjoy full use of the public accommodation in the same manner as nondisabled persons absent the denial of a reasonable accommodation;

- 4) Orozco requested a reasonable accommodation from someone employed at the public accommodation (or the accommodation would have been obvious to a reasonable person); and
- 5) Summit failed to provide Orozco with a reasonable accommodation, leading to the restriction or denial of her access to and/or full use of the public accommodation.

See Gantos v. Century Theatres, Inc., 2004PA013, *4 (CCHRC Jan. 15, 2008). The Commission’s initial investigation shows that Orozco has sufficient favorable evidence of these elements to be able to proceed to a contested hearing on this claim.

1. Orozco Has a Disability

There is substantial evidence that Orozco has a disability. The Human Rights Ordinance protects persons with a “physical or mental impairment that substantially limits one or more of the major life activities.” County Code § 42-31. *See also* CCHR Pro. R., Subpart 620.

Orozco’s physician confirms that Orozco has been diagnosed with epilepsy and is prone to seizures. *See* Investig. Rep., Exh. A. Orozco describes that she experiences unpredictable tremors and seizures as a result of her epilepsy, and that an unanticipated seizure may cause her to fall and injure herself. Cp. Q. Resp. No. 1. On the basis of this evidence, the Commission concludes that epilepsy “substantially limits” Orozco in the “major life activities” of walking and mobility in general. *See* CCHR Pro. R. 620.120 620.130.

Although Orozco also claims to suffer from an anxiety disorder, Compl. ¶ 2, she provided no evidence to support this assertion or describe the impairments associated with this disorder. As such, there is not substantial evidence to show that Orozco’s anxiety disorder rises to the level of a covered “disability.” *See Boykin v. Provident Hospital*, 1997E018, *4-5 (CCHRC Feb. 14, 2002 (dismissing disability discrimination claim for failure to present evidence that complainant’s medical condition substantially limited a major life activity)).

2. Summit is a Public Accommodation

The Human Rights Ordinance defines a “public accommodation” as “a person, place, business establishment, or agency that sells, leases, provides, or offers any product, facility, or service to the general public in Cook County[.]” County Code, § 42-31. A convenience store, such as Summit, fits comfortably within this broad definition.

Summit is owned and managed by Khatiwala. *See* Rp. Q. Resp. No. 1; Khatiwala Interview (July 2, 2015). Khatiwala is also Summit’s sole employee, and the only person with whom Orozco interacted at the store. *Id.*; *see also* Compl. ¶ 5; Orozco Interview (June 13, 2015).

3. Other Elements

The remaining three elements turn on the question of whether allowing Orozco to bring Marley into the store qualifies as a “reasonable accommodation of her disability. Orozco does not allege, and the Commission’s investigation did not find, that she had any other impediment to shopping at Summit, but for her claim that she needed to be accompanied by her dog when in public to alert her to an impending epileptic seizure. And Orozco testified that Khatiwala denied her request for this accommodation. Compl. ¶¶ 5-8; Orozco Interview (June 13, 2015). That Khatiwala himself testified that he never explicitly requested that Orozco or Marley leave his store is the word of one party against the other. Khatiwala Interview (July 2, 2015). The Commission will leave it to the administrative law judge at a contested hearing with both witnesses testifying under oath to resolve that credibility question in the first instance.

4. Reasonable Accommodation: Trained Service Dog

The question of whether allowing Marley into Summit with Orozco would have been a reasonable accommodation of Orozco’s epilepsy turns on an analysis of whether Marley is a trained service animal. There is no question that where a public accommodation has a general rule prohibiting animals, permitting a disabled person to enter accompanied by his or her *bona fide* service animal is a “reasonable accommodation.”⁷ The sometimes-challenging issue is defining the requirements for a pet to qualify as a “service animal” for this purpose. The Commission finds sufficient evidence that Marley is a “service animal” (within the meaning of that term as adopted by the Commission in interpreting the Human Rights Ordinance) to merit further hearing on this point.

The Human Rights Ordinance does not explicitly define what qualifies as a “service animal,” but the Commission adopts the criteria already established under federal law for enforcement of the Americans with Disabilities Act (“ADA”). To show that a dog is a “service animal,” 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.

See 28 C.F.R. § 36.104 (defining term “service animal” for purposes of the ADA).

The training requirement rules out the potentially suspect cases in which complainants claim only that their dog has an innate ability to do something that they find useful. A service

⁷ Indeed, allowing blind persons to bring their guide dogs into public places pre-dates the laws against disability discrimination, and is likely the original example of waiving general rules to enable mobility and independence for persons with disabilities. See, e.g., The International Guide Dog Federation, “History of Guide Dogs,” online at <http://www.igdf.org.uk/about-us/facts-and-figures/history-of-guide-dogs/> (visited Aug. 17, 2015) (“seeing eye” guide dog schools were created to meet the needs of disabled WWI soldiers, starting in Germany in 1916 with the first U.S. “Seeing Eye School” opened in 1929).

animal must have specific training, beyond that of typical pets. Basic obedience training is not sufficient to turn a household dog into a service animal. See *Lerma v. California ExPos. & State Fair Police*, No. 2:12-CV-1363 KJM GGH, 2014 WL 28810, *5 (E.D. Cal. Jan. 2, 2014) (plaintiff's dog did not qualify as "a service animal" where it had only received basic obedience training); *Davis v. Ma*, 848 F. Supp. 2d 1105, 1114-15 (C.D. Cal. 2012), *aff'd*, 568 F. App'x 488 (9th Cir. 2014) (same).

The easiest cases, with respect to this requirement, are those in which the dog was specially trained by an experienced organization or professional to perform physical tasks for a person with an observable disability.⁸ But like its federal counterparts, the Commission does not limit service animal status to only those dogs that have been trained by a certified or recognized trainer. See, e.g., *Lipschultz v. Good Knight Inn, Corp.*, No. CV11-07913 DSF JCX, 2013 WL 8021, *3 (C.D. Cal. Jan. 7, 2013) (there is "no requirement for any specific amount or type of training that an animal must receive to [legally] qualify as a service animal" under the ADA). 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.

Turning to the evidence adduced by the Commission's investigation, Orozco began by claiming that Marley had an innate ability to detect when Orozco was about to have a seizure. Orozco Interview (June 13, 2015). Orozco described that Marley would become agitated and would walk back and forth immediately before Orozco had a seizure. *Id.* If this was the only evidence that Orozco had to prove that Marley was a service dog, her claim would fail. In a recent case involving a similar phenomenon and diabetics, one court held that a dog which had not been *trained* to alert its owner to low blood sugar levels was not a "service animal" under the ADA – even if the dog actually did have the innate ability to sniff out chemical changes that accompany low blood sugar, as the plaintiff in that case claimed. *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).

However, Orozco did not stop at Marley's innate ability. Instead, Orozco testified further that she used a training technique recognizable as conditioning reinforcement – pairing stimuli with treats and rewarding desired behavior in response to the stimulus – to teach Marley to nudge her calf with his nose when he detected an impending seizure. Orozco Interview (June 13, 2015). The nudge of the nose to the back of her calf now warns Orozco of the onset of an otherwise unpredictable epileptic seizure and gives Orozco time to get herself to a safe place or in a safe position when she is in public. *Id.* There is at least some evidence that the task that Orozco trained her dog to perform is a benefit to Orozco and is directly related to Orozco's disability.

⁸ For example, some service animal organizations start with specifically-bred dogs who live with a trained volunteer "puppy-raiser" for the first months of their life. If the dog passes a screening for obedience and temperament, they go through 6 to 9 months of proprietary training, which includes time working with the person who will actually use the service animal. See, e.g., Canine Companions for Independence, "Training Assistance Dogs," online at http://www.cci.org/site/c.cdKGIRNqEmG/b.4011115/K.65BA/Training_assistance_dogs.htm (visited Aug. 17, 2015).

That there is sufficient evidence at this stage to merit a hearing on Orozco's disability discrimination claim is not to say that Summit is foreclosed from contesting whether Marley really is a service dog at that hearing. Orozco will need to prove both that seizure-alert training is possible and that she actually performed training as claimed.

In spite of the individual experience Orozco claims to have had in training Marley, the general consensus among professional trainers appears to be that training cannot reliably create a "seizure alert" dog. *See, e.g.,* Maryann Mott, "Seizure-Alert Dogs Save Humans with Early Warnings," *National Geographic News* (Feb. 11, 2004), online at http://news.nationalgeographic.com/news/2003/04/0416_030416_seizuredogs_2.html (visited Aug. 17, 2015).

According to one explanation, the fallacy in claiming to "train" a dog to warn of a seizure before it occurs lies in the timing: by necessity, the attempted training must be done after the (unexpected) seizure has already happened, which is not how conditioning reinforcement works. Service Dog Central, "Seizure alert/response dogs," online at <http://www.servicedogcentral.org/content/node/491> (visited Aug. 17, 2015).

Consequently, professional organizations that train dogs to assist epileptics typically train them to perform physical tasks to help *after* a seizure has occurred (*e.g.*, activate a life-alert system, find someone to help, retrieve medications, help owner stand up, etc.). Dogs trained in this manner are referred to as "seizure response" or "seizure assist" dogs, and responsible organizations specifically warn that their dogs are *not* trained to predict seizures. The Epilepsy Foundation, "Seizure 'Predicting' Dogs," online at <http://www.epilepsy.com/get-help/staying-safe/seizure-dogs/seizure-predicting-dogs> (visited Aug. 17, 2015) (national advocacy and educational organization warns that consumers should not rely on any offers to train or provide "seizure predicting" service animals because reports of this occurring are based on innate ability and remain largely anecdotal).

As a result, courts have been inconsistent in providing "predicting" dogs with service animal status. *Compare Ayyad-Ramallo*, 2014 U.S. Dist. Lexis 74411 at *31 (relying on testimony that dogs cannot be trained to reliably detect low blood sugar to assist diabetics) *with Lipschultz*, 2013 WL 8021 at *3 (accepted as sufficient plaintiff's seemingly improbable testimony that, using basic reinforcement techniques, he trained his dog to alert him to sounds made while he is asleep and not wearing his hearing aids). The Commission is not inclined to resolve this question dispositively without the benefit of further sworn testimony from the parties and any expert witnesses that they may present at a contested hearing.⁹

⁹ Orozco also claims that her dog helps her cope with her anxiety in public settings. Cp. Q. Resp. No. 6. This aspect of her claim will not be part of any further hearings on this matter because, as discussed above, there is insufficient evidence that her anxiety qualifies as a disability. Even if it did, however, Orozco provided no evidence that Marley was individually trained to assist her with anxiety or that the dog performs any tasks that assist her with a psychiatric medical condition. In the absence of such evidence, "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of [the] definition" of a "service animal." *Sak v. City of Aurelia, Iowa*, 832 F. Supp. 2d 1026, 1041 (N.D. Iowa 2011) (internal citations and quotation marks omitted).

B. The Undue Hardship Defense

Where a complainant proves a *prima facie* case of discrimination in the context of a public accommodation, the Commission still will not find the respondent liable for a violation of the Human Rights Ordinance if it can show that making the requested accommodation would cause “undue hardship.” *Mora v. European Deli, Inc.*, 2010PA010 *6 (CCHRC June 3, 2013) (explicitly extending the undue hardship defense to the public accommodations context because it is a part of “duty to accommodate” disability discrimination analysis in all parallel jurisdictions). A respondent may establish an undue hardship defense by showing that the accommodation would be “prohibitively expensive or unduly disruptive to [its] normal business.” See CCHR Pro. R. 630.150 (providing grounds for this defense in the employment context).

Prior Commission precedent specifically indicates that where the requested accommodation is an exception to a public accommodation’s general “no dogs allowed” rule, a respondent may prove undue hardship by showing that the service dog would interfere with others’ use of the public accommodation. See *Gantos v. Century Theatres, Inc.*, 2004PA013, *4 (CCHRC Jan. 15, 2008). That said, a respondent cannot *assume* that such problems may result if the dog is allowed entry. Instead, the undue hardship defense requires an individualized assessment of the harm caused by the particular dog in the specific circumstances.¹⁰ See, e.g., *Tamara v. El Camino Hospital*, 964 F. Supp. 2d 1077, 1085 (N.D. Cal. 2013) (rejecting undue hardship defense where defendants refused to allow service dog in hospital psychiatric unit based on generalized speculation that the dog might upset unstable patients, but failed to provide any evidence that at time plaintiff was admitted, the ward in question actually had such unstable patients); *Roe v. Providence Health System—Oregon*, 655 F. Supp. 2d 1164, 1086 (D. Or. 2009) (accepting undue hardship defense where defendant hospital denied entry to plaintiff’s service dog because the specific dog’s rancid odor posed risk of infection and plaintiff had refused to correct problem by bathing dog).

In this case, the parties presented completely different versions of the events of June 6, 2014. Orozco claims that her dog was on a leash at her side at all times, and that even though she told Khatiwala she needed to bring in her service dog, he told her she had to leave the dog outside to shop. In contrast, Khatiwala says that Orozco’s dog ran through the store while Orozco stood near the door. He first told Orozco to remove the unleashed dog from the aisles with glass shelves and bottles at risk of breaking and injuring the dog. And it was only after the dog urinated on the floor that he may have asked Orozco to take the dog out of the store. Both parties have only their testimony (and potentially that of an interested witness) to support their side of the story. With neither able to point to objective evidence of what happened (e.g., an in-store video camera system), the Commission will leave it to an administrative law judge at a contested hearing to determine whose testimony is more credible.

¹⁰ Generally, the Commission requires a respondent who asserts an undue hardship defense based on interference with others’ use to provide evidence that the service dog *actually did* the behavior causing concern. For example, in *Gantos v. Century Theatres*, the Commission accepted respondent movie theater’s alleged defense where complainant was denied admission because her service dog was barking and getting excited in the lobby. 2004PA013, *4 (CCHRC Jan. 15, 2008). The manager’s asserted fear – that the dog would cause further disruption during the movie itself – was well-grounded. *Id.*

If the administrative law judge believes Khatiwala's version of events at a hearing, then Summit has a valid affirmative defense to Orozco's disability discrimination claim. Where a particular dog has urinated in a store that sells food, its incompatibility with that public accommodation's business has been demonstrated. Also, a dog that runs unleashed through a store's aisles (even without the glass bottles) is blatantly disruptive to the business and an undue hardship.¹¹

II. National Origin Discrimination Claim

In addition to alleging disability discrimination, Orozco claims that she was the victim of national origin discrimination on June 6, 2014 at Summit. The Human Rights Ordinance prohibits public accommodations from discriminating on such grounds, and defines "national origin" to mean "the place in which an individual or one of such individual's ancestors was born." County Code §§ 42-37(a), 42-31.

Orozco asserts national origin discrimination based on a single alleged comment by Khatiwala on June 6, 2014. Orozco claims that she asked Khatiwala for his business card after he twice said she could not enter the store with her dog. According to Orozco, Khatiwala replied: "Sorry, I don't speak Mexican." Compl. ¶ 9; Orozco Interview (June 3, 2015). Orozco is of Mexican descent. Orozco Interview (June 3, 2015).

This statement alone is not sufficient for the Commission to infer discriminatory animus in Summit's decision to ultimately exclude Orozco and her dog from the store. The Commission's investigation indicates that Khatiwala's English fluency is more limited than what would be necessary to reasonably presume that he intended the phrase "I don't speak Mexican" as an insult. English is not Khatiwala's native language. Khatiwala Interview (July 2, 2015). And during his interview with Commission investigators – months removed from his heated argument with Orozco and where it is reasonable to presume that Khatiwala would not overtly insult individuals from a particular national origin – Khatiwala misidentified the Spanish language as "Puerto Rican." *See id.*

Nor is this alleged statement alone sufficient for the Commission to reasonably infer that Orozco was subjected to national origin harassment when she attempted to receive service at Summit. A single ethnically offensive comment, however unpleasant and uncivil, is not legally actionable as harassment. *See, e.g., Iverson v. Horwitz*, 1994E021, *7 (CCHRC Feb. 8, 1996) (dismissing harassment claim based on isolated incidents, including such comments).

Taking the facts as Orozco alleges them, she and Khatiwala were arguing about whether Summit would accommodate Orozco's disability by letting her shop with her service animal. Whatever hostility Khatiwala was directing at Orozco was based on her membership in the protected class of persons with disabilities, and not of persons with a particular national origin. The Commission's investigation supports only her claim of discrimination based on her disability.

¹¹ To come full circle, if the administrative law judge finds Khatiwala's testimony to be more credible than Orozco's, the evidence of Marley's behavior would strongly support the further conclusion that Orozco's dog is not, in fact, a *bona fide* service animal whose presence Summit had a legal obligation to reasonably accommodate (even absent an undue hardship).

CONCLUSION

For the foregoing reasons, the Commission finds **SUBSTANTIAL EVIDENCE** to support the unlawful discrimination claim based on disability in Complaint No. 2014PA001 pending before the Commission. The Commission will issue a notice of the date and time of an Initial Status for a dispositive Administrative Hearing on this claim. The Commission also orders that the unlawful discrimination claims based on national origin in Complaint No. 2014001 be **DISMISSED** for **LACK OF SUBSTANTIAL EVIDENCE** of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), complainant may file a request for reconsideration with the Commission within 30 days of the date of this order.

September 3, 2015

By delegation:



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