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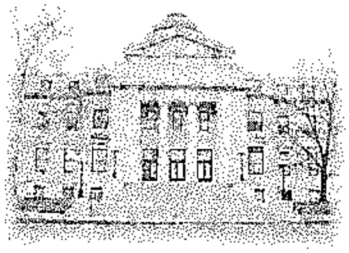

OFFICE OF OMBUDSMAN
OLA BABCOCK MILLER BUILDING
FIFTH EAST GRAND AVENUE
DES MOINES, IOWA 50319

BERNARDO GRANWEHR
OMBUDSMAN

January 18, 2023

Sondra Wilson
[redacted]
Ames, IA 50014

Dear Ms. Wilson:

I am responding to your online complaint that we received on November 15, 2022. You submitted a complaint against the Iowa Civil Rights Commission (ICRC) as it related to the Love Club, LLC, Reliable Street, Inc, and Lockwood Cafe. The underlying complaint you submitted to the ICRC alleged these entities discriminated against you based on your sex and gender identity. The ICRC closed your complaint at the screening stage without finding these entities discriminated against you. You alleged the ICRC erroneously screened out your case.

Please note that our office is not part of the formal ICRC appeal process. Rather, we are an outside agency that can review the actions of other governmental agencies to determine if they acted in accordance with law and policy. In the case of the ICRC, we can look at the process and procedures followed by the agency to determine if they conformed with laws and policies that govern the agency. Due to the specialized nature of discrimination complaints, our office does not have the expertise to review the underlying evidence used in the case to determine if discrimination had in fact occurred, or the weight the ICRC placed on certain evidence when it arrived at its decision.

In response to your complaint, I reviewed the materials you sent me, which included your original Complaint to ICRC, the Civil Rights Questionnaire, the Preliminary Case Review, the Close Complaint Cover letter, your Appeal and the ICRC Appeal Response. I also reviewed Iowa law and administrative rules.

Based on the documents you provided, you filed a complaint and subsequently you and the respondent were asked to complete questionnaires. This is based on Iowa rule.

According to Iowa Administrative Code 161-3.12(1)(a), the ICRC may send a questionnaire to the parties after receiving a complaint:

> **161—3.12(216) Administrative review and closure.**
> 3.12(1) *Preliminary screening.*
> a. *Questionnaire.* As soon as practicable after receipt of a complaint, the commission may draft and mail to the parties written questionnaires. Respondent and complainant may respond via regular, certified or local mail, electronic mail, or online via the commission's case management system. Complainant and respondent will receive different sets of questions as the complainant and respondent typically have different items of information and different interpretations of the facts. The questionnaire will be as specific as practicable to the particular complaint.

Once the questionnaires are returned, the case is screened to determine if further processing is warranted under a "reasonable possibility of a probable cause determination" standard, in accordance with rule 161-3.12(1)(e) and (f):

> e. *Preliminary screening process.* As soon as practicable after the receipt of all materials responsive to the questionnaires, the executive director or designee shall review the submitted answers and materials. The executive director or designee shall then determine whether the case will be "screened in" as warranting further processing or "screened out" as not warranting further investigation.
> f. *Standard for screening.* A case will be screened in when further processing is warranted. Further processing is warranted when the collected information indicates a reasonable possibility of a probable cause determination or the legal issues in the complaint need development.

Consistent with the administrative rules, your case was assigned to Sarah Vanderploeg for screening. Ms. Vanderploeg drafted the Preliminary Case Review that recited (1) your allegations, (2) the respondent's response, (3) an analysis of the law governing public accommodation and (4) the ICRC's conclusion. This basic format follows a standard of legal review often used by courts. After reviewing the allegations and the applicable law, the Preliminary Case Review specifically found that there was no reasonable possibility of a finding of probable cause on the "public accommodation" claim.

The Preliminary Case review determined that you were a volunteer and our office does not have the expertise to dispute that.

Iowa Administrative Code rule 161-3.12(1)(g) and (h) explains the effect of a case that is screened out:

> g. *Effect of screen out.* A complaint determined not to warrant further processing shall be administratively closed.

> h. *Effect of failure to follow screening procedure.* Preliminary screening is a tool to remove from the commission's active complaints those cases which the collected preliminary information indicates do not warrant further processing. Irregularities in the preliminary screening of a complaint, failure to complete preliminary screening within 120 days of the filing of the complaint, or failure to follow the preliminary screening procedure altogether shall not, by itself, in any way prejudice the rights of either party.

Consistent with the administrative rules, the Case Determination administratively closed your complaint. Rule 161-3.12(3) explains that "[a]n administrative closure resulting from preliminary screening is merely an estimation of the probable merits of the case based on the experience and expertise of the commission."

Following the administrative closure that resulted from the screening process, you filed a request to reopen the case that is consistent with rule 161-3.16(3). That rule also provides the following:

> The commission may summarily deny an application for reopening without seeking additional information and without following any of the procedures set forth in paragraph 3.16(3)"e." Summary denial is appropriate when the application for reopening either fails to assert any grounds for reopening or asserts grounds which are inadequate to justify reopening.

In response to your request, the ICRC issued a "Summary Order and Notice Denying Reopening," which stated "[t]he request contained nothing which changed the screener's determination that Complainant could not demonstrate that Respondent's reason for denying Complainant service was pretext for discrimination." Your complaint is that ICRC improperly closed the case after you say you proved the respondent's claims false.

I note that nothing in the administrative rule describes a process by which the ICRC must detail or explain the reason for denying a reopening. All that is required under rule 161-3.16(3) is a notice to the parties that the denial was made:

> f. . . . If no further investigation is required, the commission shall decide the matter on the accumulated record of the case. Each of the parties shall be informed of the action taken on the application to reopen, in writing, either by regular or certified mail.
> g. When the commission denies an application for reopening of an administrative closure, the notice of the denial may be made by regular mail.

However, in the Summary Order and Notice Denying Reopening, the ICRC addresses your claim that the respondents' statements were false, stating:

> Complainant seems to suggest that Respondent's reason for asking her to leave is false; however, even assuming all facts in favor of Complainant, there is no indication that it was anything more than a good-faith mistaken belief on the part of Respondent. A respondent's reason for its actions may be legitimate even though it is erroneous "if the [respondent] honestly believed the asserted grounds at the time." *Tagomo v. Wells Fargo & Co.*, 462 F.3d 925, 935 (8th Cir. 2006); *see also Pye v. Nu Aire, Inc.*, 641 F.3d 1011, 1022 (8th Cir. 2011). When the respondent reasonably relies on the particular facts before it when it makes the decision, its reason is not pretextual even if it is ultimately incorrect. *Shazor v. Prof'l Transit Mgmt., Ltd.*, 744 F.3d 948, 960 (6th Cir. 2014) (quoting *Upshaw v. Ford Motor Co.*, 576 F.3d 576, 586 (6th Cir. 2009)). Respondent provided screenshots and witness statements demonstrating repeated concerns about the appropriateness of Complainant's conduct. Even if all of these encounters were misunderstandings or even falsehoods on the part of the complaining party, it was not unreasonable of Respondent to rely on this body of evidence when it decided to bar Complainant from the premises.

I also need to point out that the Iowa Supreme Court has found that due process rights do not attach in claims submitted to the ICRC. *Estabrook v. Iowa Civil Rights Commission*, 283 N.W.2d 306 (Iowa 1979). The Court viewed the ICRC process as a mere administrative remedy, with the complainant having the option of filing a civil claim of discrimination in state or federal court once that administrative process is exhausted. *Id.* at 310. The Court determined that the legislature did not intend the ICRC to process every complaint even if it generated a prima facie case for discrimination. Rather, the Court found that the legislative intent was to permit the ICRC to be selective in determining which cases to process through the agency. This gives the ICRC broad authority to determine which cases to process, even for cases that present a prima facie showing of discrimination.

The Iowa Court of Appeals reviewed an aspect of the ICRC procedures when the agency did not provide a complainant the opportunity to review and challenge evidence as part of the agency action. *Eilders v. Iowa Civil Rights Com'n.* 2002 WL 535028 (Iowa App. 2002). The court found that the ICRC determination process was not intended to resemble a contested evidentiary proceeding found in a civil proceeding. A complete range of procedurals protections can be assured by requesting a right-to-sue letter and pursuing a claim in court. Rather, pursuing a complaint through the administrative process offered a swifter and less expensive route, but subjected the complainant to the agency's limited procedural safeguards. *Id.* at *3. The court found that the State had a significant interest in maintaining the selective and streamlined system of an already overburden process, taking judicial notice of the nearly 2,200 complaints resolved by 35 staff members. *Id.* at *3-4.

The purpose of sharing this information is to point out the courts' expectations of the ICRC as part of the administrative process; that being one of lower procedural protections than what can be expected through the court process, and the broad discretion afforded to the ICRC to screen cases.