

**STATE OF OHIO  
CIVIL RIGHTS COMMISSION**

IN THE MATTER OF:

<b>JOANN BAKER,</b>	(AKR) G3041296 (21068) 090596, Complaint #7923
<b>TILLIE PIPOLY,</b>	(AKR) G3041296 (21071) 081596, Complaint #7924
<b>MARY JANE KARAM,</b>	(AKR) G3041296 (21069) 081596, Complaint #7937
<b>LINDA SHUTRUMP</b>	(AKR) G3041296 (21070) 081596, Complaint #7939 (AKR) G3052897 (21831) 060497, Complaint #8178

Complainants

and

**TIPPECANOE COUNTRY CLUB, INC.**

Respondent

**HEARING EXAMINER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND RECOMMENDATIONS**

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**HEARING EXAMINER'S REPORT BY:**

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## INTRODUCTION AND PROCEDURAL HISTORY

Tillie Pipoly, Mary Jane Karam, and Linda Shutrump filed sworn charge affidavits with the Ohio Civil Rights Commission (Commission) (OCRC) on August 15, 1996.<sup>1</sup> JoAnn Baker filed a sworn charge affidavit with the Commission on September 5, 1996.

The Commission investigated these charges and found probable cause that Tippecanoe Country Club, Inc. (Respondent) engaged in unlawful discriminatory practices in violation of Revised Code Section (R.C.) 4112.02(G).

The Commission attempted, but failed to resolve these charges by informal methods of conciliation. The Commission subsequently issued Complaints #7923 and #7924 on February 20, 1997. The Commission issued Complaints #7937 and #7939 on March 13, 1997. The Complaints

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<sup>1</sup> Jean Bochert was one of the original Complainants who filed a charge of discrimination against Respondent on August 15, 1996. Bochert withdrew her charge on January 6, 2000, and the Complaint issued on her behalf (#7938) was dismissed at that time. (Commission Minutes, January 6, 2000, page 454)

alleged that Respondent denied Complainants “benefits of membership” because of their sex.

Complainant Shutrump filed a second charge against Respondent on June 4, 1997. The Commission investigated this charge and found probable cause that Respondent engaged in unlawful discriminatory and retaliatory practices in violation of R.C. 4112.02(G) and (I).

The Commission attempted, but failed to resolve this charge by informal methods of conciliation. The Commission subsequently issued Complaint #8178 on January 8, 1998. The Complaint alleged that Respondent subjected Complainant Shutrump to “a disproportionate increase” in monthly dues because of her sex and in retaliation for filing a previous charge of discrimination against Respondent. Complaint #8178 was consolidated for hearing with the other complaints, which were previously consolidated by the Hearing Examiner.

Respondent filed timely Answers to the Complaints. Respondent admitted certain procedural allegations, but denied that it is place of public accommodation and it engaged in any discriminatory or retaliatory

practices. Respondent also raised affirmative defenses including lack of jurisdiction.

Respondent filed a Motion to Bifurcate Hearing on December 3, 1997. Respondent moved to bifurcate the hearing to first decide whether it is a place of public accommodation and later decide the issue of liability upon a finding of jurisdiction. The Hearing Examiner granted this Motion, which was unopposed, on December 4, 1997.

A public hearing was held on November 5, 1998 at a Mahoning County Courtroom in Canfield, Ohio.<sup>2</sup> The subject matter of the hearing was limited to the sole issue of whether Respondent is a place of public accommodation under R.C. 4112.02(G) and the Commission's regulations.

The Hearing Examiner issued Findings of Fact, Conclusions of Law, and Recommendation (Hearing Examiner's Report) on August 9, 1999. The Hearing Examiner concluded that Respondent is a private club

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<sup>2</sup> The record of this hearing consists of the pleadings, two sets of Joint Stipulations of Fact, a 172-page transcript of the hearing, documents admitted and proffered into evidence during the hearing, post-hearing briefs filed by Respondent on February 1, 1999 and by the Commission on March 4, 1999, and a reply brief filed by Respondent on March 15, 1999.

rather than a place of public accommodation under R.C. 4112.02(G). Accordingly, the Hearing Examiner recommended dismissal of all Complaints except for Complaint #8178. The Hearing Examiner concluded that the Commission had jurisdiction to proceed with the retaliation allegation in that Complaint. The Hearing Examiner noted that Respondent is a “person” as defined by R.C. 4112.01(A)(1), and R.C. 4112.02(I) prohibits, *inter alia*, any “person” from retaliating against another person for filing a charge of discrimination with the Commission.

The Commission’s counsel and Complainants filed timely objections to the Hearing Examiner’s Report and requested to appear before the Commissioners of the OCRC at one of their meetings. Respondent filed a timely response to the Objections.

The Commissioners considered the Hearing Examiner’s Report, the Objections, and the Response on November 18, 1999. The Commissioners reversed the Hearing Examiner’s finding that Respondent is not a place of public accommodation and remanded the cases for a hearing on the merits. (Commission’s Minutes, November 18, 1999, page 239)

A public hearing was held on July 18-21, 2000 at the Mahoning County Court of Common Pleas in Youngstown, Ohio. The hearing reconvened and concluded on August 1, 2000 at a Mahoning County Courtroom in Canfield, Ohio.

The record of this hearing consisted of the pleadings, a 1183-page transcript of the hearing, exhibits admitted into evidence at the hearing, post-hearing briefs filed by the Commission on December 4, 2000 and by Respondent on January 16, 2001, and reply briefs filed by the Commission on January 26, 2001 and by Complainants on February 12, 2001.

## **FINDINGS OF FACT**

The following findings of fact are based, in part, upon the Hearing Examiner's assessment of the credibility of the witnesses who testified before him in this matter. The Hearing Examiner has applied the tests of worthiness of belief used in current Ohio practice. For example, he considered each witness's appearance and demeanor while testifying. He considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual

recitation. He considered the opportunity each witness had to observe and know the things discussed, each witness's strength of memory, frankness or lack of frankness, and the bias, prejudice, and interest of each witness. Finally, the Hearing Examiner considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainants Pipoly, Karam, and Shutrump filed sworn charge affidavits with the Commission on August 15, 1996. Complainant Baker filed a sworn charge affidavit with the Commission on September 5, 1996. Complainant Shutrump filed a second charge on June 4, 1997.

2. In the charges filed in 1996, the Commission determined on December 12, 1996 that it was probable that Respondent engaged in unlawful discriminatory practices in violation of R.C. 4112.02(G). In Shutrump's second charge, the Commission determined on October 9, 1997 that it was probable that Respondent engaged in unlawful discriminatory and retaliatory practices in violation of R.C. 4112.02(G) and (I).

3. The Commission attempted to resolve these matters by informal methods of conciliation. The Commission issued the Complaints after conciliation failed.

4. Respondent is a corporation located in Canfield, Ohio. Respondent's stated purpose is "to operate as a private social club for recreational and social benefits of its Members, and their family and guests." (Comm.Ex. 16) Respondent maintains an 18-hole golf course with a pro shop and driving range, a swimming pool, tennis courts, and a clubhouse. The Clubhouse has several rooms including locker rooms, a living room, a ballroom, a lounge, a health/fitness room, a formal dining room, and other less formal dining areas.

5. Respondent offers several classes of membership. These classes have different privileges, rights, and obligations. Most classes limit the number of members. Members in each class are required to pay monthly dues. Most classes are also required to pay a "one-time" initiation fee and a minimum charge for food purchases on a quarterly basis. Historically, the vast majority of members with voting rights and full access to Respondent's facilities have been male.

6. Respondent operates under a Code of Regulations (Code). Respondent has periodically amended its Code since the Club's inception in the late 1920s. Stockholding members meet annually in November. Only stockholding members in good standing may attend and vote at this meeting or special meetings. The Code may be amended at such meetings by a majority vote of at least 35 stockholders or written assent, without meeting, by two-thirds (2/3) of stockholding members. Historically, the vast majority of stockholding members have been male.

7. Respondent is governed by a Board of Directors (Board) who are elected by its stockholders. The Board establishes the Club's rules and policies. The Board consists of 12 stockholding members. The Board elects officers to act as president, vice-president, secretary, and treasurer. The president appoints chairpersons to standing committees such as finance, greens, house, and membership.<sup>3</sup> The chairpersons appoint committee members with approval of the Board. Historically, only males have served on the Board. (Tr. 271-72)

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<sup>3</sup> The Board may authorize other committees as necessary, and the president may appoint chairpersons for other committees with the Board's approval. Respondent has a number of other committees such as the Golf Committee, Pro Shop Committee, Tennis Committee, Swimming Pool Committee, Social Committee, and Insurance Committee.

8. A general manager oversees the daily operation of the Clubhouse and other facilities. The general manager and staff prepare membership handbooks yearly. The handbooks are mailed to members usually at the beginning of the golf season. The Board has the authority to change the handbook.

9. Among other things, these handbooks provide a membership directory and the rules governing use of the golf course, dining areas, and the other facilities. For use of the golf course, the handbook lists the daily restrictions on playing times and a monthly schedule of events. Historically, the handbook has identified golf events based on gender and restricted the use of the golf course on Tuesday, Thursday, weekends, and holidays on the basis of sex. Virtually all golfers who play on weekend and holiday mornings have been male.

10. The general manager and staff also prepare monthly calendars for members. These calendars, which primarily list golf events, are mailed to members each month. The 2000 calendars through June of that year included the following language:

Ladies Summer Hours In Golfer's Grille Room:

Tuesday, Wednesday, Friday	No restrictions
Thursday	7:00 p.m. until closing
Saturday	6:00 p.m. until closing
Sunday and Holidays	11:00 a.m. until closing

(Comm.Ex. 40 I)

11. Complainants are female. Complainants Shutrump, Karam, and Baker (and their husbands at the time) became affiliated with Respondent and obtained access to its facilities through the purchase of a Class 1 Family Membership.<sup>4</sup> This class of membership remained part of the Club's 1991 Code, which was in effect when Complainants filed their charges of discrimination in August and September 1996.

12. Under the 1991 Code, only two classes had the right to vote and serve on the Board: Class 1 "Family Membership" and the Class 8 "Single Man or Woman" Membership. (Comm.Ex. 17, Appendix A) These classes required the member to purchase one share of stock. The stock

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<sup>4</sup> The Commission's counsel indicated that Complainant Pipoly was unable to attend the hearing due to health reasons. Thus, she did not testify at the hearing.

cost \$600 per share. Members in these classes were prohibited from buying more than one share of stock. The 1991 Code indicated that the “stock shall appear in the name of the *male* member of a family.” (Comm.Ex. 17) (Emphasis added.)

13. The language of the 1991 Code used male pronouns throughout the other articles. For example, the language presumed that the Board members and its officers would be male, those voting on nominations for the Board would be male, and those applying for membership would be male. The Class 1 Family Membership also presumed that the husband was “the family head” and membership vested in his name:

Membership in this class is vested in the head of a family and shall entitle the family head, *his wife*, male children under 21 and unmarried females to all of the privileges of the club.

*Id.*, (Emphasis added.)

14. Respondent also restricted access to its golf course based on gender at the time of Complainants’ filings. Respondent had “Ladies’ Day” on Tuesday and “Men’s Day” on Thursday. (Comm.Ex. 4) Respondent prohibited men from playing golf before 2:00 p.m. on Tuesday and women

from playing golf between 10:00 a.m. and 4:00 p.m. on Thursday. *Id.* Respondent prohibited “women” from playing golf before 3:00 p.m. on Saturday and 12:00 p.m. on Sunday and holidays.<sup>5</sup> *Id.*

15. Respondent identified golf events in its 1995 and 1996 handbooks based on gender.<sup>6</sup> For example, these handbooks listed men’s and women’s opening days, guest days, and round-ups. (Comm.Exs. 4, 5) The 1996 handbook listed the “Tippy Rider Cup” as a new men’s golf tournament. (Comm.Ex. 5)

16. Respondent has historically restricted women’s access to the “Men’s Grille”. This restriction continued in the summer of 1996. The 1995 and 1996 handbooks listed “Ladies Summer Hours” for the Men’s Grille and the “Golfer’s Grille”, respectively. For example, the 1996

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<sup>5</sup> Respondent did not amend its Code until November 1996. Therefore, the playing restrictions in the 1995 handbook (Comm.Ex. 4) remained in effect for the 1996 golf season.

<sup>6</sup> As in past years, the 1995 handbook had separate golf schedules for men and women.

handbook provided the following summer hours for women's use of the Golfer's Grille, previously known as the Men's Grille:<sup>7</sup>

Ladies Summer Hours In Golfer's Grille Room:

Tuesday, Wednesday, Friday	No restrictions
Thursday	7:00 p.m. until closing
Saturday	6:00 p.m. until closing
Sunday and Holidays	11:00 a.m. until closing

(Comm.Ex. 5)

17. In November 1996, Respondent's stockholders adopted several amendments to the Code at their annual meeting. These amendments were intended to make the Code's language gender neutral. (Tr. 127, 268, 852) Besides removing male pronouns, Respondent added a Regular Membership, a Regular Intermediate Membership, and a Spousal Membership. (Comm.Ex. 16, Appendix B) Respondent eliminated all family memberships, the Junior Membership, and the Single Man or Woman Membership. *Id.* Those members who held Class 1A Family

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<sup>7</sup> At some point in 1996, the Board changed the names of all of their dining areas:

<u>Old name</u>	<u>New name</u>
Formal Dining Room	Windsor Room
Men's Grille	Golfer's Grille
Mixed Grille	Tippy Grille
Main Dining Room	Oxford Room

(Comm.Ex. 30)

Memberships (non-stock) and Class 8 Single Man or Woman Memberships were required to become Class 1 Regular Members. (Comm.Ex. 16)

18. Under the 1996 Code, all married men who held Class 1 Family Memberships automatically became Class 1 Regular Members. Their rights did not change. These members have voting rights and may serve on the Board. These members have full access to Respondent's facilities including the right to play golf on weekend and holiday mornings.

19. Those who held Class 2 Intermediate Family Memberships became Class 2 Regular Intermediate Members. Their rights and limitations did not change. These members have full access to the golf course and the Club's other facilities without the right to vote or serve on the Board. These members must convert their membership to a Class 1 Regular Membership within 30 days of their 34<sup>th</sup> birthday. These members must also purchase stock and pay the balance due on their initiation fees by that date.<sup>8</sup>

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<sup>8</sup> Regular Intermediate Members must pay the same initiation fee as Regular Members. However, the former may pay the fee in monthly installments from the start of their membership until their 34<sup>th</sup> birthday.

20. The Spousal Membership was a newly-created class. These members must be the spouse of a Regular Member. Spousal Members must purchase one share of stock and, as stockholders, have the same rights afforded to Regular Members. Spousal Members must pay 75% of the initiation fee and 75% of the monthly dues paid by Regular Members. The capacity for Spousal Members is 310—the limit for Regular Members and Regular Intermediate Members combined.

21. Under the 1996 Code, classes 1 through 5 became eligible for “family privileges” upon payment of higher monthly dues. These privileges were limited to “Immediate Family” members such as the member’s spouse, children, and stepchildren under the age of 23. Those with family privileges have access to the Club’s facilities without the presence of a Club member. They may invite guests to use the facilities with them. They may purchase a locker in the Clubhouse to store items. They are restricted from playing golf on weekend and holiday mornings and have no right to vote or serve on the Board.

22. The Board establishes the cost of family privileges. This cost is not contingent on the number of immediate family members or how often

they use the Club's facilities. The Board assesses Class 1 Regular Members an additional \$30 in monthly dues for family privileges. Classes 2 through 5 pay an additional \$5 in monthly dues for these privileges.

23. The 1996 Code split the Class 6 Widow Membership into two separate classes: Class 7A and 7B. Class 7A Widow Members have "all the privileges afforded to the family of a Regular Member." (Comm.Ex. 16, Appendix B) This includes the right to play golf.<sup>9</sup> They are prohibited from owning stock, voting, and serving on the Board. They are not required to pay an initiation fee, but must pay \$170 in monthly dues.

24. Class 7B Widow Members have the same rights as Class Three Social Members. They have access to the Clubhouse, pool, and tennis courts, but not the golf course unless permitted by the Board. They are prohibited from owning stock, voting, and serving on the Board. They are not required to pay an initiation fee, but must pay \$125 in monthly dues.

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<sup>9</sup> Generally, those who have access to the Club through family privileges are prohibited from playing golf on weekend and holiday mornings. Respondent's 1997 through 2000 handbooks indicated that Class 7A Widow Members could play golf at these times. (Comm.Exs. 1, 6, 7, 24)

25. The 1996 Code also created new rights for widows or “surviving spouses”. Within three months of the death of a member, surviving spouses may petition the Board in writing to convert to the class held by their deceased spouse or another class other than “Class 5, Senior Member, or Golf if the privileges previously enjoyed were other than Golf.” *Id.* The Board may grant or deny the petition, or grant another class in lieu of the requested class. Surviving spouses are not required to pay an additional initiation fee upon conversion.

26. In its 1997-2000 handbooks, the Board changed the daily restrictions on playing golf to reflect the amendments to the 1996 Code.<sup>10</sup> The handbooks no longer specifically restricted “women” from playing golf before certain times on weekends and holidays. (Comm.Exs. 1, 6, 7, 24) The handbooks restricted Saturday play before 1:00 p.m. to Class 1, 2, 4, 5, 6, and 7A members and out-of-town guests. The handbooks restricted Sunday and holiday play before 11:00 a.m. to these classes and guests.

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<sup>10</sup> Respondent has made two additional changes to the Code since 1996. Respondent created a Class 8 Legacy Class in November 1998. The following November, Respondent eliminated the nominating committee. Stockholding members may volunteer to serve on the Board by writing a letter to the Club’s president by a certain date. (Tr. 100) The Club’s president will appoint a nominating committee only if there are not four volunteers. The nominating committee will then fill out “the slate of nominees.” *Id.*

These changes have had little, if any, effect on the number of women who play golf on weekend and holiday mornings.

27. The Board continued to restrict access to the golf course on Tuesday and Thursday based on gender. The handbooks designated Tuesday as “Ladies day” and Thursday as “Men’s day”. *Id.* Respondent prohibits men from playing golf before 2:00 p.m. on Tuesday and women from between 11:00 a.m. and 4:00 p.m. on Thursday.

28. Further, the handbooks continued to identify golf events by gender. The handbooks listed men’s and women’s opening days, guest days, and round-ups. The 2000 golf schedule listed other gender-specific events such as a “4 man shotgun” event, the “Men’s SWAT Tournament”, and the “Men’s Pre-Season Guest Scramble.” (Comm.Ex. 24)

29. The 1997-1999 handbooks also continued to list “Ladies Summer Hours in the Golfer’s Grille Room.” (Comm.Exs. 1, 6, 7) These hours were the same as those listed in the 1996 handbook; women did not have access to the Golfer’s Grille until 7:00 p.m. on Thursday, 6:00 p.m. on Saturday, and 11:00 a.m. on Sundays and holidays. This language was

removed from the 2000 handbook, but these hours remained in effect until late June 2000. (Tr. 696-98, 1066-67)

30. On June 27, 2000, the Board voted to remove all restrictions on access to the Golfer's Grille except for one pertaining to children. The Board's president, Jim Harpster, referenced this action in his June letter to membership. (Comm.Ex. 37) The Board also gave the Club's general manager, Robert Yaggi, a note to disseminate to members about the Golfer's Grille being "open to all Members and their Guests" without any restrictions. (Comm.Ex. 59) Yaggi mailed the note to membership.

31. The 1996 amendments to the Code have not increased the number of female stockholders in the Club. In 1996, Respondent had one female Class 1 member and four female Class 8 members. Three women were Class 1 Regular Members in 2000. (Comm.Ex. 48) Only one person, a female, has purchased a Spousal Membership since 1996.<sup>11</sup>

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<sup>11</sup> Susan Bleggi became a Spousal Member during a membership campaign in 1999. The initiation fee for Regular Members was reduced to \$6,000 during this campaign. This reduction in turn lowered the initiation fee for Spousal Members. Bleggi paid \$4,600 (75% x \$6,000) for her initiation fee. It is unclear in the record whether Bleggi was married to (or divorced from) a Class 1 Regular Member at the time she became a Spousal Member.

## CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of various witnesses is not in accord with the findings therein, it is not credited.

1. The Commission alleged in the Complaints that Respondent denied Complainants “benefits of membership” because of their sex.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that:

It shall be an unlawful discriminatory practice:

- (G) For any proprietor or any employee, keeper, or manager of a place of public accommodation to deny any person, except for reasons applicable alike to all persons

regardless of . . . sex, . . . the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02(G) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

4. The Commission determined on November 18, 1999 that Respondent is a place of public accommodation. As such, Respondent cannot deny one gender full enjoyment of its golf course, dining areas, or other facilities.<sup>12</sup> *Ohio Civ. Rights Comm. v. Lysyj* (1974), 38 Ohio St.2d 217, 221 (test for determining violation of R.C. 4112.02(G) is “simply whether the proprietor, keeper, manager or employee of a place of public accommodation has denied to any person the full enjoyment of such a place” for unlawful discriminatory reasons). This means that Respondent cannot limit access to its golf course via “Men’s days” and “Ladies’ days” or hold golf events exclusively for one sex or the other. See *Ladd v. Iowa*

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<sup>12</sup> Obviously, Respondent may restrict access to dressing areas and restrooms on the basis of gender.

*West Racing Association*, 438 N.W.2d 600 (Iowa, 1989) (race track's "Ladies Day" promotion with free admission and discounted prices for women discriminated against men in furnishing of facilities and services in violation of state public accommodation law).

5. Respondent argues that the designated playing times for "ladies' golf" and "men's golf" are nondiscriminatory because each sex has "the same opportunity to golf, but on separate days." (R.Br. 21) According to Respondent, the purpose of separate golf days for men and women is "to make the golfing experience more enjoyable and competitive for the participants." *Id.*

6. One of the unique aspects of golf is its handicap system. This system is designed to give all golfers, regardless of sex, the opportunity to fairly compete with each other. Of course, Respondent is not required to force men and women to golf together. Golfers tend to segregate themselves. As a place of public accommodation, Respondent simply cannot deny access to its golf course based on gender; such policies violate the full enjoyment provision of R.C. 4112.02(G). Preferential treatment to women on one day and men on another day does not correct

the violation. See *Novak v. Madison Motel Associates*, 525 N.W.2d 123 (Wis.App. 1994) (hotel bar's offering of "Men's Night Out" with discounted beer and free darts did not correct its violation of state public accommodation statute by offering "ladies drink free" night).

7. Respondent further argues that its various golf outings are "open to men and women alike." (R.Br. 21) Respondent makes this argument despite undisputed evidence that most of its golf outings specifically reference one sex or the other. For example, Respondent has historically listed men's and women's opening days, guest days, and round-ups in its handbooks. The 2000 golf schedule also listed other gender-specific events such as a "4 man shotgun" event, the "Men's SWAT Tournament", and the "Men's Pre-Season Scramble." (Comm.Ex. 24) The names of these outings convey the clear message that they are intended for men. It is not coincidental that most of the participants, if not all of them, are men. This result is consistent with Respondent's history of sex discrimination against women.

8. The evidence in this case shows that Respondent has historically discrimination against women. Respondent has perpetuated this sex

discrimination in various ways. The 1991 Code, which was in effect at the time of Complainants' filing, prevented wives from becoming stockholding members. A Class 1 Family Membership automatically vested in the husband's name and only his name could appear on the stock certificate. (Comm.Ex. 17) This practice effectively prohibited married women from voting, serving on the Board, and playing golf at certain times on weekends and holidays.

9. Respondent argues that the privileges of the Club have always been based on membership status. This argument lacks factual support. To the contrary, the evidence shows that the Board specifically prohibited "women" from playing golf before certain times on weekends and holidays. Respondent maintained this policy during the 1996 golf season and in previous years. The Board also maintained "Ladies Summer Hours" for the Men's Grille for years. This sex-based restriction continued, in practice, even after the name was changed to the Golfer's Grille in 1996 and these hours were removed from the 2000 handbook.<sup>13</sup>

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<sup>13</sup> Respondent's general manager, Robert Yaggi, testified that although these hours were removed from the handbook, he was unsure as late as June 17, 2000 whether the Board intended to eliminate the previous restrictions on the Golfer's Grille. Yaggi, who attends the Board's meetings, testified that there is "a difference" between removing language from the handbook and "officially" eliminating a practice. (Tr. 1066)

10. Complainants argue that Respondent's past sex discrimination requires it to "dismantle the effects of the discrimination." (Comp.Br. 6) This argument is well-taken. Recently, the Ohio Supreme Court noted that R.C. Chapter 4112 is "remedial legislation." *Smith v. Friendship Village of Dublin, Ohio, Inc.* (2001), 92 Ohio St.3d 503, 505. Although this chapter focuses primarily on employment and housing discrimination, it is designed to remedy the effects of discrimination in public accommodation as well. *Lysyj, supra* at 220.

11. While the 1996 amendments removed gender specific language from the Code, these amendments have not remedied the effects of Respondent's prior sex discrimination. Instead, these amendments have maintained the status quo. The percentage of female stockholders (and accordingly women with voting rights) has not increased. (Comm.Ex. 48) The Board's members continue to consist of all males. Married women are still denied full access to the golf course unless they become Spousal Members.

12. Under the 1996 amendments, all married men who held Class 1 Family Memberships automatically became Class 1 Regular Members

without paying an additional initiation fee or higher monthly dues. They continued to have voting rights and full access to Respondent's facilities including the right to play golf on weekend and holiday mornings.

13. In comparison, the cost of a spousal membership was high: spouses, who were all women, had to pay an additional initiation fee of \$9,375 (75% of \$12,500) and \$180 more in monthly dues to receive voting rights and full access to the Club's facilities. The other option for families was to pay an additional \$30 in monthly dues for "family privileges." These privileges gave spouses access to Respondent's facilities including the golf course. However, these privileges did not include the right to vote, serve on the Board, or play golf on weekend and holiday mornings. The huge disparity in the cost of these two options, in effect, created a Hobson's choice for families; predictably most, if not all, opted to pay the additional \$30 in monthly fees. Thus, married women who were not allowed to be stockholders prior to the 1996 amendments continue to have no voice in influencing Respondent's policies and no right to play golf at certain times on weekends and holidays.

14. Respondent argues that the creation of the Spousal Membership provides wives of Regular Members equal access to all privileges afforded by the Club. In reality, this new classification has failed miserably in increasing the number of women with voting rights and full access to the Club's facilities. Only one female has purchased a Spousal Membership. This is not surprising. Even Respondent's witnesses testified that they did not believe there would be many applicants for Spousal Memberships.<sup>14</sup> (Tr. 124-25, 188-89, 972) Those who held family memberships before Respondent changed its Code in 1996 should not have to pay another substantial initiation fee and higher monthly dues to remedy the effects of the Club's past discriminatory practices against women. In other words, the female victims and their husbands should not (and apparently are not willing to) bear the burden of remedying Respondent's prior sex discrimination.

15. As part of the 1996 amendments, Respondent eliminated the Class 1 and 1A Family Membership classifications. (Comm.Ex. 16)

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<sup>14</sup> This testimony also supports the Commission's argument that Respondent never intended to remedy the effects of its past discrimination against women. As Respondent acknowledges in its brief, the Club established the Spousal Membership "to address the concerns of a few of the spouses of members." (R.Br. 6) In other words, Respondent created the Spousal Membership to placate those wives who filed a lawsuit and charges of discrimination against the Club.

Respondent eliminated these classifications even though most family members of Regular Members use the Club's facilities. Respondent has offered no valid reason for not offering a family membership where both spouses may purchase a share of stock and enjoy all of the privileges afforded by the Club. In light of Respondent's history of sex discrimination, the only plausible explanation is that all spouses of Regular Members are women. Since the wives of those families who became affiliated with the Club prior to the 1996 amendments had no right to become stockholders because of their sex, the only remedy for this sex discrimination is to allow them to purchase a share of stock for \$600 and revert back to Class 1 Family Memberships without paying an additional initiation fee or higher monthly dues.<sup>15</sup>

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<sup>15</sup> The Hearing Examiner considered the option of giving married Class 1 Regular Members the opportunity to convert their membership to their spouses. However, the Hearing Examiner concluded that this option would not remedy Respondent's sex discrimination against women. See *Kline v. Terrace Park Country Club*, Complaint #6698, April 1995. In *Kline*, Chief Hearing Examiner Franklin Martens wrote:

The conversion privilege did not cure the problem. Asking the male members to give their regular membership status to their spouses had the affect [sic] one would expect. All but one of the regular members decided to remain as regular members.

*Kline, supra* at 18.

16. Respondent argues that it would be “patently unfair” to grant a spouse of a member voting rights and full access to the Club’s facilities without paying the same initiation fee or dues as single members. (R.Br. 24) Respondent makes this argument even though the Spousal Membership required a lower initiation fee and less monthly dues than paid by single members who had to purchase a Class 1 Regular Membership. Further, Respondent affords all Class 1 Regular Members the same rights regardless of the initiation fee that they paid. For example, Philip Zell only paid an initiation fee of \$3,500 when he joined the Club in 1985. Others have joined the Club when the initiation fee was reduced to increase membership. Respondent lacks the same concern of fairness for Regular Members who have paid thousands more in initiation fees than other Regular Members for the same rights.

17. Respondent also argues that playing times on weekend and holiday mornings are reserved for shareholders to avoid “overcrowding” on the golf course. (R.Br. 22) This argument is contrary to the evidence. As the Commission correctly points out, Respondent grants those who hold Class 2, 4, 5, and 7A memberships full access to the golf course even

though they are not stockholders. (Comm.Exs. 1, 6, 7, 24) The golf course is apparently able to accommodate these members and their guests on weekend and holidays mornings even without tee times.

18. Respondent did not provide any evidence that granting wives of Regular Members full access to the golf course would cause overcrowding. This concern was raised at Board meetings during discussions about creating a Spousal Membership. (Tr. 962) The general consensus of the Board was that most wives were not interested in playing golf on weekend and holiday mornings anyway and would not pay extra money for that right.<sup>16</sup> (Tr. 125-26)

19. The Hearing Examiner agrees with Respondent's contention that the privileges that attach to stock ownership have value. The assertion that Complainants "simply do not want to pay to become members" misses the point. (R.Br. 26) Respondent must remedy its previous denial of these

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<sup>16</sup> The notion that men need to golf on weekend and holiday mornings because they work during the week is antiquated. Even if most wives opted not to play golf on weekend and holiday mornings, the ability of married business women to use the Club to entertain clients at those times cannot be overstated.

privileges to women based on their gender. The remedial nature of R.C. 4112.02(G) requires Respondent to reverse the effects of its prior sex discrimination and make the victims of such discrimination whole.

## **RETALIATION**

20. The Commission alleges in Complaint #8178 that Respondent subjected Complainant Shutrump to “a disproportionate increase” in monthly dues because of her sex and in retaliation for filing a previous charge of discrimination against Respondent.<sup>17</sup> The latter allegation, if proven, would constitute a violation of R.C. 4112.02, which provides that:

It shall be an unlawful discriminatory practice:

- (I) For any person to discriminate in any manner against another person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

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<sup>17</sup> The main thrust of Complaint #8178 is the allegation of unlawful retaliation. The sex discrimination allegation is cumulative.

21. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Columbus Civ. Serv. Comm. v. McGlone* (1998), 82 OhioSt.3d 569. Therefore, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful retaliation under Title VII of the Civil Rights Act of 1964 (Title VII).

22. Under Title VII case law, the evidentiary framework established in *McDonnell Douglas Co. v. Greene*, 411 U.S. 792 (1973) for disparate treatment cases applies to retaliation cases. This framework normally requires the Commission to prove a *prima facie* case of unlawful retaliation by a preponderance of the evidence. The Commission may establish a *prima facie* case of unlawful retaliation in Complaint #8178 by proving that:

- (1) Complainant Shutrump engaged in an activity protected by R.C. Chapter 4112;
- (2) Respondent knew about the protected activity;
- (3) Thereafter, Respondent subjected Shutrump to an adverse membership action; and
- (4) There was a causal connection between the protected activity and the adverse membership action.

*Cf. Hollins v. Atlantic Co., Inc.*, 188 F.3d 652 (6<sup>th</sup> Cir. 1999) (setting forth *prima facie* elements of Title VII retaliation claim).

23. The Commission established the first three elements of a *prima facie* case of unlawful retaliation. Complainant Shutrump filed a charge of discrimination with the Commission on August 15, 1996. Respondent received notice of this charge prior to the 1996 amendments to the Code. These amendments split the Class 6 Widow Classification into two separate classes depending on golfing privileges. The monthly dues for Shutrump and other widows with golf privileges were increased from \$125 to \$170. This increase constitutes an adverse membership action.

24. Although the Commission established three elements of a *prima facie* case, the Commission failed to provide sufficient evidence to infer a causal connection between the increase in Shutrump's monthly dues and her filing of a charge of discrimination. There is no evidence that Respondent divided the widow classification and raised the monthly dues of all widows with golfing privileges because of Shutrump's membership in that group.<sup>18</sup>

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<sup>18</sup> There were approximately 11 other widows who became Class 7A members along with Shutrump. (Tr. 576)

25. The evidence shows that Respondent granted widows with golfing privileges full access to the golf course after the 1996 amendments even though they were not shareholding members. Prior to these amendments, the widow classification paid the lowest monthly dues except for those of non-resident members. Donald Leone, a Board member from 1995-1998, testified that the monthly dues for widow members had not been raised “for years.” (Tr. 999) Leone also testified that there was discussion among Board members that widows with golfing privileges should pay more in monthly dues than non-golfing widows paid. The sentiment was that non-golfing widows were comparable to social members who paid a substantially lower initiation fee and less monthly dues because they lacked golfing privileges.<sup>19</sup> (Tr. 236-37, 303)

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<sup>19</sup> The maintenance of the golf course is one of the Club’s highest yearly expenses. (Tr. 526-27)

## RECOMMENDATIONS

For all of the foregoing reasons, the Hearing Examiner recommends the following:

1. The Commission issue a Dismissal Order in Complaint #8178;
2. The Commission issue a Cease and Desist Order in Complaints #7923, #7924, #7937, and #7939. Specifically, the Commission order Respondent to cease and desist from engaging in sex discrimination and all other practices that violate R.C. Chapter 4112;
3. The Commission order Respondent to eliminate all practices and policies that limit access to its golf course and other facilities (other than restrooms and locker rooms) on the basis of sex;
4. The Commission order Respondent to provide all members the same access to golf outings and other events regardless of sex;
5. The Commission order Respondent to offer, within 60 days of the Commission's Final Order, all wives of current Class 1 Regular Members

whose families became affiliated with the Club prior to the 1996 amendments the opportunity to purchase a share of stock for \$600 and revert back to Class 1 Family Memberships without paying an additional initiation fee or higher monthly dues.<sup>20</sup> All wives who purchase stock shall enjoy the same rights, privileges, and access to the Club's facilities as all other stockholders;

6. The Commission order Respondent to offer, within 60 days of the Commission's Final Order, widows whose families purchased a Class 1 Family Membership prior to the 1996 amendments the opportunity to purchase a share of stock for \$600. All widows who purchase stock shall enjoy the same rights, privileges, and access to the Club's facilities as all other stockholders;

7. The Commission order Respondent to amend its Code of Regulations to comply with the Commission's Final Order. Respondent shall distribute a new Code to all members prior to April 2002;

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<sup>20</sup> This would require Respondent to revert back to memberships based on familial status. Respondent should offer different family memberships including one giving both spouses the option to purchase stock. Respondent may charge new members who purchase a family membership with two shares of stock a higher initiation fee and higher monthly dues than new single members. Respondent may also charge current families who became affiliated with the Club after the 1996 amendments the difference in the initiation fee they paid and the initiation fee established for a family membership with two shares of stock, if they seek to convert to the latter.

8. The Commission order Respondent to prepare a membership handbook that complies with the Commission's Final Order. Respondent shall distribute the 2002 handbook to all members prior to April of that year;

9. The Commission order Respondent to provide a copy of its new Code and the 2002 handbook to the Commission's Special Enforcement Unit (SEU) at 1111 East Broad Street, Suite 301, in Columbus, Ohio. Respondent shall provide copies of these documents to the SEU prior to April 2002;

10. The Commission order Respondent to provide the SEU copies of any changes in its Code over a four-year period beginning in April 2002. Respondent shall also provide the SEU yearly copies of its handbooks through 2006; and

11. The Commission order Respondent to provide the SEU a yearly report which includes, but is not limited to, the following:

- A current membership list along with the type of membership held;
- The names of all prospective applicants for membership who were considered during the pre-screening process and the type of membership sought;

- Copies of all applications for membership;
- Separate lists of all applicants for membership who were rejected and accepted. These lists shall include the type of membership applied for;
- A current list of the names of all stockholding members;
- The names of all stockholding members who volunteered to serve on the Board, the results of all Board elections, and names of all current Board members including offices held;
- The minutes of all stockholder and Board meetings;
- All correspondence sent to members by the Club president or other office holders;
- All calendars of monthly events distributed to membership or posted at the Club;
- Copies of all written complaints filed with the Board by members about sex discrimination or other forms of unlawful discrimination; and
- Any other documents or information requested by the SEU.

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TODD W. EVANS  
HEARING EXAMINER

September 18, 2001

**APPENDIX A\* 1991 CODE OF REGULATIONS**

<b>CLASS</b>	<b>DESCRIPTION</b>	<b>MEMBERSHIP CAPACITY</b>	<b>INITIATION FEES</b>	<b>MONTHLY DUES</b>
1	<b>FAMILY MEMBERSHIP:</b> Membership in this class is vested in the head of a family and shall entitle the family head, his wife, male children under 21 and unmarried females to all of the privileges of the club. Sons and daughters of Class 1 members between the ages of 21 and 25, inclusive, and <u>still attending school</u> may obtain golf privileges upon payment of a fee of \$50.00 per year.	285**	\$12,500.00	\$263.00
1A	<b>FAMILY MEMBERSHIP (Non-Stock):</b> Membership in this class shall enjoy the same privileges as a Class 1 member.	NO LIMIT	12,500.00	273.00
2	<b>INTERMEDIATE FAMILY MEMBERSHIP:</b> Membership in this class is vested to married or single persons under the age of 34. These members and their families, if married, are entitled to the same privileges as a Class 1 member. Members in this class must purchase a share of stock and pay initiation fee, but may pay for the stock and the initiation fee monthly over a period from their start of membership until they become 34 years of age. Upon reaching the age of 34, these members must transfer to Class 1 membership or resign. When transferring to Class 1, the member must pay the balance due on his share of stock . . . .	285**	12,500.00	169.00
3	<b>SOCIAL MEMBERSHIP:</b> Membership in this class entitles the member and eligible members of his family to all the privileges of the Club except golfing privileges. This class of member may not hold a share of stock.	125	2,500.00	169.00
4	<b>NON-RESIDENT MEMBER:</b> Membership in this class is limited to those persons who reside beyond a radius of 30 miles from the Club and who neither maintain a winter residence, summer residence or place of business within that area. These members and their families are entitled to full privileges of the Club. Class 4 members may transfer to Class 1 membership upon approval of the Board of Directors and by paying the difference in entrance fee between a Class 4 and a Class 1 members, (sic) and by securing a share of stock.	50	1,500.00	93.00
5	<b>JUNIOR MEMBERSHIP:</b> Membership in this class is limited to unmarried sons and daughters, <u>not attending school</u> , between the ages of 21 and 25 inclusive, whose parents are Class 1 members in good standing. Membership in this Class are entitled to the same privileges as Class 1 members.	NO LIMIT	500.00	125.00
6	<b>WIDOWS:</b> Membership in this class is limited to widows of members whose husbands were members in good standing at the time of their death. Upon approval of the Board of Directors, a widow may apply for transfer to this class of membership and she and her children shall enjoy the same privileges of the class held by her husband at the time of his death.	NO LIMIT	NONE	125.00
7	<b>SENIOR MEMBERSHIP:</b> This class is limited to Class 1 members over 65 years of age who have been members in good standing for at least that number of years which, when added to the age of the Member, will total 90 years; and who are willing to surrender his share of stock for its original purchase price. Members in this class and their families shall enjoy the same privileges as Class 1 members.	26	NONE	188.00
8	<b>SINGLE MAN OR WOMAN:</b> Membership in this class is limited to single men or women. The member only is entitled to all of the privileges of Class 1 members.	285**	12,500.00	219.00

\* **Appendix A** is based on Commission's Exhibit 17.

\*\* **Classes 1, 2, and 8** are limited to 285 members combined.

\*\*\* **Class 1 and 8 members** must hold a share of stock in their name or be the assignee of the rights of such stock. Only members in these classes are entitled to vote. Stockholders having membership in other classes must transfer to one of these classes to retain their voting privileges. Stock may be held in the name of an individual, corporation or partnership.

**APPENDIX B\* 1996 CODE OF REGULATIONS**

<b>CLASS</b>	<b>DESCRIPTION</b>	<b>MEMBERSHIP CAPACITY</b>	<b>INITIATION FEES</b>	<b>MONTHLY DUES</b>
1	<b>Regular member</b> shall be at least twenty-one (21) years of age. This Member shall have, subject to Club rules and the Code of Regulations, all privileges afforded by the Club. Members of this class must purchase a share of stock. Each Regular Member shall be entitled to the use of all Club facilities, subject to the Club's rules and Code of Regulations, including the Clubhouse, golf course, swimming pool and tennis courts.	310***	\$12,500.00	(S) \$240.00 (F)** 270.00
2	<b>Regular Intermediate Member</b> shall be at least twenty-one (21) and under thirty-four (34) years of age. All Regular Intermediate Members shall have, subject to Club rules and the Code of Regulations all privileges afforded by the Club to Regular Members except voting rights. Additionally, a Regular Intermediate Member may not serve on the Board of Directors. The Regular Intermediate Member must resign or convert his or her membership to Regular status within thirty (30) days of his or her thirty-fourth (34) birthday.	310***	12,500.00	(S) 170.00 (F) 175.00
3	<b>Social Member</b> shall be at least twenty-one (21) years of age. Each Social Member shall be entitled to the use of Club facilities, subject to Club rules and the Code of Regulations, including the Clubhouse pool and tennis courts. A Class 3 Member is not entitled to the use of the golf course unless permitted on a limited basis by the Board of Directors. A Class 3 Member may not serve on the Board of Directors nor own stock.	150	2,500.00	(S) 170.00 (F) 175.00
4	<b>Non-Resident Regular Member</b> is a Member who does not reside or maintain residence or regularly work, nor does the Member's spouse or immediate family under the age of 21 reside within a forty mile radius of the Club. Such Member shall retain all privileges of a Regular Member classification except the right to vote. A Class 4 member may not serve on the Board of Directors nor own stock.	50	1,500.00	(S) 100.00 (F) 105.00
5	<b>Senior Member</b> shall be limited to Regular Members over sixty-five (65) years of age who have been Regular Members in good standing for at least that number of years which, when added to the age of the Member, will total 90 years; and who are willing to surrender his or her share of stock for its original purchase price. Members in this class shall enjoy the same privileges as Regular Members, except the right to vote. Class 5 Members may not serve on the Board of Directors.	30	NONE	(S) 190.00 (F) 195.00
6	<b>Spousal Member</b> is the spouse of a Regular Member and must be at least twenty-one (21) years of age. This Member shall have, subject to the Club rules and Code of Regulations; all privileges afforded a Regular Member, including the right to vote. Members of this class must purchase a share of stock. Initiation fees for Spousal Members shall be 75% of those of a Regular Member. Monthly dues and assessments for Spousal Members shall be 75% of a regular Member.	310	9,375.00	180.00
7	<b>Class 7 Widow/Widower Member</b> is the spouse of a deceased Member. Members of this Class 7 membership must elect either Class 7A and 7B; subject to the provisions of Section 2.12, Surviving Spouse.			
7A	<b>Class 7A</b> shall have, subject to Club rules and the Code of Regulations, all privileges afforded by the Club to the family of a Regular Member. Additionally, a Class 7A Member may not serve on the Board of Directors nor own stock.	NO LIMIT	NONE	170.00
7B	<b>Class 7B</b> shall be entitled to the use of Club facilities, subject to Club rules and the Code of Regulations, including Club House, pool and tennis courts. A Class 7B member is not entitled to the use of the golf course unless permitted on a limited basis by the Board of Directors.	NO LIMIT	NONE	125.00

\* **Appendix B** is based on Commission's Exhibit 16.

\*\* **Family Privileges.** Each class of Membership, upon payment of additional monthly dues as prescribed by the Board of Directors, shall be eligible for Family Privileges. Family Privileges shall be limited to the Immediate Family of the Member. For purposes of this section, "Immediate Family" shall mean: spouse, children and stepchildren under the age of 23. The Immediate Family of Members shall be subject to the Club rules and Code of Regulations, and such rights as authorized by the Member.

\*\*\* **Classes 1 and 2** are limited to 310 members combined.