STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
CARLOS ESTES,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2004CF0978
	)	EEOC NO(S):	21BA40103
and	)	ALS NO(S):	05-096
	)		
STATE OF ILLINOIS-DEPARTMENT OF HUMAN SERVICES,	)		
	)		
	)		
	)		
Respondent.	)		

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION) Entered this 17th day of March 2009

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

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Complainant,	) **Charge No: 2004CF0978**
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STATE OF ILLINOIS-DEPARTMENT OF	)
HUMAN SERVICES,	)
Respondent.	)
	)

RECOMMENDED ORDER AND DECISION

On March 18, 2005, Complainant filed a Complaint with the Illinois Human Rights Commission (Commission) alleging that his employer, State of Illinois-Department of Human Services, subjected him to sexual harassment in violation of the Illinois Human Rights Act, 775 IICS 5/1-101 *et seq*. (Act).

Respondent filed a motion for summary decision on July 9, 2008. Complainant did not file a response, although given time to do so. The record indicates that the motion has been served upon all Parties and the Illinois Department of Human Rights.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. It is, therefore, named herein as an additional party of record.

CONTENTIONS OF THE PARTIES

Respondent contends that this matter must be dismissed based on the doctrine of *res judicata* because a federal district court dismissed an analogous case with prejudice and there have been no post-trial motions filed nor has an appeal been filed. Complainant has not filed any response to this motion.

FINDINGS OF FACT

The following findings of fact are made from undisputed facts in the record.

1. Complainant filed a Charge of Discrimination, Charge Number 2004CF0978, with the Illinois Department of Human Rights (Department) on October 10, 2003, amended December 11, 2003. On March 18, 2005, the Department filed a Complaint, on behalf of Complainant, with the Illinois Human Rights Commission (Commission) alleging that Respondent subjected Complainant to practices of sexual harassment in violation of the Illinois Human Rights Act, 775 IICS 5/1-101 *et seq.* (Act).
2. Respondent filed a verified answer to the Complaint on May 9, 2005.
3. On August 8, 2005, Complainant filed a motion to stay this matter based on his representation that he intended to file an analogous matter in federal court and desired to stay the Commission case pending the outcome of the analogous federal case. After having subsequently presented proof to this tribunal that he had filed such a case in federal court, Complainant's motion to stay this matter was granted on November 8, 2005.
4. Complainant's co-counsels Charles Krugel and Denise Mercherson filed separate motions to withdraw on May 22, 2008 and June 26, 2008, respectively. Attorney Krugel's motion was granted on June 10, 2008 and Attorney Mercherson's motion was granted on July 23, 2008.
5. Respondent filed a motion for summary decision on July 9, 2008.
6. On August 12, 2008, Respondent appeared through counsel; Complainant did not appear. An order was entered ordering Complainant to file a written response to Respondent's motion for summary decision by August 28, 2008. Complainant was warned that failure to file a response would be taken as evidence that Complainant did not oppose the motion. A hearing on the motion was set for September 4, 2008. The record shows that the Commission served the August 12, 2008 order on Complainant at his address of record on August 13, 2008.

7. On September 4, 2008, Respondent appeared for hearing on the motion. Complainant did not appear. The record showed that Complainant had not filed a response to the motion.
8. Complainant filed an analogous cause of action in federal district court, case number 05 C 5750, in 2005. On March 25, 2008, a verdict found in favor of Defendant and against Plaintiff, terminating the case. Judgment on the verdict was entered by the federal court on the same date.
9. There is no evidence that any post-trial motion or appeal has been filed in the federal cause of action.

CONCLUSION OF LAW

The March 25, 2008 judgment by a federal district court in case number 05 C 5750 involving the same parties and the identical cause of action is a judgment on the merits, which has *res judicata* effect barring the re-litigation of that same cause of action in this tribunal.

DISCUSSION

Respondent argues that this matter must be dismissed based on the doctrine of *res judicata* because a federal district court entered judgment in an analogous case in favor of Respondent/defendant and that this judgment bars re-litigation of the claim.

Respondent states that, for the doctrine of *res judicata* to apply here, the Commission case and the federal case must have the same parties, the allegations must be identical, and a decision on the merits must have been entered. Respondent contends that all three elements are present here, warranting dismissal of this matter. Respondent further maintains that no post-trial motions have been filed and no appeal been filed

In its motion, Respondent attaches a copy of the judgment in *Carlos Estes v. Illinois Department of Human Services*, Case Number 05 C 5750, of the United States

District Court in the Northern District of Illinois, as its Exhibit A. The judgment shows a jury verdict in favor of Defendant and against Plaintiff, terminating the case

This Commission has long recognized and applied the doctrine of *res judicata*. *Campbell and the Ingersoll Milling Co.*, IHRC, 2312, March 28, 1991; *Reason and United Parcel Service, Inc.*, IHRC, 2504, July 26, 1991; *Holmes and Cotter and Co.*, IHRC, 6473, June 10, 1994; *Dressel and Uddeholm Corp.*, IHRC, 7725, June 22, 1994; *Prochotsky and Baker and McKenzie*, IHRC, 4673, Feb. 27, 1995.

Respondent correctly sets out the elements of a *res judicata* motion. *Res judicata* will bar a subsequent action when three conditions are present: (1) there is an identity of parties or their privies; (2) there is an identity of the cause of action; and (3) there is a final judgment on the merits rendered by a court of competent jurisdiction. *Downing v Chicago Transit Authority*, 162 Ill 2d 70, 74-75, 642 NE 2d 456, 458, 204 Ill Dec 755, 757, (1994).

Complainant has filed nothing to refute the evidence presented in this motion. The August 12, 2008 order warned Complainant that failure to file a response to this motion would be taken as evidence that Complainant did not oppose the motion. Moreover, the record shows that Complainant had requested that proceedings in this matter be stayed at the Commission while he pursued an analogous action in federal court.

The Commission has said, "[w]e will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion." *Jones and Burlington Northern Railroad*, IHRC, 1704, June 23, 1986.

On the undisputed facts in the record, a final judgment has been issued in an analogous action in federal court, justifying dismissal of this case based on the doctrine of *res judicata*.

RECOMMENDATION

Accordingly, I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: September 10, 2008

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section