



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>LUBA ADLER,</b>	)	
<b>Complainant,</b>	)	
	)	
<b>and</b>	)	<b>CHARGE No:2006CN1999</b>
	)	<b>EEOC No: N/A</b>
	)	<b>ALS No: 07-740</b>
	)	
	)	
<b>EVANSTON NORTHWESTERN HEALTHCARE,</b>	)	
<b>Respondent.</b>	)	

**RECOMMENDED ORDER AND DECISION**

This matter is before me on Respondent's Motion to Dismiss the Complaint based upon the doctrines of *res judicata* and/or *collateral estoppel*. Respondent filed a motion along with exhibits. Complainant has not filed a response, although given time to do so. The record indicates the motion has been filed upon the Illinois Department of Human Rights. This matter is ready for a decision.

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 argues that the Complaint pending before this Commission must be dismissed because a final judgment has been entered in analogous claims filed by Complainant in federal district court in which the parties, facts and issues were identical. Complainant's position is not known, as Complainant has filed no response to the motion.

## FINDINGS OF FACT

The following findings of fact are based on the record:

1. On September 25, 2007, the Illinois Department of Human Rights, on behalf of Complainant, filed a Complaint with the Illinois Human Rights Commission (Commission) alleging that Respondent subjected Complainant to violations of the Illinois Human Rights Act, (Act) 775 ILCS 5/1-101 *et seq.*
2. In her two-count Complaint, Complainant alleges that she was aggrieved by harassment based on her national origin and age.
3. On March 11, 2008, both parties appeared through respective counsel. An order issued staying this matter pending the outcome of an analogous action between the parties that was currently pending in federal court.
4. Several subsequent status hearings were held where one or more of the Parties appeared to advise this tribunal on the status of the federal matter.
5. On January 27, 2010, Respondent appeared through counsel; Complainant did not appear. Respondent advised that a final judgment in its favor had been issued in the federal matter and requested a briefing schedule on a motion to dismiss. Respondent was ordered to file its motion no later than February 9, 2010, and Complainant was ordered to file a response no later than February 23, 2010. The matter was set for hearing on March 9, 2010.
6. Respondent filed its motion to dismiss on February 9, 2010. The motion indicated that the United States District Court for the Northern District of Illinois, Eastern Division, had granted summary judgment on Complainant's national origin harassment claim in favor of Respondent on December 16, 2008 (Case No. 07C 4203). The motion further stated that the federal court granted judgment as a matter of law on Complainant's claim of age harassment following a jury trial and

entered a final judgment on that claim in favor of Respondent on January 11, 2010.

7. On February 23, 2010, Complainant filed a motion requesting an extension of time, until March 9, 2010, to file her response to the motion to dismiss.

Complainant noticed the motion to be heard on March 9, 2010. On March 9, 2010, Respondent appeared for hearing on its motion to dismiss; Complainant did not appear. The record showed that Complainant had not filed a response to the motion. I took the matter under advisement.

### **CONCLUSIONS OF LAW**

1. Complainant is an “aggrieved party” and Respondent is an “employer” as defined by the Act.
2. The Commission has jurisdiction over the parties and the subject matter of this action.
3. There is identity among the parties, facts and issues between the Complaint filed with the Commission and the complaint filed in federal district court, Case No. 07C4203.
4. A federal district court issuance of final judgments on the merits of analogous claims pending before it preclude Complainant from relitigating her claims before the Commission.

### **DETERMINATION**

Respondent's motion to dismiss based on the doctrine of *res judicata* must be granted because Complainant has previously litigated the same issues of discrimination before a federal court and a final judgment on the merits of those claims has been rendered.

## DISCUSSION

Respondent's motion argues that, pursuant to *Goodwin v. United Food & Commercial Workers Union Local No. 500-R*, IHRC, ALS No.1857(B), Jan. 9, 1987, this case must be dismissed with prejudice because the final disposition of the Complainant's federal case invokes the doctrine of *res judicata* as to the pending Complaint before this Commission. Respondent cites the elements required to invoke the doctrine of *res judicata* as set out in *Housing Authority for LaSalle County v. Young Men's Christian Assoc. of Ottawa*, 101 Ill. 2d 246, 461 N.E.2d 959 (1984): (1) the parties in the present action are the same as the parties in the federal action; (2) the same set of facts provide the bases for both claims; and (3) a final judgment on the merits was entered in the federal action. Respondent contends that all three of these elements have been met in the instant case.

Respondent further argues that, even if the doctrine of *res judicata* does not apply here, the doctrine of *collateral estoppel* operates to bar the pending action because the issues as set out in the Commission Complaint are identical to the issues that were decided in the federal action.

It is well settled that the doctrine of *res judicata* applies to cases brought before the Commission. Once a judgment has been entered upon a cause of action, the parties cannot attempt to relitigate that cause of action in a subsequent action. *Goodwin, supra*, citing *Towns v. Yellow Cab Co.*, 73 Ill.2d 113, 382 N.E.2d 1217, 22 Ill.Dec 519 (1978).

In order to determine whether *res judicata* applies here, the elements as set forth above must be met. The first requirement is easily met. The Parties before the Commission are the same named parties in the federal case. Respondent submits a copy of the federal complaint, number 07C4203, filed July 25, 2007 in federal district court, naming Luba Adler vs. Evanston Northwestern Healthcare Corporation.

The second element requires that the cause of action must be the same in both cases. If the same set of facts provides the basis for both claims, then the cause of action is the same. *Smith v. City of Chicago*, 820 F.2d 916 (7<sup>th</sup> Cir. 1987). The federal and Commission pleadings both allege that Respondent subjected Complainant to illegal harassment on the bases of national origin and age when her supervisor, Javier Menendez, and other employees, made various disparaging remarks to Complainant in the workplace. It is clear that the set of core facts that gave rise to the federal case are the same set of core facts that underlie the Commission case; thus, the causes of action are the same.

The last requirement is that a final disposition must have been reached in the first case to prevent litigation in the subsequent case. Respondent submits its Exhibit 3, which is a copy of the *Memorandum Opinion and Order* entered by U.S. District Court Judge Matthew F. Kennelly, dated December 16, 2008, granting summary judgment with respect to Complainant's analogous national origin claim and as to other claims not relevant here. A grant of summary judgment constitutes a judgment on the merits, *Webster v. Spraying Systems Co.*, IHRC, ALS No. 2268, July 26, 1991. Respondent also submits its Exhibit 4, which is a copy of the federal court's order, dated January 10, 2010, granting judgment as a matter of law in favor of Respondent on Complainant's age claim.

Complainant has filed nothing in opposition to Respondent's motion. Complainant further failed to appear for hearing on this motion to dismiss. As the Commission has previously stated, "We 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, ALS No. 1704, June 23, 1986. Here, all of the elements of *res*

*judicata* have been met, requiring dismissal of this matter. Respondent's argument based on *collateral estoppel* need not be addressed.

**RECOMMENDATION**

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

**HUMAN RIGHTS COMMISSION**

By: \_\_\_\_\_

**SABRINA M. PATCH**  
**Administrative Law Judge**  
**Administrative Law Section**

**ENTERED: March 11, 2010**