



STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF)
)
 Shirley Jackson,)
 Complainant)
 and)
)
 CITGO Gas Station,)
 Respondent)

Charge No.: 2003CP2535
 EEOC No.:
 ALS No.: 04-403

RECOMMENDED ORDER AND DECISION

This matter comes before the Commission following a public hearing on damages only held after a default was entered against the Respondent on March 4, 2005. Without explanation, Complainant, although in attendance in person, declined to present any evidence of damages at the public hearing and no briefs were required of the parties, nor were any filed on or after the due date of August 26, 2005. This matter is now ready for disposition.

Statement of the Case

The charge in this matter, 2003CP2535, was filed by Complainant with the Department of Human Rights on February 11, 2003. After a full investigation, in which the Respondent participated as required, a complaint was filed by the Department on behalf of Complainant on October 1, 2004. Respondent failed to appear at the first two status hearings for this case on November 30, 2004 and December 28, 2004. Complainant was given leave to make an oral motion for default on December 28, 2004 and she did so at that time. Respondent was

given notice of the oral motion for default in a written order issued by the Commission on December 29, 2005, which was also served on the Department. Respondent was required to respond to the motion for default by no later than Friday, January 28, 2005 and it was advised of the requirement that it must be represented by an attorney if it wished to participate in this case. No response or appearance of an attorney was filed on behalf of Respondent on or before January 28, 2005 and an order granting the motion for default was entered on March 4, 2005 with the finding that "failure to contest this matter or to respond to the motion for default amounts to an admission of the allegations of the complaint." Grant and Rentar Driver Services, _____ Ill. H.R.C. Rep. _____ (1988CF3179, September 11, 1992); Bielecki and Illinois Family Planning Council, 40 Ill. H.R.C. Rep. 109 (1988).

At the next status hearing on April 26, 2005, a public hearing for damages only was set for June 15, 2005. A non-lawyer member of the management of Respondent appeared and indicated that Respondent would be obtaining counsel for this matter. An attorney filed an appearance on May 5, 2005 along with a Motion to Vacate (the default). The Motion to Vacate was heard on May 12, 2005 and it was denied. On that same date, the public hearing on damages only was scheduled.

The public hearing on damages only was held on June 15, 2005, with Complainant appearing *pro se* while Respondent was represented by counsel who was accompanied by a designated company representative. Although she was given the opportunity to present evidence at the public hearing and was

admonished several times about the consequences of failing to do so, Complainant did not make any statement, present any testimony or introduce any evidence during the public hearing.

Findings of Fact

1. Complainant filed Charge No. 2003CP2535 with the Illinois Department of Human Rights on February 11, 2003 alleging that Respondent denied her full enjoyment of its facilities due to her race, black, and sex, female. The Department's investigation of the charge was extended three times for a total of 330 days by agreement of the parties on December 3, 2003, June 23, 2003 and September 21, 2004. The Department filed a two-count complaint on Complainant's behalf with the Commission on October 1, 2004.
2. Respondent failed to appear at the first two status hearings for this matter on November 30, 2004 and December 28, 2004. Complainant's motion for a default was granted on March 4, 2005 after Respondent failed to respond to the motion for default or otherwise appear in this matter.
3. Prior to the scheduling of a public hearing on damages, Respondent indicated that it would obtain counsel. An appearance was filed on May 5, 2005 by an attorney representing Respondent.
4. With both parties being present on April 26, 2005, a public hearing on damages only was scheduled for June 15, 2005. On that date,

Complainant appeared *pro se* and Respondent was present through counsel and a designated representative.

5. Although given ample opportunity to present testimony and other evidence, Complainant chose not to present any evidence of her damages arising from her complaint.

Conclusions of Law

1. In accord with the default order entered on March 4, 2005, Respondent is liable for a violation of the provisions of the Illinois Human Rights Act that prohibit discrimination due to race or sex against persons who seek the use of public accommodations.
2. Because Complainant declined to present any evidence of the damages she may have sustained due to the discriminatory conduct of Respondent, Complainant is not entitled to any monetary or other award in this matter.
3. In light of the finding of liability against Respondent, it should be ordered to cease and desist from any discriminatory conduct based on race or sex in the course of providing a public accommodation.

Discussion

By not participating in this matter after the Department filed a complaint with the Commission, Respondent was found to be in default. The finding of default amounts to an admission of liability for the discriminatory acts alleged in the two counts of the complaint, *i.e.*, that it discriminated against Complainant on the basis of her race, black, and her sex, female, in the course of providing a

public accommodation. It is recommended that the Commission accept the finding of default entered on March 4, 2005 and find Respondent liable for the discriminatory conduct alleged in the complaint.

In the usual case after a default by a respondent, the complainant is entitled to present evidence relating to his or her damages at a public hearing held for that purpose alone. A respondent, in spite of the entry of a default against it, is entitled to participate in the damages only public hearing and it is unusual, but not rare, for a respondent to step forward at this late stage. This is such a case and on the day of public hearing, both Complainant (who appeared *pro se*) and Respondent, represented by counsel and a designated representative, all appeared for the presentation of evidence.

At the public hearing, after the preliminary statements on behalf of the Commission were placed in the record, the parties were asked if they cared to make opening statements. Complainant replied "No" (Tr. 9) and Respondent "reserve(d) it until later" (Tr. 10). Complainant was then asked if she had any evidence to present and she replied, "No, just myself." Tr. 10. Before the record was closed, Complainant was given an extended admonishment that her failure to present evidence would result in a recommendation that would not include any award to her personally. She indicated that she understood this. Tr. 17.

Research has not revealed any prior Commission case in which a complainant in attendance at a damages only public hearing elected to remain mute with regard to providing evidence of his or her alleged damages. However, there have been cases in which a complainant has failed to attend a damages

only public hearing and, therefore, likewise did not present any evidence regarding his or her damages. The leading case concerning the latter circumstance is Magraff and Alexopolis, _____ Ill. H.R.C. Rep. _____ (1990CN0209, November 8, 1993). In Magraff, the Commission declared that in cases of default where the complainant has failed to participate in the damages hearing, the order of default will remain on the record, but no award is made to the complainant for his or her actual damages or for attorney's fees. This enables the Commission, in furtherance of the public interest, to order a respondent to cease and desist from any further unlawful discrimination.

Recommendation

In accord with the principles stated in Magraff, I recommend that the Commission affirm the finding of default against Respondent as reflected in the order of March 4, 2005 and that Respondent be ordered to cease and desist from discriminating against anyone on the basis of race or sex in providing a public accommodation in the course of its business activities. I further recommend that the Commission make no award to Complainant because of her failure to present evidence providing the basis for any such award.

HUMAN RIGHTS COMMISSION

ENTERED:

January 4, 2006

BY: _____

DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

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