	This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 7/01/03.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
ROBERT ANTONSON,	)	
Complainant,	)	
	)	CHARGE NO: **1998CF2797**
and	)	EEOC: **21B982268**
	)	ALS NO: **10845**
UNITED ARMORED SERVICES, INC.,	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes to be heard on Respondent's Motion to Dismiss based on the theory of *res judicata* and *collateral estoppel* and for its Motion for Sanctions. A Memorandum in Support of the Motion was filed by Respondent along with exhibits attached, as well as a Reply Memorandum. Complainant failed to file a Response to the Motion. The motion is ripe for decision.

CONTENTIONS OF THE PARTIES

Respondent, United Armored Services, Inc., contends that this matter should be dismissed as a matter of law because Complainant's Complaint is barred by the doctrines of *res judicata* and *collateral estoppel*. Respondent contends that the identical matter was litigated on the merits in the federal court where a final judgment was rendered against the Complainant. Complainant failed to respond to the motion for dismissal.

FINDINGS OF FACT

1. On May 14, 1998, Complainant filed Charge No. 1998 CF 2797 with the Illinois Department of Human Rights (Department) alleging that Respondent denied him

a promotion in retaliation for his complaints regarding alleged national origin discrimination.

2. On June 1, 1999, the Department filed a Complaint with the Illinois Human Rights Commission (Commission) alleging that Respondent failed to promote him because he opposed unlawful discrimination when he complained to Respondent that he was being subjected to discrimination based on his national origin.

3. On September 13, 1999, Complainant filed a second Charge of discrimination (Charge No. 2000 CF 0300) with the Department alleging that Respondent retaliated against him for filing the first Charge with the Department by harassing and ultimately terminating him.

4. On June 12, 2000, the Commission issued an order of stay because the Complainant was to file a suit with the federal court.

5. On June 27, 2000, Complainant filed a lawsuit in the U.S. District Court for the Northern District of Illinois under Case Number 00 C 4095.

6. In the federal action, Complainant alleged that Respondent, United Armored Services, Inc., retaliated against him because of his complaints of national origin discrimination based on his co-workers and supervisors' continued harassment, Respondent's failure to promote him and the termination of his employment.

7. On October 31, 2001, the Respondent filed a Motion for Summary Judgment in the federal action, which was granted by the court on February 12, 2002. Judgment was entered in favor of the Respondent and against the Complainant and the federal action was dismissed with prejudice.

8. Complainant appealed the dismissal to the Seventh Circuit Court of Appeals. By ruling dated September 17, 2002, the Seventh Circuit affirmed the District Court's order. Complainant did not file a certiorari petition with the United States Supreme.

9. The Illinois Human Rights case is identical to the federal action. Therefore, the federal ruling collaterally estops the Commission from proceeding forward because of the application of the doctrine of *res judicata*.

10. The Respondent is entitled to a dismissal of this action as a matter of law due to the doctrines of *res judicata* and *collateral estoppel*.

11. On January 30, 2003, the order of stay was lifted and Respondent made an oral motion to dismiss. Respondent is required to submit a written motion on his dispositive motion with notice to the Illinois Department of Human Rights

12. Respondent is not entitled to sanctions associated with the filing of its motion to dismiss.

CONCLUSIONS OF LAW

1. The Illinois Human Rights Commission is collaterally estopped from proceeding in this matter because the Complaint is barred by the doctrines of *res judicata* and *collateral estoppel*, in that the Human Rights case and the federal action involve similar facts and issues which were resolved by a final judgment on the merits in the federal action.

2. Respondent is not entitled to sanctions for filing its motion to dismiss because Respondent is required to serve the Illinois Department of Human Rights with a notice of its motion to dismiss.

DETERMINATION

Respondents' Motion to Dismiss based on the doctrines of *res judicata* and *collateral estoppel* should be granted because the Commission is collaterally estopped from proceeding with this matter which was already litigated and decided by a federal court, thus making the matter *res judicata*. Respondent is not entitled to sanctions for filing its written motion to dismiss.

DISCUSSION

Section 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 et. seq., specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has adopted the standards used by the Illinois courts in considering motions for summary judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy. Cano v. Village of Dolton, 250 Ill App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 833 (1st Dist. 1993).

The issue in this case is whether the federal court's Summary Judgment based upon the same set of facts in the instant case is *res judicata*. The doctrine of *res judicata* provides that a final judgment on the merits prevents the same parties from relitigating the same claim, demand or cause of action in a subsequent action. Goodwin v. United Food & Commercial Workers Union Local No. 550-R, 30 Ill. HRC Rep. 64 (1987), citing Towns v. Yellow Cab Co., 73 Ill.2d 113, 382 N.E.2d 1217, 22 Ill.Dec. 519 (1978). Once

a judgment has been entered upon a cause of action, the parties cannot attempt to relitigate that cause of action on any grounds.

It should be noted that Complainant failed to respond to Respondent's motion to dismiss. In similar situations, the Commission has held that a Complainant's failure to respond to Respondent's motion to dismiss can result in the dismissal of the Complaint. See, In re the Matter of Deborah A. Bartollotta Plesniak, 2000 ILHUM Lexis 22 (Ill. Hum. Rts. Comm., June 13, 2000). Notwithstanding the fact, I will discuss the matter before me as to the issue of *res judicata*.

In order to determine whether *res judicata* applies, three elements must be met: the parties in the present action must be the same or in privity with the parties in the first action; the cause of action in both cases must be the same; and a decision on the merits must have been made in the earlier case. Housing Authority for LaSalle County v. Young Men's Christian Association of Ottawa, 101 Ill.2d 246, 461 N.E.2d 959 (1984).

The first requirement is easily met; the parties in both cases are the same. The Complainant and the Respondents in this instant case litigated the case before the Federal Court. Robert Antonson and United Armored Services, Inc. were Plaintif and Defendant, respectively, in the federal matter.

The second requirement states that the cause of action must be the same in both cases. One method of determining the similarity of causes of action is to examine the facts of each case. If the same set of facts provide the basis for both claims, then the cause of action is the same. Smith v. City of Chicago, 820 F.2d 916 (7th Cir. 1987). It is clear that both the federal case and the Commission case allege the same set of facts. The two cases allege that Respondent, United Armored Services, Inc., retaliated against

Complainant because of his complaints of national origin discrimination based on his co-workers and supervisors' continued harassment, which resulted in their failure to promote him and his subsequent termination. The same core of facts that gave rise to the federal suit underlie the discrimination claim that the Complainant asserts before the Commission. Since the core set of facts that give rise to the federal suit are the same core facts that underlie the instant case, the cause of action is the same.

The third requirement under the *res judicata* doctrine is that a final disposition has to be reached in the first case to bar the complainant from bringing another case. The federal court granted the Respondent's Summary Judgment Motion and dismissed Complainant's case with prejudice. A Summary Judgment constitutes a Judgment on the Merits. Webster v. Spraying Systems Co., __Ill. HRC Rep.__, (Charge No. 1985CF1738, July 26, 1991). As presented, all three required elements have been fulfilled. Thus, the Commission lacks jurisdiction of Complainant's Complaint due to the doctrines of *res judicata* and *collateral estoppel*.

In addition to Respondent's request to dismiss this matter, Respondent also requests sanctions due to Complainant failure to agree to dismiss this matter upon Respondent's oral motion to dismiss. In support of its motion for sanctions, Respondent cites the cases of In the Matter of Rodolfo D. Espinoza, 2002 ILHUM Lexis 73 (Ill. Hum. Rts. Comm., May 7, 2002) and In the Matter of Marvin Virkler, Ill. HRC Dep. , Charge No. 1995CA2460 (August 3, 2000). A review of those cases show that the facts are not on point and are distinguishable to the case at bar. The Espinoza case involved sanctions against the Complainant for requesting an order of stay at the commencement of a public hearing. The order of stay was granted, but sanctions were assessed against Complainant

for the costs incurred by Respondent for preparation of the matter for hearing. The Virkler case also involved sanctions against a Complainant who was seeking an order of stay at the start of a public hearing.

In this instance, Respondent was not at a point where they were ready for trial subsequent to preparation and actual appearance for the start of a hearing. The ALJ lifted the order of stay that was already in place in order to allow Respondent to file its motion to dismiss. Although it is true that Respondent made an oral motion to dismiss on January 30, 2003, the Commission Rules of Procedures makes it clear that any motion to dismiss "shall be served upon the Department." Section 5300.730 (a)(3)(A). As such, the Department was not served with Respondent's motion to dismiss until its written motion which was subsequently filed on February 21, 2003. In other words, Respondent was required to serve the Department regardless of Complainant's position at the time of the oral motion. Therefore, Complainant's refusal to agree to Respondent's oral motion to dismiss did not constitute conduct which unreasonably delayed or protracted the proceedings, which would warrant any sanctions, pursuant to Section 5300.750 (e) of the Commission Procedural Rules.

CONCLUSION

Section 8-106.1 of the Human Rights Act provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. Cano v. Village of Dolton, 250 Ill.App.3d 130, 620 N.E.2d 1200, 189 Ill.Dec. 883 (1st Dist. 1993). 56 Ill.Admin. Code §5300.530 (b) and §5300.730 of the Procedural

Rules of the Commission provides that the Administrative Law Judge has authority to hear any proper motions or objections, including motions to dismiss.

It is clear that all three requirements have been met. The parties are the same in this case as in the federal case, the cause of action at issue in both cases is the same, and the federal court made a determination in the earlier case based upon the merits. Therefore, the instant case is barred by the doctrines of *res judicata* and *collateral estoppel*.

It is also clear that Respondent is not entitled to an award for sanctions for filing its subsequent motion to dismiss because Respondent was required to give notice to the Department of its motion, regardless of Complainant's refusal to agree to Respondent's previous oral motion to dismiss.

RECOMMENDATION

I recommend that this matter be dismissed with prejudice because this matter is barred by the doctrines of *res judicata* and *collateral estoppel*. I also recommend that no award for sanctions be granted to Respondent.

HUMAN RIGHTS COMMISSION

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BY: NELSON E. PEREZ
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: May 7, 2003