



STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
I. M. HOFMANN,)	
)	
Complainant,)	
)	Charge No.: 1990CF1198
and)	EEOC No.: 21B900273
)	ALS No.: 7811
FERMILAB NATIONAL)	
ACCELERATOR LABORATORY,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On November 12, 1993, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, I. M. Hofmann. That complaint alleged that Respondent, Fermilab National Accelerator Laboratory, subjected Complainant to sexual harassment and retaliated against her for filing a charge of discrimination.

At Complainant's request, proceedings in this forum were stayed to allow her to pursue her case in federal court. While the matter was pending before the federal court, the court found that the parties had reached a settlement. Pursuant to that finding, the court dismissed Complainant's action and the underlying charge of discrimination. Complainant appealed that dismissal to the Seventh Circuit Court of Appeals, but the Seventh Circuit dismissed her appeal.

This matter now comes on to be heard on Respondent's Motion to Dismiss the Complaint With Prejudice and Complainant's Motion to Amend Hofmann's IDHR & IDHRC Complaint & Charges For Good Cause to Conform to the Evidence, Pursuant to IDHR Act 5/8A-102(C). Each party filed a written response to the other's motion. In addition, Respondent filed a reply to Complainant's response and Complainant filed a motion to vacate Respondent's motion and the federal court's dismissal order, as well as a motion for default against Respondent. The motions are ready for decision.

FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1. On November 30, 1998, pursuant to Complainant's motion, this matter was stayed in the Human Rights Commission to allow Complainant to pursue her claim in federal court.

2. On December 16, 1999, after a hearing on the issue, Judge James F. Holderman of the United States District Court found that Complainant and Respondent had reached an oral agreement to settle their dispute. Based upon that finding, Judge Holderman ordered the dismissal of the federal court action. Judge Holderman specifically found that the parties' settlement agreement covered the proceedings before the Human Rights Commission.

3. Complainant appealed Judge Holderman's decision to the

Seventh Circuit Court of Appeals. On March 7, 2001, the Seventh Circuit dismissed Complainant's appeal.

4. On April 10, 2001, the Seventh Circuit denied Complainant's petition for rehearing.

CONCLUSIONS OF LAW

1. Complainant's motion to amend her complaint is denied.

2. Complainant's motion for default is denied.

3. The parties have had the opportunity to litigate the issue of the existence of a settlement agreement in another proceeding before a court of competent jurisdiction.

4. On the basis of the doctrine of *res judicata*, the instant case should be dismissed with prejudice.

DISCUSSION

The Illinois Department of Human Rights filed a complaint on behalf of Complainant. That complaint alleged that Respondent subjected Complainant to sexual harassment and retaliated against her for filing a charge of discrimination.

On November 30, 1998, pursuant to Complainant's motion, this matter was stayed in this forum to allow Complainant to pursue her claim in federal court. Complainant was represented by court-appointed counsel in that action. On December 16, 1999, after a hearing on the issue, Judge James F. Holderman of the United States District Court found that Complainant and Respondent had reached an oral agreement to settle their dispute. Based upon that finding, Judge Holderman ordered the dismissal of the

federal court action. As part of his ruling, Judge Holderman specifically found that the parties' settlement agreement covered the proceedings before the Human Rights Commission.

Complainant appealed Judge Holderman's decision to the Seventh Circuit Court of Appeals. On March 7, 2001, the Seventh Circuit dismissed Complainant's appeal. On April 10, 2001, the Seventh Circuit denied Complainant's petition for rehearing.

Subsequently, Complainant returned to this forum and filed her motion to amend the complaint. At approximately the same time, Respondent moved to dismiss the complaint, arguing that Judge Holderman's ruling should be given *res judicata* effect by the Commission. The motion to dismiss will be discussed first.

The doctrine of *res judicata* applies if three elements are met: 1) the parties in the present action must be the same parties, or in privity with the same parties, as the ones in the prior action, 2) the cause of action must be the same as the one in the prior action, and 3) a decision on the merits must have been entered in the prior action. ***Housing Authority for LaSalle County v. Young Men's Christian Assoc. of Ottawa***, 101 Ill. 2d 246, 461 N.E.2d 959 (1984). Those elements have been met in the instant case.

There is no dispute on the first element. Complainant and Respondent are the same parties who litigated the federal suit. There is no agreement, though, on the other two elements.

Complainant's arguments are somewhat convoluted, but it

appears that she disputes the second element in part on the basis that the federal hearing did not address the merits of her complaint. The federal court's hearing addressed the issue of whether the parties had reached an oral settlement agreement.

Complainant is correct that the federal court did not address the merits of her discrimination claim. Respondent's instant motion, though, is not based upon the merits of that claim. Instead, the instant motion is based upon the federal court's findings regarding the settlement agreement.

Judge Holderman specifically found that the parties had reached an oral settlement agreement and that that agreement covered the instant proceeding. The issue of the existence of the settlement is the issue to which Respondent seeks to apply the doctrine of *res judicata*. Thus, it is clear that the issue in question was the same in the federal court as it is before the Commission.

As for the third element, there is no doubt that there was a decision on the merits by the federal court. Complainant concedes that there was a hearing on the matter and that the judge issued a decision on the issue. On the basis of his finding, Judge Holderman dismissed Complainant's federal case. Complainant's appeal of that dismissal was dismissed. Certainly, there was a decision on the merits and that decision is final. Thus, Respondent's motion meets the third and final element necessary for the application of *res judicata*.

Complainant suggests that the federal court did not have jurisdiction to dismiss her claim, but that suggestion is baseless. Under federal law, oral settlement agreements are enforceable. **Taylor v. Gordon Flesch Co.**, 793 F.2d 858 (7th Cir. 1986). There can be no doubt that a federal court has the power to determine when such an agreement exists.

The facts in the instant case are similar to the facts in **Richardson and City of Chicago, Chicago Park Dist.**, ___ Ill. HRC Rep. ___, (1988CF0221, September 9, 1996.) In that case, the Circuit Court had found that the parties had reached a valid oral settlement agreement. The Illinois Appellate Court affirmed the Circuit Court's decision. The Human Rights Commission applied the doctrine of *res judicata* to dismiss the case on the basis of the oral agreement found by the court. The only difference between **Richardson** and the instant case is that the settlement agreement in the instant case was found by a federal court instead of a state court. That is not a factual distinction which justifies a different result. The Commission should follow the precedent of **Richardson** and dismiss the instant case.

In light of that recommendation, Complainant's motion to amend her complaint is moot, as is the motion for default. It is clear that she has settled her claim against Respondent. No amendment of the complaint can revive that claim. Moreover, if there is no properly amended complaint, Respondent cannot be held in default for failure to answer such a complaint. (Complainant

asserts that "the way she understands it" she was given leave to amend her charge and complaint. Complainant's understanding is incorrect. No such leave has been given.) Thus, all of Complainant's motions must be denied.

RECOMMENDATION

Based upon the foregoing, the doctrine of *res judicata* bars Complainant from relitigating the issue of her oral settlement agreement with Respondent. The federal court found that the parties had reached an oral agreement and that the agreement covered proceedings before the Human Rights Commission. Therefore, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: November 13, 2001