

1 STATE OF INDIANA  
2 INDIANA CIVIL RIGHTS COMMISSION

3 CANDYSUE L. SHEETS, ANGELA KARES, and JAMAL L. ) Docket No.: EMsh10060256  
4 SMITH, in his official capacity as EXECUTIVE ) EEOC No.: 24FA10-00282  
5 DIRECTOR of the INDIANA CIVIL RIGHTS )  
6 COMMISSION, )  
7 Complainant, )  
8 vs. )  
9 MASCO ENTERTAINMENT, LLC d/b/a FIRESIDE )  
10 BREWHOUSE, )  
11 Respondent. )

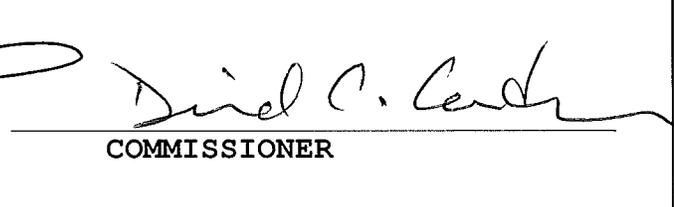
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13 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

14 On July 18, 2013, Noell F. Allen Administrative Law Judge ("ALJ") for  
15 the Indiana Civil Rights Commission ("ICRC") entered her Proposed Findings Of  
16 Fact, Conclusions Of Law, And Order ("the proposed decision").

17 No objections have been filed to the ICRC's adoption of the proposed  
18 decision.

19 Having carefully considered the foregoing and being duly advised in the  
20 premises, the ICRC hereby adopts as its own the findings of fact, conclusions  
21 of law, and order proposed by the ALJ in the proposed decision, a copy of  
22 which is attached hereto and incorporated herein by reference.

23 INDIANA CIVIL RIGHTS COMMISSION

24  )  
25 COMMISSIONER )  
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COMMISSIONER )  
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COMMISSIONER )

1 Dated this 23<sup>rd</sup> Day of August, 2013.

2 To be served by first class mail on the following parties and attorneys  
3 of record:

4 Candysue L. Sheets  
5 3925 Gray Arbor Drive  
6 Indianapolis, IN 46227

7 Masco Entertainment, LLC dba Fireside Brewhouse  
8 c/o Chief Executive Officer  
9 110 East Washington Street  
10 Indianapolis, IN 46204

11 McNEELY LAW OFFICE  
12 BY: Mark W. McNeely, Esq.  
13 Attorneys for Respondent Masco Entertainment, LLC dba Fireside  
14 Brewhouse  
15 30 East Washington Street, Suite 100  
16 Shelbyville, IN 46202

17 BROWN, DePREZ & JOHNSON, P.A.  
18 BY: Stephen E. Schrupf, Esq.  
19 Attorneys for Respondent Masco Entertainment, LLC dba Fireside  
20 Brewhouse  
21 24 East Polk Street  
22 P.O. Box 718  
23 Shelbyville, IN 46176

24 and to be personally served on the following:

25 Michael C. Healy, Esq.; Staff Counsel  
26 Indiana Civil Rights Commission  
27 Attorney for Complainants  
28 Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

**STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION**

CANDYSUE L. SHEETS, ANGELA KARES, and )  
JAMAL L. SMITH, in his official capacity )  
EXECUTIVE DIRECTOR of the INDIANA CIVIL )  
RIGHTS COMMISSION, )  
Complainant, )  
vs. )  
MASCO ENTERTAINMENT, LLC d/b/a FIRESIDE )  
BREWHOUSE, )  
Respondent. )

Docket No.: EMsh10060256  
EEOC No.: 24FA10-00282

**FILE DATED  
JUL 19 2013  
INDIANA STATE  
CIVIL RIGHTS COMMISSION**

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
AND ORDER**

A Hearing on Damages was held in this case before Administrative Law Judge (“ALJ”) Robert D. Lange (“Judge Lange”) for the Indiana Civil Rights Commission (“ICRC”) on August 9, 2012. Complainants Candy Sue L. Sheets (“Sheets”) and Angela Kares (“Kares”) (collectively, “Complainants”), appeared in person and were represented by Michael C. Healy, Staff Counsel for the ICRC. Respondent, Masco Entertainment, LLC d/b/a Fireside Brewhouse (“Respondent” or “Fireside”), did not appear, by counsel or otherwise.

An opening statement was waived. Kares and Sheets testified on their own behalf.

After Complainants rested, the cause was taken under advisement. The ALJ ordered Complainants to submit what he suggested he enter as proposed findings of fact, conclusions of law and order on or before September 12, 2012.

On September 12, 2012, Complainants filed Complainants’ Suggested Proposed Findings of Fact, Conclusions of Law and Order.<sup>1</sup>

<sup>1</sup> Judge Lange retired from his position as ALJ from the ICRC on December 26, 2012. On July 2, 2013, the Commission appointed Noell F. Allen, undersigned ALJ, as ALJ for this matter.

Having carefully considered the foregoing and being duly advised in the premises, the ALJ proposes that the ICRC enter the following as findings of fact, conclusions of law and order.

**FINDINGS OF FACT**

1. Sheets and Kares are adult females who have resided at all material times in the State of Indiana.

2. Fireside is an establishment licensed to do business in the State of Indiana. It operates at least one (1) restaurant in the City of Indianapolis.

3. The body of Sheets's Complaint reads as follows:

I. On May 5, 2010, I was forced to quit my job.

II. I believe that I have been discriminated against on the basis of my sex (sexual harassment) because:

A. On the above-mentioned date, I quit my job due to a hostile work environment.

B. Throughout my employment the General Manager Jeff Stafford subjected me to unwanted sexual comments and this made me uncomfortable.

C. I informed the owners about Mr. Stafford's conduct however, nothing was done to stop the unwanted sexual comments I had to endure on a daily basis.

III. I am seeking all available remedies for a violation of Title VII of the Civil Rights Act of 1964, as amended, and the Indiana Civil Rights Laws.

4. After an investigation by the ICRC, a NOTICE OF FINDING of Probable Cause was entered and the matter was scheduled for a Hearing on the merits of Sheets's complaint.

5. On November 16, 2011, the parties agreed to add Kares as a named Complainant.

**SECOND PRE-HEARING ORDER (11/16/11)**

6. On April 18, 2012, Complainants filed their Motion to Compel Discovery.

7. On May 3, 2012, the assigned ALJ entered an ORDER COMPELLING DISCOVERY, compelling Respondent to respond to Complainants' discovery requests on or before May 24, 2012.

8. On June 5, 2012, Complainants filed their Application for Order by Default, citing that Respondent had not complied with the ORDER COMPELLING DISCOVERY.

9. On June 20, 2012, the ALJ issued his NOTICE OF PROPOSED DEFAULT ORDER ("NPDO").

10. The NPDO notified Respondent that a written motion could be filed requesting that the proposed default order not be imposed within seven (7) days after service of the NPDO.

11. Respondent did not file such a written motion.

12. On July 9, 2012, the ALJ issued his ORDER BY DEFAULT.

13. The complaint (as amended) sets out a prima facie case that Complainants were denied an employment opportunity by Respondent on the basis of sex.

14. Sheets testified that her average pay at Fireside was between \$300.00 and \$500.00 per week, with tips included. That is approximately \$400 per week.

15. After Sheets's termination from Fireside on May 5, 2010, she subsequently sought employment at other, similar establishments, including a large number of restaurants. Sheets finally found employment February 6, 2012 at Nachi Technology. Her pay there is at least the same as it was at Fireside.

16. Sheets lost a total of \$36,400.00, less interim earnings, as a result of her constructive discharge from Fireside.

17. Kares testified that her average pay at Fireside was from approximately \$300.00 to as much as \$575.00 per week, plus an additional \$50.00 to \$90.00 per week in tips. This equals approximately \$507.50 per week.

18. After Kares' termination from Fireside in November of 2010, she subsequently sought employment at other, similar establishments, including a large number of restaurants.

19. Kares finally found other employment in January of 2011 at JW Marriott. Her pay there was \$372.00 for working less than one (1) month. In October of 2011, Kares found work at Waterman's Farmer's Market, and earned approximately \$800.00 there. Kares is, as of this date, still looking for work.

20. Kares lost a total of \$45,010.50, less interim earnings, as a result of her constructive discharge from Fireside.

21. Both Kares and Sheets also seek to be paid interest on the judgment. That amount is eight per cent (8%) per year, compounded annually.

22. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby adopted as such.

#### CONCLUSIONS OF LAW

1. The ICRC has jurisdiction over the subject matter and the parties.
2. Kares and Sheets are each a "person", as that term is defined in section 3(a) of the Indiana Civil Rights Law, I.C. 22-9-1-1 et seq. ("ICRL"); I.C. 22-9-1-3(a).
3. Fireside Brewhouse is an "employer", as that term is defined in the ICRL, I.C. 22-9-1-3(h).

4. What constitutes a discriminatory practice is set out in the following subsection of the ICRL:

“Discriminatory practice” means:

(1) the exclusion of a person from equal opportunities because of

...sex...

I.C. 22-9-1-3(1)(1)

5. The ICRL makes it a discriminatory practice to exclude a person from equal opportunities because of, among other things, sex. I.C. 22-9-1-3(1)(1) Every discriminatory practice related to, among other things, employment, is unlawful unless exempted by the ICRL, Id. Because there is no such applicable exemption, Fireside Brewhouse’s failure to remedy the unwanted sexual harassment was unlawful.

6. If the ICRC has finds that a person has committed an unlawful discriminatory practice, it shall issue an order requiring the person to cease and desist from that practice, and to take further affirmative action to as will effectuate the purposes of the ICRL, which may include restoring Complainant’s losses incurred as a result of the discriminatory treatment. I.C. 22-9-1-6(k)(A).

7. Fireside Brewhouse constructively terminated Kares and sheets on the basis of their sex, female.

8. Generally, expenses of litigation are not included in damages unless there is a contract or statute expressly providing for their inclusion. *Bituminous Fire & Marine Ins. Co. v. Culligan Fyrprotexion, Inc.*, 437 N.E.2d 1360 (Ind. Ct. App. 1982); *Cooper v. High*, 262 Ind. 405, 317 N.E. 2d 177 (1974)

9. "Complainant's losses" include back pay. \$45,010.50 is an appropriate amount for Kares in this case. \$36,400.00 is an appropriate amount for Sheets in this case. Neither Kares nor Sheets seeks an order to hire in this case.

10. Complainants also seek interest due to their loss of the use of the money caused by the discriminatory treatment. This is calculated at the rate of eight (8) per cent per year, I.C. 24-4.6-1-101, and may be compounded annually.

11. Administrative review of this proposed decision may be obtained by an interested and affected person who is not in default by the filing of a writing specifying with reasonable particularity each basis for each objection within fifteen (15) days after service of this proposed decision. I.C. 4-21.5-5-23-29(d)

12. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

### ORDER

1. Fireside Brewhouse shall cease and desist from excluding persons from equal employment opportunities on the basis of sex.

2. Fireside Brewhouse shall post and prominently display statements of its policies to provide equal employment opportunities at its facilities.

3. Fireside Brewhouse shall notify, in writing, all staff members of the policies enumerated in paragraph 2 of this Order.

4. Fireside Brewhouse shall purge its records of all reference to the complaint, as amended, herein resolved, and of the circumstances appertaining thereto.

5. Fireside Brewhouse shall not release any adverse references concerning Angela Kares and Candy Sue L. Sheets to any persons seeking reference information.

6. All management personnel of Fireside Brewhouse shall attend, and successfully complete, a professionally developed training seminar, approved in advance by the ICRC Executive Director, addressing the recognition, prevention and remedying of sexual harassment in employment. Respondent shall obtain the Executive Director's approval no later than 180 days after the effective date of this Order and shall have completed the seminar no later than 300 days after the effective date of this Order. Proof of completion shall be filed with the ICRC.

7. Fireside Brewhouse shall initiate a grievance procedure concerning the prevention, investigation and remedying of sexual harassment in the workplace. Fireside Brewhouse shall also appoint a Grievance Committee to investigate any and all accusations concerning sexual harassment. In the event that any member of the Grievance Committee is accused of committing sexual harassment, he/she shall recuse himself/herself from further participation on the committee.

8. Fireside Brewhouse shall deliver to the ICRC a check, made payable to Kares, in the amount of \$ 47,345.58, within thirty (30) days of the effective date of this Order.

9. Fireside Brewhouse shall deliver to the ICRC a check, made payable to Sheets, in the amount of \$ 39,312.00, within thirty (30) days of the effective date of this Order.

10. Fireside Brewhouse shall report, in writing, to the ICRC when the undertakings outlined above have been accomplished. The report will describe the manner in which the

undertakings were carried out, and include copies of the documents required under this Order.

This report shall be submitted not later than March 14, 2014.

11. This Order shall take effect immediately after it is approved and signed by a majority of the members of the ICRC, unless it is modified by the ICRC pursuant to Ind. Code 4-21.5-3-31(a), stayed by the ICRC pursuant to Ind. Code 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated this 18<sup>th</sup> Day of July, 2013.

  
\_\_\_\_\_  
Noell F. Allen  
Administrative Law Judge

To be served by first class mail on the following parties and attorneys of record:

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and to be personally served on the following:

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