

JESSICA SPAULDING,
Complainant,

v.

SWEET HOME CHICAGO
RESTAURANTS, LLC; and
RANDY DURAN;
Respondents.

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

On September 12, 2013, Noell F. Allen Administrative Law Judge (“ALJ”) for the Indiana Civil Rights Commission (“ICRC”) entered her Proposed Findings Of Fact, Conclusions Of Law, And Order (“the proposed decision”).

No objections have been filed to the ICRC’s adoption of the proposed decision.

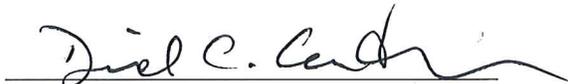
Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

INDIANA CIVIL RIGHTS COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

Dated this 27th Day of September, 2013.

To be served by first class mail on the following parties:

Jessica Spaulding,
10023 Edgewood Road
Brownsburg, IN 46112

Sweet Home Chicago Restaurants, LLC
c/o Robert Donovan, Resident Agent
5151 East Highway 36
Avon, IN 46123

Rudy Duran
4392 Gibbs Road
Danville, IN 46122

and to be personally served on the following attorney of record:

Frederick S. Bremer, Esq.; Staff Attorney
Indiana Civil Rights Commission
Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204-2255

JESSICA SPAULDING,
Complainant,

v.

SWEET HOME CHICAGO
RESTAURANTS, LLC; and
RANDY DURAN;
Respondents.

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The undersigned Administrative Law Judge (“ALJ”) for the Indiana Civil Rights Commission (“ICRC”) submits this Proposed Findings of Fact, Conclusion of Law, and Order (“Proposed Decision”) to the ICRC on the grounds of *res judicata*. The Respondent, Sweet Home Chicago Restaurants, LLC and Randy Duran (“Respondents”) was granted a “discharge” under section 727 of title 11, United States Code (the Bankruptcy Code). Complainant, Jessica Spaulding (“Spaulding”) was a named creditor in the bankruptcy action.

Having carefully considered the foregoing and being duly advised in the premises, the undersigned Administrative Law Judge for the Indiana Civil Rights Commission (“ICRC”) proposes that the ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. This proceeding began when Spaulding filed a complaint with the ICRC against the Respondents alleging discrimination based on disability. (Complaint of Discrimination, June 15, 2010)
2. On June 29, 2010, the Respondents filed its answer to the complaint.
3. On January 12, 2011, the Deputy Director of the ICRC issued his Notice of Finding and Joinder of Party concluding probable cause exists to believe that an unlawful discriminatory practice occurred against Spaulding by the Respondents.
4. On February 4, 2011, ALJ Robert D. Lange of the ICRC sent notice to both parties of the initial pre-hearing conference to be held on March 14, 2011.

5. The Respondents did not appear at the initial pre-hearing conference scheduled for March 4, 2011.
6. Spaulding applied for an Order by Default on May 12, 2011.
7. ALJ Robert D. Lange issued the Notice of Proposed Default Order on May 27, 2011.
8. On June 13, 2011 and July 7, 2011, ALJ Robert D. Lange issued the Order by Default and Notice of Hearing on Damages.
9. Judge Lange conducted the damages hearing on July 27, 2011.
10. On September 27, 2011, Spaulding submitted what she suggested to be the Proposed Recommended Findings of Fact, Conclusions of Law, and Order.
11. Prior to the ICRC's final order on this matter, on December 11, 2011, Respondents filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Southern District of Indiana.
12. On May 1, 2012, the United States Bankruptcy Court discharged the debt related to Spaulding's discrimination claim.
13. Discharging the debt claimed by Spaulding constituted a decision on the merits of this case by a court of competent jurisdiction.

CONCLUSIONS OF LAW

1. The ICRC has jurisdiction over the subject matter and the parties.
2. The doctrine of *res judicata* applies in this case because three elements are satisfied:
 - a. There must be a common identity of the parties or their privies;
 - b. There must be a common identity of the cause of action; and
 - c. There must be a final judgment on the merits rendered by a court of competent jurisdiction.

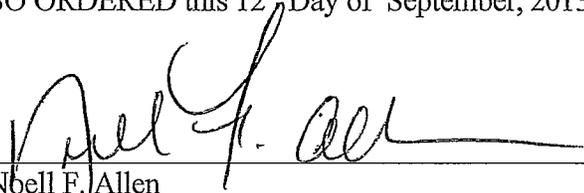
Both Respondents listed in this case, Randy Duran and Sweet Home Chicago Restaurants LLC were listed debtors in the bankruptcy petition, therefore a common identity of the parties or their privies exists. The same set of operative facts that would be used in a hearing before the ALJ would have been used in the bankruptcy proceeding in order for the bankruptcy court to make its decision, therefore, a common identity of the cause of action exists. Discharging the debt claimed by Spaulding constituted a decision on the merits of this case by a court of competent jurisdiction.

3. The doctrine of *res judicata* bars re-litigation of a case where a court of competent jurisdiction has issued a final decision on the merits of the case.
4. The Federal Court has held that "if a claim is submitted to and rejected by a bankruptcy court and no appeal is taken, the bankruptcy court's decision is *res judicata* and bars further litigation before the Commission. *Katchen v. Landy*, 382 U.S. 323, 334 (1966). Therefore, Spaulding's case must now be dismissed.
5. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis of each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).
6. Any Finding Of Fact that should have been deemed a Conclusion Of Law is hereby adopted as such.

ORDER

1. Spaulding's complaint of discrimination is **DISMISSED**, with prejudice.

SO ORDERED this 12th Day of September, 2013



Noell F. Allen
Administrative Law Judge
Indiana Civil Rights Commission

To be served by first class mail on the following parties:

Jessica Spaulding
10023 Edgewood Road
Brownsburg, IN 46112

Sweet Home Chicago Restaurants, LLC
c/o Robert Donoyan, Resident Agent
5151 East Highway 36
Avon, IN 46123

Rudy Duran
4392 Gibbs Road
Danville, IN 46122

Travis A. Van Winkle
Attorney at Law
Law Office of Travis Van Winkle, LLC
P.O. Box 34280
Indianapolis, IN 46234

and to be personally served on the following attorney of record:

Frederick S. Bremer, Esq.; Staff Attorney
Indiana Civil Rights Commission
Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204-2255