

**STATE OF INDIANA
INDIANA CIVIL RIGHTS COMMISSION**

ANDRE FREEMAN,) ICRC NO.: PAr18010013
Complainant,)
vs.)
)
)
KILROY'S BAR N GRILL,)
Respondent.)

**DATE FILED
MAY 18 2020
ICRC
COMMISSION**

FINAL ORDER

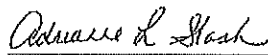
On April 23, 2020, Hon. Caroline Stephens Ryker, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") issued her Initial Findings of Fact, Conclusions of Law, and Order ("Order"). The parties had opportunity to object to the Order; neither party objected. With no objections or an intent to review on record, the Commission shall affirm the Order, IC 4-21.5-3-29. After consideration of the record in this matter and the Order,

THE COMMISSION HEREBY ORDERS:

1. The findings of fact and conclusions of law as stated in the Order, a copy of which is attached hereto, are incorporated herein by reference. IC 4-21.5-3-28.
2. The Order is AFFIRMED under IC 4-21.5-3-29 and hereby becomes the Final Order disposing of the proceedings. IC 4-21.5-3-27(a).

Either party to a dispute filed under IC 22-9 may, not more than thirty (30) days after the date of receipt of the Commission's final appealable order, appeal to the court of appeals under the same terms, conditions, and standards that govern appeals in ordinary civil actions. IC 22-9-8-1.

SO ORDERED by the majority vote of 5 Commissioners on May 15th, 2020.
Signed this May 15, 2020



Chair Adriane Slash

Certificate of Service

Served this 18 day of May in 2020 by United States Mail on the following:

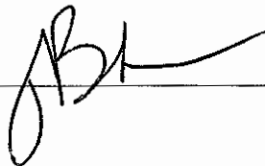
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**STATE OF INDIANA
INDIANA CIVIL RIGHTS COMMISSION**

ANDRE FREEMAN,
Complainant,

vs.

KILROY'S BAR N GRILL,
Respondent.

ICRC NO.: PAra18010013

DATE FILED

APR 23 2020

OFFICE OF THE
ADMINISTRATIVE JUDGE

INITIAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On March 10, 2020, Respondent, by counsel, filed Respondent's Verified Motion to Enforce Settlement Agreement ("Motion") and Respondent's Memorandum in Support of Verified Motion to Enforce Settlement Agreement ("Memo") with the undersigned Administrative Law Judge ("ALJ"), Hon. Caroline A. Stephens Ryker, for the Indiana Civil Rights Commission ("ICRC"). Complainant's brief in response was due on or by April 13, 2020, and Complainant did not file a brief. Accordingly, the undersigned ALJ took this matter under advisement. Having carefully considered the evidence and being duly advised in the premises, the presiding ALJ for the ICRC proposes that the Commission enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. On January 11, 2018, Complainant Andre Freeman ("Complainant") filed a complaint of discrimination under the Indiana Civil Rights Law ("ICRL") with the ICRC in which he alleged that Respondent discriminated against him on the basis of race by limiting his access to a public accommodation. (Memo at Ex. A.)
2. The ICRC maintains an Alternative Dispute Resolution Department ("ADR Department") that provides mediation services to Parties to a complaint pending before the Commission. (Memo at Ex. B and Ex C.) The ICRC ADR Department may conduct mediations of complaints filed under the ICRL prior to the ICRC issuing a decision of probable cause or no probable cause ("pre-cause mediations"). *Id.*
3. In April of 2018, Complainant and Respondent engaged in pre-cause mediation using the ICRC's ADR Department. (Memo at Ex. B and Ex. C.)
4. Through the mediation, the Parties reached a settlement agreement. *Id.*

5. The Parties agreed to a private mediation agreement and did not attempt to enter a consent agreement with the Commission. *Id.*
6. Specifically, Respondent agreed to provide Complainant with a gift card in exchange for the closure of Complainant's ICRC complaint. *Id.*
7. At the time, the Parties intended that the settlement agreement would result in the closure of this matter. *Id.*
8. After the agreement was reached, an ICRC mediator provided a written copy of the settlement agreement for the Parties to sign and return. *Id.*
9. Respondent executed the written settlement agreement; Complainant did not. *Id.*
10. Complainant failed to cooperate with ICRC or Respondent in executing the settlement agreement. *Id.* As a result, Respondent has been unable to provide Complainant with the gift card. *Id.* Similarly, Complainant has not taken any steps to close his complaint with the ICRC. *Id.*
11. Because a written settlement agreement was not fully executed, the ICRC did not close the matter, and it proceeded with its investigation. (Memo at Ex. C.)
12. Respondent remains willing to provide Complainant with the agreed upon gift card. (Memo at Ex. B.)
13. On November 21, 2019, ICRC issued a Notice of Finding in which the ICRC issued a probable cause finding under the ICRL. Accordingly, the Commission appointed an ALJ to preside over this matter and to conduct a hearing under Indiana Code 22-9-1-16.
14. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. Indiana courts favor settlement, and the same policy is reflected in the Indiana Civil Right Law. *Sands v. Helen HCI, LLC*, 945 N.E.2d 176, 180 (Ind. Ct. App. 2011); IND. CODE § 22-9-1-6.
2. Parties to a complaint pending before the ICRC may settle a matter with a private settlement agreement or by executing a written Consent Agreement approved of and enforceable by the Commission. IND. CODE § 22-9-1-6(O).
3. Pre-cause mediations are not subject to the Indiana Rules on Alternative Dispute Resolution or the Indiana Administrative Orders and Procedures Act. IN. ST. ADR R. 1.4; IND. CODE § 4-

21.5-2-5. Instead, pre-cause mediations are subject to ICRC's relevant administrative rules. IND. CODE § 4-21.5-3.5-1; 910 IAC 1-3-3; 910 IAC 1-3-4.

4. Under Indiana law, settlement agreements are not required to be reduced to writing, and a Party to a settlement agreement can move for the Commission to enforce an unwritten settlement agreement. *Sands*, 945 N.E.2d at 180.
5. Similarly, the Indiana Administrative Code does not require that a settlement agreement resulting from a pre-cause mediation be reduced to writing before it can be enforced. 910 IAC 1-3-3; 910 IAC 1-3-4.
6. Generally, “[s]ettlement agreements are governed by the same general principles of contract law as other agreements.” *Sands*, 945 N.E.2d at 180.
7. A settlement agreement has been reached when there has been “...offer, acceptance, consideration, and a meeting of the minds of the contracting parties.” *Id.* (internal citations removed.)
8. In order to determine if the requirements of an enforceable settlement agreement are met, the Commission must conduct a fact-sensitive inquiry focused on the Parties’ actions and conduct. *Zimmerman v. McColley*, 826 N.E.2d 71, 77 (Ind. Ct. App. 2005).
9. Specifically, a settlement agreement is enforceable when two requirements are met: 1) the Parties have manifested an intent to be bound and 2) the agreement includes all definite, essential terms. *Sands*, 945 N.E.2d at 180.
10. The manifestation of the intent to be bound simply means that the Parties acted as though they were entering the settlement agreement together. *Zimmerman*, 826 N.E.2d at 77.
11. While a refusal to reduce the terms of a settlement agreement to writing can be an indication that the Parties did not intend to be bound by the agreement, the Commission must consider whether the execution of a written agreement is a term of the agreement or an act of performance required by the agreement. *Sands*, 945 N.E.2d at 180-181. If a written agreement is an act of performance, then the refusal to execute a written settlement agreement does not negate a Party’s earlier expression of the Party’s intent to be bound by the terms of the oral settlement agreement. *Id.*
12. Evidence that the settlement’s facilitator believes that an agreement was reached can demonstrate that the Parties intended to be bound by a settlement agreement despite a refusal to execute a signed settlement agreement. *Estate of Skalka v. Skalka*, 751 N.E.2d 769, 771-

772 (Ind. Ct. App. 2001); *See generally, Bullock v. S. Bend Cmty., Sch. Corp.*, No. 3:13-CV-1093, 2015 WL 1418804, at *3-4 (N.D. Ind. Mar. 27, 2015).

13. An agreement contains definite terms when “there is no uncertainty as to any substantial term of the settlement contract” and the agreement’s terms can be logically interpreted. *Sands*, 945 N.E.2d at 181.
14. The settlement agreement reached by the Parties in April of 2018 is enforceable.
15. The Parties manifested their intent to be bound by the agreement when they both represented to the ICRC mediator that they accepted the settlement terms.
16. The terms of their settlement agreement are easily understood and are clearly identified: in exchange for a gift card, Complainant would close his complaint with the ICRC by executing the signed settlement agreement.
17. Although Complainant refused to return a signed copy of the written settlement agreement to the ICRC mediator, the execution of a signed settlement agreement was a term of performance of the Parties’ settlement agreement. Therefore, Complainant’s refusal to sign the written settlement agreement is not evidence of a lack of agreement.
18. Accordingly, the Parties have an enforceable settlement agreement that prevents the further litigation of this matter.
19. Administrative review of this initial decision may be obtained by filing objections with the Commission that state with reasonable particularity each basis for each objection within 15 days after service of this initial decision. IND. CODE § 4-21.5-3-29(d). Filings before the Commission and ICRC ALJ can be made with the Docket Clerk of the Indiana Civil Rights Commission by email, fax, or by mail at the following:

Docket Clerk
c/o Indiana Civil Rights Commission
100 North Senate Avenue, N300
Indianapolis, IN 46204
Fax: 317-232-6580
Email: docketclerk@icrc.in.gov

A Party shall serve copies of any filed item on all Parties. IND. CODE § 4-21.5-3-17(c).

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

ORDER

1. Respondent's Verified Motion to Enforce Settlement Agreement is GRANTED.
2. Complainant's January 11, 2018 complaint is DISMISSED, with prejudice.
3. Both Parties shall execute a signed copy of the settlement agreement drafted by the ICRC mediator within fifteen (15) days after the issuance of a final order by the Commission.
4. Complainant shall contact Respondent's attorney of record within fifteen (15) days after the issuance of a final order by the Commission to provide Respondent with Complainant's contact information, including an email address and mailing address, to be used to facilitate the transfer of the gift card. The contact information for Respondent's attorney of record is included in this Order's certificate of service.
5. This order becomes a final order disposing of the proceedings immediately upon affirmation by the Commission. IND. CODE § 4-21.5-3-29.

Default

A Party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed. IND. CODE § 4-21.5-3-18(d)(8); IND. CODE § 4-21.5-3-24.

Resolution of the Matter

Parties must notify the Presiding Officer of a settlement. If a hearing has not been set, the filing of a written, Notice of Withdrawal by Complainant is immediately effective in closing the matter; however, if a joint motion to dismiss or request for withdrawal is made after the case has been set for hearing, the written consent of a majority of the Commissioners must be obtained. 910 IAC 1-2-6. **Notification of a settlement will not result in the closure of the complaint or staying of deadlines unless accompanied by a written motion for dismissal, withdrawal, or staying of deadlines.**

Filing

Subject to Indiana Code 4-21.5-3-1, the filing of a document in proceedings before the ICRC's Administrative Law Judge or Commission can be completed by mail, personal service, fax, or electronic mail to:

**Docket Clerk
c/o Indiana Civil Rights Commission
100 North Senate Avenue, N300
Indianapolis, IN 46204**

Fax: 317-232-6580

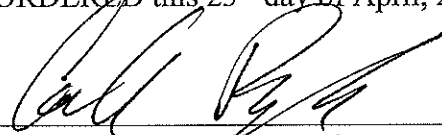
Email: docketclerk@icrc.in.gov

A Party shall serve copies of any filed item on all Parties. IND. CODE § 4-21.5-3-17(c).

Contact Information

The name, official title, and mailing address of the Presiding Officer and Commission as well as a telephone number through which information concerning schedules and procedures may be obtained, is included below. **However, all *ex parte* contacts –direct or indirect communications regarding any issue in the pending proceeding without notice and opportunity for all Parties to participate in the communication – are forbidden by law.** Repeat: a Party shall serve copies of any filed item on **all Parties.** IND. CODE § 4-21.5-3-17(c). The attached Certificate of Service includes the names and mailing addresses of all known Parties and other persons to whom notice is being given. IND. CODE § 4-21.5-3-18(d)(1).

SO ORDERED this 23rd day of April, 2020



Hon. Caroline A. Stephens Ryker
Administrative Law Judge
Indiana Civil Rights Commission
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Indianapolis, IN 46204-2255
Micah Benson, Docket Clerk
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Certificate of Service

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