

STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. PAra08030170

ROY A. CHEEK, JR.;  
Complainant,

FILE DATED

JAN 27 2012 *dl*

v.

Indiana State Civil Rights Commission

THE OMELET SHOPPE,  
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On December 14, 2011, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his 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.

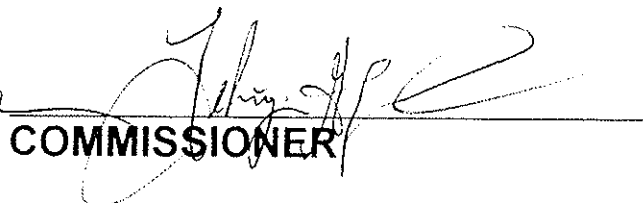
Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

INDIANA CIVIL RIGHTS COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

Dated: 27 January 2012

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

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v.

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THE OMELET SHOPPE,  
Respondent.

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

A Hearing was held before the assigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") on March 25, 2011. Complainant -- Roy A. Cheek, Jr. ("Cheek") - was present and was represented by counsel, Timothy V. Clark, Esq. of the LAW OFFICE OF TIMOTHY V. CLARK of Indianapolis. Respondent, The Omelet Shoppe ("TOS"), appeared, pro se, by Dianna S. Bunch ("Bunch"), who operated TOS as a sole proprietorship at the time of the incidents giving rise to this complaint..

After opening statements were made, Cheek testified on his own behalf and also called Bunch. During the presentation of Cheek's case, Complainant's Exhibit 1 ("CX1") was admitted into evidence without objection. After Cheek rested his case, TOS elected not to present any additional evidence and rested its case. Commission Exhibit A ("ICRCXA") was admitted into evidence without objection. Cheek made a closing argument and, after TOS elected not to make a closing argument, the cause was taken under advisement.

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

## FINDINGS OF FACT

1. The issues to be decided are whether TOS unlawfully discriminated against Cheek because of race by accusing him of not paying for his food and calling police and, if so, what relief should be awarded.
2. Cheek is African American and was, at the time of the incidents giving rise to the instant complaint, a 33 year old resident of North Carolina who worked as an over the road truck driver.
3. TOS was, at the time of the incidents, a sole proprietorship that offered its goods and services to the general public. More specifically, TOS was a diner located in Indianapolis near the intersection of I-465 and Harding Street.
4. Cheek decided to go to TOS about 1:00 A.M. on November 4, 2007 with 4 friends with whom he had been playing pool. These people included Crystal Bunton ("Bunton"), Rosemarie Windell ("Windell"), Bunton's sister, and Bunton's sister's boyfriend. All of those friends are White.
5. This group found a place to sit, placed their orders, and ate. Upon entering the restaurant, Bunton decided to pay for herself, Windell, and Cheek and went to the cash register and did so. Bunton's sister and her boyfriend took care of their own tabs.
6. The group gathered back at the table and left the building together. They were gathered and talking near the car in which they had arrived, Cheek smoking a cigarette, when Donny Riddle ("Riddle"), arrived, angry. Riddle, who is White and is Bunch's son, immediately looked at Cheek and, loudly, said, "Somebody's going to get in here and pay this bill right now". Cheek responded, "Well, we'll go in there and we'll get it straight."
7. They (Riddle, Cheek, Bunton and Windell) went in there but they did not get it straight. While standing behind the counter near the cashier, Riddle continued speaking loudly at, or to, Cheek. The cashier told Riddle, "I'm sorry, they done paid for their food – their food has been paid for." Riddle looked at Cheek and said, "You're still going to jail, Nigger." Cheek replied that he had no reason to go to jail since his food had been paid for. Riddle then used the phone and Cheek left the building, with Bunton and Windell behind him.

Cheek and his friends went outside the building and were immediately met by a police officer. This encounter did not go well for Cheek, the officer placing him in handcuffs while he (the officer) went inside and talked to Riddle. Eventually, despite several patrons of TOS telling the officer that Cheek's meal had been paid for, Cheek was arrested and charged with public intoxication and resisting arrest and was taken to jail, where he spent the night.

9. On this record, it appears that TOS, by and through Riddle, called the police because of Cheek's race.

10. The criminal charges against Cheek were ultimately dismissed.

11. As a result of being insulted, and later arrested, because of the racially motivated acts of TOS's agent, Cheek has lost \$2,150.00 out of pocket. This is \$750.00 in attorney fees to defend against the criminal charges, \$900.00 in travel from North Carolina to Indiana on 3 different occasions for criminal proceedings, and \$500.00 in lost wages for 5 days of missed work.

12. Cheek also experienced emotional distress, emotional trauma, humiliation, embarrassment, and injury to his reputation as a result of the confrontation, insult, and arrest.

13. Any Conclusion of Law that 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. Cheek and TOS are each a "person", as that term is defined in section 3(a) of the Indiana Civil Rights Law, IC 22-9-1-1 *et. seq.* ("the ICRL"). IC 22-9-1-3(a).
3. TOS is a "public accommodation", as the term is defined in the ICRL. IC 22-9-1-3(m).
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 race ...  
IC 22-9-1-3(1)(1).

5. Generally, cases decided under federal civil rights statutes are entitled to great weight in the interpretation of the ICRL. *Indiana Civil Rights Commission v. Culver Educational Foundation*, 535 N.E.2d 112 (Ind. 1989).
6. Cheek was subjected to a confrontation about his bill and a racially charged insult by an agent of TOS because of his race. This behavior deprived him of equal access to a public accommodation.
7. The calling of the police by TOS's agent also occurred because of race and resulted not only in Cheek spending a night in jail but also in Cheek expending time and money in defending against potential criminal proceedings.
8. The ICRL makes it a discriminatory practice to exclude a person from equal opportunities because of, among other things, race. IC 22-9-1-3(1)(1). Every discriminatory practice related to, among other things, public accommodations, is unlawful unless specifically exempted by the ICRL. *Id.* Because there is no such applicable exemption, TOS's actions were unlawful.
9. If the ICRC 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 as will effectuate the purpose of the ICRL, which may include restoring Complainant's losses incurred as a result of the discriminatory treatment. IC 22-9-1-6(k)(A).
10. "Complainant's losses" include out of pocket expenses and damages for pain and suffering and emotional distress. *Indiana Civil Rights Commission v. Adler*, 714 N.E.2d 632 (Ind. 1999). Cheek has proven that he sustained pain, suffering, and emotional distress as a result of the proven, unlawful discriminatory practice. \$20,000.00 is an appropriate amount in this case.
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

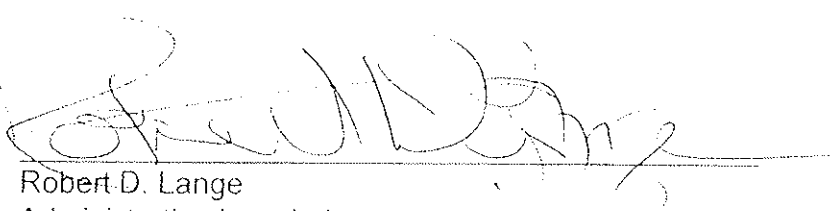
1. ...able particularity each basis for each objection within 15 days after service of this proposed decision. IC 4-21.5-5-23-29(d).

12. ...by Finding of Fact that should have been a Conclusion of Law is hereby adopted as such.

## ORDER

1. TOS shall cease and desist from excluding persons from equal access to its public accommodations on the basis of race.
2. TOS shall deliver to the ICRC a check payable to Cheek in the amount of \$22,150.00 within 30 days of the effective date of this Order.
3. 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 IC 4-21.5-5-3-31(a), stayed the ICRC pursuant to IC 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated: 14 December 2011

  
\_\_\_\_\_  
Robert D. Lange  
Administrative Law Judge

To be served by first class mail this 14<sup>th</sup> day of December, 2011 on the following parties and attorneys of record:

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c/o Dianna Sue Bunch  
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and to be served by electronic mail this 14<sup>th</sup> day of December, 2011 on the following:

Indiana Civil Rights Commission  
c/o Jamal L. Smith, Executive Director