



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

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

5 Phillip Gray  
6 4203 Useppa Court  
7 Noblesville, IN 46062

8 Shangri-La  
9 c/o Chief Executive Officer  
10 2440 West Jefferson Boulevard  
11 Fort Wayne, IN 46802

12 Shangri-La  
13 c/o Dino Zurzolo  
14 1002 North Coliseum Boulevard  
15 Fort Wayne, IN 46802

16 Dino Zurzulo d/b/a Shangri-La East  
17 2440 West Jefferson Boulevard  
18 Fort Wayne, IN 46802

19 Dino Zurzulo d/b/a Shangri-La East  
20 1002 North Coliseum Boulevard  
21 Fort Wayne, IN 46802

22 Omert'a, LLC  
23 c/o Chief Executive Officer  
24 2440 West Jefferson Boulevard  
25 Fort Wayne, IN 46802

26 Omert'a, LLC  
27 c/o Chief Executive Officer  
28 1002 North Coliseum Boulevard  
Fort Wayne, IN 46802

Wholesalers, Inc. d/b/a Shangri-La Show Club  
c/o Chief Executive Officer  
2440 West Jefferson Boulevard  
Fort Wayne, IN 46802

STILES LAW OFFICE  
BY: Randall Brian Stiles, Esq.  
Attorneys for Respondents  
6058 East State Boulevard  
Fort Wayne, IN 46815

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

Michael C. Healy, Esq.; Staff Counsel  
Indiana Civil Rights Commission  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255



1 Judge Lange has since retired from the ICRC. The Commission appointed  
2 Noell F. Allen as ALJ to preside over matters in this case. Having carefully  
3 considered the foregoing and being duly advised in the premises, the  
4 undersigned ALJ proposes that the ICRC enter the following as findings of  
5 fact, conclusions of law and order.

6  
7 FINDINGS OF FACT

- 8 1. Gray is an adult male who has resided at all times in the  
9 State of Indiana. Gray is a Vietnam War veteran who suffers from  
10 post traumatic stress disorder (PTSD), and has been declared 100 per  
11 cent (100%) disabled.
- 12 2. The Respondents are an establishment licensed to do  
13 business in the State of Indiana. It operates at least one (1) night  
14 club in the City of Fort Wayne, Indiana.
- 15 3. The body of Gray's complaint provides:
- 16 a. I applied with this establishment several times and have  
17 never been granted an interview.
- 18 b. I believed that Shangri-La has discriminated against me on  
19 the basis of gender and my status as a Disabled Vietnam  
20 Veteran because:
- 21 i. Shangri-La posting [sic] for bartenders on 03-07-2010  
22 specified "looking for 3 hot chicks" (see attached  
23 document).
- 24 ii. Shangri-La's postings for bartenders has [sic] always  
25 included the requirement that the applicant send a  
26 picture.
- 27 iii. Having had friends visit Shangri-La, they have reported  
28 that they have never seen a male bartender working  
there.
- iv. Although Shangri-La has denied this in our  
correspondence and has stated "guys too" his posting  
specifically stated that he is looking for female  
bartenders only and that everyone must send a picture.  
The only reason for requiring a picture is so that he  
can see the applicant's gender, race and age. It is the  
belief of the Plaintiff that Shangri-La has place [sic]  
"guys too" only to try to avoid the appearance of gender  
discrimination.

- 1           c.     I am seeking all available remedies for a violation of  
2           Title VII of the Civil Rights Act of 1964, as amended, and the  
3           Indiana Civil Rights Laws.
- 4           4.     After an investigation by the ICRC, a NOTICE OF FINDING of  
5           Probable Cause was entered and the matter was scheduled for a  
6           Hearing on the merits of Gray's complaint.
- 7           5.     On November 30, 2011, Judge Lange entered an ORDER  
8           COMPELLING DISCOVERY, compelling Respondents to respond to  
9           Complainant's discovery request on or before December 22, 2011.
- 10          6.     On January 30, 2012, Complainant filed his Application for  
11          Order by Default, citing that Respondents had not complied with the  
12          ORDER COMPELLING DISCOVERY.
- 13          7.     On February 1, 2012, Judge Lange issued his NOTICE OF  
14          PROPOSED DEFAULT ORDER ("NPDO").
- 15          8.     The NPDO notified Respondents that a written motion could  
16          be filed requesting that the proposed default order not be imposed  
17          within seven (7) days after service of the NPDO.
- 18          9.     Respondents did not file such motion.
- 19          10.    On February 27, 2012, Judge Lange issued his ORDER BY  
20          DEFAULT.
- 21          11.    The complaint sets out a *prima facie* case that Complainant  
22          was denied an employment opportunity by Respondent on the basis of  
23          disability and sex.
- 24          12.    Gray is a graduate of the Midwest Bartending School and has  
25          work experience bartending at various establishments. These include,  
26          but are not limited to, bartending at U Club and Stasiu's in  
27          Indianapolis, and then as a bar manager at The Oxygen Club, also in  
28          Indianapolis.

1           13.           Upon being denied employment at Shangri-La, Gray has  
2                   subsequently sought employment at other, similar establishments  
3                   including restaurants as a bartender. Gray also maintains an ongoing  
4                   small business, My Bar to You, providing bartending services for  
5                   private events. Gray has sustained losses in that venture.

6           14.           According to the U.S. Department of Labor, Bureau of Labor  
7                   Statistics, Occupational Employment Statistics May 2010 for  
8                   bartenders, the median, hourly earnings for bartenders is \$8.98.  
9                   (See <http://www.bls.gov/oes/2010/may/oes353011.htm>).

10          15.           Bartenders also earn tips. Hourly tips range from \$2.65 to  
11                   \$20.22. Dancers are required to tip bartenders at fifteen (15) to  
12                   twenty (20) percent of the dancer's earnings each night. Dancers  
13                   earn between \$200.00 and \$400.00 per night. The average tips per  
14                   dancer are \$300.00. Such places have between ten (10) to fifteen  
15                   (15) dancers per night. The average number of dancers per night is  
16                   12.5. The total average amount of tips earned per night is  
17                   \$3,750.00. The bartenders on staff would earn at least fifteen  
18                   percent (15%) of \$3,750.00 (or \$562.50) per night. There are three  
19                   bartenders on staff to share the tips. Each bartender would receive,  
20                   on average, \$187.50 per night. Assuming Gray worked a full-time  
21                   schedule working five (5) nights per week, Gray would earn \$937.50  
22                   per week above his hourly wage.

23          16.           Assuming Gray worked a forty (40) hour work week, based on  
24                   the average hourly rate, Gray would have earned \$359.20 per week  
25                   plus tips for \$937.50 for total weekly earnings of \$1,296.70. Gray's  
26                   earnings at fifty-two (52) weeks would be \$67,428.40; and Gray's  
27                   earnings at two (2) years would be \$134,856.80 less applicable  
28                   withholdings.

1 17. There is no evidence that Gray would have worked overtime  
2 had he been hired by Shangri-La.

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

5  
6 CONCLUSIONS OF LAW

7 1. The ICRC has jurisdiction over the subject matter and the  
8 parties.

9 2. Gray is a "person", as that term is defined in the Indiana  
10 Civil Rights Law ("ICRL"). Ind. Code § 22-9-1-3(a).

11 3. Respondents are an "employer", as that term is defined in  
12 the ICRL. Ind. Code § 22-9-1-3(h).

13 4. The ICRC's Rule 6.1 (1) provides, in material part, that  
14 "[w]hen a party has failed to plead or otherwise defend as provided  
15 by this article", that party is in default. 910 IAC 1-6-1(1).

16 5. Default is appropriate under 910 IAC 1-6-1(1).

17 6. Default is appropriate under Ind. Code § 4-21.5-3-24(a)(2).

18 7. The ALJ was required to conduct further proceedings after  
19 default without the participation of Respondents. Ind. Code § 4-  
20 21.5-3-24(d).

21 8. The effects of an order by default include that the  
22 allegations of the complaint are deemed admitted.

23 9. The ICRL defines "discriminatory practice" as "the  
24 exclusion of a person from equal opportunities because of ... sex  
25 [and] disability ..." Ind. Code § 22-9-1-3(1)(1).

26 10. The subsection of the foregoing statute further states  
27 "Every discriminatory practice related to, among other things,  
28 employment is unlawful unless exempted by the ICRL. *Id.* No such

1 exemption exists here. Therefore, Shangri-La's failure to hire Gray  
2 because of his disability and sex, male, was unlawful.

3 11. If the ICRC finds that a person has committed an unlawful  
4 discriminatory practice, it shall issue an order requiring the  
5 person to cease and desist from that practice and to take further  
6 affirmative action as will effectuate the purposes of the ICRL.  
7 Such an order may include restoring Complainant's losses incurred as  
8 a result of the discriminatory treatment. Ind. Code § 22-9-1-  
9 6(k) (A).

10 12. Gray has proven that he has sustained lost earnings that  
11 were the proximate result of the proven unlawful discriminatory  
12 practice.

13 13. The burden of proof on the issue of mitigation of damages  
14 is on the wrongdoer. *Colonial Discount Corp. v. Berkhardt*, 435 N.E.  
15 2d 65 (Ind. App.1982).

16 14. Administrative review of this proposed decision may be  
17 obtained by any interested and affected person who is not in default  
18 by the filing of a writing specifying with reasonable particularity  
19 each basis for each objection within fifteen (15) days after service  
20 of this proposed decision. Ind. Code § 4-21.5-23-29(d).

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

23  
24 ORDER

25 1. Respondents shall cease and desist from excluding persons  
26 from equal employment opportunities on the basis of disability and  
27 sex.  
28



1  
2 To be served by first class mail on the following parties and attorneys  
3 of record:

4 Phillip Gray  
5 4203 Useppa Court  
6 Noblesville, IN 46062

7 Shangri-La  
8 c/o Chief Executive Officer  
9 2440 West Jefferson Boulevard  
10 Fort Wayne, IN 46802

11 Shangri-La  
12 c/o Dino Zurzolo  
13 1002 North Coliseum Boulevard  
14 Fort Wayne, IN 46802

15 Dino Zurzulo d/b/a Shangri-La East  
16 2440 West Jefferson Boulevard  
17 Fort Wayne, IN 46802

18 Dino Zurzulo d/b/a Shangri-La East  
19 1002 North Coliseum Boulevard  
20 Fort Wayne, IN 46802

21 Omert'a, LLC  
22 c/o Chief Executive Officer  
23 2440 West Jefferson Boulevard  
24 Fort Wayne, IN 46802

25 Omert'a, LLC  
26 c/o Chief Executive Officer  
27 1002 North Coliseum Boulevard  
28 Fort Wayne, IN 46802

Wholesalers, Inc. d/b/a Shangri-La Show Club  
c/o Chief Executive Officer  
2440 West Jefferson Boulevard  
Fort Wayne, IN 46802

STILES LAW OFFICE  
BY: Randall Brian Stiles, Esq.  
Attorneys for Respondents  
6058 East State Boulevard  
Fort Wayne, IN 46815

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

Michael C. Healy, Esq.; Staff Counsel  
Indiana Civil Rights Commission  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255