

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. PAha10100472

VIRGINIA CREASY,
Complainant,

v.

NORTHWEST PIZZA, INC.
d/b/a DOMINO'S PIZZA and
RENE I. FLORES;
Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On August 27, 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").

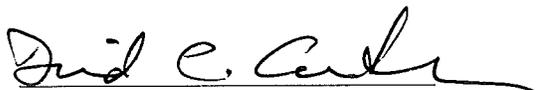
No objections have been filed to the ICRC's adoption of the proposed decision.

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


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

Virginia Creasy
1256 John Street
Frankfort, IN 46041

Northwest Pizza, Inc. d/b/a Domino's Pizza
c/o Rene Flores, President
P.O. Box 5541
Lafayette, IN 47903

Northwest Pizza, inc. d/b/a Domino's Pizza
c/o Chief Executive Officer
P.O. Box 6629
Richmond, VA 23230-0629

Rene I. Flores
2013 Stonehollow Road
Henrico, VA 23238-5804

Rene Flores
East Coast CV Pizza
13813 Sandy Oak Road
Chester, VA 23831

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

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d/b/a DOMINO'S PIZZA and
RENE I. FLORES;
Respondents.**

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A Hearing on Damages was held before Administrative Law Judge ("ALJ") Robert D. Lange for the Indiana Civil Rights Commission ("ICRC") on November 21, 2011. Complainant, Virginia Creasy ("Creasy"), appeared by telephone. Michael C. Healy, Staff Counsel for the ICRC, appeared in the public interest on behalf of Creasy. Respondents - Northwest Pizza, Inc. d/b/a Domino's Pizza ("NPI") and Rene I. Flores (Collectively referred to as "Respondents") - did not appear, by counsel or otherwise.

An opening statement was waived. Creasy then testified on her own behalf. During the presentation of Creasy's case, Complainant's Exhibit A ("CX_") and CXB were admitted into evidence without objection. The ALJ allowed Creasy until December 1, 2011 to file her suggested proposed decision and the cause was taken under advisement.

On November 29, 2011, Creasy filed Complainant's (Suggested) Proposed Findings of Fact, Conclusions of Law and Order and on December 9, 2011, Creasy filed Complainant's Amendment To (Suggested) Proposed Findings of Fact, Conclusions of Law and Order.

On December 26, 2012, ALJ Lange retired without having made a decision. The ICRC appointed Noell F. Allen as ALJ on July 2, 2013.

On August 13, 2013, Creasy filed Complainant's Second (Suggested) Proposed Findings of Fact, Conclusions of Law and Order.

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

FINDINGS OF FACT

1. Creasy is an adult disabled female who has resided, at all material times, in the state of Indiana.
2. NPI is a corporation licensed to do business in the state. One of its pizza establishments is located in Frankfort, IN.
3. The body of Creasy's complaint reads as follows:
 - I. On September 7, 2010, I was denied access to Respondent's goods and services.
 - II. I believe that I have been discriminated against on the basis of my disability because:
 - A. On the above mentioned date, Respondent refused my reasonable accommodation request.
 - B. Due to my disability I was not able to pick up my order.
 - C. I reported the incident to the corporate office and nothing was done.
 - III. I am seeking all available remedies for a violation of Title I of the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, as amended, and the Indiana Civil Rights Laws.
COMPLAINT OF DISCRIMINATION (October 20, 2010)
("COMPLAINT").
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 Creasy's complaint.
5. On September 14, 2011, the ALJ entered an ORDER GRANTING COMPLAINANT'S MOTION TO RESCHEDULE PROCEEDINGS that rescheduled the Final Pre-Hearing Conference on September 26, 2011.
6. NPI did not appear at the Pre-Hearing Conference, by counsel or otherwise. (THIRD PRE-HEARING ORDER, September 26, 2011).

7. On September 30, 2011, Creasy filed her Application for Order by Default.
8. On October 14, 2011, Judge Lange issued his NOTICE OF PROPOSED DEFAULT ORDER (“NPDO”).
9. The NPDO notified NPI 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. NPI did not file such a written motion.
10. On October 28, 2011, Judge Lange issued his ORDER BY DEFAULT.
11. On September 17, 2012, Creasy filed her Application to Pierce Corporate Veil and Add Rene Flores (“Flores”), President of NPI, as an Individual Defendant (“Application”).
12. On October 18, 2012, Judge Lange granted Creasy’s Application.
13. The facts alleged in Creasy’s COMPLAINT are deemed admitted, and no evidence is to be considered on the issue of liability.
14. The COMPLAINT sets out a *prima facie* case that Creasy was denied access to NPI’s goods and services on the basis of disability.
15. Creasy is in very poor health and suffers from, among other things: congestive heart failure, chronic obstructive pulmonary disease (COPD), and has had a stroke. She must use a home oxygen machine for her heart and breathing problems. She has been prescribed a large number of medicines for these and other conditions. She is unable to leave her home except to go the hospital and someone must be with her at all times.
16. On the day in question, Creasy telephoned NPI’s facility in Frankfort to order one of the specials from the menu for delivery to her home. The clerk told her the food could not be delivered because the price was too low. NPI had delivered food of this price to her home on prior occasions. During the conversation with the clerk, Creasy told him of her disability and the clerk replied “I can’t help it that you’re a cripple”.
17. Creasy also testified that, as a result of this denial of service, Creasy suffered a panic attack and had to be taken to the hospital the next day. Available medical records (CX B) reveal that Creasy was in the emergency room of the St. Vincent Frankfort Hospital shortly after the incident took place. One result was that she had her prescription of Lorezepam (CX A), an anti-depressant and anti-anxiety medication, increased from ½ milligram per day to one 1 milligram per day.
18. Creasy’s attempts to contact and resolve the matter with NPI’s management were to no

avail.

19. As a result of NPI's actions, Creasy experienced emotional distress, mental anguish, pain and suffering, feelings of humiliation, anxiety and depression. These actions also made Creasy's already difficult physical and mental condition worse.

20. \$20,000.00 is an appropriate amount to compensate Creasy.

21. On October 19, 2012, Judge Lange issued a NOTICE OF PRE-HEARING CONFERENCE ("CONFERENCE") that scheduled such CONFERENCE on November 28, 2012.

22. The Respondents did not appear at the CONFERENCE by counsel or otherwise.

23. On July 3, 2013, the undersigned ALJ, Noell F. Allen, issued and served a NOTICE OF PROPOSED DEFAULT ORDER ("Order") against NPI. An amended Order followed on July 8, 2013 adding Flores.

24. The Respondents did not file a written motion requesting the proposed default not be imposed.

25. Default against the Respondents is appropriate under I.C. 4-21.5-3-24(a)(2).

26. Default against the Respondents is appropriate under 910 IAC 1-6-1.

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

CONCLUSIONS OF LAW

1. ICRC has jurisdiction over the subject matter and the parties.

2. Creasy and Flores are each "person", as that term is defined in section 3(a) of the Indiana Civil Rights Law ("the ICRL"). IC 22-9-1-3(a).

3. A "public accommodation" is defined as "any establishment that caters or offers its services or facilities or goods to the general public." IC 22-9-1-3(m). NPI is a public accommodation.

4. A party may be defaulted for failure to plead or otherwise defend as required under 910 IAC 1-6-1. Default is also appropriate under the Administrative Orders and Procedures Act, IC 4-21.5-3-24 (a) (3).

5. Default is required, in the circumstances of this case, because Respondents did not file a

written motion that default not be imposed within seven (7) days after service of the NPDO. IC 4-21.5-3-24(e).

6. ICRC's Rule 6.1 provides, in material part, that "[w]hen a party has failed to plead...as provided by these rules...after proper notice...that party may be defaulted." 910 IAC 1-6-1.

7. The effects of an Order by Default are that the allegations of the complaint are deemed admitted.

8. Section 3(l) of the ICRL provides, in material part, as follows:

- (l) "Discriminatory practice" means:
 - (1) the exclusion of a person from equal opportunities because of...disability.

Every discriminatory practice relating to...public accommodations...shall be considered unlawful unless it is specifically exempted by this chapter.
IC 22-9-1-3(l)

9. The refusal to serve a person because of disability is a discriminatory practice. Because there is no applicable exemption for such a practice, it was unlawful. IC 22-9-1-3(l).

10. If the ICRC finds that a person has committed an unlawful discriminatory practice, it is required to issue an order requiring that person to cease and desist from that practice and to take further affirmative action as will effectuate the purposes of the ICRL, which affirmative action may include restoring complainant's losses and requiring the respondent to file periodic proof of compliance.

11. Administrative review of this proposed decision may be obtained by a party who is not in default by the filing of a writing specifying with reasonable particularity each basis for each objection within fifteen (15) days of the after service of this proposed decision. IC 4-21.5-3-29(d).

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

ORDER

1. The Respondents shall cease and desist from refusing to deliver its food products to customers on the basis of disability.

2. The Respondents shall deliver to the ICRC, as escrow agent, a cashier's check for Twenty Thousand Dollars (\$20,000.00), payable to Virginia Creasy.
3. All management personnel of NPI shall attend a professionally developed seminar approved by the ICRC's Executive Director addressing a public accommodation's recognition, elimination and treatment of unlawful discrimination on the basis of disability. NPI 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 attendance shall be filed with the ICRC.
4. NPI shall post and maintain, on bulletin boards normally used to disseminate customer information, a boldprint statement of policy on non-discrimination.
5. NPI shall notify, in writing, all staff members of the policies enumerated in paragraph 4 of this Order.
6. NPI 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 August 31, 2014.
7. 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 4-21.5-3-31(a), stayed by the ICRC pursuant to IC 4-21.45-3-31(b), or stayed by a court of competent jurisdiction.

Dated this 27th day of August, 2013.



Noell F. Allen
Administrative Law Judge

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