

NOV 20 2015

INDIANA STATE  
CIVIL RIGHTS COMMISSION

**STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION**

Benjamin Shaw,

Complainant,

vs.

M & M Stump and Tree and William Mohr,

Respondent.

) Docket No.: Para13101559

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

On **November 20, 2015**, Hon. 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.

Any party aggrieved by the ICRC’s decision may seek judicial review with the Indiana Court of Appeals within thirty days following the date of notification of such decision.

**INDIANA CIVIL RIGHTS COMMISSION**

  
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COMMISSIONER

  
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COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER

**November 20, 2015**

To be served by Certified Mail on the following parties:

Benjamin Shaw  
7727 Newlin Dr.  
Fort Wayne, IN 46816

CERTIFIED MAIL: 9214 8901 0661 5400 0074 5213 53

William Mohr  
M & M Stump and Tree  
6950 County Rd.427  
Auburn, IN 46706

CERTIFIED MAIL: 9214 8901 0661 5400 0074 5214 69

William Mohr  
160 Leggett Road  
Clinton, MS 39056

CERTIFIED MAIL: 9214 8901 0661 5400 0074 5217 04

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 Ave, Room N103  
Indianapolis, IN 46204-2255



b. Respondent completed an estimate immediately when my Caucasian neighbor requested an estimate.

III. I am seeking all available remedies for a violation of the Indiana Civil Rights Law.

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 Shaw's complaint.

5. On November 10, 2014, the ALJ conducted the initial pre-hearing conference. Mr. Mohr appeared, *pro se*, along with Mr. Healy for Mr. Shaw and in the public interest. During the pre-hearing conference, Mr. Mohr admitted to calling the Complainant, Mr. Shaw a nigger.

6. On May 1, 2015, Complainant filed a Motion to Compel Discovery, stating therein that Respondents had not responded to any of his discovery requests.

7. On May 7, 2015, the ALJ entered an Order Compelling Discovery, compelling Respondents to respond to Complainant's discovery requests on or before May 21, 2015.

8. Respondents did not file any response to Complainant's discovery requests.

9. On May 21, 2015, Mr. Shaw, filed his Complainant's (Corrected) Application for Order by Default ("Application"), an Application to which M&M Stump and Tree and William Mohr, did not respond.

10. On May 28, 2015, the ALJ issued a Notice of Proposed Default Order ("Notice") and served the same via mail to M&M Stump and Tree and to Mr. Mohr.

11. The Notice notified Respondents that a written motion could be filed requesting that the proposed default order not be imposed within seven days after service of the Notice.

12. Respondents did not file such a written motion.

13. Further, the ALJ conducted the final pre-hearing conference that was scheduled for June 1, 2015. The Respondents did not appear.

14. On June 4, 2015, the ALJ issued an Order of Default against the Respondents for failing to participate in discovery and appearing at the final pre-hearing conference.

15. The Complaint of Discrimination sets out a prima facie case that Complainant was denied services by the Respondents on the basis of race.

16. Mr. Shaw attests that his denial of service and insult causes emotional distress, pain and suffering and believes \$10,000.00 is an appropriate amount of money to compensate Mr. Shaw.

17. Any Conclusion of Law which 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 parties.
2. Complainant and Respondent 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. “Public accommodation’ means any establishment that caters or offers its services or facilities or goods to the general public.” IC 22-9-1-3(m). Respondent offers services to the general public and is, therefore, a “public accommodation” as defined by the ICRL.
4. “Discriminatory practice’ means: the exclusion of a person from equal opportunities because of race ...” Ind. Code Ann. § 22-9-1-3 (l)(1).
5. IC 22-9-1-6 provides, in material part as follows:
  - Sec. 6. The commission shall have the following powers and duties:
    - (k)(1) To state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, to cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power:
      - (A) to restore complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice, however, this specific provision when supplied to orders pertaining in employment shall include only wages, salary, or commissions;
6. By operation of law and as more thoroughly appears in the Order by Default in this case, the Respondents engaged in an unlawful discriminatory practice, to-wit: denying Mr. Shaw services on the basis of his race.
7. Complainant asserts \$10,000.00 is an appropriate amount for the emotional distress pain and suffering endured as a result of Mr. Mohr’s and M&M’s behavior toward Mr. Shaw.
8. “It is the public policy of the state to provide all of its citizens equal opportunity for ... access to public conveniences and accommodations ... and to eliminate segregation or separation based solely on race ... since such segregation is an impediment to equal opportunity. Equal ... access to and use of public accommodations and equal opportunity for acquisition of real property are hereby declared to be civil rights.” Ind. Code § 22-9-1-2(a).

9. "The practice of denying these rights to properly qualified persons by reason of the race ... of such person is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of this state and shall be considered as discriminatory practices. ..."

10. "Nigger" is such an ugly and hurtful word to use in any context. It is derogatory and offensive. Beyond the use of this racial slur, Mr. Mohr and M&M Stump and Tree denied services to the Complainant.

11. The Complainant is entitled to have judgment of the Respondent for emotional pain and suffering that totals eleven thousand dollars (\$11,000.00).

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

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

#### ORDER

1. M&M and Mohr shall cease and desist from excluding persons from equal services on the basis of race.

2. M&M and Mohr shall post and prominently display statements of policies to provide equal service opportunities in any of its social public and print media advertisements.

3. M&M and Mohr shall notify, in writing, all staff members of the policies enumerated in paragraph 2 of this Order.

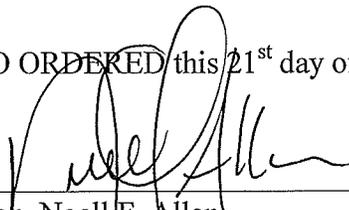
4. Mohr and all other personnel working for M&M shall attend a professionally developed diversity training seminar approved by the ICRC's Executive Director addressing a public accommodation's recognition, prevention and elimination of unlawful discrimination on the basis of race. The Respondents shall obtain the Executive Director's approval no later than 90 days after the effective date of this Order and shall have completed the seminar no later than 180 days after the effective date of this Order. Proof of attendance shall be filed with the ICRC.

5. Respondents shall deliver to Mr. Shaw a check, made payable to "Benjamin Shaw" for \$11,000.00 within thirty (30) days of the effective date of this Order. A copy of the check shall be sent to ICRC.

6. 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 under IC 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

SO ORDERED this 21<sup>st</sup> day of October, 2015

  
\_\_\_\_\_  
Hon. Noell F. Allen  
Administrative Law Judge  
Indiana Civil Rights Commission

Served by Certified Mail on the following:

Benjamin Shaw  
7727 Newlin Dr.  
Ft Wayne, IN 46816  
Certified Mail #: 9214 8901 0661 5400 0071 3957 11

William Mohr  
M & M Stump and Tree  
6950 County Rd. 427  
Auburn, IN 46706  
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William Mohr  
160 Leggett Road  
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Michael C. Healy, Esq.; Staff Counsel  
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