

IOWA CIVIL RIGHTS COMMISSION

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

DARRELL CANNON, Complainant,

VS.

**AMBROSE/LOVETINSKY, d/b/a TYCOON'S I.C.,
Respondent.**

CP# 02-84-11376

HIS MATTER, a complaint filed by Darrell Cannon (Complainant) with the Iowa Civil Rights Commission (Commission) charging Ambrose/Lovetinsky d/b/a Tycoon's I. C., (Respondent) with aiding or abetting in the area of public accommodation, came on for hearing in Des Moines, Iowa on the 23rd of June 1987 and continued on the 24th day of September 1987, before Ione G. Shadduck serving as Hearing Officer. Complainant, who was not present at either hearing, was represented by Teresa Baustian, Assistant Attorney General (AAG). Harry Ambrose, owner of Tycoon's I.C. bar, appeared pro se. He appeared at the June 23, 1987 hearing only.

The issue in this case is as follows:

Should Complainant be adjudged in default for failure to appear and the case dismissed?

After having reviewed the record, testimony, and exhibits, the Hearing Officer makes the following findings of fact, conclusion of law, recommended decision and order.

FINDINGS OF FACT

1. The Complainant, Darrell Cannon, timely filed verified complaint CP# 02-84-11376, on February 7, 1984, charging Respondent Ambrose/Lovetinsky d/b/a The Stadium with aiding or abetting in the area of public accommodation. The complaint was amended on the 12th day of May 1986, changing the name to d/b/a Tycoon's I.C.
2. The case was investigated, probable cause found, conciliation unsuccessfully attempted and the case proceeded to public hearing with Notice of Hearing issued on December 31, 1986. The Notice was sent to:

Darrell Cannon
1700 Griffith Park Bldg.
Hollywood, CA 90026,

his address of record. The certified number was 029941. The Notice was returned unclaimed. The Notice was resent by regular mail upon the advice of Attorney Baustian in that Mr. Cannon was unable to get to the Post Office to pick up certified mail.

3. The hearing was scheduled for 9:00 A.M. on Tuesday, June 23, 1987.
4. On January 26, 1987, the Commission received a pro se appearance by Respondent. This was given to the Hearing Officer. Evidently no copy was given to the AAG.
5. On May 28, 1987, the AAG filed a Request for Admissions, with a copy to Rick Jirsa, P.O. Box 3103, Iowa City, Iowa, 52244 (Manager for Respondent).
6. On June 19, 1987, the AAG filed an Application for Continuance noting that Respondent had not filed an Answer and that Mr. Cannon whothen resided in California had a work schedule and financial condition which would not permit him to travel to Iowa for the hearing.
7. The Application for Continuance was received by Respondent on June 22, 1987. No ruling had been made because the application was not timely and Respondent appeared for the Hearing on June 23rd as scheduled. Respondent was allowed to put his resistance to the Application for Continuance in the record.
8. Respondent waived his right to have the Complainant, who was not present, present his evidence first and proceeded with his defense.
9. Respondent who appeared pro se was allowed to submit his reply to the Request for Admissions after the hearing. That reply was received on June 29, 1987.
10. The Stadium (Tycoons) was a bar in Iowa City owned by Harry Ambrose. Rick Jirsa and Randy Phillips were hired as managers. Darrell Cannon was hired part-time as a DJ. Jirsa and Phillips had the authority to hire and fire employees. They did fire Cannon on January 25, 1984.
11. The reason given for firing Cannon was his refusal to play the records management recommended for their program and that he would do what he wanted to do instead of what management requested. He also played his own records, which was not practice, and those records were primarily "Black rap" records which were generally unknown in the Iowa City area. It was alleged that because of the type of music Cannon insisted on playing, patronage fell off on the night he was DJ. In the beginning of his work with Respondent, it is admitted that he was an excellent DJ.
12. Cannon, in his charge of discrimination, alleges that he was terminated because he failed to discourage Black customers from coming into Respondent's bar.
13. The Hearing of June 23, 1987, was continued pending ruling on the Application for Continuance.
14. On the 21st of August 1987, it was ruled that the continuation of the Hearing be held at 9:00 A.M. on Thursday, September 24, 1987, either in person or by telephone conference call. Harry Ambrose received a copy of the Ruling by certified mail and a copy was provided Attorney Baustian as attorney for Darrell Cannon.
15. The Hearing was held on September 24, 1987. Complainant did not appear. Respondent did not appear. Attorney Baustian was present and stated that she had not been able to reach Cannon at the

phone number which he had provided, that at different times she left messages on a telephone answering machine and received no response. She stated that she had not spoken to Cannon since the Ruling had been issued. Attorney Baustian stated further that she was fairly certain that had she been able to contact Cannon he would not have been able to attend the hearing and actively participate in the prosecution of his complaint.

CONCLUSIONS OF LAW

1. The complaint was timely filed, processed and the issues in the complaint are properly before the Hearing officer and ultimately before the Commission.
2. Complainant, Darrell Cannon, failed to appear, although notified, on either date set to hear his testimony.
3. Pursuant to Iowa R. Civ. Pro. 87, 230-236 and Iowa Code section 17A. 12(3), Darrell Cannon is declared in default in the case of CP# 02-84-11376, and judgement should be against him.

RECOMMENDED DECISION AND ORDER

1. Darrell Cannon, Complainant in Iowa Civil Rights Commission Case CP# 02-84-11376, is hereby declared in default and judgement is rendered against him.
2. Case CP# 02-84-11376 is dismissed.

Signed this 8th day of October, 1987.

IONE G. SHADDUCK
HEARING OFFICER

FINAL ORDER

The Iowa Civil Rights Commission has received, reviewed and considered the Proposed Findings of Fact, Conclusions of Law, Recommended Decision and Order of the Hearing Officer dated October 8, 1987, and the record of this case at its regularly scheduled meeting held on December 11, 1987, and adopted the proposed decision as its own.

Issued this 23rd day of December, 1987.

JOHN STOKES
Commissioner