This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 6/24/05.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
JENNIFER A. MALTBY,	)	
	)	
Complainant,	)	
	)	
and	)	CHARGE NO: 2003SN2569
	)	EEOC NO:
THOMAS KLAUSER,	)	ALS NO: S04-072
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act. On January 20, 2005, an Order was entered which, among other things, noted that Respondent appeared to be in default, and directed Complainant to file a motion for default judgment. The Order also cautioned Complainant that the failure to file anything could result in the entry of an order recommending that this case be dismissed for want of prosecution. Complainant has not filed a motion for default judgment as directed by the Order of January 20, 2005, although the time for doing so has expired.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On November 2, 2002, Complainant filed a Charge of Discrimination against Respondent, Thomas Klauser, alleging that she was the victim of sexual harassment during her employment as a car washer.

2. On March 3, 2004, the Department filed a Complaint, alleging that Complainant was the victim of sexual harassment when Respondent uttered sexual innuendos and made requests for sexual activity in the workplace.

3. On April 9, 2004, Respondent's motion to continue the public hearing was granted, and Respondent was directed to file a responsive pleading to the Complaint by May 10, 2004.

4. On June 4, 2004, an Order was entered which reflected that Respondent had not yet filed a responsive pleading and directed Respondent to file a responsive pleading by June 21, 2004.

5. On September 3, 2004, an Order was entered which noted that Respondent had not yet filed a responsive pleading, and that Respondent appeared to be in default. The Order further stated that Complainant could file a motion for default judgment, and that Respondent could file a motion seeking leave to file a late responsive pleading. The Order also informed Complainant that the failure of either party to file anything could result in the matter being dismissed for want of prosecution.

6. On January 20, 2005, an Order was entered, which acknowledged that neither party had complied with the Order of September 3, 2004, and gave the parties one more opportunity to file either a motion seeking leave to file a late responsive pleading or a motion for default by February 4, 2005.

7. Neither party has filed a motion to advance this matter as of the date of this Order.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent is an "employee" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. A Complaint may be dismissed when a party engages in conduct which unreasonable delays or protracts proceedings. See Ill. Admin. Code, Ch. XI, §5300.750(e).

4. The Complainant in this case has unreasonably delayed proceedings by failing to file an appropriate motion to default Respondent as directed in two Commission Orders. As a result, Complainant has taken insufficient action to prosecute this case.

5. The appropriate sanction for Complainant's inaction in this case is dismissal of the Complaint and the underlying Charge of Discrimination.

Determination

The Complaint and the underlying Charge of Discrimination should be dismissed with prejudice due to the delay caused by Complainant's failure to prosecute this matter.

Discussion

Under the Commission's Procedural Rules, an administrative law judge may recommend to the Commission that the Complaint be dismissed where a complainant engages in conduct which unreasonably delays or protracts proceedings. (See, 56 Ill. Admin. Code, Ch. §5300.750(e).) On review, the Commission has upheld the use of such discretion to dismiss complaints in circumstances which are analogous to the case at bar. See, **Gould and Agarwal**, ___ Ill. HRC Rep. ___ (2000SF0009, November 14, 2000).

Here, the circumstances reveal that Complainant's inaction has served to unreasonably delay these proceedings. Specifically, Complainant was directed in the Orders of September 3, 2004 and January 20, 2005 to file an appropriate motion to address Respondent's failure to file a verified answer. Moreover, Complainant was warned in both Orders that the failure to do anything could result in the entry of an Order which dismissed her cause of action for want of prosecution. Complainant has not filed any pleading since the entry of these Orders. As such, Complainant's inaction strongly suggests either that she no longer cares about pursuing her case or that she agrees that it should be dismissed for want of prosecution. In either case, Complainant's inaction constitutes an unreasonable delay and renders it difficult for the Commission to take any

action with regard to this case except to dismiss it. See, for example, **Foster and Old Republic General Services Inc.**, ___ Ill. HRC Rep. ___ (1990CA2290, November 8, 1993).

Recommendation

For all of the above reasons, I recommend that the Complaint and the underlying Charge of Discrimination of Jennifer A. Maltby be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 12TH DAY OF MAY, 2005