

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)

SUSAN TOWNSEND)

Complainant,)

and)

JERRY GOODWIN)

Respondent.)

CHARGE NO(S): 2015SN0763
EEOC NO(S): N/A
ALS NO(S): 15-0497

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**)

) Entered this 26TH day of December, 2018

PHILIP DALMAGE
EXECUTIVE DIRECTOR

2. On February 9, 2016, an Order was entered, which set forth deadlines for serving initial and supplemental discovery requests.

3. On April 12, 2016, the parties appeared at a telephone conference call. During the conference call, Complainant's counsel indicated that although he possessed Respondent's discovery requests, he had not submitted them to Complainant, even though the deadline for serving responses to said requests had expired. An Order was entered the same day establishing May 3, 2016 as the new deadline for Complainant to serve responses to Respondent's discovery requests and for Complainant to serve Respondent with any discovery requests.

4. On May 16, 2016, Respondent filed a motion to strike Complainant's pleadings due to Complainant's failure to serve responses to any of his discovery requests.

5. On June 29, 2016, the parties were scheduled for a telephone conference call. The Commission's office was able to reach Respondent's counsel, but was unable to reach Complainant's counsel. An Order was entered the same day, directing Complainant's counsel to file by July 11, 2016 a response to the motion to strike Complainant's pleadings, as well as an explanation of why counsel was unable to participate in the scheduled telephone conference call. The Order cautioned Complainant that she risked the entry of a future Order recommending that the motion to strike be granted and that her case be dismissed due to her failure to prosecute her claim if she failed to file a response to the pending motion to strike.

6. On July 12, 2016, Paul Storment, Complainant's counsel, served on Respondent's counsel a motion to withdraw as counsel on behalf of Complainant. (The Commission did not receive a copy of this motion until September 8, 2016.) In the motion, Mr. Storment claimed that he was seeking the instant withdrawal because Complainant had become "unresponsive" to his attempts to prosecute the instant case by failing to generate responses to either Respondent's discovery requests or to Respondent's motion to strike.

7. On August 5, 2016, Respondent filed a renewed motion to strike Complainant's pleadings, alleging that Complainant had not filed a response to the motion to strike her pleadings and had not served responses to any of Respondent's discovery requests.

8. On September 8, 2016, an Order was entered that directed Mr. Storment to: (1) file an appropriate proof of service with respect to his motion to withdraw as counsel on behalf of Complainant; and (2) file a response to the pending motion to strike.

9. On September 21, 2016, Mr. Storment filed a response to the motion to strike Complainant's pleadings, as well as a proper proof of service on his motion to withdraw. In the response, Mr. Storment stated that: (1) he sent Respondent's discovery requests to Complainant for her completion; (2) he reminded Complainant to complete the discovery requests, but she had failed to do so; (3) he forwarded to Complainant Respondent's motion to strike her pleadings, but she had not responded to said motion; and (4) he filed the instant motion to withdraw because Complainant had failed to respond to his directions to her.

10. On October 13, 2016, an Order was entered which granted Mr. Storment's motion to withdraw from the case and directed Complainant (or her substitute counsel) to file a response to the motion to strike her pleadings by November 30, 2016. The Order also cautioned Complainant that the failure to file a response to the motion to strike placed her at risk for the entry of a future Order recommending that the motion to strike be granted and that the Complaint be dismissed due to her failure to prosecute her case.

11. Complainant has not filed a response to the motion to strike 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 "employer" 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 fails to substantially comply with any order entered under 56 Ill. Admin. Code, Ch. XI, §5300.720 concerning discovery, or otherwise engages in conduct which unreasonably delays or protracts proceedings.

4. An administrative law judge may issue a recommended order dismissing a case with prejudice as a sanction for the failure of a party to prosecute her case, file a required pleading or otherwise comply with the terms of the Human Rights Act, the rules of the Commission or a previous order. 775 ILCS 5/8A-102(l)(6)

5. Complainant failed to comply with Respondent's discovery requests as required by the Commission's procedural rules and by Orders entered in this case.

6. Complainant has unreasonably delayed and protracted the proceedings in this matter.

Discussion

Section 5300.750(e) of the Commission's Procedural Rules (56 Ill. Admin. Code, Ch. XI, §5300.750(e)) permits a recommendation of dismissal whenever a party engages in conduct that unreasonably delays the proceedings. In this regard, the Commission has previously found that a party's failure to provide discovery responses or abide by Commission orders directing responses to outstanding discovery requests can constitute unreasonable delay for purposes of issuing sanctions under section 5300.750(e). (See, for example, *Best and Allstate Insurance Co.*, IHRC, ALS No., S-11269, May 13, 2003.) Indeed, Illinois courts, in noting the importance of discovery obligations in civil litigation, have become less tolerant of violations of discovery orders, even at the expense of deciding a case on the basis of the sanction imposed, rather than on the merits of the litigation. (See, *Shapira v. Lutheran General Hospital*, 199 Ill.App.3d 479, 557 N.E.2d 351, 356, 145 Ill.Dec. 581, 586 (1st Dist., 2nd Div., 1990).)

Here, Respondent maintains that striking Complainant's pleadings and dismissing her case is warranted because she has not complied with any of his discovery requests that were submitted to her former counsel over one year ago and has ignored two Orders that established deadlines for serving said responses. The instant record supports Respondent's argument in

this regard, where I note that after the initial February 9, 2016 Order establishing discovery deadlines, the deadline for serving responses to Respondent's discovery requests was extended in an Order dated April 12, 2016. Moreover, after Complainant failed to comply with the April 12, 2016 Order, Respondent filed his motion to strike her pleadings, to which Complainant failed to file a response, even though: (1) she was directed to do so in an Order dated October 13, 2016; and (2) she was cautioned in said Order that any failure to file a response to the pending motion to strike her pleadings placed her at risk for the entry of a future order recommending that the motion be granted and that her case be dismissed due to her failure to prosecute her case. Indeed, her former counsel similarly reported in his motion to withdraw that Complainant had failed to follow his instructions with respect to generating a response to Respondent's discovery requests or to Respondent's motion to strike.

Thus, under these circumstances, Complainant's "blow-off" of Respondent, her counsel and the Commission can only be viewed as an indication either that she no longer cares about pursuing her claim, or that she agrees with Respondent's contention that this matter should be dismissed. In any event, Complainant's conduct renders it difficult for the Commission to take any action with regard to this case except to dismiss it. (See, for example, *Paredes and Loretto Hospital*, IHRC, ALS No. 4853, June 15, 1995.)

Recommendation

For all of the above reasons, I recommend that Respondent's motion to strike Complainant's pleadings be granted, and that the Complaint and the underlying Charge of Discrimination of Susan Townsend be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY:

MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 23RD DAY OF JUNE, 2017