

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

VICTOR ZAVALETA,

Complainant,

and

LLOYD AGENCIES, LLC,

Respondent.

Charge No.: 2015CF2520

EEOC No.: 21BA51155

ALS No.: 16-0042

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision, the Complainant's Exceptions filed thereto, and the Respondent's Response to the Complainant's Exceptions.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

IT IS HEREBY ORDERED:

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **MAY 9, 2017** has become the Order of the Commission.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 2nd day of October 2018

Commissioner Robert A. Cantone, Esq.

Commissioner Steve Kim, Esq.

Commissioner Hamilton Chang

3. On February 11, 2016, the Department filed a complaint on Complainant's behalf, alleging that Respondent harassed and constructively discharged Complainant due to his sexual orientation. Complainant alleges that the harassment started in April 2014 and continued until his constructive discharge in December 2014. Respondent denies Complainant's allegations.

CONCLUSIONS OF LAW

1. Respondent is not an "employer" as that term is defined in the Illinois Human Rights Act ("Act"), 775 ILCS 5/2-101(B)(1)(a).
2. The Commission has no jurisdiction over this matter.
3. Respondent is entitled to a recommended order of dismissal as a matter of law.

DISCUSSION

Under section 8-106.1 of the Act, either party to a complaint may move for summary decision. 775 ILCS 5/8-106.1. A summary decision is analogous to a summary judgment in the Circuit Courts. Cano v. Village of Dolton, 250 Ill. App. 3d 130, 138, 620 N.E.2d 1200, 1206 (1st Dist. 1993).

A motion for summary decision should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. Fitzpatrick v. Human Rights Comm'n, 267 Ill. App. 3d 386, 391, 642 N.E.2d 486, 490 (4th Dist. 1994). All pleadings, affidavits, interrogatories, and admissions must be strictly construed against the movant and liberally construed in favor of the non-moving party. Kolakowski v. Voris, 76 Ill. App. 3d 453, 456-57, 395 N.E.2d 6, 9 (1st Dist. 1979). Although not required to prove his case as if at a hearing, the non-moving party must provide *some* factual basis for denying the motion. Birck v. City of Quincy, 241 Ill. App. 3d 119, 121, 608 N.E.2d 920, 922 (4th Dist. 1993). Only facts supported by evidence, and not mere conclusions of law, should be considered. Chevrie v. Gruesen, 208 Ill. App. 3d 881, 883-84, 567 N.E.2d 629, 630-31 (2d Dist. 1991). Inasmuch as summary decision is a drastic means for resolving litigation, the movant's

right to a summary decision must be free from doubt. Purtill v. Hess, 111 Ill.2d 229, 240, 489 N.E.2d 867, 871 (1986).

The Commission is empowered to preside over only those matters prescribed by the Act. Davies and Sequin Servs., Inc., IHRC, ALS No. 8977, April 17, 1997. Cases involving alleged civil rights violations committed by employers fall within the purview of the Act. See 775 ILCS 5/2-102(A). The Act defines an employer as “[a]ny person employing 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation.” 775 ILCS 5/2-101(B)(1)(a).

The issue of whether an entity qualifies as an employer is jurisdictional in nature. Tumblin and YKK Corp. of Amer., IHRC, ALS No. 07-615, January 7, 2011. Proof of jurisdiction must be established by the complainant. Id. The Commission has acknowledged that it “routinely dismisses cases where the complainant cannot establish that the respondent qualifies as an employer.” Id.

In its Motion, Respondent argues, *inter alia*, that the Commission has no jurisdiction over this matter because Respondent is not an “employer” within the meaning of the Act. In an affidavit attached to the Motion, one of Respondent’s managers averred that Respondent did not employ 15 or more employees within Illinois during 20 or more calendar weeks within the calendar year of (*i.e.*, 2014) or preceding (*i.e.*, 2013) the alleged harassment.

Complainant did not respond to the Motion. Thus, he has not proffered any affidavits or other evidence to challenge Respondent’s averments. Inasmuch as Respondent’s affidavit stands uncontroverted, the facts contained therein must be accepted as true. Rotzoll v. Overhead Door Corp., 289 Ill. App. 3d 410, 418, 681 N.E.2d 156, 161 (4th Dist. 1997).

In sum, Complainant has not established that Respondent qualifies as an employer, and Respondent’s evidence suggests that it does not. As the Commission has noted:

We will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion.

Jones and Burlington N. R.R., IHRC, ALS No. 1704, June 23, 1986. Therefore, this case must be dismissed for lack of jurisdiction.

RECOMMENDATION

Based on the foregoing, the Commission lacks jurisdiction over this matter, and Respondent is entitled to a recommended order of dismissal as a matter of law. Accordingly, it is recommended that: 1) Respondent's Motion be granted; and 2) the complaint and underlying charge be dismissed in their entirety with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____

**LESTER G. BOVIA, JR.
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: May 9, 2017