

IN THE MATTER OF:

Complainant,

and

**RealManage, LLC and Olive Tree
Condominium Association,**

Respondent.

CHARGE NO(S): 2020CH1681

HUD NO(S): **05-20-8062-8**

ALS NO(S): **21-0236**

Tracey Fleming
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF: IDHR and GWENDOLYN AGUIRRE, Complainants, v. REALMANAGE, LLC and OLIVE TREE CONDOMINIUM ASSOCIATION, Respondents.	Charge No.: 2020-CH-1681 HUD No.: 05-20-8062-8 ALS No.: 21-0236 Judge Azeema N. Akram
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RECOMMENDED ORDER AND DECISION

This matter is now fully resolved. However, the nature and procedural posture of the case requires a recommended order and decision to effect closure of the action under 56 Ill. Admin. Code § 5300.750(e). On July 25, 2022, this administrative court entered an order dismissing Complainant Gwendolyn Aguirre (“Complainant”) as a party after she failed to file a joint discovery report that was due on March 8, 2022. Complainant also failed to appear at four status hearings conducted on October 18, 2021; May 16, 2022; June 27, 2022; and July 25, 2022. Given that Complainant ignored multiple orders of this administrative court warning that dismissal for want of prosecution was an available sanction for her serial failures to appear, I previously determined, *sua sponte*, that that Complainant should be dismissed as a party to this case for failure to make an meaningful efforts to prosecute her case.

Notwithstanding my dismissal of Complainant, the Illinois Department of Human Rights (the “Department” or “IDHR”) remained a party to this action , representing the public interest and advancing this matter toward an agreed resolution with Respondents RealManage, LLC and Olive Tree Condominium Association (collectively, “Respondents”). On December 8, 2022, the Illinois Human Rights Commissions (the “Commission”) approved the terms of a settlement

agreement between the Department and Respondents, retaining “jurisdiction for purposes of enforcement of the Terms of Settlement and Agreement.” Comm’n Order (entered Dec. 8, 2022). Accordingly, because Complainant was dismissed as a party to this case as a sanction for want of prosecution, I am issuing this recommended order and decision perfecting her dismissal, and I am recommending that the Commission affirm that decision pursuant to 56 Ill. Admin. Code § 5300.750(e).

FINDINGS OF FACT

After reviewing the pleadings and the record file in this matter, I make the following findings of fact:

A. Initial Proceedings

On June 30, 2021, the Department filed a Complaint of Civil Rights Violation (“Complaint”) on Complainant’s behalf, alleging that Respondents failed to accommodate her request for reasonable accommodation in violation of Section 3-102.1(C)(2) of the Illinois Human Rights Act (“Act”), 775 ILCS 5/1-101 *et seq.* Specifically, Complainant alleged that Respondents refused to assign the disability parking space near her residence to only her. *See* Compl. Respondents deny that they have committed a violation and assert that they already added additional two disability parking spaces for use by all disabled residents in response to her requests. *See* Respondent’s Verified Answer to the Complaint (filed Nov. 23, 2021).

On September 8, 2021, this matter came to be heard for an initial status hearing. Complainant, *pro se*, and the Department appeared. *See* Order (entered Sept. 8, 2021). Respondents did not appear. *Id.* However, the Department informed the court that the Complaint was sent to the wrong addresses for Respondents. *Id.* Given that service on Respondents was not effectuated, they were given a new deadline by which to answer the Complaint and another status

hearing date was scheduled. *Id.* Complainant was informed that as a *pro se* litigant, she “is held to the standard of an attorney,” and that “Justice requires that the parties live with litigation decision they have made, either through their attorney or on a *pro se* basis.” *Id.*, citing *Mininni v. Inter-Track Partners*, IHRC, ALS No. 7961 (Dec. 10, 1996) (quoting *First Illinois Bank & Trust v. Galuska*, 155 Ill.App.3d 86, 627 N.E.2d 325 (1st Dist. 1993)); and quoting *Fitzgerald v. Fischer Imaging Corp.*, IHRC, ALS No. 10142 (May 29, 1998).

A status hearing was conducted by this administrative court on October 18, 2021, at which the Department and Respondents appeared through counsel. Complainant, *pro se*, failed to appear. The Department informed the court that Complainant Aguirre was actively seeking legal counsel the last time that they spoke. I entered an order granting Respondents’ request for an extension of time to answer and informed the parties that they should be ready to set a discovery schedule at the next scheduled status date.

B. Complainant Stops Participating

On November 8, 2021, this administrative court conducted a status hearing at which all parties appeared. Complainant represented that she was retaining legal counsel, who was unable to appear at the status hearing. *See* Order (entered Nov. 15, 2021). I entered an order scheduling deadlines for the parties to exchange discovery material, including a deadline by which Complaint would file a joint discovery report. *Id.* Complainant was again reminded that she is held to the standard of an attorney, and the order was served on her address because there was no appearance was on file from any attorney representing Complainant.

The next status hearing was conducted by this administrative court on May 16, 2022, at which the Department and Respondents appeared through counsel. *See* Order (entered May 16,

2022). Complainant, *pro se*, failed to appear. *Id.* I entered an order addressing discovery issues between the Department and Respondents, scheduling the next status hearing date, and stating:

Complainant is also warned that her failure to participate in judicially-ordered status hearings may be grounds for dismissal of her case for want of prosecution. Complainant failed to appear on October 18, 2021. At the last status hearing on November 15, 2021, Complainant indicated that she was in touch with a prospective attorney. No appearance by legal counsel has been filed on her behalf since then, and Complainant failed to appear for a second time today. Further, she failed to file the joint discovery report that was due on March 8, 2022 as ordered. *See Order* (entered Nov. 15, 2021).

Id.

On June 27, 2022, this administrative court conducted a status hearing at which only the Department appeared. *See Order* (entered June 27, 2022; erroneously stated as May 16, 2022).

Neither Complainant, *pro se*, nor Respondents, appeared. I closed discovery, and noted that:

Complainant Aguirre was also previously warned that “her failure to participate in judicially-ordered status hearings may be grounds for dismissal of her case for want of prosecution.” *Id.* On November 15, 2021, Complainant indicated that she was in touch with a prospective attorney, but no appearance by legal counsel has ever been filed on her behalf in the past seven (7) months. In addition to her failure to file the joint discovery report that was due on March 8, 2022 as ordered, she has now failed to appear at three status hearings conducted on: October 18, 2021; May 16, 2022; and June 27, 2022. *See Orders* (entered Nov. 15, 2021 and May 16, 2022). Her failure to diligently prosecute her case indicates that she is no longer interested in pursuing her case before the Commission.

Id. I entered an order imposing a discovery sanction on Respondents and warning Complainant that “Failure of Complainant to appear shall result in **DISMISSAL** of her as a party to this case for want of prosecution” at the next scheduled status hearing. *Id.* (emphasis in original).

On July 25, 2022, this administrative court conducted a status hearing at which the Department and Respondents appeared through counsel. *See Order* (entered July 25, 2022). Complainant, *pro se*, failed to appear. In accordance with my warning to Complainant in my previous orders, I found that:

Complainant Aguirre was previously warned multiple times that “her failure to participate in judicially-ordered status hearings may be grounds for dismissal of her case for want of prosecution.” *Id.* On November 15, 2021, Complainant indicated that she was in touch with a prospective attorney, but no appearance by legal counsel has ever been filed on her behalf in the past eight (8) months. In addition to her failure to file the joint discovery report that was due on March 8, 2022 as ordered, she has now failed to appear at four status hearings conducted on: October 18, 2021; May 16, 2022; June 27, 2022; and July 25, 2022. *See* Orders (entered Nov. 15, 2021; May 16, 2022; and June 27, 2022). Her failure to diligently prosecute her case is sanctionable conduct pursuant to 56 Ill. Admin. Code § 5300.750(e). Given that Complainant Aguirre has ignored multiple orders of this administrative court, including my most recent order that warned “**Sanctions will be imposed against any party or parties who fail to appear, pursuant to 56 Ill. Admin. Code § 5300.750(e)**” and “**Failure of Complainant to appear shall result in DISMISSAL of her as a party to this case for want of prosecution,**” I find that Complainant Aguirre should be dismissed as a party to this case, *sua sponte*, as a sanction for failure to diligently prosecute her own case. *See* Order (entered June 27, 2022). The IDHR remains a party to this matter that represents the public interest.

Id. In addition to dismissing Complainant as a party for failing to diligent prosecute her case under 56 Ill. Admin. Code § 5300.750(e), my order advised that the dismissal contained therein would be incorporated by reference into the Recommended Order and Decision that concluded the case.

C. IDHR and Respondents Settle; Complainant Emerges

The Department and Respondents appeared before this administrative court on August 15, 2022, and indicated that they were actively engaged in settlement discussions. *See* Order (entered Aug. 15, 2022). However, near the conclusion of the status hearing, former Complainant Aguirre appeared to inform this court that she does not like the tone of the person who is “sending me things.” *Id.* After attempting to clarify who and what she was referencing, and reminding her that this court had previously dismissed her as a party, Ms. Aguirre talked over me and stated that “I don’t have to talk to you either,” and that she would appeal this matter because “everyone at the State, you are all friends.” *Id.* She then hung up just as I asked her why she missed multiple status hearings at which I ordered her to appear during the past ten (10) months. My subsequent order

noted: “Appearing today after having been dismissed as a party, only to disparage the court, further demonstrates her failure to diligently prosecute her case and an inability to conduct herself in a civil manner in proceedings at the Commission.” *Id.*

On September 12, 2022, the Department and Respondents appeared for a status hearing before this administrative court through counsel, which was interrupted by former Complainant Aguirre. *See* Order (entered Sept. 12, 2022). I advised her that she could continue to observe the proceedings without interrupting the remaining parties, as she was ordered to appear at multiple status hearings that she missed after being warned that her failure to appear would result in dismissal (which it did). *Id.* Ms. Aguirre complied and remained silent during the remainder of the proceedings. *Id.*

D. The Commission Approves a Settlement Between IDHR and Respondents

After the status hearing held on September 12, 2022, the proceedings continued advancing toward a negotiated resolution between the Department and Respondents. *See* Order (entered Oct. 3, 2022).

On November 15, 2022, the Department filed a Motion for Leave to File Terms of Settlement and Agreement, requesting, on behalf of itself and Respondents, that the motion be entered into the record and submitted for approval by a panel of the Commission pursuant to Section 8-105(A) of the Act. I granted the motion, which transferred the case file to the General Counsel’s Office for review by a panel of the Commission. In so doing, I noted that the dismissal of Gwendolyn Aguirre as a party under 56 Ill. Admin. Code § 5300.750(e) remained in full force and effect. *See* Order (entered Nov. 16, 2022).

The Commission approved the Terms of Settlement and Agreement as to the Department and Respondents, retaining jurisdiction of the same “for purposes of enforcement of the Terms of Settlement and Agreement.” *See* Comm’n Order (entered Dec. 8, 2022). This recommended

order and decision effects the dismissal for want of prosecution that was effected by my order of July 25, 2022.

CONCLUSIONS OF LAW

After reviewing the pleadings and the record file in this matter, I make the following conclusions of law:

1. This administrative court has jurisdiction over this matter and over the parties who have appeared in this case.
2. The Illinois Human Rights Act authorizes an administrative law judge of this Commission to dismiss a case with prejudice where a complainant fails to prosecute his or her claims. *See* 775 ILCS 5/8A-102(I)(6). The procedural rules of this Commission further permit such action—either as a sanction or as a means of administratively closing a case. *See* 56 Ill. Admin. Code § 5300.750(e).
3. By ignoring at least four (4) orders of this administrative court requiring her to appear at status hearings—and through her corresponding failures to appear at those status hearings—I find that Complainant failed to diligently prosecute her case in accordance with 56 Ill. Admin. Code § 5300.750(e).
4. Pursuant to 56 Ill. Admin. Code § 5300.750(e), Complainant’s failure to diligently prosecute her case is sanctionable conduct, warranting dismissal of Complainant as a party even where the Department remains a party-complainant.

ANALYSIS

“It is a fundamental principle governing practice before the Commission that it is the singular responsibility of complainants to diligently pursue the disposition of their cases once they are docketed with the Commission.” *Neil v. Tribco Constr. Servs. LLC*, IHRC, ALS No. 08-0286

(June 16, 2011), citing *Johnson v. Valley Green Mgmt. Co.*, IHRC, ALS No. 11469 (July 25, 2002). Dismissal is warranted where there is a lack of due diligence in the prosecution of the lawsuit by complainant. See, e.g., *Daraban v. TLC Mgmt. Co., Inc. & Farrell*, IHRC, ALS No. 07-349 (May 12, 2008); see also *Schaefer v. Village of Mundelein*, IHRC, ALS No. 07-199 (Mar. 17, 2009). (dismissed for want of prosecution where complainant failed to comply with discovery orders).

Although courts generally prefer to resolve cases on their merits, a trial court may dismiss a case for want of prosecution due to the plaintiff's failure to prosecute the case with due diligence, "in order to manage the court's docket and avoid unnecessary burdens on the court and opposing parties." *Ill. Bone & Joint Inst. v. Kime*, 396 Ill. App. 3d 881, 883 (1st Dist. 2009). The determination of whether to dismiss for want of prosecution must be made on the particular facts of the case and rests within the trial court's discretion. *People v. Kruger*, 399 Ill. Dec. 113, 116, 45 N.E.3d 1103, 1106 (4th Dist. 2015), citing *Dep't of Revenue v. Steinkopf*, 160 Ill. App. 3d 1008, 1018, 513 N.E.2d 1016, 1022 (1987).

A complainant's failure to prosecute "can evidence itself either in an action lying dormant with no significant activity to move it or in a pattern of dilatory tactics." *Lyell Theatre Corp. v. Loews Corp.*, 682 F.2d 37, 42-43 (2d Cir. 1982) "The latter may consist, for example, of groundless motions, repeated requests for continuances or persistent late filings of court ordered papers." *Id.* A dismissal for lack of prosecution is appropriate when there is "a clear record of delay or contumacious behavior." *Penny Theater Corp. v. Plitt Theaters, Inc.*, 812 F.2d 337, 339 (7th Cir. 1987). Allowing courts to dismiss cases where the party who brought the case has failed to prosecute "serves not only to protect defendants but also to aid courts in keeping administrative control over their own dockets and to deter other litigants from engaging in similar dilatory behavior." *Zaddack v. A.B. Dick Co.*, 773 F.2d 147, 150 (7th Cir. 1985).

Here, Complainant's repeated failures to appear at status hearings in her own case unreasonably delayed the proceedings in this matter. Although she finally appeared after being dismissed as a party-complainant, this only affirmed that Complainant chose to disregard orders of this administrative court until she was sanctioned for doing so. Complainant's failure to diligently prosecute her case is sanctionable conduct pursuant to 56 Ill. Admin. Code § 5300.750(e). She was warned multiple times that her failure to participate in judicially-ordered status hearings would result in dismissal of her case for want of prosecution – and she chose not to heed those warnings. With the Department diligently advancing this matter in the public interest, this administrative court had no choice but to allow this case to move on without Complainant by dismissing her as a party. Accordingly, I recommend that the Commission affirm the dismissal of Complainant Aguirre as a party to this case as a sanction for failing to diligently prosecute her case in accordance with 56 Ill. Admin. Code § 5300.750(e).

RECOMMENDATION

Based on the foregoing, I recommend that the Illinois Human Rights Commission affirm dismissal of Gwendolyn Aguirre as a party to this this action pursuant to 56 Ill. Admin. Code § 5300.750(e).

HUMAN RIGHTS COMMISSION

BY:

**AZEEMA N. AKRAM
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: December 15, 2022

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