STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
TAMRA KRUSE BRAUER,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2005SN2040
	)		2005SF2039
	)	EEOC NO(S):	21BA50940
and	)	ALS NO(S):	06-050C
	)		06-051
STEVEN LINQUIST and TEAMSTERS	)		
LOCAL #325,	)		
	)		
	)		
Respondent.	)		

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) and/or 8B-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 17th day of March 2009

_____

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)
	)
TAMRA KRUSE BRAUER,	)
Complainant,	) **Charge No:2005SN2040**
and	) **ChargeNo.2005SF2039**
STEVEN LINDQUIST[1]	) **EEOC: 21BA50940**
and	) **ALS No: 06-050C**
TEAMSTERS LOCAL #325,	)
Respondents.	)

RECOMMENDED ORDER AND DECISION

This matter comes before me on *Complainant's Motion to Re-instate Steven Lindquist as a Respondent*, filed April 21, 2008. Respondent, Steven Lindquist (Lindquist), filed *Former Respondent Steven Lindquist's Response to Complainant's Motion to Reinstate Him* on April 30, 2008; Complainant filed a reply on May 19, 2008; and Lindquist filed a motion to strike Complainant's reply brief on May 19, 2008.

Also before me is the motion by Respondent, Teamsters Local #325, to dismiss this case, filed April 15, 2008. Complainant filed a response to the motion on May 5, 2008, and Teamsters Local #325 filed a reply on May 13, 2008.

All three parties, through respective counsel, submitted oral argument on the motions during a telephone conference on May 20, 2008, and I took the matters under advisement.

CONTENTIONS OF THE PARTIES

First, Complainant moves this tribunal to reconsider its December 11, 2006 order dismissing Lindquist as a party respondent in this matter. Lindquist objects to the motion, arguing that he was properly dismissed based on jurisdictional grounds. Lindquist further

[1] The Charge and the Complaint caption in this matter indicate this Respondent as Steven *Lundquist*, however, pursuant to an agreed motion to correct the misspelling in the caption, an order issued on October 30, 2008 to correct the caption and all references to this respondent in the record to reflect Steven *Lindquist*

contends that Complainant has failed to proffer any valid reason why the decision dismissing him was in error.

Next, Teamsters Local #325 maintains that this case should be dismissed because Complainant entered into a signed settlement agreement on January 18, 2008. Teamsters Local #325 contends that, pursuant to the terms of the settlement, Complainant agreed to dismiss the charges against it and Rockford Area Teamsters Association in return for reinstatement to her job position. (Although Rockford Area Teamsters Association is not a named respondent in this matter, the record shows that Rockford Area Teamsters Association and Respondent, Teamsters Local #325, share some officers and may have some interrelated functions).

Complainant counters that the agreement is "improper, unconscionable and unenforceable" because it was executed by Complainant outside the presence of and without the advice of Complainant's counsel.

FINDINGS OF FACT

The following facts were derived from uncontested facts in the record.

1. Complainant filed a *Charge of Discrimination* (Charge) with the Illinois Department of Human Rights (Department) on January 11, 2005, alleging to have been subjected to sexual harassment by Respondent, Steven Lindquist (Lindquist).
2. Complainant filed a second Charge with the Department on January 11, 2005 alleging to have been subjected to sexual harassment and retaliatory discrimination by Respondent, Teamsters Local #325.
3. On behalf of Complainant, the Department filed two separate Complaints based on the aforementioned Charges with the Illinois Human Rights Commission (Commission) on March 2, 2006

4. Teamsters Local #325 filed an amended verified answer to the Complaint on April 13, 2006; Lindquist did not file an answer and, instead, filed a motion to dismiss or, alternatively, a motion for summary determination, on April 27, 2006.

5 Both Respondents filed a joint motion to consolidate the two cases on July 17, 2006. The cases were consolidated by order of the Chief Administrative Law Judge on August 15, 2006.

6. On August 4, 2006, Complainant's then attorney, Timothy F. Horning, filed a motion to withdraw on agreement of Complainant. The motion was granted on August 8, 2006.

7. Complainant remained *pro se* from August 8, 2006 until December 13, 2006, when Attorney Laura Baluch of Barrick, Switzer, Long, Balsley & Van Evera filed an appearance via facsimile with the Commission. (Although the appearance form is dated *February 11, 2003*, this is an apparent error, as the Commission file stamp and the facsimile cover sheet both indicate the appearance as having been filed and received by the Commission on December 13, 2006).

8. By order of December 11, 2006, Lindquist's motion to dismiss himself from this action was granted. That order is incorporated by reference to this Recommended Order and Decision.

9. A settlement agreement (*Settlement Agreement* attached to Respondent's Motion to Dismiss, filed April 15, 2008) was executed by Complainant, Tamra K. Kruse Brauer, Respondent, Teamsters Local #325 and Rockford Area Teamsters Association on January 18, 2008. It is noted that Rockford Area Teamsters Association is not a named respondent in either of the two cases filed before this Commission; however, the record shows that Rockford Area

Teamsters Association and Respondent Teamsters Local #325 share some officers and may have some interrelated functions. Pursuant to the terms of the settlement, Complainant agreed to "drop all charges" against Teamsters Local #325 and Rockford Area Teamsters Association in consideration for being hired by the Rockford Area Teamsters Association "to work in the bar area" for "$10.00 an hour" and "payment of Complainant's C-4 insurance to Central States."

10. Complainant has been hired in accordance with the terms of the agreement and is currently working for Rockford Area Teamsters Association.

11. Complainant presents no valid reason for reconsideration of the December 11, 2006 ruling dismissing Lindquist from the Complaint.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this action.

2. A *pro se* complainant is held to the same standard as a party represented by counsel. *First National Bank & Trust v. Galuska,* 255 Ill App 3d 86, 627 NE2d 325, 194 Ill Dec 209 (1st Dist 1993).

3. The Commission has the authority to enforce settlement agreements that constitute valid contracts between parties. The Commission will dismiss cases in which the parties have entered into a legally binding settlement agreement, which includes a release of all claims under the Act. *Rogers and Sara Lee Bakery*, IHRC, 4346, February 4, 1994.

4. Complainant has availed herself of the benefit of the bargain and cannot now refuse to be bound by it. *Butler v Metz, Train, Olsen, and Youngren*, 62 Ill App 3d, 379 NE 2d 1255, 20 Ill Dec 187 (2d Dist 178), *Keyes and Cook County Forest Preserve*, IHRC, 4700, June 29, 1992.

DETERMINATION

1. Complainant puts forth no valid reason to support reconsideration of the December 11, 2006 order dismissing Respondent Steven Lindquist from this matter; therefore, that order remains undisturbed.
2. Complainant entered into a binding contract with Respondent Teamsters Local #325 and has since accepted the benefits of the bargain, as she has been hired and is currently employed in accordance with the agreement. Complainant should be required to abide by the terms of the agreement and dismiss this case.

DISCUSSION

This matter is before me on two motions: *Complainant's Motion to Re-instate Steve Lindquist as a Respondent*, filed April 21, 2008, and a motion to dismiss by Respondent Teamsters Local #325, filed April 15, 2008.

Complainant's Motion to Re-instate Steve Lindquist as a Respondent

On December 11, 2006, pursuant to Respondent Steven Lindquist's (Lindquist) *Motion to Dismiss or in the Alternative Motion for Summary Determination Pursuant to 775 ILCS 5/8-106.1*, an order was issued granting the motion and dismissing Lindquist as a party Respondent.

In the Complaint against Lindquist (Brauer v. Steven Lindquist, Charge No. 2005SN2040), Complainant alleges that she was aggrieved by practices of sexual harassment prohibited by Section 2-102(D) of the Act. Complainant further alleges that, at the relevant time, she was hired by Teamsters Local #325 as a bartender/waitress (paragraph 3 of Complaint) and that Lindquist was an *employee [italics mine]* of Teamsters Local #325 within the meaning of the Act at Section 2-101(A)(1)(a), (paragraph 2 of Complaint).

The December 11, 2006 order dismissed Lindquist as a party respondent from this matter based on jurisdictional grounds on findings that, although Lindquist was an *employee* under the Act for Respondent Teamsters Local #325 at the relevant time, Complainant was *not*, as she was employed by Rockford Area Teamsters Association, a separate legal entity not named in this Complaint. Because Lindquist was found *not* to be an individual performing services for remuneration from the same employer as Complainant, jurisdiction over Lindquist was found to be lacking.

In her initial brief in the motion to re-instate, Complainant merely argues that the ruling dismissing Lindquist should be reconsidered because Complainant was not represented at the time the motion to dismiss Lindquist was pending.

Lindquist counters that he was properly dismissed based on jurisdictional grounds and further states that Complainant failed to proffer any substantive reason why the decision dismissing Lindquist was in error. Lindquist argues that Complainant's election to proceed to litigate this matter without counsel is not a sufficient basis to support reconsideration of the ruling.

In her reply brief to the motion, Complainant argues for the first time that Lindquist was an employee for both Teamsters Local #325 and Rockford Area Teamsters Association Complainant submits argument only and presents no evidence or other documentation to support this position. Lindquist filed a motion to strike Complainant's reply brief, arguing that Complainant was not granted leave to file a reply. Lindquist further argues that Complainant's reply brief raised a new argument that was not presented in the initial brief and, therefore, the new argument should not be considered.

Respondent's contention that Lundquist improperly filed a reply is without merit, as the record shows that the parties were given the option to file a reply. However, Respondent properly points out that Complainant's reply brief raised a new argument that was not presented in her initial brief, depriving Respondent of the opportunity to

present opposing argument. For this reason, it would be improper to consider Complainant's new argument in this motion for reconsideration.

As to Complainant's argument that reconsideration is appropriate because Complainant was not represented by counsel at the time Lindquist's motion to dismiss was pending, the record shows otherwise. According to the record, Complainant was represented by counsel for a sufficient period of time to file a response to the motion. Complainant was represented by counsel from April 12, 2006, until her counsel withdrew with her agreement on August 8, 2006. Lindquist's motion to dismiss was filed on April 27, 2006, and ruling on the motion was issued on December 11, 2006. Complainant chose to proceed without representation from August 8, 2006 until December 13, 2006, two days after the ruling was issued.

Moreover, Complainant's status as not being represented by counsel during part of these proceedings is not a valid basis for reconsideration. This tribunal does not require an individual complainant to secure counsel in order to proceed with the litigation of a case. However, a *pro se* complainant is held to the same standard as a party represented by counsel. *First National Bank & Trust v Galuska*, 255 Ill App 3d 85, 627 NE2d 325, 194 Ill Dec 209 (1st Dist 1993).

The December 11, 2006 decision dismissing Lindquist from this case was analyzed pursuant to summary decision principles. The time for Complainant to present competent evidence to defeat the motion has come and gone and Complainant presents no convincing argument to support reconsideration. For these reasons, the December 11, 2006 ruling dismissing Steven Lindquist as a party respondent in this matter remains undisturbed.

<u>Is there a legal basis to void the settlement agreement?</u>

Complainant does not dispute that she entered into a settlement agreement with Respondent Teamsters Local #325 and Rockford Area Teamsters Association. The

parties further agree that Complainant has been hired and is currently working in accordance with the terms of the agreement The terms called for Complainant to be hired by Rockford Area Teamsters Association in consideration for Complainant's promise to "drop all charges" against Teamsters Local #325 and Rockford Area Teamsters Association.

Complainant argues that the execution of the agreement was "improper, unconscionable and unenforceable" because Teamsters Local #325 was aware Complainant was represented by counsel and inappropriately proceeded to negotiate the agreement with Complainant personally, outside the presence, and without the consent, of her attorney.

Complainant cites Illinois Supreme Court Rule of Professional Conduct 4.2, arguing that Teamsters Local #325 violated this tenet by communicating directly with Complainant without her attorney's prior consent.

Teamsters Local #325 counters that Jeff Porter (Porter), who assumed the position of Secretary/Treasurer and Chief Officer of Teamsters Local #325 on January 1, 2008, engaged Complainant personally in conversations in an effort to resolve this legal dispute. Respondent maintains that those efforts resulted in the execution of the settlement agreement between Complainant, Teamsters Local #325 and Rockford Area Teamsters Association.

Teamsters Local #325 argues that it engaged in no improper conduct because Porter, who is not an attorney, communicated with Complainant in his capacity as Officer of Teamsters Local #325 in an effort to resolve the matter. Based on Porter's status as a non-attorney, Teamsters Local #325 contends that the cited Supreme Court Rule does not apply under the facts here. Teamsters Local #325 further argues that Complainant puts forth no evidence that any of its attorneys attempted to contact or communicate with her.

The record shows that Complainant put forth no affidavit or other evidence that any attorney for Teamsters Local #325 attempted to contact her personally or caused another to communicate with her regarding this action. Moreover, as Complainant argues a violation of a Supreme Court Rule of Professional Conduct, this tribunal has no jurisdiction to investigate or act upon such violations. Complainant is urged to properly report any such violation to the appropriate reporting authority.

Furthermore, Complainant submits nothing to support that the terms of the settlement agreement were unconscionable or unenforceable. Besides, the record shows that Complainant has accepted the benefit of the bargain and, after having accepted the fruits of an agreement, Complainant cannot now refuse to be bound by it. *Butler v Metz, Train, Olsen, and Youngren*, 62 Ill App 3d, 379 NE 2d 1255, 20 Ill Dec 187 (2d Dst 178), *Keyes and Cook County Forest Preserve*, IHRC, 4700, June 29, 1992. Therefore, pursuant to the terms of the agreement, this matter should be dismissed.

RECOMMENDATION

Accordingly I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: November 6, 2008

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section