

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)

ANGEL L. DELVALLE,)

Complainant,)

and)

AMERICAN EAGLE, INC.,)

Respondent.)

CHARGE NO(S): 2005CF2839

EEOC NO(S): N/A

ALS NO(S): 06-259

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 9th day of April 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

| | | |
|------------------------------|---|------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| ANGEL L. DELVALLE, |) | |
| |) | |
| Complainant, |) | Charge No. 2005CF2839 |
| |) | EEOC No. N/A |
| and |) | ALS No. 06-259 |
| |) | |
| AMERICAN EAGLE, INC., |) | |
| |) | Judge Reva S. Bauch |
| Respondent. |) | |

RECOMMENDED ORDER AND DECISION

This matter is before the Commission on Respondent's Motion to Dismiss Complainant's Complaint ("Motion") for lack of jurisdiction. Complainant filed a response. Respondent filed a reply. This matter is ready for ruling.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Determination

The Complaint was untimely filed. Thus, the Commission has no jurisdiction over it, and it must be dismissed, with prejudice.

Findings of Fact

1. On March 23, 2005, Complainant filed a Charge at the Department against the Respondent.
2. On January 20, 2006, both parties executed an extension agreement with the Department agreeing to extend the 365-day time limit for the Department's investigation by 180 days.

3. On September 22, 2006, the Department sent Complainant a letter advising him that the time period for its investigation had expired and that he had the right to file a complaint with the Commission in the thirty (30) day window of September 20, 2006 to October 16, 2006.
4. On August 24, 2006, Complainant filed the Complaint with the Commission.

Conclusions of Law

1. Complainant is an individual claiming to be aggrieved by a violation of the Illinois Human Rights Act, ("Act") 775 ILCS 5/1-102 *et seq.*
2. The Commission has the authority to determine whether jurisdiction over the matter exists.
3. Section 7A-102(G)(2) provides that an aggrieved party may individually file a complaint with the Commission between 365 and 395 days after the charge is filed, or such longer period agreed to in writing by all parties.
4. An aggrieved party may not file a complaint outside the 30-day time period provided by 7A-102(G)(2) of the Act.
5. If an aggrieved party files a complaint either before or after the 30-day period granted by 7A-102(G)(2), that complaint is a nullity and the Commission has no jurisdiction over it.
6. The Complaint is not timely because Complainant filed it before the 30-day time period had begun.
7. Because Complainant did not file his Complaint in a timely fashion, within the 30-day period provided by 7A-102(G)(2) of the Act, the Commission does not have jurisdiction over the Complaint.

Discussion

Respondent requests the Commission dismiss the Complaint because the Complainant failed to file his Complaint within the 30-day window in accordance with 775

ILCS 5/7A-102(G)(2). The Commission has considered numerous cases in which aggrieved parties have filed their own complaints outside the 30-day period. Whether those parties have filed their complaints after the period has begun or before the period has begun, the Commission has found the attempted filings to be jurisdictionally deficient. **David v. Human Rights Com'n**, 286 Ill App3d 508 (1997); *see also Heeter and Bd. of Ed. of Riverdale Community School Dist. 110*, IHRC, Dec. 23, 1994; **Brumzick and Intern'l Paper Co.**, IHRC, 5514(s), June 24, 1992.

Recommendation

I recommend that the Commission dismiss the Complaint, without prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW DIVISION

ENTERED: JULY 28, 2009