

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)
)
GEORGETTA NIANG,)
)
)
)
Complainant,)
)
and)
)
MALCOLM WHITESIDE AND THE)
SHERWIN-WILLIAMS COMPANY,)
)
)
Respondent.)

CHARGE NO(S): 2006CN2611
EEOC NO(S): N/A
ALS NO(S): 07-291 (C)

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

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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Complainant,)	
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)	EEOC No.: N/A
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MALCOLM WHITESIDE AND)	
THE SHERWIN-WILLIAMS COMPANY,)	
)	
Respondents.)	Judge Gertrude L. McCarthy

RECOMMENDED ORDER AND DECISION

This matter comes before me on the *Motion of the Respondents, Malcolm Whiteside and the Sherwin-Williams Company, to Dismiss for Want of Prosecution, or Alternatively, for an Order Barring Complainant from Submitting Discovery Requests and Compelling Complainant to Respond by April 18, 2008 to the Discovery Requests of the Respondents.* The motion was filed with the Commission on April 7, 2008. The Illinois Department of Human Rights (Department) was also served with notice of the pending motion. Neither Complainant nor the Department has responded and the time for such a response has passed. The matter is ripe for decision.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. They are therefore named herein as an additional party of record

FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1. Mail sent to Complainant by the Commission has not been returned as undeliverable

2. Complainant has failed to appear before the Commission for status hearings on December 12, 2007, February 28, 2008, April 9, 2008 and June 11, 2008.

3. Complainant has failed to respond to discovery propounded to her on July 12, 2007.

4. On April 7, 2008, Respondents filed their pending motion with the Commission with proper service to the Complainant and the Department.

5. Complainant has failed to respond to the pending motion.

CONCLUSIONS OF LAW

1. Complainant's failure to appear at scheduled status hearings has unreasonably delayed the proceedings in this matter.

2. Complainant's failure to respond to Respondents' discovery requests and failure to respond to Respondents' pending motion suggests abandonment of her claim.

3. In light of Complainant's apparent abandonment of her claim, the complaint in this matter should be dismissed with prejudice.

DISCUSSION

Complainant was served with the complaint in this matter by certified mail. Complainant was duly notified of a *Notice of Public Hearing*. Although Complainant appeared at the initial status date, she failed to appear on various other status dates of December 12, 2007, February 28, 2008, April 9, 2008 and June 11, 2008. Additionally, Complainant failed to respond to Respondents' discovery requests and failed to respond to the pending motion. In fairness to Complainant, it should be noted that she did appear at status dates of August 15, 2007 and September 27, 2007. It should also be noted that neither party appeared on status dates of December 13, 2007 and April 10, 2008. Complainant's failure to respond to Respondents' discovery requests propounded on July 12, 2007 and failure to respond to the pending motion, however, clearly suggests that she no longer cares about pursuing her claim. Complainant's

actions can only be viewed as her abandonment of her claim which has unreasonably delayed the proceedings in this matter.

The Commission routinely dismisses abandoned claims. See e.g. *Leonard and Solid Matter, Inc.*, IHRC, 4942, August 25, 1992. Additionally, the Commission has dismissed cases where Complainant has failed to appear before the Commission on dates scheduled for hearing or status. See, e.g., *Stewart and SBC Midwest*, IHRC, 04-277, September 29, 2006, and *Jackson and Chicago Firefighters Union Local No. 2*, IHRC, 8193, September 29, 1997. The Commission has also dismissed cases where Complainant has failed to respond to discovery. See e.g. , *Daughtry and Archer Daniels Midland Co.*, IHRC, S-11842, April 25, 2003 and *Best and Allstate Insurance Co.* , and *Jack Readicker*, IHRC, S-11269, February 26, 2003. In light of these precedents, this case should be dismissed.

RECOMMENDATION

Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:
GERTRUDE L. MCCARTHY
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: June 19, 2008