STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
EARL MILLOY,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2005CF2489
	)	EEOC NO(S):	21BA51323
and	)	ALS NO(S):	07-309
	)		
WBBM-TV,	)		
	)		
	)		
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

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
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EARL MILLOY,	)	
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Complainant,	)	
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and	)	**Charge No.: 2005CF2489**
	)	**EEOC No.: 21BA51323**
WBBM-TV,	)	**ALS No.: 07-309**
	)	
Respondent.	)	**Judge Gertrude L. McCarthy**

RECOMMENDED ORDER AND DECISION

This matter comes on to be heard on Respondent's *Motion For Summary Decision* (Motion), filed on January 8, 2008. Respondent, along with its Motion, provided numerous exhibits in support of said Motion.

On February 28, 2008, Complainant was granted an extension of time to March 14, 2008 within which to respond to the pending motion. On May 30, 2008, Complainant made an oral motion for a second extension of time which was denied. No further pleadings relating to the referenced motion have been filed and this matter is ripe for decision.

For the following reasons, Respondent's motion should be granted.

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

Contention of the Parties

The Department filed a two count Charge on behalf of Complainant, alleging a violation of the Human Rights Act (Act) in that Complainant's discharge from his employment with Respondent was based on his race and gender.

Respondent contends that summary decision is appropriate in the instant case as: (1) Complainant is unable to establish a *prima facie* case of discrimination; and (2) Respondent has articulated a legitimate, non-discriminatory business reason for terminating Complainant.

FINDINGS OF FACT

1. As a result of numerous complaints against Complaint, Respondent, through Diane Murphy its Vice President of Human Resources (Murphy), instituted an investigation which was completed in January, 2005.

2. As a result of the investigation, a meeting was held on January 24, 2005 and Complainant was advised that he was terminated.

3. On February 18, 2005, Complainant filed perfected Charge No. 2005CF2489, alleging a violation of the Act based on race and gender discrimination.

4. On April 25, 2007, the Department filed a two count Complaint on behalf of Complainant alleging violations of the Act based on race and gender discrimination.

5. On June 12, 2007, Respondent filed its *Answer and Affirmative Defenses to the Complaint*.

6. On January 8, 2008, Respondent filed its *Memorandum for Summary Decision*.

7. On February 28, 2008, Complainant was granted an extension of time to and including March 14, 2008 within which to file a response to the pending motion, which Complainant failed to do.

8. On May 30, 2008, Complainant made an oral motion for an extension of time within which to respond to the pending motion. That motion for extension was denied

9. Complainant has failed to file a timely response to the pending motion.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction to proceed on the instant Complaint.

2. A summary decision in favor of Respondent is appropriate in this case.

3. This matter should be dismissed with prejudice.

DISCUSSION

Complainant alleges he was discriminated against on the bases of his race and gender when he was discharged from his employment with Respondent. The discharge resulted after an investigation into complaints against Complainant for: (1) derogatory comments against Complainant's subordinates and (2) Complainant's behavior which other employees considered threatening. Complainant has failed to file a timely responsive pleading thereto despite being provided ample opportunity to do so.

Respondent's motion can be decided on the record in the file. A summary decision is analogous to a summary judgment in the Circuit Court. *Cano v Village of Dolton,* 250 Ill. App. 3d 130, 138, 620 N.E.2d 1200, 1206 (1st Dist. 1993). Such a motion should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommendation in its favor as a matter of law. *Strunin v. Marshall Field & Co.*, IHRC, 536(L), March 3, 1983. The movant's affidavits should be strictly construed, and those of the opponent should be liberally construed. *Kolakowski v. Voris,* 76 Ill.App.3d 453, 456, 395 N.E.2d 6, 9 (1st Dist. 1979). The movant's right to summary decision must be clear and free from doubt. *Bennett v. Raag,* 103 Ill. App. 3d 321, 431 N.E.2d 48 (2nd Dist. 1982).

When these principles are applied to the record, Respondent's motion must be granted.

A *prima facie* case of race discrimination is made where Complainant is able to show that: (1) he is a member of a protected class. (2) he suffered an adverse employment action, and (3) similarly situated employees outside of the protected class were treated more favorably. *Forrester and Rauland-Borg Corp* , IHRC, 11695, January, 2003. See also *Dixon and Borden Chemical,* IHRC, 12461(SXL), December 16, 1985.

Although the elements will vary according to the specific claim, to establish a *prima facie* case of sex discrimination based on discharge, the complainant must show: (1) he is in a protected class, (2) that he was meeting respondent's reasonable expectations, (3) he was discharged, and (4) that similarly situated persons outside his protected class were not discharged. *Sullivan and Center for New Horizons,* IHRC, S11333, October 31, 2002. See also *Yarbrough and Ryder Distribution Resources, D.P.D*, IHRC, 4281, October 5, 1992.

Assuming, *arguendo,* that Complainant has met his burden of establishing a *prima facie* case of discrimination, the burden shifts to respondent to articulate a legitimate, non-discriminatory business reason for the adverse act. In the event Respondent is successful in articulating a legitimate, non-discriminatory business reason for the adverse act, the presumption of unlawful discrimination is no longer present and Complainant is required to prove by a preponderance of the evidence that Respondent's articulated non-discriminatory reason is mere pretext for unlawful discrimination. *Zaderaka v. Illinois Human Rights Commission,* 131 Ill.2d 172, 178, 545 N.E.2d 684, 687 (1989).

Respondent, in its Motion and accompanying exhibits, has presented evidence of legitimate, non-discriminatory reasons for its decision to discharge Complainant. These reasons were: (1) numerous complaints of Complainant's verbal harassment of subordinates and (2) complaints of Complainant's creation of a hostile work environment. Respondent attempted to solve the problem by sending Complainant for management training. After an October 14, 2004 incident Diane Murphy, Respondent's Vice President of Human Resources, held an investigation into complaints of harassment and workplace safety against Complainant. The investigation, completed in January 2005, yielded additional complaints against Complaint. At a January 24, 2005, meeting Complainant was advised of his termination based on: (1) the results of the

internal investigation; (2) Complainant's failure to follow certain directives of his superior; and (3) additional complaints of Complainant's threatening behavior by employees. See *Respondent WBBM-TV's Motion for Summary Decision,* (pp. 6-10.)

Clearly, Respondent has alleged a legitimate, non-discriminatory reason to discharge Complainant based upon the results of the aforementioned investigation resulting from employee complaints. Complainant has failed to rebut any of Respondent's statements attesting to the non-discriminatory, legitimate reasons for Complainant's discharge. In the absence of any evidence from Complainant, Respondent's evidence stands unrebutted and must be accepted. *Koukoulomatis v. Disco Wheels,* 127 Ill.App.3d 95, 101, 468 N.E.2d 477 (4th Dist. 1984) Complainant has not shown that there is a genuine issue with regard to Respondent's articulated, non-discriminatory reason for Complainant's termination.

RECOMMENDATION

Based upon the foregoing, it is recommended that Respondent's *Motion for Summary Decision* be granted and the Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY_
GERTRUDE L. MCCARTHY
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: August 26, 2008