STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
DIANE MORRIS,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2006CF3347
	)	EEOC NO(S):	21BA61981
and	)	ALS NO(S):	07-577
	)		
BODINE ELECTRIC COMPANY,	)		
	)		
	)		
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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DIANE MORRIS,	)
Complainant,	) **Charge No: 2006CF3347**
	) **EEOC: 21BA61981**
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	)
and	)
	)
BODINE ELECTRIC COMPANY,	)
Respondent.	)

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's *Motion to Enforce Settlement and to Dismiss*, filed May 12, 2008. The record indicates the motion has been served upon all parties and the Illinois Department of Human Rights. The parties appeared on May 13, 2008, for hearing on the motion.

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

CONTENTIONS OF THE PARTIES

Respondent contends that an order should enter enforcing the parties' settlement agreement and dismissing this case.

Complainant puts forth no legal argument that would negate the formation of the agreement or otherwise render the agreement void.

FINDINGS OF FACT

The following findings of fact are made from the record in this case.

1. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on July 3, 2006. The Department filed a Complaint on behalf of Complainant with the Illinois Human Rights Commission (Commission) on August 1,

2007, alleging Complainant to have been aggrieved by practices of illegal retaliation in violation of the Illinois Human Rights Act, (Act), 775 ILCS 5/1-101 *et seq*.

2. Respondent filed a verified answer to the Complaint on August 24, 2007

3. Barry A. Gomberg & Associates filed an appearance on behalf of Complainant on October 19, 2007

4. On March 20, 2008, the parties appeared and participated in a settlement conference with the assistance of this Administrative Law Judge. Complainant personally appeared along with her counsel Respondent's counsel appeared along with a representative of Respondent. The parties entered into a settlement agreement and stated the material points of the agreement in a handwritten document pending the drafting of a formal, type-written agreement. Complainant, Complainant's counsel, Respondent's representative and Respondent's counsel all signed the handwritten document dated March 20, 2008.

5. On May 13, 2008, the parties appeared on Respondent's instant motion to enforce the settlement agreement and to dismiss. Complainant appeared personally and through counsel. Respondent appeared through counsel. Although Complainant had not filed a written response to the motion, Complainant, personally, represented that she took exception to three terms as stated in the formal agreement. Specifically, Complainant expressed that she was uncomfortable with the term providing that the settlement check would be payable to her attorney's client trust fund account; Complainant found ambiguous the term indicating the duration of time she would be allowed to avail herself of outplacement services provided by Respondent; and Complainant objected to the term requiring her to release her right to pursue a pending workers' compensation claim against Respondent.

6. Although the issue as to a workers' compensation claim had not been previously discussed or contemplated during the settlement conference, Complainant revealed that she had a workers' compensation claim pending against Respondent and desired that

claim to be exempt from the term requiring her to provide a general release of all claims against Respondent. Respondent's counsel advised that he was unaware of any pending workers' compensation claim, but agreed to exempt any such claim from the release provision. An order was entered on May 14, 2008, addressing all of Complainant's concerns. The order stated in pertinent part:

> I have reviewed the submitted written agreement and the signed pre-agreement submitted with the motion and find that, with the addition of a clause exempting Complainant's pending worker's compensation claim from the waiver provision, and additional clarification that Complainant may use Respondent's outplacement service as long as she wants to, the terms are consistent with the oral agreement entered into by the parties during the settlement negotiations.

The May 14, 2008 order ordered Respondent to make amendments to the formal agreement consistent with the order and further ordered Complainant to execute the final amended agreement no later than June 6, 2008. Complainant was warned that failure to do so would result in dismissal of this matter.

7. On May 22, 2008, Respondent filed a copy of the final amended agreement, signed and dated by Respondent on May 21, 2008, along with a copy of a correspondence addressed to Complainant's counsel referencing the final amended agreement and requesting Complainant to execute the agreement.

8. I reviewed the final amended agreement and determined that it complied with the amendments as ordered in my May 14, 2008 order.

9. As of today, Complainant has not filed a motion for voluntary dismissal of this Complaint.

10. The record shows that, on June 6, 2008, Complainant, personally, filed a signed letter dated June 4, 2008, directed toward this Administrative Law Judge. This filing prompted Commission staff to issue a letter dated June 13, 2008, to Complainant, personally, advising her not to communicate with the Administrative Law Judge except upon notice and opportunity in compliance with Commission Rule 5300.540. Because there was no proof of service filed with the letter, it is stricken from the record and was not considered in this decision.

CONCLUSIONS OF LAW

1 The Illinois Human Rights Commission has jurisdiction over the Parties and subject matter of this action.

2. The Commission has the authority to dismiss a case where a valid settlement agreement has been reached between the Parties. *Watkins and State of Illinois, Department of Corrections*, IHRC, 7267(S), June 2, 1999; citing, *Bordner and Chairpeople Inc.*, IHRC, 5664, Dec. 10, 1998

3. Where the Parties have entered into a settlement agreement that constitutes a valid contract and no valid defense to contract formation is demonstrated, the Commission has the authority to dismiss the case, with prejudice. *Serra and Coca Cola Bottling Co. of Chicago, IHRC, 5540, Sept. 20, 1996.*

DETERMINATION

The parties entered into a valid settlement agreement to dismiss this Complaint. Complainant put forth no legal defenses to contract formation and the record supports no bases for concluding that the terms of the agreement are unfair, unreasonable or unconscionable. Thus, the agreement between the parties prevents further prosecution of this matter.

DISCUSSION

Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on July 3, 2006. The Department filed a Complaint on behalf of Complainant with the Illinois Human Rights Commission (Commission) on August 1, 2007, alleging Complainant to have been aggrieved by practices of illegal retaliation in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq*. Respondent filed a verified answer to the Complaint on August 24, 2007.

Barry A Gomberg & Associates filed an appearance on behalf of Complainant on October 19, 2007. On March 20, 2008, the parties appeared and participated in a settlement conference with the assistance of this Administrative Law Judge. Complainant personally appeared along

with her counsel Respondent's counsel appeared along with a representative of Respondent The parties entered into a settlement agreement and stated the material points of the agreement in a handwritten document pending the drafting of a formal, type-written agreement. Complainant, Complainant's counsel, Respondent's representative and Respondent's counsel all signed the handwritten document dated March 20, 2008.

After the formal, type-written agreement was prepared, Respondent submitted it to Complainant's counsel for execution. When Complainant refused to execute the agreement, Respondent filed the instant motion to enforce the settlement and to dismiss the Complaint

The parties appeared through respective counsel for hearing on Respondent's motion on May 13, 2008. Complainant was personally present. Although Complainant had not filed a written response to the motion, Complainant, personally, represented that she took exception to three terms as stated in the formal agreement. Specifically, Complainant expressed that she was uncomfortable with the term providing that the settlement check would be payable to her attorney's client trust fund account; Complainant found ambiguous the term indicating the duration of time she would be allowed to avail herself of outplacement services provided by Respondent; and Complainant objected to the term requiring her to release her right to pursue a pending workers' compensation claim against Respondent.

I dismissed as unreasonable Complainant's objection to Respondent issuing the settlement check as payable to Complainant's attorney's client trust fund account, as such procedure is standard. The existence of a pending workers' compensation claim had not been previously discussed at the settlement conference and was brought up for the first time during the May 13, 2008 hearing. Respondent advised he had no knowledge of such a pending claim. Although exemption from release of any workers' compensation claim was not a term contemplated under the handwritten agreement, Respondent agreed to add it as a term to the final typewritten agreement. An order was entered on May 14, 2008 addressing Complainant's concerns The order stated in pertinent part:

> I have reviewed the submitted written agreement and the signed pre-agreement submitted with the motion and find that, with the addition of a clause exempting Complainant's pending worker's compensation claim from the waiver provision, and additional clarification that Complainant may use Respondent's outplacement service as long as she wants to, the terms are consistent with the oral agreement entered into by the parties during the settlement negotiations.

The May 14, 2008 order further ordered Respondent to make amendments to the formal typewritten agreement consistent with the order and to serve a final amended agreement on Complainant's counsel and the Commission. Complainant was ordered to execute the final amended agreement no later than June 6, 2008. Complainant was warned that failure to do so would result in dismissal of this matter.

On May 22, 2008, Respondent filed a copy of the final amended agreement with the Commission along with a copy of a correspondence dated May 21, 2008, addressed to Complainant's counsel referencing the final amended agreement and requesting Complainant to execute the agreement.

I reviewed the final amended agreement and concluded that it comported with the amendments as ordered in the May 14, 2008 order. As of this time, Complainant has not filed a motion for voluntary dismissal of this Complaint.

The record shows that, on June 6, 2008, Complainant, personally, filed a signed letter dated June 4, 2008, directed toward this Administrative Law Judge. This filing prompted Commission staff to issue a letter dated June 13, 2008, to Complainant, personally, advising her not to communicate with the Administrative Law Judge except upon notice and opportunity in compliance with Commission Rule 5300.540. Because there was no proof of service filed with the letter, it is stricken and was not considered in this decision.

This matter can be resolved pursuant to traditional contract theory. The burden of proving the existence of the settlement agreement is on the party alleging it. *Kugelman v Village of Hoffman Estates*, 236 Ill App3d 407 (1st Dist 1992). The record supports that the three elements of contract formation are present: an offer, an acceptance and consideration. *Steinberg v Chicago Medical School*, 69 Ill 2d 320, 371 NE2d 634, 13 Ill Dec 699, (1977). Pursuant to the

handwritten agreement dated March 20, 2008, Respondent offered to: pay Complainant $30,000 00; not contest any claim for unemployment compensation benefits; and provide outplacement services to Complainant for as long as she wants to use the service

In consideration of the offer, Complainant agreed to: resign her employment at Respondent; provide a general release as to all claims against Respondent; and dismiss the instant case. Complainant accepted this offer by signing the handwritten agreement

The final formal agreement signed by Respondent on May 21, 2008, and served on Complainant's counsel on May 21, 2008 (file-stamped in the Commission record on May 22, 2008) is consistent with the terms of the handwritten agreement and further complies with my May 14, 2008 order.

Because the record supports that the elements of contract formation were present, the inquiry next proceeds to whether a valid defense to contract formation exists. Such commonly recognized defenses include fraud, duress, mutual mistake, mental incompetence, or unconscionable bargain. Complainant presents no defenses whatsoever to contract formation. Complainant's only objections to the terms were sufficiently addressed during the May 13, 2008 hearing and subsequent order. Further, Respondent agreed to add an additional term, inuring to the benefit of Complainant only, which was not contemplated at the time of settlement.

Illinois courts encourage the settlement of claims as a matter of public policy. *Serra and Coca-Cola Bottling Co.*, IHRC, 5540, Sept. 20, 1996, citing *McAllister v Hayes*, 165 Ill App 3d 426, (3d Dist 1988). Where the parties have entered into a settlement agreement that constitutes a valid contract and no valid defense to contract formation is demonstrated, the Commission has the authority to dismiss the case, with prejudice, *Serra, supra*.

Although the Commission has ruled that an Administrative Law Judge does not have the power to recommend enforcement of the terms of a private settlement, the Commission has stated that if the settlement agreement has not been submitted to the Commission for approval, the most the Commission can say is that the terms of the settlement prevent further prosecution

of the case *Watkins and State of Illinois, Department of Corrections*, IHRC, 7267(S), June 2, 1999; citing, *Bordner and Chairpeople Inc.*, IHRC, 5664, Dec. 10, 1998.

RECOMMENDATION

Such is the case on the facts here; thus, I recommend that the Complaint and underlying Charge in this matter be dismissed with prejudice

HUMAN RIGHTS COMMISSION

BY:_____

ENTERED: July 10, 2008

SABRINA M. PATCH
ADMINSTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION