

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)
)
THOMAS J. KUNA-JACOB,)
)
)
Complainant,)
)
and)
)
JIM ROESCH, VIKI VAN TUYLE,)
SCHOOL BOARD, NORTH GREENE CUSD #3,)
)
)
Respondent.)

CHARGE NO(S): 2006SF3501
EEOC NO(S): 21BA62097
ALS NO(S): S07-657

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,)	CHARGE NO: 2006SF3501
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CUSD # 3,)	
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Respondents)	

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.) On March 31, 2008, Respondents filed a motion for summary decision, alleging that the instant Complaint must be dismissed since the parties had entered into a settlement agreement covering the allegations contained in the instant Complaint. Complainant has filed a response, and Respondents have filed a reply. Accordingly, this matter is ready for a decision.

Contentions of the Parties

In the instant Complaint, Complainant asserts that he was the victim of discrimination based on his sexual orientation, mental handicap (anxiety disorder), and religion when Respondents initially suspended him and then constructively discharged him from his teaching position by initiating discharge proceedings based on his job performance. In the motion for summary decision, Respondents asserts that the instant Complaint must be dismissed pursuant to the terms of a settlement agreement entered into by the parties that, among other things, called for Complainant to release

Respondents of all claims arising out the subject suspension/termination and specifically precluded Complainant from filing any claim under the Illinois Human Rights Act. In his response, Complainant admits to signing the agreement, but contends that the agreement is void because it is against public policy and because he signed the agreement under economic duress.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On December 26, 2005, Vicki VanTuyle, Respondents' Superintendent of Schools, sent a letter to Complainant, notifying him that the School Board would be holding a meeting on January 4, 2006 to consider the question of whether Complainant should be dismissed as a teacher immediately due to certain allegations of misconduct. At the time Complainant received this letter, he was under a paid suspension from his teaching duties. The letter outlined six areas of concern for the School Board, including charges that Complainant: (1) failed to provide appropriate supervision for the students in his classroom; (2) failed to plan for his absences by leaving lesson plans for substitute teachers; (3) failed to maintain discipline in his classroom; (4) failed to adequately assess and record student progress; (5) failed to provide adequate instructional services to his students; and (6) failed to confine his teaching to the established school curriculum.

2. On January 4, 2006, the parties entered into a settlement agreement that called for Complainant's suspension with pay for the balance of the 2005-2006 school year in exchange for Complainant's resignation and agreement not to bring any claim or cause of action arising out of his employment with Respondents. The settlement

agreement specifically precluded Complainant from, among other things, filing any action arising under the Illinois Human Rights Act.

3. The terms of the January 4, 2006 settlement agreement also reflected that Complainant had "representation, counsel and guidance" at all times pertinent to the entry to the settlement agreement, and that each party was entering the agreement as a "free and voluntary act."

4. On June 1, 2006, Complainant filed an unperfected Charge of Discrimination alleging that Respondents' investigation of charges against him, as well as their actions that led to his forced resignation, amounted to discrimination based on Complainant's sexual orientation, mental handicap, and religion.

5. On August 28, 2007, Complainant filed a *pro se* Complaint alleging that Respondents discriminated against him on the bases of his sexual orientation, mental handicap and religion when it conducted an investigation into charges of misconduct and eventually forced him to resign his teaching position

6. After Complainant signed the resignation letter and the settlement agreement, Respondents complied with the terms of the settlement agreement by paying Complainant his salary for the remaining portions of the 2005-2006 school year.

7. The record is silent as to whether Complainant returned to Respondents any of the money he received after he signed the settlement agreement.

Conclusions of Law

1 Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent-School District is an "employer" as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. If a valid agreement is entered into by an employee and an employer, an employee may waive his or her right to bring a discrimination claim in exchange for money.

4. Under the Human Rights Act, a complainant may sue only his or her "employer," as opposed to his supervisors in his or her individual capacity, for unlawful discrimination based on his sexual orientation, mental handicap and religion

Determination

This matter should be dismissed with prejudice since the record established that the parties reached a settlement whereby Complainant agreed to waive his Human Rights Act claim in exchange for a monetary sum.

Discussion

This case presents a rather straightforward question as to whether the parties' January 4, 2006 settlement agreement served to preclude Complainant from bringing his discrimination claim under the Human Rights Act. In *Wheaton and State of Illinois, Department of Corrections*, 37 Ill HRC Rep 182 (1988), the Commission blocked the prosecution of a discrimination complaint where the complainant had signed a release of his rights pursuant to a settlement agreement, after finding that there was no longer a cause of action once the complainant had released his rights. In the instant case, Respondents make a similar argument in that they maintain that: (1) Complainant was confronted by a representative of Respondents, who indicated that the School Board was considering Complainant's immediate dismissal based on allegations of work-related misconduct; (2) rather than going through with the scheduled hearing on the charges of misconduct levied against Complainant, Complainant chose to immediately resign his position and accept continued payments of salary for the balance of the

school year; and (3) in exchange for Respondents' continued payments of Complainant's salary, Complainant agreed to waive any claim, including any potential Human Rights Act claim, arising out of his employment with Respondents.

In his response, Complainant admits that he signed the settlement agreement, but argues that the terms of the settlement agreement should be ignored because: (1) Respondents did not provide him with any additional consideration than what it was required to give him under the terms of his teaching agreement; (2) the instant settlement agreement contravenes public policy because it allows an employer to mask violations of the Human Rights Act and other constitutional provisions; and (3) Respondents' threats to dismiss him without pay prior to signing the settlement agreement were unlawful. He also submits that Respondents' threats of dismissal without pay constituted duress sufficient to invalidate the settlement agreement because: (1) the resulting lack of income arising out of his dismissal posed a threat to his "life and limb" since it would have caused him to be without shelter during the winter months; and (2) his loss of income would have prevented him from the completion of his "life's work," which, according to Complainant, was a treatise calling for world and universal peace entitled the "Holy Land of Eretz Y'shuallah Ha-MasiiH at Center Stage."

After reviewing the pleadings, I agree with Respondents that they are entitled to a dismissal of the instant case based on the terms of the settlement agreement. Specifically, the record reflects that: (1) a dispute regarding Complainant's competency to teach arose between the parties; (2) Complainant was facing a hearing in which several charges against him were going to be raised; (3) instead of going through with the hearing and face the potential of dismissal without pay, Complainant agreed to resign his position in exchange for a sum of money; and (4) Complainant filed the instant

Charge of Discrimination and Complaint in violation of the terms of the release he gave to Respondents. True enough, Complainant insists that, as a matter of contract law, the agreement is unenforceable since Respondents did not give up any additional consideration in exchange for Complainant's release. However, Complainant assumes that Respondents lacked any ability to terminate him without pay during the middle of a school year, and Respondents aptly point out that they could seek such a dismissal for cause under section 10-22.4 of the School Code (105 ILCS §5/10-22.4). Thus, in the absence of any language in Complainant's teaching agreement that grants him his salary even when he is dismissed for cause, Complainant's continued receipt of his salary for time spent not teaching would constitute valid consideration to support Complainant's promise not to sue Respondents under the Human Rights Act.

Alternatively, Complainant contends that the settlement agreement itself violates public policy because it allows Respondents to discriminate against him on the grounds cited in his Complaint without any additional sanction imposed by the Commission. However, Complainant's argument is not well-taken since the Commission and the Illinois courts have routinely encouraged settlement of disputed claims as a matter of public policy (see, for example, *Serra and Coca-Cola Bottling Co.*, IHRC, 5540, September 20, 1996, citing *McAllister v Hayes*, 165 IllApp3d 426, 519 NE2d 71, 116 IllDec 481 (3rd Dist 1988)) and have acknowledged similar settlements that have called for the continuation of an employee's salary in exchange for a release from future lawsuits under the Human Rights Act. (See, *Oster and Erkert Brothers, Inc.*, IHRC, 11649, October 9, 2002.) Indeed, if Complainant's argument were to be adopted, only non-meritorious claims filed by complainants with the Commission would be eligible for

settlement agreements, and I am unaware of any case law that would support such a notion.

Complainant's argument that he was under duress at the time he signed the settlement agreement has potentially more traction since duress is a valid defense to the formation of a settlement agreement. Duress sufficient to void a settlement agreement, though, requires a showing that Complainant was induced by a wrongful act or a threat of another to make a contract under circumstances that deprived him of his free will. (See, for example, *Enslin v. Village of Lombard*, 128 IllApp3d 531, 470 NE2d1188, 83 IllDec 768 (2nd Dist 1984).) However, as the *Enslin* court observed, duress does not exist where consent to an agreement is secured as a result of hard-bargaining between the parties, or financial pressure suffered by one of the parties, or by threats of going to the press about the circumstances surrounding the dispute.

Indeed, aside from his claim that he was unable to complete his treatise, Complainant makes similar arguments that he felt pressured to sign the settlement agreement since, according to Complainant, he was faced with the prospect of being homeless with the loss of his teaching salary. He also maintained that his union representative opined that Complainant could not continue teaching after a newspaper article contained a quote from Complainant indicating that he (Complainant) was bisexual. However, as noted by the court in *Enslin*, neither an inability to complete a treatise nor the embarrassment of potential exposure by the press are the types of causes sufficient to invalidate an otherwise binding settlement agreement. Moreover, Commission in *Wheaton* rejected a similar economic duress claim made by a complainant, who argued that he lacked free will to enter into the settlement contract since, at the time he entered in to the agreement, he was living in a shack without heat,

electricity, or running water and was reduced to begging for food. (*Wheaton* at p 199.) In that case, the Commission instead focused on the question as to whether the complainant was competent to enter into an agreement in terms of an ability to understand both the nature of the negotiations he was conducting with the respondent, as well as the effect on what he was doing. *Wheaton* at p 200.

In contrast, Complainant has made no allegation to establish the fact that he was unaware of the terms of the settlement agreement, or that he was unaware of what he was doing at the time he signed the agreement. Indeed, as Respondents note, the terms of the settlement agreement expressly stated that each party entered into the contract as a free and voluntary act, and that each party knew and understood the terms of the settlement agreement. As such, I can find no basis in this record to support Complainant's claim that he was under legally cognizable duress at the time he signed the settlement agreement. Accordingly, I find that Respondents are entitled to issuance of a summary decision based on the terms of the settlement agreement that called for the release of any claim Complainant may have had under the Illinois Human Rights Act. As a result, I need not make any ruling on Respondents' alternative claim that Complainant ratified the terms of the settlement agreement, although I would note that Complainant makes no claim that he returned any of the money he received pursuant to the terms of the settlement agreement that he now seeks to avoid.

Finally, while the terms of settlement agreement only purport to release Complainant's employer from the instant lawsuit, Complainant has not shown, how either Respondent Roesch, as President of the North Green High School, or Respondent VanTuyle, as Superintendent, is liable in his or her own individual capacity with respect to the allegations of discrimination made in the instant Complaint. Indeed,

section 2-102(A) of the Human Rights Act (775 ILCS 5/2-102(A)) defines a civil rights violation in terms of an "employer" discharging an employee on the basis of a prohibited category, and there is no evidence, outside of their job titles, to indicate that either individual Respondent was an "employer" of Complainant. Hence, Complainant's allegations against these individual Respondents should be dismissed with prejudice as well.

Recommendation

For all of the above reasons, I recommend that Respondents' motion for summary decision be granted, and that Complaint and underlying Charge of Discrimination of Thomas J Kuna-Jacob be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY:

MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 16TH DAY OF OCTOBER, 2008