

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:	)	
	)	
COSMOS GEORGE STRATIGOS,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 2007CF0336
	)	EEOC NO(S): 21BA62737
and	)	ALS NO(S): 08-0004
	)	
AMERICAN AIRLINES, INC.,	)	
	)	
	)	
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 17 <sup>th</sup> day of March 2009

\_\_\_\_\_  
N. KEITH CHAMBERS  
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

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<b>COSMOS GEORGE STRATIGOS,</b>	)	
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<b>Complainant,</b>	)	<b>Charge No.: 2007CF0336</b>
	)	<b>EEOC No.: 21BA62737</b>
<b>and</b>	)	<b>ALS No.: 08-0004</b>
	)	
<b>AMERICAN AIRLINES, INC.,</b>	)	
	)	
<b>Respondent.</b>	)	<b>Judge Gertrude L. McCarthy</b>

**RECOMMENDED ORDER AND DECISION**

This matter comes before me on Respondent American Airlines, Inc.'s *Motion for Summary Decision* (motion) and *Memorandum in Support of Respondent American Airlines, Inc.'s Motion for Summary Decision* (memorandum) filed with the Commission on July 9, 2008. On August 13, 2008, an order was entered granting Complainant 14 days within which to file his response to the pending motion. No response was filed. On September 25, 2008, Complainant's attorney was granted leave to withdraw, Complainant being present before the Commission on that date and voicing no objection to the motion to withdraw. Also on September 25, 2008, an order was entered that Respondent's motion be taken under advisement. Complainant has taken no action since September 25, 2008.

The Illinois Department of Human Rights (Department) has not responded to the pending motion. The time for response is over and the matter is, therefore, ripe for decision.

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.

For the reasons set forth below, Respondent's motion for summary decision should be granted

### **Findings of Fact**

1. On January 14, 2008, the Illinois Department of Human Rights (Department), on behalf of Complainant, filed a *Complaint of Civil Rights Violation* alleging discrimination based on national origin in violation of the Illinois Human Rights Act.

2. On February 26, 2008, Respondent filed its *Verified Answer to Complainant of Civil Rights Violation*.

3. On July 9, 2008, Respondent filed its *Motion for Summary Decision*.

4. Complainant has filed no response thereto, although provided time within which to file said response.

5. On September 25, 2008, Complainant's attorney was granted leave to withdraw as Complainant's counsel; Complainant appeared and voiced no objection to that motion

### **Conclusions of Law**

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B)

2. The Commission lacks jurisdiction of the subject matter of this action

### **Discussion**

#### **1 Standards of Summary Decision**

Under Section 8-105.1 of the Act, either party to a complaint may move for summary decision. **775 ILCS 5/8-106.1**. See also **88 Ill. Admin. Code Section 5300.735**. A summary decision is the administrative agency procedural analog to the motion for summary judgment in the Code of Civil Procedure. **Cano v. Village of Dolton, 250 Ill App3d 130 (1993)**. Such a motion should be granted when there is no

genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. **Fitzpatrick v. Human Rights Comm'n, 267 Ill App2d 386 (1994)**. The purpose of a summary judgment is not to be a substitute for trial but, rather, to determine whether a triable issue of fact exists. **Herrschner v. Xttrium Lab. Inc., 26 Ill App3d 686, 325 N.E.2d 335 (1975)**. All pleadings, depositions, affidavits, interrogatories and admissions must be strictly construed against the moving party and liberally construed against the nonmoving party. **Kolakowski v. Voris, 76 Ill App3d 453 (1990)**. If the facts are not in dispute, inferences may be drawn from the undisputed facts to determine if the movant is entitled to judgment as a matter of law. **Turner v. Roesner, 193 Ill App3d 482, 549 N.E.2d 1287 (1990)**. Summary decision is a drastic means of resolving litigation and should be granted if the right of the movant to judgment is clear and free from doubt. **Purtill v. Hess, 111 Ill2d 229 (1986)**.

II. Respondent's Motion For Summary Decision

Respondent's motion for summary decision (motion) is based upon the argument that Complainant's claim is preempted by the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978 (FAA) and, therefore, the Commission lacks jurisdiction over this matter.

III. Uncontested Facts

Complainant, who is of Greek ancestry, was employed by Respondent as a Fleet Service Clerk. On March 20, 2006, Complainant was discharged from his employment with Respondent. The discharge was the result of alleged "dishonesty and/or misrepresentation of facts." Complainant denies engaging in the acts alleged and argues that the discharge was a result of discrimination based on his ancestry in violation of the Act.

IV. Federal Aviation Act of 1958

The Federal Aviation Act of 1958 as amended, states in relevant part:

*"[No] State . . . shall enact or enforce any law, rule, regulation or standard or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under Subchapter IV of this chapter to provide air transportation."* **49 U.S.C. Section 1305(a)(1)**

In **Morales v. Trans World Airlines**, 112 S. Ct. 2031 (1992), the Supreme Court, "in order to ensure that the States would not undo the anticipated benefits of federal deregulation of the airline industry" determined that State enforcement actions having a connection with or "relating to rates, routes or services of any air carrier" are preempted under the Federal Aviation Act of 1958 as amended by the Airline Deregulation Act of 1978.

In construing the phrase "relating to" the **Morales**, *supra*, Court determined that the term should be given broad effect. The Illinois Appellate Court has determined that "services" as used in **49 U.S.C. Section 1305(a)(1)** extends to include ground activities conducted by the airlines. See **Hastalis and Human Rights Commission**, 205 Ill.App.3d 50, 562 N.E.2d 1272, 150 Ill.Dec 469 (3<sup>rd</sup> Dist. 1990),<sup>1</sup> a case involving a blind passenger's refusal to complete requested information on a form. The **Hastalis** Court determined that the "service" provided was not the completion of a requested form but the provision of transportation.

An American Airlines Fleet Service Clerk's job description includes, *inter alia*, "the handling of items on and off aircraft, carts, containers and trucks, transporting items between terminals and aircraft, receiving, delivering, weighing and documenting of cargo. . . ." See *American Airlines Job Description and Essential Job Functions – Fleet Service Clerk*.

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1. In **Hastalis**, *supra*, the Third District Court did not accept Complainant's argument that the term 'services' as used in **49 U.S.C. Section 1305(a)(1)** did not extend to ground activities, stating that "The primary service offered by any air carrier is air transportation between two points . . . the federal law expressly preempts any state law relating to air transportation services . . . If a state law relates to 'rates, routes or service', it has been held barred by express preemption." See **Illinois Corporate Travel and American Airlines**, 889 F.2d 751, 562 N.E.2d 1274 (7<sup>th</sup> Cir. 1989).

The Commission and the Illinois Court of Appeals are in agreement that claims of discrimination brought by airline employees under the Illinois Human Rights Act are preempted by the FAA. See **Lara-Girjikian and Mexicana Airlines**, IHRC, 9134, May 29, 1998, *affirmed* 307 Ill.App.3d 510, 718 N.E.2d 584 (1<sup>st</sup> Dist. 1999). See also **Klocek and Delta Airlines**, IHRC, 5815, February 28, 1997 and **Schorsch and Simmons Airlines, Inc.**, IHRC, 8136, November 20, 1996. Both cases involved a claim of discrimination based on handicap. The reasoning, however, of **Lara-Girjikian** and **Schorsch**, is no less sound in the matter before the Commission.

In **Schorsch** the Commission, cited **Belgard-Krause v. United States**, 857 P.2d 467 (Co. Ct. App. 1992), cert. den. *sub. nom.* **Belgard-Krause v. United Airlines**, \_\_\_ U.S. \_\_\_, 64 E.P.D. Para. 42,976 (CCH). While acknowledging that the case is not binding on the Commission or the Illinois courts, the **Schorsch** court found it instructive in stating that "few matters are more important in determining the nature of the services that an airline is to provide than the quality of its employees. If the states were free to regulate an airline's hiring practices with respect to applicant's having perceived a physical handicap, the area of possible conflict would be nearly limitless."

It is clear that, whether the issue is one of discrimination based upon handicap, or other alleged discriminatory charges such as national origin, the Supreme Court, the Illinois Courts and the Illinois Human Rights Commission have determined that federal law preempts state law. This is abundantly clear when the airline industry is involved in the alleged practice.

The argument that Complainant's complaint is preempted by the Federal Aviation Act of 1958 as amended by the Airline Deregulation Act of 1978 is bolstered by a recent article in the Journal of Air Law and Commerce (2003) which states:

*"The foundation of federal preemption of state law is found in the Supremacy Clause of the U.S. Constitution which provides that the Constitution and the laws of the United States which shall be made in pursuance thereof shall be the*

*supreme law of the land . . . anything in the Constitution or laws of any state to the contrary notwithstanding. The U.S. Supreme Court has found that the Supremacy clause creates a fundamental principle . . . that Congress is able to preempt state law. See also Crosby v. National Foreign Trade Counsel, 530 U.S. 363 (2000).*

**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

GERTRUDE L. MCCARTHY  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: October 8, 2008