**STATE OF ILLINOIS**
**HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF: | ) | | |
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| SIEGLINDE H. PAULSEN, | ) | | |
| | ) | | |
| | ) | | |
| Complainant, | ) | CHARGE NO(S): | 2005SA2916 |
| | ) | EEOC NO(S): | 21BA51681 |
| and | ) | ALS NO(S): | S08-0115 |
| | ) | | |
| AMERICAN BANK & TRUST CO., | ) | | |
| | ) | | |
| | ) | | |
| 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

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| IN THE MATTER OF: | ) | |
| | ) | |
| SIEGLINDE H. PAULSEN, | ) | |
| | ) | |
| Complainant, | ) | CHARGE NO: 2005SA2916 |
| | ) | EEOC NO: 21BA51681 |
| and | ) | ALS NO: S08-115 |
| | ) | |
| AMERICAN BANK & TRUST CO., | ) | |
| | ) | |
| Respondent | ) | |

# RECOMMENDED ORDER AND DECISION

This matter is before me on a motion to dismiss the instant Complaint filed by Respondent. Complainant has filed a response. Accordingly, this matter is ripe for a decision.

## Contentions of the Parties

In the motion to dismiss, Respondent argues that the Commission lacks jurisdiction to consider the instant Complaint since Complainant filed her Complaint after the Department had issued its second Notice of Dismissal for Lack of Substantial Evidence. In her response, Complainant asserts that the Commission has jurisdiction over the instant matter since the Department of Human Rights failed to conduct an adequate investigation, and since neither Complainant nor her counsel had received the Department's second Notice of Dismissal for Lack of Substantial Evidence by the time Complainant had filed her Complaint with the Commission.

## Findings of Fact

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

1. On March 29, 2005, Complainant filed on her own behalf a Charge of Discrimination alleging that Respondent terminated her on account of her age and in retaliation for having opposed unlawful discrimination

2. Subsequent to the filing of the instant Charge of Discrimination, the parties agreed to certain extensions of time to allow the Department of Human Rights to complete its investigation.

3. On April 9, 2007, the Department issued a Notice of Dismissal for Lack of Substantial Evidence.

4. On May 14, 2007, Complainant filed a Request for Review.

5. On December 10, 2007, the Department's Chief Legal Counsel remanded the matter back to the investigator to conduct an additional investigation.

6. On January 31, 2008, the parties granted the Department of Human Rights an extension of time to and including March 12, 2008 to complete its investigation.

7. On March 11, 2008, the Department of Human Rights issued a second Notice of Dismissal for Lack of Substantial Evidence.

8. On March 12, 2008, and prior to any knowledge with respect to the existence of the Department's second Notice of Dismissal for Lack of Substantial Evidence, Complainant filed her Complaint with the Commission.

9. On March 17, 2008, Complainant's counsel received the Department's second Notice of Dismissal for Lack of Substantial Evidence.

10. On April 15, 2008, Complainant filed a Request for Review, contending that the investigator failed to comply with the directives contained in the December 10, 2007 remand.

11 The record does not indicate the status of the second Request for Review

**Determination**

The Commission lacks jurisdiction over the instant Complaint because the Department of Human Rights had already issued its second Notice of Dismissal by the time the Complainant had filed her Complaint with the Commission.

## Discussion

Section 7A-102(G)(2) of the Human Rights Act (775 ILCS 5/7A-102(G)(2)) authorizes a complainant to file a complaint on his or her own behalf within 30 days after the expiration of the Department's investigation period, but only "if the Director has not sooner issued a report and determination" as to the existence of substantial evidence that an alleged civil rights violation has been committed. In the instant case, the record shows that the Department had issued its second Notice of Dismissal for Lack of Substantial Evidence on March 11, 2008, which was one day prior to Complainant filing her Complaint with the Commission. Accordingly, because Complainant did not comply with the jurisdictional dictates of section 7A-102(G)(2), the instant Complaint must be dismissed based upon the timing of the filling of her Complaint.

Complainant, though, argues that jurisdiction of this Complaint properly rests with the Commission since the Department's investigator did not comply with the terms of the December 10, 2007 Order requiring that she conduct a more thorough investigation of all of witnesses prior to issuing any second determination as to the existence of substantial evidence. However, Complainant's contentions in this regard do not trump the jurisdictional language set forth in section 7A-102(G)(2), especially where Complainant has not argued that the Department did not timely issue the second Notice of Dismissal for Lack of Substantial Evidence. As such, it would seem that any alleged failure of the investigator to comply with the Chief Legal Counsel's Order of December 10, 2007 is more properly addressed in a second Request for Review, which Complainant acknowledges she filed on April 15, 2008

Finally, counsel for Complainant suggests that the Commission has jurisdiction over the instant Complaint because he had not received actual notice of the Department's second Notice of Dismissal for Lack of Substantial Evidence by the time he had filed the instant Complaint. However, the Commission, in *Eisenstein and Gofen & Glossberg*, IHRC, 5955, June 23, 1993, rejected a similar contention that the notice of dismissal was not effective until actual receipt by the complainant. Accordingly, I find that there is no jurisdiction over the Complaint since the

underlying Charge of Discrimination had been dismissed prior to the time that the Complaint had been filed

## Recommendation

For the foregoing reasons, I recommend that the motion to dismiss the instant Complaint be granted on jurisdictional grounds However, the Complaint should be dismissed without prejudice to the Complainant's rights on her second Request for Review.

HUMAN RIGHTS COMMISSION

BY: _
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 17TH DAY OF JULY, 2008