

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)

JULIE POSTESTA,)

Complainant,)

and)

CHARLES CAVALIER, MICHAEL)
ROBERTS and 3660 CLARK STREET,)
INC., d/b/a CASEY MORAN'S TAVERN ON)
CLARK STREET,)

Respondent.)

CHARGE NO(S): 2007CN2327
2007CN2329
2007CF2328
EEOC NO(S): 21BA71106
ALS NO(S): 08-0146C

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 23rd day of August 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
JULIE POTESA,)	
Complainant,)	CHARGE NOs: 2007CN2327
)	2007CN2329
)	2007CF2328
and)	EEOC NO: 21BA71106
)	ALS NO: 08-146C
)	
CHARLES CAVALIER, MICHAEL ROBERTS)	
and 3660 CLARK STREET, INC., d/b/a)	
CASEY MORAN'S TAVERN ON CLARK)	
STREET,)	
Respondents.)	

RECOMMENDED ORDER AND DECISION

This matter is before me on the motion of Respondents, Charles Cavalier and Michael Roberts, to dismiss this case as to them; and on my motion, *sua sponte*, to dismiss this matter as to all Respondents. The record shows that the motion has been served on all parties and the Illinois Department of Human Rights.

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 this case should be dismissed due to Complainant's conduct, which has resulted in unreasonable delay of this matter. Complainant failed to respond to the motion, although allowed time to do so.

FINDINGS OF FACT

The following findings of fact were made from the record:

1. On March 24, 2008, the Illinois Department of Human Rights (Department), on behalf of Complainant, filed a Complaint (Charge No: 2007CN2327, ALS No: 08-146) with the Illinois Human Rights Commission (Commission) against Respondent Charles Cavalier. On March 24, 2008, the Department, on behalf of Complainant, filed a Complaint (Charge No:

2007CN2329, ALS No: 08-149) with the Commission against Respondent Michael Roberts. On April 24, 2008, the Department, on behalf of Complainant, filed a Complaint (Charge No: 2007CF2328, ALS No: 08-189) with the Commission against Respondent 3660 Clark Street Inc., d/b/a Casey Moran's Tavern on Clark Street. All three cases were consolidated by order of the Chief Administrative Law Judge on July 8, 2008.

2. All parties appeared through respective counsel on March 25, 2009. An order was entered ordering Complainant to execute appropriate documents no later than April 14, 2009 to allow Respondents Charles Cavalier and Michael Roberts to obtain her income tax information. A status on discovery was set for July 14, 2009.
3. Respondents Charles Cavalier and Michael Roberts, through counsel, filed a motion to compel on May 27, 2009, and noticed the motion for hearing on June 9, 2009. Complainant's attorney filed a motion to withdraw on June 5, 2009, and noticed the motion for hearing on June 9, 2009. All Parties, through respective counsel, appeared on the motions on June 9, 2009. Both motions were continued for hearing until July 14, 2009.
4. On July 14, 2009, all parties appeared through counsel. Complainant's counsel's motion to withdraw was granted and Complainant was ordered to file an appearance or secure substitute counsel no later than August 7, 2009. Respondent's motion to compel was continued to August 11, 2009.
5. On August 11, 2009, Respondents Charles Cavalier and Michael Robertson appeared through counsel. Respondent 3660 Clark Street did not appear. Complainant did not appear and no appearance on her behalf was shown in the record. An order issued ordering Respondents Charles Cavalier and Michael Robertson to file a motion to dismiss by August 28, 2009, and further ordering Complainant to file a response to the motion by September 11, 2009. The motion was set for hearing on September 16, 2009. The order warned Complainant that failure to appear for hearing on the motion may result in dismissal of this matter.

6. On September 16, 2009, Respondents Charles Cavalier and Michael Robertson appeared through counsel. Respondent 3660 Clark Street did not appear. Complainant did not appear. The record showed that Complainant had not filed a response to the motion to dismiss.

CONCLUSION OF LAW

Complainant's conduct in failing to appear for the August 11, 2009 status hearing, failing to file a response to the motion to dismiss, failing to file an appearance and failing to appear for hearing on the motion to dismiss has resulted in unreasonable delay of this matter.

DETERMINATION

Dismissal of this Complaint is warranted due to Complainant's conduct, which has unreasonably delayed these proceedings.

DISCUSSION

Respondents Charles Cavalier and Michael Roberts, through counsel, move for dismissal of this matter due to Complainant's failure to comply with orders of this Commission, failure to file an appearance and failure to appear at the August 11, 2009 scheduled status hearing. Although Respondent, 3660 Clark Street, did not join in Respondent's motion, Complainant's conduct in failing to file a response to this motion and failing to appear for hearing on this motion prompted my *sua sponte* motion to dismiss this matter in its entirety.

Section 5/8A-102(l)(6) of the Act authorizes a recommended order of dismissal, with prejudice, as a sanction for a party's failure to prosecute his case, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous order of the Administrative Law Judge. Similarly, Section 5300.750(e) of the Commission rules provides for a recommendation of dismissal with prejudice if a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance, or unreasonably refuses to comply with any order entered or otherwise engages in conduct which unreasonably delays or protracts these proceedings.

Complainant's conduct in failing to appear for the August 11, 2009 status hearing, failing to file a response to the motion to dismiss, failing to file an appearance and failing to appear for hearing on the motion to dismiss, justifies dismissal of this matter.

RECOMMENDATION

Therefore, I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: September 17, 2009

BY: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section