STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
SHAWNELL BARNES,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2007CF2384
	)	EEOC NO(S):	21BA71141
and	)	ALS NO(S):	08-0225
	)		
DANAHER SENSORS & CONTROLS,[1]	)		
	)		
	)		
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

[1] Proper name of Respondent is Dynapar Corporation

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HUMAN RIGHTS COMMISSION

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SHAWNELL BARNES,	)	
	)	**Charge No. 2007CF2384**
Complainant,	)	**EEOC No. 21BA71141**
	)	**ALS No. 08-0225**
and	)	
	)	
DANAHER SENSORS & CONTROLS,[1]	)	
	)	**Judge Reva S. Bauch**
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is brought pursuant to Respondent's Motion to Dismiss for Want of Prosecution ("Motion"). Although given the opportunity, Complainant has not filed a Response. This matter is now ready for disposition.

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.

FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1 On April 29, 2008, the Department issued a Notice of Substantial Evidence Finding as to one allegation of Complainant's Charge.

2 On or about May 5, 2008, Respondent's attorney contacted the Department's Chief Counsel to initiate conciliation with regard to the remaining allegation and informed the Chief Counsel that Respondent was interested in settlement.

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[1] Proper name of Respondent is Dynapar Corporation

3. The Department was unable to locate the Complainant to convey Respondent's settlement offer.

4. On or about May 23, 2008, the Department informed Respondent's attorney that since it could not locate Complainant, a Complaint would be prepared and filed with the Commission.

5. On June 3, 2008, Complainant filed a Complaint with the Commission.

6. The Complaint packet sent to Complainant was returned to the Commission.

7. The Commission sent another Complaint packet to the Complainant at another possible address. That packet was also returned to the Commission

8. On or about July 14, 2008, Respondent filed its Verified Answer to the Complainant.

9. On August 20, 2008, the Commission held an initial status hearing. Respondent's attorney appeared. Complainant failed to appear.

10. At the August 20, 2008 status hearing, Respondent's attorney advised the Commission that several attempts had been made to serve the Verified Answer on Complainant, but that no confirmation of receipt had been received.

11. The matter was set for another status hearing on September 17, 2008.

12. The August 20, 2008 Order indicated that should Complainant again fail to appear on September 17, 2008, the Commission would entertain a motion for want of prosecution.

13. The August 20, 2008 Order was sent via certified mail to Complainant's last two known addresses.

14. One of the mailings was returned to Respondent's counsel; the other was forwarded to another address and has not been returned.

15. On September 17, 2008, the Commission held a status hearing. Respondent's counsel appeared. Complainant failed to appear.

16. On September 17, 2008, Respondent filed this Motion and a briefing schedule was set by Order dated September 17, 2008.

17. The September 17, 2008 Order advised Complainant that failure to respond to the Motion may be grounds for dismissal.

18. Respondent's counsel was instructed to serve a copy of the September 17, 2008 Order and its Motion on Complainant at all known addresses.

19. Respondent's counsel submitted a Certificate of Service that evidenced it had served the Motion on Complainant at all known addresses by U.S. Mail.

20. Respondent's counsel also filed a Certificate of Service that it served the Complainant with the Commission's September 17, 2008 Order setting the briefing schedule on this Motion.

21. Complaint has not file a response to the Motion.

CONCLUSIONS OF LAW

1. A complaint may be dismissed when a party unreasonably refuses to comply with Administrative Law Judge Orders or otherwise engages in conduct which unreasonably delays or protracts proceedings.

2. Complainant has failed to comply with several Administrative Law Judge Orders and has unreasonably delayed and protracted these proceedings. The appropriate sanction is dismissal of the Complaint, and the underlying charge, with prejudice.

DISCUSSION

Under Commission procedural rules, an Administrative Law Judge may recommend to the Commission that a complaint be dismissed where a party unreasonably refuses to comply with Orders or otherwise engages in conduct which unreasonably delays or protracts proceedings. *See* **56 Ill. Admin. Code §5300.750(e).**

A fundamental principle governing practice before the Commission is that complainants must diligently pursue their cases once they are docketed with the

Commission. Complainant has failed to comply with several Orders and has unreasonably delayed and protracted these proceedings. Respondent has appeared to defend its case. It is unfair to require Respondent to expend additional resources to defend a case that Complainant is unable or unwilling to prosecute. As such, it is appropriate to dismiss his Complaint, with prejudice. **Aceves and Everlast Concrete, Inc. and Artech Concrete, Inc.**, IHRC, 12187, May 18, 2005.

In addition, Complainant has not filed any response to the Motion. The Commission has held that a dispositive motion should be granted where it appears on its face to be valid and the Complainant has failed to file a response. **Jones and Burlington Northern Railroad, 25 Ill. HRC Rep. 101 (1986).**

RECOMMENDATION

I recommend the Commission dismiss the Complaint, and the underlying charge, with prejudice.

HUMAN RIGHTS COMMISSION

BY:
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: November 14, 2008