STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
AMADOR GUTIERREZ,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2007CA3649
	)	EEOC NO(S):	N/A
and	)	ALS NO(S):	08-0254
	)		
CLEAR LAM PACKAGING, 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 17th day of March 2009

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)
	)
AMADOR GUTIERREZ,	)
Complainant,	)
	)
and	) **Charge No: 2007CA3649**
	) **EEOC No: NA**
CLEAR LAM PACKAGING, INC.,	) **ALS NO: 08-254**
Respondent	)

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion to stay or dismiss the Complaint for lack of jurisdiction, filed January 23, 2009. Complainant does not oppose the motion.

The record indicates that the motion has been served upon 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 maintains the Commission lacks jurisdiction over this Complaint because it was not filed with the Illinois Human Rights Commission (Commission) within the statutory time period pursuant to the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.* Complainant does not oppose the motion.

FINDINGS OF FACT

The following findings were made from the record:

1. Complainant filed a perfected Charge of Discrimination with the Illinois Department of Human Rights (Department) on June 11, 2007. On June 11, 2008, Complainant, on his own behalf, filed this Complaint with the Commission. The Charge Number on the face of the Complaint is 2007CA3649.

2. Respondent filed an answer to the complaint on July 30, 2008. On September 9, 2008, a discovery order was entered and the parties began the discovery process.
3. On January 23, 2009, Respondent filed a motion to stay or dismiss this Complaint for lack of jurisdiction. As its Exhibit A, Respondent attached a copy of a Department extension form for the subject charge number indicating that the parties had agreed to a 300-day extension of time for the Department to complete its investigation. The extension was signed by both parties on November 15, 2007. Respondent also attached, as its Exhibit B, an April 30, 2008 notice from the Department referencing the subject Charge number. The notice indicated that, pursuant to the agreed extension, the Department calculated the time period for filing a complaint with the Commission as beginning from 04/08/09 through 05/07/2009.
4. Neither party disputes the authenticity of the extension agreement or the April 30, 2008 notice from the Department.

CONCLUSION OF LAW

The Commission lacks jurisdiction over this Complaint because it was not filed in accordance with sections 5/7A-102(G)(1) and 5/7A-102(G)(2) of the Act.

DETERMINATION

Respondent's motion to dismiss this Complaint must be granted, as the Commission lacks jurisdiction over this Complaint

DISCUSSION

Complainant filed a perfected Charge of Discrimination with the Illinois Department of Human Rights (Department) on June 11, 2007. On June 11, 2008, Complainant, on his own behalf, filed this Complaint with the Commission. The Charge Number on the face of the Complaint is 2007CA3649. Respondent filed an answer to the Complaint on July 30, 2008 On September 9, 2008, a discovery order was entered and the parties began the discovery process

On January 23, 2009, Respondent filed a motion to stay or dismiss this Complaint for lack of jurisdiction. Respondent maintains that this Complaint is not properly before the Commission as it was prematurely filed. As its Exhibit A, Respondent attached a copy of a Department extension form for the subject charge number indicating that the parties had agreed to a 300-day extension of time for the Department to complete its investigation The extension was signed by both parties on November 15, 2007. Respondent also attached, as its Exhibit B, an April 30, 2008 notice from the Department referencing the subject Charge number. The notice indicated that, pursuant to the agreed extension, the Department calculated the time period for filing a complaint with the Commission as beginning from 04/08/09 through 05/07/2009. Neither party disputes the authenticity of the extension agreement or the April 30, 2008 notice from the Department

Section 5/7A-102(G) (1) of the Act, in relevant part, states:

> When a charge of a civil rights violation has been properly filed, the Department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed except in cases in which the order was procured by fraud or duress....

Section 5/7A102 (G) (2) of the Act, in relevant part, states:

> Between 365 and 395 days after the charge is filed, or such longer period agreed to in writing by all parties, the aggrieved party may file a complaint with the Commission, if the Director has not sooner issued a report and determination pursuant to paragraphs (D)(1) and (D)(2) of this Section.. The aggrieved party shall notify the Department that a complaint has been filed and shall serve a copy of the complaint on the Department on the same date that the complaint is filed with the Commission.

The undisputed facts in the record show that the Complaint was not filed within the statutory period as contemplated by the parties' agreed upon 300-day extension of the Department's investigative period. Thus, there is no basis for jurisdiction of this Complaint before the Commission at this time.

RECOMMENDATION

I recommend that this Complaint be dismissed without prejudice and that the Charge not be dismissed so the Department can continue its ongoing investigation.

HUMAN RIGHTS COMMISSION

By:_____
SABRINA M. PATCH
Administrative Law Judge
Administrative law Section

ENTERED: January 29, 2009