

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF: )

TEODORA GARCIA, )

Complainant, )

and )

TOWN & COUNTRY RESTAURANT, INC., )

Respondent. )

CHARGE NO(S): 2008CF2024

EEOC NO(S): 21BA81014

ALS NO(S): 08-0476

**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 31<sup>st</sup> day of January 2011

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N. KEITH CHAMBERS  
EXECUTIVE DIRECTOR

STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
TEODORA GARCIA,	)	
	)	
Complainant,	)	Charge No. 2008CF2024
	)	EEOC No. 21BA81014
and	)	ALS No. 8-0476
	)	
TOWN & COUNTRY RESTAURANT, INC.,	)	Judge Reva S. Bauch,
	)	Presiding
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is before the Commission on Respondent's Motion to Dismiss for Want of Prosecution. Complainant had an opportunity to file a response but failed to do so. Accordingly, 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 February 9, 2009, Chief Judge Michael Evans consolidated ALS No. 08-0476 and ALS No. 08-047.
2. Complainant's attorneys represented that they had lost complete contact with Complainant since October 20, 2009.
3. From October 20, 2009 to and including the date of the Motion to Withdraw, Complainant's attorneys had attempted numerous times to communicate with

Complainant via telephone at the last known phone number, and had left 15 to 20 voice mail messages.

4. Complainant's attorneys also forwarded a letter to instruct Complainant to communicate with them.
5. Complainant's attorneys had attempted communication through the Lake County State's Attorney's Office, but they had no response from Complainant.
6. Notice of the Motion to Withdraw, as well as the Motion itself, were translated into Spanish and sent via Certified Mail to Complainant at her last known address, restricted delivery.
7. The Motion to Withdraw advised Complainant that she should retain other counsel or file with the Clerk of the Human Rights Commission, within 21 days from the entry of an Order granting withdrawal, a supplementary appearance for service of notices and other papers.
8. On March 4, 2010, Complainant's attorneys presented me with an original envelope (including the contents), of the certified mailing which indicated the letter had been unclaimed and returned to sender.
9. On March 4, 2010, I granted Complainant's counsels' Motion to Withdraw as Complainant's counsel.
10. On March 4, 2010, Respondent filed a Motion to Close Discovery and Dismiss this Matter.
11. The Motion to Dismiss was entered and continued.
12. My March 4, 2010 Order gave Complainant until April 1, 2010 to obtain new counsel and/or file an appearance on her own behalf.
13. My March 4, 2010 Order required Complainant's attorneys to serve a copy of my Order on Complainant and file a Proof of Service with the Commission.

14. On March 4, 2010, Attorney Carol Babbitt filed a Certificate of Service with the Commission certifying that she had served the March 4, 2010 Order on Complainant via U.S. Mail.
15. This matter was set for another status hearing on April 8, 2010.
16. On April 8, 2010, Complainant failed to appear. Respondents' attorney appeared.
17. On April 8, 2010, a briefing schedule was set for Respondent's Motion to Dismiss.
18. Notwithstanding the provisions in my April 8, 2010 Order, Respondent failed to serve a copy of the April 8, 2010 Order on Complainant, and failed to file a Proof of Service with the Commission.
19. On April 27, 2010, I entered an Order setting the matter for a status hearing to set a new briefing schedule.
20. My April 27, 2010 Order required Respondent's counsel to file a Proof of Service with the Commission certifying that a copy of the April 27, 2010 Order had been served on Complainant.
21. Respondent's counsel did not file appropriate verified documentation that my April 27<sup>th</sup> Order was served on Complainant.
22. On June 3, 2010, I entered an Order granting Complainant an opportunity to file a response to Respondent's Motion to Dismiss by June 18, 2010.
23. The Commission mailed the June 3, 2010 Order, the April 18, 2010 Order, the April 28<sup>th</sup> Order, Respondent's Motion to Dismiss, and Respondent's counsel's change of address form to Complainant at her last known address.
24. Complainant has not filed a response to the Motion.

## CONCLUSIONS OF LAW

1. A complaint may be dismissed when a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance or unreasonably refuses to comply with a Commission Order or otherwise engages in conduct which unreasonably delays or protracts proceedings.
2. Since Complainant has failed to appear since her attorneys withdrew as her counsel and has failed to comply with several Commission Orders, 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 fails to appear at a scheduled status hearing, unreasonably refuses to comply with a Commission Order 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 appear. She has also failed to comply with several Commission Orders. It appears that Complainant has simply abandoned her claim in this case. 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 to Dismiss. 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, IHRC, ALS No. 1704, June 23, 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: July 29th, 2010**