

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF: )

CATHERINE ZARYCANY, )

Complainant, )

and )

CONTINENTAL CASUALTY COMPANY, )

Respondent. )

CHARGE NO(S): 2005CF3968  
EEOC NO(S): 21BA52617  
ALS NO(S): 09-0087

**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 7th day of January 2011

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N. KEITH CHAMBERS  
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

<b>IN THE MATTER OF:</b>	)
	)
<b>CATHERINE ZARYCZNY,</b>	)
<b>Complainant,</b>	)
	) <b>Charge No: 2005CF3968</b>
	) <b>EEOC No: 21BA52617</b>
	) <b>ALS No: 09-0087</b>
<b>and</b>	)
	)
<b>CONTINENTAL CASUALTY COMPANY,</b>	)
<b>Respondent.</b>	)

**RECOMMENDED ORDER AND DECISION**

This matter is before me on Respondent's motion to dismiss this Complaint, filed January 22, 2010. Complainant filed a response to the motion on February 9, 2010.

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.

**FINDINGS OF FACT**

Based upon the record, I make the the following findings of fact:

1. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on July 20, 2005, amended April 15, 2006. On February 6, 2009, the Department filed a Complaint, on behalf of Complainant, with the Illinois Human Rights Commission (Commission), alleging that Respondent subjected her to practices of national origin discrimination and retaliation in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.* On March 27, 2009, Respondent filed a verified answer to the Complaint.
2. A discovery order was entered on May 12, 2009, ordering the parties to propound discovery by June 12, 2009, and to serve discovery answers by July 29, 2009. An order issued on July 29, 2009, continuing the due date for discovery responses to August 26, 2009. On

September 23, 2009, an order issued allowing Complainant additional time until September 25, 2009, to serve her discovery responses.

3. On November 10, 2009, both parties appeared for a discovery status. Respondent advised that Complainant's discovery responses were deficient and that it served Complainant with a letter on October 26, 2009 detailing the deficiencies. Respondent further advised that Complainant had yet to respond to Respondent's October 26, 2009 letter. An order issued ordering Complainant to respond to Respondent's October 26, 2009 letter in an effort to resolve all outstanding discovery disputes. A status was set for January 12, 2010.
4. On January 12, 2010, Respondent appeared. Complainant did not appear. Respondent advised that Complainant had still not responded to her October 26, 2009 letter as ordered. An order was entered on January 12, 2010, granting Respondent leave to file a motion to dismiss by January 22, 2010. Complainant was ordered to file a response by February 5, 2010, and a hearing on the motion was set for February 9, 2010 at 11:00 a.m.
5. Respondent filed its motion to dismiss on January 22, 2010. Although the time for hearing on the motion had been set, Respondent indicated a different time in its notice of hearing. Respondent filed an amended motion on January 27, 2010, to correct the error. On February 9, 2010, Respondent appeared for hearing on the motion. Complainant did not appear. I granted the motion to dismiss by order of February 9, 2010, and indicated that a recommended order and decision to dismiss the matter would follow. At the time of the hearing, Complainant's response to the motion had not been filed.
6. Later that same day, Complainant filed a response to Respondent's motion to dismiss. On February 11, 2010, Complainant filed an emergency motion to reconsider and to vacate the order of dismissal. Complainant stated that she was not present at the February 9, 2010 hearing at 11:00 a.m. because she had received a notice by Respondent that erroneously indicated the hearing was set for 2:00 p.m. Complainant maintained that she appeared at the Commission office at 2:00 p.m. and was informed that the hearing had been held.

7. Complainant's emergency motion was set to be heard on February 17, 2010 at 10:30 a.m. Although Respondent appeared on Complainant's emergency motion, Complainant did not appear. Notwithstanding Complainant's failure to appear, I considered Complainant's motion on its merits and granted the motion vacating the dismissal. I further granted Complainant leave to file her late response to Respondent's motion to dismiss, *nunc pro tunc*.
8. After consideration of the briefs of both parties on Respondent's motion to dismiss, this decision follows.

### **CONCLUSION OF LAW**

Complainant's conduct in failing to comply with the November 10, 2009 Order and in further failing to submit responsive answers to Respondent's discovery has resulted in unreasonable delay of this matter.

### **DETERMINATION**

Complainant's conduct in failing to comply with the November 10, 2009 Order and in further failing to submit responsive answers to Respondent's discovery has resulted in unreasonable delay of this matter, justifying dismissal of this Complaint.

### **DISCUSSION**

Respondent, also known as CAN, filed its motion to dismiss based on Complainant's failure to comply with the November 10, 2009 order to respond to Respondent's October 26, 2009 letter detailing the deficiencies in Complainant's discovery responses. Complainant's response to the motion makes no attempt to address Respondent's contention that she ignored the directive in the order by failing to take any steps to respond to Respondent's discovery deficiency letter. In her response to this motion to dismiss, Complainant merely argues that her answers to the interrogatories and to the documents requested by Respondent are in the exclusive control of Respondent.

While Complainant's position is puzzling at best, I find the vast majority of Complainant's discovery responses to be wholly non-responsive, inadequate and deliberately evasive. For

example, Interrogatory #3 requests Complainant to identify all persons who have knowledge of the facts relating to the allegations in her complaint. Complainant's answer here is, "Unknown at this time. Investigation continues." Similarly, Interrogatory #5 asks Complainant to identify all persons with whom she has had contact or communications regarding the allegations in her complaint. Here, Complainant answers, "CAN and /or others. Investigation continues."

Interrogatory #6 asks Complainant to identify non-expert witnesses whom she expects to call at trial. Again, Complainant answers, "Unknown at this time, Investigation continues."

Interrogatory #13 asks Complainant to state all facts relating to her alleged application for the position of Director of Legal Services in June, 2004, including the place and circumstances under which she allegedly applied, the identity of persons who were present at the time, and statements made at the time. Complainant's response is, "Please see previously submitted detailed pleadings in this matter. Investigation continues." Such answers are simply inadequate, evasive and non-responsive.

In its motion, Respondent maintains that Complainant produced absolutely no documents in response to any of its document requests. Respondent points out that Complainant answered virtually every document production request by stating that any relevant documents were in the possession of Respondent and by further responding, "To the extent that Complainant was in possession of any documents related to the statements in the above paragraph, they have previously been tendered to the Respondent and IDHR." Again, such responses are inadequate, evasive and non-responsive. Complainant cannot proceed to prosecute this claim while attempting to hamstring Respondent's ability to defend itself by failing to responsively answer discovery inquiries. *Miller and State of Illinois Comptroller's Office*, IHRC, ALS No. 4391(S), Feb. 25, 1992.

Complainant's response to this motion to dismiss fails to address the inadequacies of her discovery responses and further fails to offer any explanation for failing to comply with my order to respond to Respondent's deficiency letter in an effort to resolve any discovery disputes.

Section 5300.750(e) of the Procedural Rules of the Illinois Human Rights Commission authorizes a recommendation for dismissal with prejudice where 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 the proceedings. Complainant's conduct has unreasonably delayed these proceedings.

**RECOMMENDATION**

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

**HUMAN RIGHTS COMMISSION**

By: \_\_\_\_\_  
**SABRINA M. PATCH**  
**Administrative Law Judge**  
**Administrative Law Section**

**ENTERED: February 25, 2010**