STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
NATALIE SMITH,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 2009CN1305
	)	EEOC NO(S): N/A
and	)	ALS NO(S): 09-0616
	)	
JENNIFER LEA WISE, D.C.,	)	
	)	
	)	
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 7th day of January 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
NATALIE SMITH,	)	
	)	
Complainant,	)	
	)	**Charge No.: 2009CN1305**
and	)	**EEOC No.: N/A**
	)	**ALS No.: 09-616**
JENNIFER LEA WISE, D.C.,	)	
	)	**Judge Lester G. Bovia, Jr.**
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter has come to be heard on Respondent's Motion to Dismiss ("Motion"). Complainant has advised that she does not oppose the Motion.

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. Moreover, the Department was duly served with the Motion and given an opportunity to be heard. Accordingly, this matter is now ready for disposition.

FINDINGS OF FACT

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

1. Complainant filed a charge with the Department on October 13, 2008 alleging handicap discrimination and retaliation. Respondent denies Complainant's allegations.

2. Complainant and Respondent agreed in writing to extend the Department's statutory 365-day time period to conduct its investigation by an additional 300 days. Accordingly, the Department's investigation period is scheduled to expire on August 9, 2010.

3. Complainant properly could have filed a complaint with the Commission during the 90 days immediately following the expiration of the Department's investigation period.

4. Complainant filed her complaint on October 27, 2009, over nine months prematurely.

CONCLUSIONS OF LAW

1. Because Complainant filed her complaint before the expiration of the Department's investigation period, the complaint was not properly filed.

2. Because the complaint was not properly filed, the Commission has no jurisdiction over this matter.

3. Respondent is entitled to a recommended order of dismissal without prejudice as a matter of law to allow the Department to complete its investigation.

DISCUSSION

Respondent argues that the complaint in this matter should be dismissed because it was filed prematurely. Section 7A-102(G)(1) of the Illinois Human Rights Act requires the Department, within 365 days after the filing of a charge, to file a complaint with the Commission, or to order that no complaint be issued and dismiss the charge with prejudice. 775 ILCS 5/7A-102(G)(1). The 365-day investigation period may be extended by agreement of the parties. Id. A complainant may file a complaint with the Commission on her own behalf during the 90 days immediately following the expiration of the Department's investigation period. 775 ILCS 5/7A-102(G)(2). A complainant may not file a complaint before the Department's investigation period has expired. Parks and City of Moline, IHRC, ALS No. 07-207, March 17, 2009. In fact, any complaint filed before the Department's investigation period has expired is a nullity, and the Commission has no jurisdiction over it. Id.

The record file indicates that Complainant filed a charge with the Department on October 13, 2008. Complainant and Respondent agreed in writing to extend the Department's statutory 365-day time period to conduct its investigation by an additional 300 days. Accordingly, the Department's investigation period is scheduled to expire on August 9, 2010. Thus, Complainant properly could have filed a complaint on her own behalf with the Commission during the 90 days immediately following the expiration of the Department's investigation period (*i.e.*, during the 90-

day period from August 10, 2010 to November 8, 2010). However, Complainant filed her complaint on October 27, 2009, over nine months prematurely.

Complainant, through counsel, has acknowledged that her complaint is premature. Thus, she does not oppose the Motion. Complainant's counsel has represented that he was unaware that Complainant had granted the Department an extension of time to conclude its investigation, which caused counsel to miscalculate the deadline for filing the complaint. Therefore, the complaint must be dismissed without prejudice to allow the Department to complete its investigation.

RECOMMENDATION

Based on the foregoing, the Commission lacks jurisdiction over this matter, and Respondent is entitled to a recommended order of dismissal as a matter of law. Accordingly, it is recommended that: 1) Respondent's Motion be granted; and 2) the complaint be dismissed without prejudice to allow the Department to complete its investigation.

HUMAN RIGHTS COMMISSION

BY:_____

LESTER G. BOVIA, JR.
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: February 11, 2010