STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
DEBORAH SULLINS,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2001SF0442
	)	EEOC NO(S):	21BA11145
and	)	ALS NO(S):	S-11721
	)		
S.O.I. DEPT OF PUBLIC AID, MARK SCHEFF	)		
AND JIM SCHUH,	)		
	)		
	)		
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

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	)	
	)	
Respondents.	)	

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On November 26, 2007, an Order was entered directing either Complainant or Complainant's Bankruptcy Trustee to file a report regarding the Trustee's position with respect to advancing her cause of action against Respondent Scheff. However, neither Complainant nor her Bankruptcy Trustee has filed such a report as of the date of this Order, although both were warned that the failure to file such a report could result in the entry of a future order recommending that the case be dismissed for want of prosecution. As to the other Respondents, the record shows that Complainant settled her cause of action against Respondent Schuh, as reflected in the Commission's Order of July 5, 2002. Moreover, on June 26, 2007, a motion for summary decision filed by Respondent State of Illinois, Department of Public Aid, was granted on *res judicata* grounds.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On February 26, 2002, a Complaint was filed by the Department of Human Rights on behalf of Complainant, alleging that Respondents sexually harassed

Complainant, and that Respondents harassed Complainant in retaliation for reporting sexual harassment.

2. On May 28, 2002, Respondent Jim Schuh and Complainant filed a motion seeking approval by the Commission of a settlement between himself and Complainant, as well as a finding that the settlement was entered into in good faith by these parties.

3. On July 5, 2002, an Order was entered by a Commission panel approving the settlement between Complainant and Respondent Schuh and dismissing with prejudice the portion of the Complaint against Respondent Schuh.

4. On October 15, 2003, an Order was entered, which scheduled the matter for a public hearing on January 27-29, 2004 as to the remaining Respondents.

5. On January 13, 2004, Complainant filed a motion seeking a stay of the public hearing due to her intention on filing in federal court a similar Title VII action against Respondent State of Illinois, Department of Public Aid, based upon the conduct at issue in the instant Complaint. The text of Complainant's motion indicated that the Title VII action would not necessarily resolve her claim against Respondent Scheff, but that counsel for Scheff did not object to the delay of her case against him.

6. Complainant's motion for stay was granted on January 15, 2004.

7. On February 17, 2004, Complainant filed a Title VII action against Respondent State of Illinois, Department of Public Aid

8. On March 13, 2006, the Federal District Court granted Respondent's motion for summary judgment as it pertained to Complainant's sexual harassment claim, but allowed Complainant's retaliation claim to be tried in front of a jury. Specifically, the Federal District Court found that Respondent Scheff's alleged conduct was not sufficiently severe or pervasive enough to create a hostile work environment, and that any harassment that Complainant experienced was not based on her gender since

Scheff was as "vulgar and abusive with men as he was with women." Sullins, 2006 WL 668213 at 11.

9. On October 4, 2006, Complainant filed a status report indicating that in May of 2006, a jury found in favor of Respondent on Complainant's retaliation claim in the federal court matter, and that Complainant did not take an appeal of the jury's verdict. Complainant's counsel also contended that the result in the federal court matter did not dispose of the issues contained in the instant Complaint.

10. On October 5, 2006, an Order was entered which directed the parties to file a report regarding what portions of Complainant's Human Rights Act case could proceed to a public hearing in light of the result in the federal jury trial

11. On October 30, 2006, Respondent State of Illinois filed a motion for summary decision, alleging that the doctrine of *res judicata* required that Complainant's Human Rights Act action against it be dismissed in view of the favorable rulings it received in federal court on Respondent's motion for summary judgment with respect to Complainant's sexual harassment claim, as well as the jury's verdict with respect to Complainant's retaliation claim.

12. Instead of filing a response to the pending motion for summary decision, Complainant filed on November 30, 2006, a motion requesting that the matter be stayed for a period of at least 60 days so that Complainant could file a Chapter 7 bankruptcy petition and permit the Trustee to have an opportunity to file a response to the motion for summary decision.

13. On December 15, 2008, an Order was entered which treated the motion for stay as a motion for an extension of time to file a response and directed the Complainant or her Trustee to file a response to the pending motion for summary decision by January 31, 2007.

14. On March 6, 2007, an Order was entered, which noted that neither Complainant nor her Trustee had filed any sort of response to the pending motion for summary decision. The Order gave Complainant one more opportunity to file by March 23, 2007 either a response to the pending motion for summary decision or some sort of notification that a bankruptcy petition had been filed on her behalf.

15 On June 26, 2007, an Order was entered granting the motion for summary decision filed by Respondent State of Illinois, Department of Public Aid. Complainant did not file any response to the motion as required by the Order of March 6, 2007. The Order also set the matter for a future telephone conference call to address how the instant matter would proceed against Respondent Scheff.

16. On July 17, 2007 a telephone conference was held in which Complainant's counsel indicated that Complainant had in fact filed a bankruptcy petition, and that she still wished to proceed against Respondent Scheff Accordingly, an Order was entered on the same day, indicating that the Trustee needed to make some sort of an appearance in this matter since Complainant's rights to the instant lawsuit transferred to her bankruptcy estate at the time she filed her bankruptcy petition

17 On October 11, 2007, a telephone conference was conducted with the parties in which Complainant's counsel indicated that he was in the process of being appointed as the Trustee's legal representative in the instant matter.

18 On November 26, 2007, a telephone conference was conducted with the parties in which Complainant's counsel indicated that the Trustee was taking the position that Complainant's counsel could not be the legal representative in this matter due to counsel's status as a potential creditor in Complainant's bankruptcy estate. Accordingly, an Order was entered on the same day, directing the Trustee to file a report on or before January 28, 2008 indicating his position with respect to advancing the case to a public hearing. The Order specifically noted that neither Complainant nor Complainant's

attorney could prosecute the instant matter due to the existence of Complainant's bankruptcy petition, and that the Trustee, who controlled the bankruptcy estate, must do something to advance the case to the public hearing. The Order also warned that should Trustee not comply with this Order, a future order would be entered which recommended that the case be dismissed for want of prosecution.

19. The Trustee has not filed any response to the Order of November 26, 2007 as of the date of this Recommended Order.

Conclusions of Law

1. A complaint may be dismissed when a party engages in conduct which unreasonably delays or protracts proceedings.

2. The Bankruptcy Trustee has unreasonably delayed proceedings when he failed to make an appearance in this matter or other otherwise advance this matter against the remaining Respondent.

3. The appropriate sanction for Trustee's inaction in this case is dismissal of the remaining portions of the Complaint and the underlying Charge of Discrimination.

Determination

The Complaint against Respondent Scheff and the underlying Charge of Discrimination should be dismissed with prejudice due to the Trustee's failure to advance the case to a public hearing

Discussion

Under the Commission's procedural rules, an administrative law judge may recommend to the Commission that the Complaint be dismissed where a complainant engages in conduct which unreasonably delays or protracts proceedings. (See, 56 Ill Admin Code, Ch XI, §5300.750(e)) On review, the Commission has upheld the use of such discretion to dismiss complaints in circumstances analogous to the case at bar. See, *Maltby and Tom's Quality Car Care*, IHRC, S04-073, June 24, 2005.

In the instant case, the circumstances reveal that while certain respondents have been dismissed from the instant case either through a settlement with Complainant or through a motion for summary decision based on findings adverse to Complainant in federal court, Complainant and/or her Bankruptcy Trustee has failed to advance her cause of action with respect the remaining portion of her cause of action against Respondent Mark Scheff. True enough, Complainant's filing of her bankruptcy petition has complicated matters since Complainant's interest in the cause of action shifted to her bankruptcy estate, which is under the control of the Bankruptcy Trustee. (See, *Bates and Pathway Financial*, IHRC, 4860, May 7, 1993, where the Commission also observed that the complainant's filing of a Chapter VII bankruptcy petition deprived her of any standing to proceed on her Human Rights Act claim.) Thus, although Complainant has expressed an interest (after she filed her bankruptcy petition) in proceeding against Respondent Scheff, her thoughts on the matter are neither here nor there since she now lacks standing to proceed on the remaining portion of her claim against Respondent Scheff.

Moreover, the individual who now controls Complainant's cause of action (i.e., the Bankruptcy Trustee) has failed to make any sort of appearance in this matter on behalf of the bankruptcy estate, although the July 17, 2007 Order, as well as the November 26, 2007, Order informed the Trustee that he needed to make some sort of appearance for the purpose of proceeding on the claim against Respondent Scheff. Indeed, the Trustee's inaction in this case is doubly frustrating since he has effectively blocked Complainant's counsel from proceeding on this matter due to a perceived conflict of interest. Accordingly, because the Trustee is the only individual who can prosecute Complainant's claim against Respondent Scheff, and because the Trustee has ignored the warning contained in the Order of November 26, 2007 that the failure to make an appearance could result in the entry of a future order recommending that this

case be dismissed with prejudice, the only thing left to do at this juncture is to dismiss the case against Respondent Scheff with prejudice due to the Trustee's failure to prosecute the instant matter.

Recommendation

It is therefore recommended that the portions of the instant Complaint against Respondent Mark Scheff, as well as the underlying Charge of Discrimination of Deborah Sullins be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY:
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 31ST DAY OF OCTOBER, 2008