

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)

ROSIE JOHNSON,)

Complainant,)

and)

AMES MERCHANDISING CORP.,)

Respondent.)

CHARGE NO(S): 2001CP2144
EEOC NO(S): N/A
ALS NO(S): 11923

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:)

ROSIE JOHNSON,)

Complainant,)

AND)

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CORP.,)

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Charge No. 2001CP2144

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RECOMMENDED ORDER AND DECISION

This matter comes before me *sua sponte*. On October 31, 2002, The Illinois Department of Human Rights filed a *Complaint of Civil Rights Violation* (complaint) on behalf of Complainant Johnson. That two (2) count complaint alleged that Complainant was denied full and equal enjoyment of Respondent's premises because of her race and her age.

On May 6, 2003, the matter was properly *stayed* after the Commission received a letter and several documents evidencing Respondent Ames's filing of a bankruptcy petition in the United States Bankruptcy Court. Since that date, there have been periodic telephone status hearings with the Complainant who has always appeared *pro se*. Despite several orders entered ordering Respondent to provide the administrative law judge with an attorney's name for the purpose of updating the Commission on the status of the bankruptcy proceedings, none was ever provided. Thus, Respondent failed to participate in any of the telephone status hearings held on the *stay* of this matter. On a few occasions, without ever filing a formal

appearance, one of Respondent's bankruptcy attorneys did, however, update the administrative law judge on the status of the bankruptcy proceedings.

Both Complainant and Respondent failed to appear for the last telephone status hearing that was scheduled for March 30, 2010 at 11:00 a.m. It is clear that Complainant did not appear on that date because she no longer resides at the address that the Commission has on file for her - - the order sent to Complainant scheduling a telephone status for March 30th was sent back to the Commission by the U.S. Postal Service and marked "return to sender, unable to forward." Complainant has failed to file a change of address notification with the Commission and has provided no information regarding the status of the bankruptcy proceedings in almost three (3) years. Therefore, it is recommended that this matter be dismissed for want of prosecution.

FINDINGS OF FACT

1. On October 31, 2002, a *Complaint of Civil Rights Violation* (complaint) was filed on behalf of Complainant Johnson by the Illinois Department of Human Rights.
2. Complainant is not represented by an attorney and has appeared *pro se* throughout the case.
3. Respondent failed to file a verified answer to the complaint and has failed to appear for all scheduled status hearings.
4. On March 10, 2003, Respondent Ames filed documents with the Commission evidencing the filing of a bankruptcy petition in the United States Bankruptcy Court.
5. On May 6, 2003, the administrative law judge entered an order *staying* this matter.
6. On January 29, 2004, an order was entered scheduling a telephone hearing on March 3, 2004 for status on the *stay* and for the purpose of ordering Respondent to provide the Commission with the name, address and telephone number of a new

attorney representative by February 25, 2004. The telephone number for Respondent's legal representative which appeared on its appearance form was a disconnected number.

7. Respondent failed to provide a name, address and telephone number of a new attorney representative.
8. On March 3, 2004, both parties were unavailable by telephone and thus failed to appear for the status hearing.
9. An order was entered on March 9, 2004 rescheduling the matter for a status hearing on the *stay* for April 20, 2004 and again ordering Respondent to provide the name, address and telephone number of a new attorney representative by April 12, 2004 for the purpose of updating the Commission on the status of the bankruptcy proceedings.
10. On April 20, 2004, Complainant appeared telephonically and Respondent failed to appear as no new telephone number for a legal representative was provided to the Commission. On that date, Complainant had no knowledge of the status or progress of the bankruptcy proceedings.
11. On December 12, 2005, an order was entered *sua sponte* scheduling a telephone hearing for January 17, 2006 for the purpose of updating the Commission on the status of Respondent's bankruptcy proceedings.
12. On January 17, 2006, Complainant appeared telephonically and still had no knowledge of the progress of the bankruptcy proceedings but stated that she was looking into the matter and would be contacting the bankruptcy court. Respondent failed to appear once again due to the fact that it had never provided the Commission with new contact information for its legal representative. An order was entered on January 20, 2006, scheduling the matter again for status on the *stay* for

March 8, 2006. Respondent was again ordered to provide the Commission with new contact information for its legal representative.

13. On March 8, 2006, Complainant appeared by telephone. Although no appearance form was filed with the Commission by a legal representative for Respondent, Respondent's bankruptcy attorney contacted the Commission that day and participated in the telephone conference with Complainant. On that date, Respondent's bankruptcy attorney indicated that the bankruptcy proceedings were ongoing and that pre-petition claims such as Complainant's had not yet been paid. An order was entered on that date continuing the matter to July 12, 2006.
14. On July 12, 2006, Complainant appeared and Respondent again failed to appear. However, Respondent's bankruptcy attorney informed the administrative law judge that the bankruptcy proceedings were ongoing and that pre-petition claims such as Complainant's had not yet been paid. The matter was continued to November 15, 2006.
15. On November 15, 2006, Complainant appeared and Respondent again failed to appear. Once again, Respondent's bankruptcy attorney indicated that the bankruptcy proceedings were ongoing and that pre-petition claims such as Complainant's had not yet been paid. The matter was continued to May 16, 2007.
16. On May 16, 2007, both Complainant and Respondent failed to appear without explanation to the Commission.
17. On February 22, 2010, an order was entered *sua sponte* scheduling a telephone hearing on the status of the *stay* for March 30, 2010 at 11:00 a.m. That order was served by the Commission on February 26, 2010.
18. On March 9, 2010, the order entered and sent to Complainant Johnson scheduling a telephone status hearing for March 30, 2010 was returned to the Commission by the U.S. Postal Service and marked as "undeliverable."

19. As of the date of this Recommended Order and Decision, Complainant has not filed a "Change of Address" notification with the Commission.
20. On March 29, 2010, Respondent's counsel filed a motion for admission in Illinois on a *pro hac vice* basis.
21. On March 30, 2010, Complainant failed to appear for the scheduled telephone status conference which was to take place at 11:00 a.m.

CONCLUSIONS OF LAW

1. Complainant's failure to provide the Commission with an updated address, failure to appear telephonically on March 30, 2010 and her failure to pursue the prosecution of her case since 2007 has unreasonably delayed the proceedings in this matter.
2. In light of Complainant's apparent abandonment of her claim, this matter should be dismissed with prejudice.

DISCUSSION

Complainant has taken absolutely no action to prosecute this matter since 2007. Although the case was formally *stayed* due to Respondent's bankruptcy, it is ultimately Complainant's duty and responsibility to pursue the matter before the Commission. Without explanation, Complainant failed to appear for the last two (2) status hearings and she has filed no pleadings or otherwise pursued her case in almost three (3) years. Complainant has also failed to provide the Commission with an updated address. For reasons unknown, it appears that she has simply abandoned her claim. As a result, it is appropriate to dismiss her claim with prejudice. *Leonard and Solid Matter, Inc.*, IHRC, ALS No. 4942, August 25, 1992. Finally, although on March 29, 2010, Respondent's counsel filed a motion for *pro hac vice* admission to appear and participate as an attorney in this matter, considering the above findings of fact and conclusions of law, that motion is now moot.

RECOMMENDATION

Based on the foregoing, it appears that Complainant has abandoned her claim. Accordingly, it is recommended that the complaint be dismissed with prejudice.

ENTERED: March 31st, 2010

HUMAN RIGHTS COMMISSION

**MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**