

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

James R. Thompson Center
100 W. Randolph Street, Suite 5-119
Chicago, Illinois 60601

Meeting of Panel A
November 18, 2010
11:00 a.m.

Minutes of Oral Argument in the Matter of

ROSETTA DAVIS v. ELMBROOK HEALTHCARE & REHABILITATION CENTER, LLC

Charge No. 2005CF1490 ALS No. 06-241 EEOC No. 21BA50478

Present:	Commissioners	Marti Baricevic (Panel Chair) Robert S. Enriquez Greg Simoncini
	Staff	Harriet Parker Donyelle L. Gray Evelio Mora N. Keith Chambers Christine Welninski Christopher Hoffmann, Law Student Extern
	Parties:	Hector Morales, attorney for Complainant Rosetta Davis, Complainant Laura Elkayam, attorney for Respondent David Pogrund, attorney for Respondent
	Members of the Public:	Sherwin Pogrund

NOTICE:

This meeting of Illinois Human Rights Commission Panel A was audio recorded.

I. Call to Order.

A meeting of Human Rights Commission Panel A was called to order on November 18, 2010, at 11:06 a.m. by Panel Chair Commissioner Baricevic.

Pursuant to the Illinois Open Meetings Act, 5 ILCS 120/1 et seq. it was determined that a quorum of the public body was present at the meeting.

II. Proceedings

Panel A of the Commission met for the purpose of hearing oral argument on the Complainant's exceptions to a Recommended Order and Decision.

Panel Chair, Commissioner Baricevic instructed the parties on the procedural guidelines for the proceedings and the standard of review.

Commissioner Baricevic informed the parties that each party would be permitted 10 minutes to make its opening statement, and 5 minutes each for its reply.

Commissioner Baricevic instructed the parties that the proceedings would be transcribed by a court reporter as well as audio recorded. Commissioner Baricevic instructed the parties that following all oral argument and the close of questioning by the Commissioners, the Panel would then go into Executive Session for the purpose of deliberation.

In response to a question from the Complainant's attorney, Commission General Counsel Harriet Parker informed the parties that they would be advised of the Commission's final decision via a written order as soon as the order was available. The parties were advised the order would be served on them via U.S. Mail.

Mr. Hector Morales, counsel for the Complainant, presented a 10 minute opening statement.

Ms. Laura Elkayam, one of the Respondent's counsel, presented a 10 minute opening statement.

Mr. Morales presented a 5 five minute reply.

Ms. Elkayam presented a 5 minute reply.

The Commissioners thereafter questioned both counsels.

III. Executive Session

Pursuant to the Open Meetings Act, 5 ILCS 120/2(c)(4), following the close of oral argument and questioning by the Commissioners, the Commissioners voted to close a portion of the public meeting at 12:08 p.m., for the purpose of deliberation. Motion made by Commissioner Simoncini, seconded by Commissioner Enriquez. Motion carried 3-0. At 12:47 p.m., the open meeting resumed.

IV. Determination

By a vote of 2-1, the Panel ruled that the Complainant's exceptions were persuasive, and therefore declined to adopt the Recommended Order and Decision, which recommended summary decision in favor of the Respondent and the dismissal of the Complainant's complaint with prejudice. The Panel determined the Recommended Order and Decision was against the manifest weight of the evidence for the following reasons:

1. There was a nexus between the Complainant's April 6, 2004, anonymous complaint via telephone to the Respondent's Vice President concerning racial discrimination in work assignments, where in May 2004, the Complainant revealed herself to have been the anonymous caller, and the Complainant's subsequent suspension and termination from employment on July 22, 2004, and July 29, 2004, respectively.
2. The written statements of the Complainant's four co-workers, which were relied upon by the Respondent's decision-maker when the Respondent decided to terminate the Complainant, contained animus against the Complainant, and therefore were not persuasive.
3. The Respondent applied different standards in response to allegations from staff of patient abuse because when the Complainant complained to two of the Respondent's RNs that she had seen bruises on a patient, neither nurse took action to investigate the charge of injury and suspected abuse. However, following one witness' written statement dated July 22, 2004, detailing alleged patient abuse by the Complainant, the Complainant was suspended on July 24, 2004, pending the Respondent's investigation into that allegation of abuse against the Complainant. Two days later on July 26, 2004, three additional written statements by the three

witnesses were submitted to the Respondent, wherein the witnesses alleged that three to six months prior, they had witnessed patient abuse by the Complainant. The Respondent then discharged the Complainant on July 29, 2004.

The Panel ruled that the matter be remanded to the Administrative Law Section so that a public hearing may be scheduled before an Administrative Law Judge. Motion made by Commissioner Simoncini, seconded by Commissioner Baricevic, with Commissioner Enriquez dissenting from the majority vote in favor of remanding the matter. Motion carried 2-1.

V. Adjournment.

The meeting was adjourned at 12:50 p.m. Motion made by Commissioner Simoncini, seconded by Commissioner Enriquez. Motion carried 3-0.

Respectfully submitted,

Harriet Parker
General Counsel