

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CA1887
)	EEOC NO.: 21BA92343
SUBWAY)	ALS NO.: 09-0675
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Subway’s (“Petitioner”) Request for Review (“Request”) of the Notice of Default issued by the Department of Human Rights (“Respondent”)¹ of Charge No. 2009CA1887; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent’s Notice of Default **SUSTAINED** on the following ground:

FAILURE TO SHOW GOOD CAUSE FOR FAILING TO FILE A VERIFIED RESPONSE

In support of which determination the Commission states the following findings of fact and reasons:

1. On June 19, 2008, Penny Washington (“Complainant”) filed a charge of discrimination with the Respondent, which charge was perfected on November 21, 2008. The Complainant alleged the Petitioner failed to hire her because of her age, 55, in violation of Section 2-102(A) of the Illinois Human Rights Act (the “Act”). On November 5, 2009, the Respondent issued the Petitioner a Notice of Default for its failure to file a verified response and failure to show good cause for its failure to do so. On November 18, 2009, the Petitioner filed a timely Request.
2. The Petitioner is a restaurant. On May 26, 2008, the Complainant applied for a job with the Petitioner. The Petitioner did not hire the Complainant. Thereafter, the Complainant filed a charge of age discrimination with the Respondent.
3. The Respondent mailed a Notice of Charge to the Petitioner on December 29, 2008. The Notice of Charge advised the Petitioner that it was required to file a response to the Complainant’s charge within 60 days from the date the Petitioner received the charge.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge requesting review of the Department’s action shall be referred to as the “Petitioner.”

4. On July 15, 2009, the Respondent spoke to the Petitioner's owner, who stated that he had never received the Notice of Charge because the Notice of Charge had been sent to the wrong street address. The Petitioner's owner provided the Respondent with the correct street address.
5. Thereafter, on July 14th, the Respondent corrected the Petitioner's street address, and faxed the Petitioner the Notice of Charge, the Complainant's charge, a questionnaire, and a sample verified response. The Petitioner had until September 14, 2009, to file a verified response to the charge.
6. On August 14, 2009, during a telephone call with the Respondent, the Petitioner's owner informed the Respondent that the Petitioner had been advised to disregard the charge. At that time, the Respondent told the Petitioner's owner that if the Petitioner failed to file a verified response to the charge, a finding of default may be entered against the Petitioner.
7. On September 14, 2009, after the Petitioner still had not filed a verified answer to the charge, the Respondent contacted the Petitioner and left a voicemail message regarding the charge.
8. On September 17 and September 22, 2009, the Petitioner's owner told the Respondent that the Petitioner would submit the necessary documentation to the Respondent. On September 22nd, the Petitioner's owner stated it would submit the necessary documentation to the Respondent by September 23, 2009.
9. As of September 23, 2009, the Petitioner had not filed a verified response to the charge.
10. On September 24, 2009, the Respondent mailed the Petitioner a Notice to Show Cause for its failure to file a verified response to the charge, and gave the Petitioner 15 calendar days, or until October 14, 2009, to respond to the Notice to Show Cause. The Petitioner did not respond to the Notice to Show Cause.
11. On November 5, 2009, the Respondent issued the Petitioner a Notice of Default for its failure to file a verified response to the charge.
12. The Petitioner filed its Request on November 18, 2009. In the Request the Petitioner contends it mailed some documents to the Respondent approximately 45 days prior to filing the Request. The Petitioner also submits a signed, but unverified, statement wherein it denies any discriminatory conduct.
13. In its response, the Respondent requests that the Commission sustain the Notice of Default. The Respondent states there is no record the Petitioner ever sent any documentation relative

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to the charge. Further, the Respondent argues that the Petitioner's statement in support of its Request does not constitute a verified response to the charge. Finally, the Respondent states the Petitioner failed to show good cause for its failure to file a timely verified response to the charge.

Conclusion

The Commission concludes that the Notice of Default the Respondent issued against the Petitioner shall be sustained. The Petitioner has not demonstrated good cause for its failure to timely file a verified response to the charge.

The Petitioner had notice of its obligation to file a verified response to the charge and of the potential consequences if it failed to do so. The Petitioner also had ample time to file a verified response, and does not herein dispute that it received proper notice of the charge.

The Petitioner has submitted no proof that it ever filed a verified response with the Respondent, nor does the unverified statement it now attaches to its Request qualify as a verified response. Therefore, the Petitioner's Request is not persuasive.

Section 8-103(C) of the Act, 775 ILCS 5/8-103(C)², provides in pertinent part that:

When [...] a notice of default [...] is sustained on review, the Commission shall enter a default order and set a hearing on damages.

Having sustained the Notice of Default, the Commission is now required to schedule the matter for a hearing on damages. The Commission's administrative law judges do not consider arguments as to the merits of the default, or the Respondent's finding of liability as a result of that default.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Respondent's Notice of Default upon review is hereby **SUSTAINED**.
2. This matter is referred to the Administrative Law Section for a hearing on damages;
3. The recommendation of the Administrative Law Judge assigned to this matter shall be reviewed in the same manner as a Recommended Order and Decision; and
4. This Order is not final and may not be appealed at this time.

² The instant default is issued in accordance with Section 8-103(C) of the Act prior to the amendments to this section, which were made effective February 2, 2010. Section 8-103(C), as amended, applies to charges or complaints that were filed with the Department or the Commission, respectively, on or after February 2, 2010. The underlying charge in this case was filed with the Department of Human Rights prior to February 2, 2010. Therefore the amended provisions do not apply.

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Entered this 26th day of May 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini