This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 03/20/06

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
EDWIN GONZALEZ,	)	
	)	
Complainant,	)	
	)	
and	)	CHARGE NO: 1998CF2180
	)	EEOC NO: 21B981506
NATIONAL CENTER FOR LATINOS WITH DISABILITIES,	)	ALS NO: S-10989
	)	
	)	
Respondent.	)	

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 March 5, 2003, a default order was entered by Judge William Hall after Respondent failed to appear at a status hearing. Judge Hall thereafter left the Commission. On May 13, 2005, an Order was entered which acknowledged that a damages hearing had been conducted by Judge Hall on June 11, 2003, but directed that Complainant participate in a new damages hearing because the transcript of the June 11, 2003 hearing had been lost. The May 13, 2005 Order also required the Complainant to contact the Commission by June 3, 2005 so that arrangements could be made to conduct a new damages hearing. Complainant, though, did not comply with the May 13, 2005 Order and further failed to comply with the Orders of June 28, 2005 and September 12, 2005, which directed Complainant to give notice of any intent to proceed with a new damages hearing.

Findings of Fact

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

1. On October 1, 1999, the Department filed the instant Complaint alleging that Complainant had been verbally harassed and had his hours reduced on account of his handicap.

2. Respondent filed an Answer and generally appeared with Complainant at various status hearings before Judge Hall.

3. On August 20, 2002, both Respondent and Complainant appeared at a status hearing where the parties were directed to file a prehearing memorandum.

4. While the record does not indicate whether the prehearing memorandum was ever filed, the record reflects that an Order was entered on February 5, 2003, which granted the request by Respondent's counsel to withdraw from the case after advising the Commission that Respondent had suspended operations and was in the process of dissolving. Judge Hall also directed a representative of Respondent to appear at a status hearing on March 5, 2003.

5. On March 5, 2003, a status hearing was conducted in which only Complainant appeared. During the status hearing, Complainant moved for a default judgment, which was granted by Judge Hall. The matter was then set for a damages hearing on May 6, 2003. The damages hearing was continued again to June 11, 2003.

6. On June 11, 2003, Complainant appeared at the damages hearing. On the same day Judge Hall entered an order, directing Complainant to file an attorney's fee petition by July 11, 2003.

7. On July 10, 2003, Complainant's attorneys filed a fee petition seeking $42,557.28 in attorneys' fees and costs.

8. Judge Hall left the Commission prior to making any ruling on the damages proceeding or on Complainant's request for attorneys' fees and costs.

9. On January 16, 2004, Chief Administrative Law Judge Mary Kennedy entered an Order, which acknowledged that a public hearing had been conducted on June 11, 2003 and directed the parties to appear for a status hearing on January 29, 2004.

10. On January 29, 2004, Chief Administrative Law Judge Kennedy entered an Order, which transferred this case to me for a ruling on the "Petition for Attorney's Fees".

11. At some point prior to January 29, 2004, the transcript of the damages hearing became lost. Moreover repeated searches of the Commission's Chicago offices have not uncovered the transcript. The Commission's Office also made several unsuccessful attempts to locate the court reporter to obtain a copy of the transcript.

12. On May 13, 2005, an Order was entered which acknowledged the fact that the transcript of the damages hearing had become lost, as well as the attempts at obtaining a copy of the transcript. Accordingly, the Order directed that a new damages hearing be conducted in the Commission's Chicago office and further directed Complainant to file a notice to proceed by June 3, 2005, for the purpose of establishing a date for the new damages hearing. Complainant did not comply with this Order.

13. On June 28, 2005, an Order was entered which noted the continued need to hold a new damages hearing and directed Complainant to file on or before July 22, 2005 a notice of intent to participate in the new damages hearing. Complainant did not comply with this Order.

14. On September 12, 2005, an Order was entered which again directed Complainant to file by October 12, 2005 a notice of intent to proceed with the new damages hearing. In the Order Complainant was specifically warned that if he failed to participate in a new damages hearing he risked the entry of an order recommending that: (1) the default order be sustained; and (2) he receive no compensatory damages including his request for attorneys' fees.

15. Complainant has not filed any intent to proceed with a new damages hearing and has otherwise failed to comply with the Orders of May 13, 2005, June 28, 2005 and September 12, 2005.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent is an “employer” as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. As a consequence of the default order entered on March 5, 2003, all of the allegations in the instant Complaint are deemed admitted.

4. As a consequence of Complainant’s failure to provide notice of his intention to proceed with a new damages hearing, Respondent should still be held in default on the Complaint, but Complainant should not receive any damages.

Determination

The Commission should affirm the finding of default against Respondent, but award Complainant no damages due to his failure to file a notice of intent to appear at a new damages hearing once it was discovered that the transcript of the original damages hearing was missing.

Discussion

On March 5, 2003, Judge Hall entered an Order finding Respondent in default on the issue of liability, presumably due to Respondent’s failure to attend a status hearing. The matter was thereafter set for a damages hearing, which was conducted on June 11, 2003, and Complainant thereafter submitted an attorneys’ fee petition. However, at some point prior to the reassignment of the case to me, the transcript of the damages hearing became unfortunately lost, and all efforts to find said transcript have proved to be unsuccessful. Subsequently, three orders were entered which directed Complainant to file a notice of intent to proceed to a new damages hearing so that I might be able to make a finding as to the extent of Complainant’s damages. However, Complainant has failed to comply with any of these Orders and has ignored the warning in the Order of September 12, 2005, that his failure to file a notice of intent to proceed would generate an order recommending that the default order be sustained, and that any request for damages be denied.

While Complainant’s apparent reluctance to proceed further with this case is understandable given the representation by Respondent’s counsel in February of 2003 that

Respondent had suspended operations and was facing an impending dissolution, the fact remains that Complainant's inaction in failing to contact the Commission to indicate what he wished to do with respect to a new damages hearing demonstrates an abandonment of his claim. In such a circumstance, the Commission has allowed the default finding to stand, but has denied Complainant any request for damages. (See, for example, **Lash and World Travel Agency**, ___ Ill. HRC Rep. ___ (1986CF2960, June 10, 1991).) Additionally, since attorney fees are but one aspect of any damages claim before the Commission, it would appear that the holding in **Lash** would cover any claim that Complainant might make in an attorney fee petition.

True enough, Complainant did file a petition seeking attorneys' fees, and the January 29, 2004 Order directed that I make a ruling on said petition. However, it is unclear from the January 29, 2004 Order whether Complainant was waiving any consideration of his damage claims that were addressed at the original damages hearing in favor of a ruling only on his attorneys' fee petition. Indeed, if such were the case, Complainant had ample opportunity since May of 2005 to clarify for the Commission the nature and extent of his damages claim. Here, it is sufficient to say that Complainant's own inaction in that regard dictates a finding that he has abandoned his claim.

Recommendation

For all of the above reasons, it is recommended that the March 5, 2003 default order against Respondent stand, but that Complainant receive no damages arising out of the default order.

HUMAN RIGHTS COMMISSION

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

ENTERED THE 6TH DAY OF FEBRUARY, 2005