



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 01/03/06

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

**IN THE MATTER OF:**

**PAMELA HINCKLEY,  
Complainant,**

**and**

**PROVENZALE Dental,  
Respondent.**

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) **CHARGE NO: 2004CN1230**  
) **EEOC NO: N/A**  
) **ALS NO: 04-452**  
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**RECOMMENDED ORDER AND DECISION**

This matter is before me on Respondent’s motion to dismiss this matter for Complainant’s failure to answer Respondent’s discovery requests.

**FINDINGS OF FACT**

1. Complainant filed this Charge of Discrimination, designated number 2004CN1230, with the Illinois Department of Human Rights (Department) on November 12, 2003. The Department filed a Complaint, on behalf of the Complainant, with the Illinois Human Rights Commission (Commission) on November 10, 2004, alleging that Respondent, Provenzale Dental, discriminated against her on the basis of sexual harassment in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et.seq.*
2. Also on November 12, 2003, Complainant had filed a previous Charge of Discrimination, designated number 2004CN1229, with the Illinois Department of Human Rights (Department). The Department filed a Complaint, on behalf of the Complainant, with the Illinois Human Rights Commission (Commission) on November 10, 2004, alleging that Respondent, Donald Provenzale, Sr.,

discriminated against her on the basis of sexual harassment in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et.seq.*

3. Respondent filed a verified answer to the Complaint on December 15, 2004. In its affirmative defenses, Respondent alleges that Complainant falsely complained of alleged sexual harassment by Respondent in retaliation for Respondent having reported bona fide allegations of criminal wrongdoing by Complainant against Respondent.
4. Around December 4, 2004, Complainant filed a motion requesting that pre-hearing matters be held by telephone since she currently resides in Franklin, Tennessee. On December 29, 2004, Respondent appeared; Complainant did not appear. I granted Complainant's motion to hold pre-hearing matters by telephone over Respondent's objections. An Order was entered ordering the Parties to serve discovery no later than January 28, 2005. The matter was set for a discovery status on March 15, 2005.
5. On January 11, 2005, Complainant filed a pleading entitled *Pleadings and Rebuttal to Respondent's Request of Review*. The pleading appears to be a narrative of Complainant's position of the case; other than that, its purpose is not clear.
6. On January 28, 2005, Respondent filed a proof of service of *Respondent's Written Requests of Complainant* and Respondent's motion for leave to depose Complainant.
7. On February 8, 2005, Complainant filed a pleading entitled *1) Dates of Sexual Harassment that were Given [sic] to Dept. of Human Rights at Hearing (2) Rebuttal to Mr. Lyons Remarks*.
8. On February 14, 2005, Complainant filed interrogatory responses and an accompanying certificate of service.

9. On March 3, 2005, Respondent's attorney, Christopher P. Lyons, filed a motion to withdraw. On March 8, 2005, Donald Provenzale Sr., personally, filed a motion to dismiss or to compel on behalf of Respondent alleging that Complainant had failed to adequately respond to its discovery.
10. On March 15, 2005, both Parties were available. Before me were Respondent's motion for leave to depose Complainant; Respondent's motion to withdraw; and Respondent's motion to dismiss or compel. I reviewed Complainant's interrogatory responses. Over Respondent's objections, an Order was entered allowing Complainant additional time until April 15, 2005 to file her answers to Respondent's interrogatories, requests for production and requests for admissions. The Order directed Complainant that all answers must be numbered, specific and responsive to each question. All pending motions were continued until May 4, 2005.
11. Complainant filed answers to discovery on March 30, 2005, April 11, 2005 and April 22, 2005.
12. Both Parties were available for the May 4, 2005 hearing. Mr. Lyons withdrew his motion to withdraw. Respondent represented that Complainant's responses were again inadequate; Complainant disagreed. I reviewed Complainant's responses that had previously been filed in this record and entered an order ordering Respondent to file a motion to compel no later than May 13, 2005. A hearing on the motion was set for May 24, 2005.
13. On May 12, 2005, Respondent filed *Respondent's Supplemental Motion to Compel, for Entry of Admitted Facts, and for Sanctions*. The motion alleged that Complainant's discovery responses did not comply with my Order of March 15, 2005, in that they were vague, unresponsive and/or incomplete.

14. On May 24, 2005, both Parties were available. A two-hour telephone hearing was held on Respondent's motion to compel and an Order was entered indicating my rulings. The Order states that "All of Respondent's discovery requests and Complainant's responses were reviewed, discussed and explained to Complainant so that I am satisfied that Complainant understands how to fully and completely answer all discovery." The Order ordered Complainant to serve additional discovery responses no later than June 30, 2005. A status on discovery was set for July 21, 2005.
15. On July 21, 2005, both Parties were available. Complainant had filed additional discovery answers on June 20, 2005. Respondent represented that many of the discovery responses remained incomplete or unresponsive. Respondent's attorney, Mr. Lyons, had a court reporter present at his office to record the telephonic proceedings. I reviewed Respondent's interrogatories and production requests and Complainant's handwritten answers and other documents submitted in response to discovery and determined that Complainant's answers were woefully incomplete, inadequate and non-responsive. I noted specifically that Complainant failed to responsively answer Respondent's Interrogatory # 21— which goes to the heart of Respondent's defense— by failing to specifically list and describe the nature and amounts of all compensation Complainant alleges she was authorized to receive from Respondent as reimbursement to her for insurance premiums or medical bills.
16. In response to interrogatory #21, Complainant submits a copy of a non-file-stamped pleading in *People of the State of Illinois v. Pamela Hinckley*, filed in the 18<sup>th</sup> Judicial Circuit, Du Page County, Illinois, Case # 03 CF 3091, entitled "Supplemental Disclosure to Defendant"; several pages of a Citi-Advantage World MasterCard billing statement that appears to be billed to Donald

Provenzale Jr. (although Donald Provenzale Jr. is not a named Respondent in this matter, he appears to be a partner in the Provenzale Dental practice, which is a named Respondent in this case); copies of what appears to be check register statements of Donald J. Provenzale D.D.S. and Donald J. Provenzale Jr. D.D.S.; a transcript of a State of Illinois Department of Employment Security (IDES) Appeals Division - Benefit Appeals Subdivision proceeding, Docket # 4005157A, 02/25/2004, in which Complainant Donald Provenzale Sr., Donald Provenzale Jr., Detective of Downers Grove Police David Bormann, and Christopher Lyons are named as participants; a copy of the Department Charge in this matter and attachments related to the IDES proceeding. There are no explanations included with the documents that could be used to interpret their meaning.

17. Complainant represented during the July 21, 2005 hearing that information responsive to Interrogatory #21 was in the possession of her attorney in a separate matter and that she was refusing to list the amounts and nature of each benefit she maintains she received from Respondent. On this representation, Respondent made an oral motion to dismiss. Due to Complainant's express indication that she would not submit specific answers to this legitimate discovery question, I issued an Order ordering Respondent to file a written motion to dismiss and set a briefing schedule on the motion. Complainant was ordered to file a response to the motion no later than August 19, 2005.
18. Respondent filed a motion to dismiss with a supporting memorandum on August 5, 2005; Complainant filed a one-paragraph response to the motion on August 19, 2005; Respondent filed a reply memorandum on August 26, 2005. Complainant's response to the motion maintains that she has adequately answered all discovery.

### **CONCLUSION OF LAW**

The failure of Complainant to submit complete, responsive answers to Respondent's discovery requests, although given several opportunities in which to do so, has resulted in unreasonable delay, justifying dismissal of this Complaint with prejudice.

### **DETERMINATION**

This case is dismissed due to Complainant's failure to submit complete, responsive answers to discovery, although given time in which to do so, resulting in unreasonable delay of this matter.

### **DISCUSSION**

775 ILCS 5/8A-102(I)(6) of the Act authorizes a recommended order of dismissal, with prejudice, or of default as a sanction for a party's failure to prosecute his case, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous Order of the Administrative Law Judge. Similarly, Section 5300.750(e) of the Procedural Rules of the Illinois Human Rights Commission authorizes a recommendation for dismissal with prejudice where a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance, or unreasonably refuses to comply with any Order entered, or otherwise engages in conduct which unreasonably delays or protracts the proceedings.

The record indicates that Complainant failed to submit responsive answers to Respondent's discovery requests, although given several extensions of time in which to do so. Respondent served its interrogatories and request for production on Complainant on January 28, 2005, which answers were due 28 days later, on February 25, 2005. When those answers were deemed insufficient, Complainant was allowed several extensions until April 15, 2005, May 24, 2005 and July 21, 2005 to remedy the insufficiencies.

Although Complainant has submitted several documents which purport to answer discovery, a review of these documents indicate that many are woefully inadequate, incomplete and unresponsive to Respondent's interrogatories; further, Complainant has specifically refused to answer interrogatory #21 in that she has refused to list and describe the nature and amounts of all compensation — including the dates and times she actually received the compensation and the reasons or purpose of each item of compensation — that she alleges she was authorized to receive from Respondent as reimbursement to her for insurance premiums or medical costs. Although Complainant submits several documents purporting to be in response to this interrogatory, she fails to list the requested information and to otherwise submit answers responsive to this and other interrogatories.

**RECOMMENDATION**

Accordingly, I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

**HUMAN RIGHTS COMMISSION**

**BY: \_\_\_\_\_**  
**SABRINA M. PATCH**  
**Administrative Law Judge**  
**Administrative Law Section**

**ENTERED: October 3, 2005**