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:	**)**
	)
MARK A. HODGES,	**)**
Complainant,	**)**
	)
and	**)Charge No: 2005CF0712**
	)EEOC No: N/A
SPEED SEJA #802	**)ALS No: 05-428**
Respondent.	**)**
	)
	)

RECOMMENDED ORDER AND DECISION

This matter is before me on the Respondent's Motion to Dismiss the Complaint filed October 24, 2005. The record indicates that the motion has been served upon all Parties and the Illinois Department of Human Rights (Department). This matter is ready for a decision.

FINDINGS OF FACT

The following findings were made from the record:

1. On September 14, 2004, Complainant filed a Charge of Discrimination with the Department pursuant to the Illinois Human Rights Act (Act) 775 ILCS 5/1-101 et seq. The Charge was designated as Charge Number 2005CF0712.
2. On September 15, 2005, Complainant, on her own behalf, filed a Complaint with the Illinois Human Rights Commission (Commission) based on the underlying Charge.
3. A public hearing was scheduled for November 23, 2005.
4. On October 24, 2005, Respondent filed a *Motion to Dismiss* the Complaint.
5. On November 23, 2005, Respondent appeared; Complainant did not appear. An Order was entered allowing Complainant until December 9, 2005 to file a response to the motion and granting Respondent until December 16, 2005 to file a reply.
6. Complainant has not filed a response to the motion.

CONCLUSION OF LAW

The Commission lacks jurisdiction over this Complaint because it was not filed in accordance with sections 5/7A-102(G)(1) and 5/7A-102(G)(2) of the Act.

DETERMINATION

Respondent's motion to dismiss must be granted as the Commission lacks jurisdiction over this Complaint.

DISCUSSION

In its motion, Respondent represents that on May 24, 2005 both Parties had agreed to a 180-day extension of the Department's investigative period, which extension had not run its course at the time Complainant filed this Complaint. Respondent submits its Exhibit I to the motion, which is a Department extension form, dated May 24, 2005 and signed by both parties agreeing to extend the 365-day investigative period by 180 days. Respondent further attaches its Exhibit 2, which is a Department form dated July 31, 2005, referencing the relevant Charge and advising Complainant that he has a right to file a Complaint with the Commission based on this Charge during the time period from 03/14/06/ through 04/12/06.

Complainant has filed no objection or other response to this motion, although given time in which to do so, and there is nothing in the record disputing Respondent's representations in the motion.

Section 5/7A-102(G)(1), in relevant part, states:

> When a charge of a civil rights violation has been properly filed, the department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed except in cases in which the order was procured by fraud or duress…

Section 5/7A102 (G)(2), in relevant part, states:
Between 365 and 395 days after the charge is filed, or such longer period agreed to in writing by all parties, the aggrieved party may file a complaint with the

> Commission, if the Director has not sooner issued a report and determination pursuant to paragraphs (D)(1) and (D)(2) of this Section…The aggrieved party shall notify the Department that a complaint has been filed and shall serve a copy of the complaint on the Department on the same date that the complaint is filed with the Commission.

Because the Complaint was not filed within statutory parameters, there is no basis for jurisdiction of this Complaint before the Commission. Accordingly, the February 14, 2006 status date is stricken.

RECOMMENDATION

I recommend that this Complaint be dismissed without prejudice and that the Charge not be dismissed so the Illinois Department of Human Rights can continue its ongoing investigation.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative law Section

ENTERED: January 31, 2006