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:	**)**
	)
SANTIAGO MAYORGA,	**)**
Complainant,	**) CHARGE NO: 2005CA0469**
	) EEOC NO: 21BA42961
and	**) ALS NO: 05-104**
	)
	)
MIDWAY BUILDING SERVICES,	**)**
Respondent.	**)**

RECOMMENDED ORDER AND DECISION

This matter is before me following an order of default issued by a Commission panel on May 25, 2005, pursuant to a *Petition for Hearing to Determine Damages* filed by the Illinois Department of Human Rights (Department) on March 29, 2005. The matter was referred to the Administrative Law Section for a hearing on damages.

FINDINGS OF FACT

The following facts were derived from the record:

1. On May 25, 2005, a Commission panel entered an order of default pursuant to a *Petition for Hearing to Determine Damages* filed by the Illinois Department of Human Rights (Department) on March 29, 2005. The matter was referred to the Administrative Law Section for a hearing on damages.
2. On May 31, 2005, an Order was entered setting this matter for a damages hearing on July 12, 2005.
3. On July 12, 2005, the Complainant's widow, Carmen Mayorga, and two children of Complainant, Rose Roselia and Santiago Mayorga, Jr., appeared. An Order was entered spreading the death of Complainant of record and continuing the matter until October 27, 2005 to allow Complainant's representative to appear and advise this tribunal.

4. On October 27, 2005, Carmen Mayorga and Roselia Mayorga appeared. Respondent did not appear. Roselia Mayorga advised that she was seeking counsel to proceed with the matter on the deceased Complainant's behalf. An Order was entered setting a status for December 13, 2005.

5. On December 13, 2005, neither Party appeared. An Order was entered ordering a proper Party to file a motion to substitute as to the deceased Complainant no later than January 4, 2006. A status was set for January 10, 2006. The Order warned that failure of a proper Party to comply with the Order or to appear at the next status date would result in dismissal of this matter.

6. On January 10, 2006, neither Party appeared; a review of the record indicates that no motion to substitute as to the deceased Complainant has been filed.

CONCLUSIONS OF LAW

1. As a consequence of the default order entered on May 25, 2005, all of the allegations against Respondent of age and sex/gender discrimination contained in Complainant's Charge of Discrimination are deemed admitted.
2. Pursuant to Section 5300.660 (b) of the Commission Rules, when a Party to a Complaint dies, the proper Party or Parties may be substituted upon motion. If a motion to substitute is not filed within 90 days after the death is suggested of record, the Complaint may be dismissed as to the deceased Party.
3. As a consequence of Complainant's failure to advance this matter to a hearing on damages by failing to obey orders to file a motion to substitute the legal representative of deceased Complainant after the Complainant's death was suggested of record, Complainant should receive no damages.

DETERMINATION

Once a finding of liability is made against a respondent, the next step is to determine the amount of damages due to Complainant. Complainant has thwarted this determination, making it impossible for this tribunal to determine what relief, if any, Complainant is entitled to. Under these circumstances, it is appropriate to allow the default finding against Respondent to stand, but to deny the Complainant any award for damages. See, **Rebecca Dobbs and Wal-Mart Stores, Inc**., __ Ill HRC Rep.__ (1999CP2486, September 25, 2002); **Magraff and Alexopolis**, __ Ill HRC Rep.__ (1990CN0209, November 8,1993); and **Jackson and Jones**, __Ill HRC Rep. __ (1992CN0362, May 18, 1994).

DISCUSSION

On May 25, 2005, a Commission panel entered an order of default pursuant to a *Petition for Hearing to Determine Damages* filed by the Department on March 29, 2005. The matter was referred to the Administrative Law Section for a hearing on damages. On May 31, 2005, an Order was entered setting this matter for a damages hearing on July 12, 2005. On that day, three people appeared representing themselves as the Complainant's widow, Carmen Mayorga, and two children of Complainant, Rose Roselia and Santiago Mayorga, Jr., and advised that Complainant, Santiago Mayorga, was deceased on April 13, 2005.

An Order was entered spreading the death of Complainant of record and continuing the matter until October 27, 2005 to allow Complainant's representative to appear and advise this tribunal. On October 27, 2005, Carmen Mayorga and Roselia Mayorga appeared. Respondent did not appear. Roselia advised that she was seeking counsel to proceed with the matter on the deceased Complainant's behalf. An Order was entered setting a status for December 13, 2005. On December 13, 2005, neither Party appeared. An Order was entered ordering a proper party to file a motion to

substitute as to the deceased Complainant no later than January 4, 2006 and setting a status for January 10, 2006. The Order warned that failure of a proper party to comply with the Order or to appear at the next status date would result in dismissal of this matter.

On January 10, 2006, neither Party appeared; a review of the record indicates that no motion to substitute as to the deceased Complainant has been filed. The failure of a legal representative to file a motion to substitute, although given an opportunity in which to do so, has thwarted these proceedings. Further, the failure of a proper party to appear for the December 13, 2005 and January 10, 2006 status hearings has unreasonably delayed these proceedings. In similar situations, the Commission has allowed the default finding to stand, but denied Complainant any damages. In **Magraff**, *supra*, the Commission held that it is in the public interest to enter an order that requires Respondent to cease and desist from further unlawful discrimination, notwithstanding the fact that Complainant failed to advance the matter to a damages hearing. I recommend such a result in this case.

RECOMMENDATION

Accordingly, I recommend that the default order against Respondent stand and that Respondent be ordered to cease and desist from further discrimination. I further recommend that Complainant receive no damages arising out of the default Order.

HUMAN RIGHTS COMMISSION

BY: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: January 12, 2006