



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

**IN THE MATTER OF** )  
)  
**Diane M. Burns,** )  
**Complainant** )  
)  
**and** )  
)  
**Wal-Mart Stores, Inc.,** )  
**Respondents** )

**CHARGE NO.: 1999 CF 2490**  
**EEOC NO.: 21B991891**  
**ALS NO.: 11194**

**RECOMMENDED ORDER AND DECISION**

This matter is before me on Respondent’s Motion to Dismiss for Failure to Comply with Discovery Requests (“Motion”) which was filed at the Commission on September 18, 2000. In an order dated September 20, 2000, Complainant was given until October 20, 2000 to respond to the Motion. However, it was later discovered that no proof of service of the September 20, 2000 order was filed with the Commission, although one was later provided, and in a subsequent order dated November 3, 2000, Complainant was given until December 15, 2000 to respond. However, no response from Complainant has been received to date. Because of Complainant’s persistent lack of participation in this matter, it is now recommended that the Motion be granted and this complaint be dismissed for lack of prosecution.

The Department of Human Rights filed the complaint in this case on February 22, 2000. Complainant appeared *pro se* at the initial status hearing of April 25, 2000 and Respondent appeared through counsel. The verified answer of Respondent, including an affirmative defense on the issue of mitigation of damages, was timely filed on May 1, 2000. Both parties appeared at the next status date on May 17, 2000, at which time a scheduling order was entered for the case.

This was the last date on which it can be determined that Complainant participated in any manner with regard to this case.

The record indicates that Respondent timely served its initial request for discovery, while there is no indication that any such request was filed by Complainant. An affidavit appended to the Motion states that Respondent's counsel made several attempts to contact Complainant by telephone and Complainant never returned those calls even though messages were left with apparently competent people at her home. The Motion was then filed as noted above. To date, Complainant has not filed a response to the affirmative defense asserted by Respondent in its verified answer. Further, she did not appear at the Commission on September 20, 2000, or on November 16, 2000 when Respondent noticed a motion to reconsider my order giving Complainant additional time to respond to the Motion due to the failure to file the proof of service of the September 20, 2000 order. She did not submit a written response to the Motion while, in essence, being given two opportunities to do so. There is nothing in the record to indicate that she has inquired at the Commission's offices about her case in any fashion since her last personal appearance here on May 17, 2000.

I find that the case should be dismissed because of the failure of Complainant to take action in support of prosecuting it in accord with the authority granted to the Commission in the Illinois Human Rights Act, 775 ILCS 5/8A-102(I)(6).

#### **Findings of Fact**

1. Respondent, represented by counsel, was properly served with notice of this matter and timely filed its verified answer.
2. Complainant has not entered an appearance either *pro se* or through counsel,

although she did personally appear at the initial status hearing on April 25, 2000 and the next status date of May 17, 2000.

3. Complainant did not file a response to Respondent's affirmative defense and she failed to appear at the motion calls on September 20, 2000 and November 16, 2000 even though she was given due notice of the fact that this case was on the docket. She has not filed any response to the Motion and there is no evidence in the record that Complainant has made any inquiry about her case since May 17, 2000.

#### **Conclusions of Law**

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B), respectively.

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. The Commission is authorized to dismiss complaints with prejudice due to "the failure of a party to prosecute his or her case . . . ." Illinois Human Rights Act, 775 ILCS 5/8A-102(I)(6).

4. Because Complainant has failed to take any action with regard to this case since May 17, 2000, there has been a failure "to prosecute his or her case" on the part of Complainant, thereby requiring dismissal of the complaint with prejudice.

#### **Discussion**

It is a fundamental principle governing practice before this Commission that it is the singular responsibility of complainants to diligently pursue disposition of the cases once they are docketed with the Commission. In this case, Complainant has not participated in the prosecution of the case in any fashion since May 17, 2000. Because of the passage of time with no effective action on the part of Complainant, it is recommended that this case now be dismissed because of the failure of Complainant to prosecute her case.

**Recommendation**

It is recommended that Respondent's Motion be granted and this case be dismissed with prejudice pursuant to the authority granted to the Commission in the Illinois Human Rights Act at 775 ILCS 5/8A-102(I)(6).

HUMAN RIGHTS COMMISSION

ENTERED:

January 5, 2001

BY: \_\_\_\_\_

DAVID J. BRENT  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION