This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 06/26/06

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
RUDY S. CASTILLO,	)	
	)	**Charge No. 2005CF2196**
Complainant,	)	**EEOC No. 21BA51078**
	)	**ALS No. 05-416**
and	)	
	)	
EXPRESS PERSONNEL SERVICES,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes before me from the Commission's Default Order entered on December 9, 2005. Pursuant to such Default Order, an order was entered on December 22, 2005 requiring the parties to appear on March 9, 2006 at 11:00 A.M for a status conference on a damages hearing. By Commission order dated February 24, 2006, the status hearing was rescheduled to May 4, 2006. The Default Order and Commission orders sent to the Complainant have been returned to the Commission. In accordance with the Commission's last order dated February 24, 2006, a final status hearing took place on May 4, 2006. Respondent requested to, and did, appear via telephone. As with the prior orders, the Commission's February 24, 2006 order mailed to Complainant was returned. Regarding the status hearing on May 4, 2006, Complainant failed to contact the Commission with a telephone number and failed to appear in person. Accordingly, this matter is now ready for a decision.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

FINDINGS OF FACT

The following facts were derived from the record file in this matter.

1. On September 7, 2005, the Department of Human Rights filed a Petition for Hearing to Determine Damages.
2. On December 9, 2005, the Commission entered a Default Order granting the Department's Petition and referred the case to the Commission's Administrative Law Section for a hearing on damages.
3. The Default Order mailed to Complainant at his last known address was returned to the Commission.
4. On December 22, 2005, the Commission entered an order that set this case for a status on March 9, 2006 at 11:00 A.M. at the Illinois Human Rights Commission's Chicago office.
5. The December 22, 2005 order mailed to Complainant at his last known address was returned to the Commission.
6. On February 24, 2006, the Commission entered an order rescheduling this case for a status hearing on May 4, 2006 at 11:00 A.M. at the Illinois Human Rights Commission's Chicago office.
7. The February 24, 2006 order mailed to Complainant's at his last known address was returned to the Commission.
8. On May 4, 2006, a final status hearing took place.
9. Complainant failed to provide the Commission with any contact information for the status hearing. Respondent, having filed an appearance by its Oklahoma attorney, appeared at the status hearing via telephone.
10. Complainant failed to file a written appearance, failed to provide written notice of a change of address with the Commission, and otherwise failed to take any action to prosecute his claim.

CONCLUSIONS OF LAW

1. Because the Complainant has failed to properly notify the Commission of a change of address so that orders and other papers may be served on him, he is deemed to have failed to prosecute his case.
2. Although it has not been served on the Complainant because no proper address is known, the Default Order entered by the Commission is effective.
3. Complainant, having failed to prosecute his claim, shall not be entitled to any monetary damages.

DISCUSSION

A fundamental principle governing practice before the Commission is that complainants must diligently pursue their cases once they are docketed with the Commission. Several attempts have been made to serve orders on the Complainant using his last known address in the Commission's files. Complainant has failed to provide the Commission with written notice of change of address. Mail sent to the Complainant has been returned to the Commission. Accordingly, Complainant has failed to prosecute his claim.

Only Respondent participated (through its out-of-state attorneys from Oklahoma) in the May 4, 2006 final status hearing. I opted not to set a pubic hearing date. I opined that requiring Respondent to incur significant expenses to attend a public hearing in Chicago would be substantially unfair when Complainant had made absolutely no effort to prosecute his claim.

In **Magraff and Alexopolis***, ___ Ill. HRC. ___ (1990CN0209, Nov. 8, 1993*), the Commission declared that in cases of default where the complainant has failed to participate in the damages hearing, the order of default will remain on the record, but no award is made to the complainant for his or her damages. This enables the

Commission, in furtherance of the public interest, to order a respondent to cease and desist from any further discrimination.

RECOMMENDATION

Based on the principles set forth in **Magraff**, I recommend that the Commission: (1) affirm the finding of default against Respondent as reflected in the Commission's Default Order dated December 9, 2005; (2) make no monetary award to Complainant because he has failed to prosecute his claim; and (3) order that Respondent cease and desist from discriminating against anyone on the basis of physical handicap.

HUMAN RIGHTS COMMISSION

By: _____

REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: May 9, 2006