This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 8/15/05

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | |
| **TANYA DAUGHTRY**, | ) | |
| | ) | |
| Complainant, | ) | |
| | ) | |
| and | ) | CHARGE NO: 2001SF0597 |
| | ) | EEOC NO: 21BA11957 |
| **ARCHER DANIELS MIDLAND COMPANY**, | ) | ALS NO: S-11842 |
| | ) | |
| Respondent. | ) | |

# RECOMMENDED ORDER AND DECISION

This matter comes to me on the motion by Respondent, Archer Daniels Midland Company, to dismiss this case for want of prosecution. Complainant has not filed a response to this motion, although the time for doing so has expired.

## Contentions of the Parties

Respondent contends that dismissal of this case is warranted because Complainant has repeatedly failed to respond to discovery requests and has failed to comply with certain Commission orders directing her to do so.

## Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On June 7, 2001, Complainant filed a Charge of Discrimination against Respondent, Archer Daniels Midland Company, alleging sex discrimination in the terms and conditions of her employment.

2. On June 26, 2002, the Department of Human Rights filed a Complaint against Respondent on behalf of Complainant, alleging that Respondent altered the conditions of her employment by requiring that she take a cut in pay on the basis of her gender.

3. On October 1, 2002, Respondent served Complainant's attorney with a set of discovery requests that included written interrogatories, requests to produce documents and requests for admissions by Complainant.

4. On October 22, 2002, Complainant's attorney filed a motion to withdraw as counsel on behalf of Complainant. Complainant's counsel also requested that discovery be stayed for a period of sixty days.

5. On November 8, 2002, an Order was entered which granted the motion to withdraw and directed Complainant to respond to all outstanding discovery requests by January 21, 2003. The Order expressly advised Complainant that if she had not retained new counsel by the due date for serving responses to outstanding discovery requests, she would be responsible for serving responses to Respondent at that time.

6. Complainant failed to serve responses to outstanding discovery requests by the January 21, 2003 deadline.

7. On February 5, 2003, the Commission conducted a status conference, during which Complainant asserted that she did not believe that she was required to serve responses to outstanding discovery requests, but admitted that she had received the Commission's November 8, 2002 Order stating to the contrary.

8. On February 5, 2003, the Commission again ordered Complainant to answer all outstanding discovery requests by February 21, 2003. In the Order, the Complainant was cautioned that if Complainant failed to meet the February 21, 2003 deadline, the Commission would entertain any motion to dismiss this case based on her failure to prosecute her action. The Order further required the parties to participate in a status conference on March 3, 2003.

9. Complainant failed to serve responses to outstanding discovery requests as required by the February 5, 2003 Order. Complainant also failed to make herself

available for the telephone status conference of March 3, 2002 or to advise the Commission as to any change in residence.

## Conclusions of Law

1. Complainant is an “employee” as that term is defined under the Human Rights Act.

2. Respondent is an “employer” as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. A complaint may be dismissed when a party fails to substantially comply with any order entered under section 5300.720 of the Commission’s Procedural Rules (56 Ill. Admin. Code, Ch. XI, sec. 5300.720) concerning compliance with discovery, or otherwise engages in conduct that unreasonably delays or protracts proceedings.

4. An administrative law judge may issue a recommended order dismissing a case with prejudice as a sanction for the failure of a party to prosecute his or her case, file a required pleading, or otherwise comply with terms of the Human Rights Act, the rules of the Commission or a previous order. 775 ILCS 5/8A-102(I)(6).

5. Complainant failed to substantially comply with the Respondent’s discovery requests as required by the procedural rules and by Orders entered in this case.

6. Complainant has unreasonably delayed and protracted the proceedings in this matter.

## Determination

The Complaint in this matter should be dismissed with prejudice due to Complainant’s failure to either prosecute this action in a diligent manner or comply with Orders entered in this case concerning discovery and participation in status conferences.

## Discussion

Section 5300.750(e) of the Commission's Procedural Rules (56 Ill. Admin. Code, Ch. XI, §5300.750(e)) permits a recommendation of dismissal whenever a party engages in conduct that unreasonably delays the proceedings. In this regard, the Commission has previously found that a party's failure to provide discovery responses or abide by Commission orders directing responses to outstanding discovery requests can constitute unreasonable delay for purposes of issuing sanctions under section 5300.750(e). (See, for example, **Crawford and Aramark Uniform Services, Inc.**, ___ Ill. HRC Rep. ___ (1997SF0122, September 30, 1998.) Indeed, Illinois courts, in noting the importance of discovery obligations in civil litigation, have become less tolerant of violations of discovery orders, even at the expense of deciding a case on the basis of the sanction imposed, rather than on the merits of the litigation. See, **Shapira v. Lutheran General Hospital**, 199 Ill.App.3d 479, 557 N.E.2d 351, 356, 145 Ill.Dec. 581, 586 (1st Dist., 2nd Div., 1990).

In this case, Respondent argues that Complainant has engaged in dilatory conduct since she failed to serve it with discovery responses necessary to prepare its defense and has failed to appear at a status conference. It similarly maintains that Complainant's conduct can only be construed as contumacious behavior given the existence of two orders (i.e., November 8, 2002 and February 5, 2003) directing her to provide discovery responses, as well as the February 5, 2003 Order directing Complainant to appear at a status conference. Indeed, Respondent notes that the February 5, 2003 Order specifically warned Complainant that her continued failure to provide discovery responses placed her at risk for entry of an order dismissing the case with prejudice.

In reviewing the pleadings, I agree with Respondent that the time has come to dismiss this case for want of prosecution. Here, the record shows that Complainant has

delayed the prosecution of this action by her continued failure to provide Respondent with responses to legitimate discovery requests or appear at a scheduled status hearing. Moreover, Complainant's failure to file a response to the pending motion to dismiss can only be viewed as an indication that either she no longer cares about pursuing her claim or that she agrees with Respondent's contention that this matter should be dismissed with prejudice. In any event, Complainant's conduct renders it difficult for the Commission to take any action with regard to this case except to dismiss it. See, **Forrest and Denny's**, ___ Ill. HRC Rep. ___ (1995SF0700, October 4, 1999), where the Commission similarly upheld a recommendation to dismiss a case based on complainant's failure to respond either to outstanding discovery requests or to a pending motion to dismiss the case for want of prosecution.

## Recommendation

For all of the above reasons, it is recommended that the Complaint and the underlying Charge of Discrimination of Tanya Daughtry be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY:_____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 25th DAY OF April, 2003