This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 11/04/05

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	**)**
	)
JOSE DIMAS,	**)**
Complainant,	**) CHARGE NO: 2004CF1877**
	) EEOC NO: 21BA40845
and	**) ALS NO: 05-003**
	)
	)
CAMPAGNA-TURANO BAKERY, INC.,	**)**
Respondent.	**)**

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion to dismiss the Complainant due to Complainant's failure to answer Respondent's discovery requests. The record indicates the motion has been served upon all Parties and the Illinois Department of Human Rights.

FINDINGS OF FACT

1. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on January 6, 2004.
2. The Department filed a Complaint, on behalf of the Complainant, with the Illinois Human Rights Commission (Commission) on January 6, 2005, alleging that Respondent discriminated against him on the bases of national origin and retaliation in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et.seq*.
3. On March 8, 2005, Respondent appeared through counsel; Complainant appeared *pro se*. An order was entered allowing Respondent until March 15, 2005 to file a verified answer to the Complaint. A discovery schedule was entered ordering the Parties to serve initial discovery no later than June 3, 2005 and to appear for a discovery status on July 12, 2005.
4. Respondent filed a verified answer to the Complaint on March 11, 2005.

5. On July 12, 2005, Respondent appeared through counsel; Complainant did not appear. Respondent represented that it had served discovery on Complainant on May 17, 2005, but had received no responses to its discovery. Respondent made an oral motion to dismiss the Complaint. An order was entered ordering Respondent to file a written motion to dismiss by July 22, 2005. Complainant was ordered to file a response to the motion by August 5, 2005 and Respondent was ordered to file a reply by August 19, 2005. A status on a decision on the motion was set for September 13, 2005.

6. Respondent filed a motion to dismiss, along with an affidavit and exhibits, on July 20, 2005. The record indicates that Complainant has not filed a response to the motion. Respondent filed its reply on August 10, 2005.

7. Respondent filed an affidavit with its motion to dismiss averring that it served discovery requests on Complainant on May 17, 2005 and sent a follow-up letter on June 21, 2005 requesting Complainant to immediately produce his overdue responses.

8. On September 13, 2005, Respondent appeared for the scheduled status hearing; Complainant did not appear. Respondent represented that Complainant had not served answers to its discovery requests nor served a response to its motion to dismiss.

9. A review of the file indicates that Complainant has not filed a response to Respondent's motion to dismiss or a proof of service of discovery responses.

10. I granted Respondent's motion to dismiss.

CONCLUSION OF LAW

The failure of Complainant to submit responses to Respondent's discovery requests or to file a response to Respondent's motion to dismiss has resulted in unreasonable delay, justifying dismissal of this Complaint with prejudice.

DETERMINATION

This case is dismissed due to Complainant's failure to submit answers to discovery or file a response to Respondent's motion to dismiss.

DISCUSSION

775 ILCS 5/8A-102(I)(6) of the Act authorizes a recommended order of dismissal, with prejudice, or of default as a sanction for a party's failure to prosecute his case, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous Order of the Administrative Law Judge. Similarly, Section 5300.750(e) of the Procedural Rules of the Illinois Human Rights Commission authorizes a recommendation for dismissal with prejudice where a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance, or unreasonably refuses to comply with any Order entered, or otherwise engages in conduct which unreasonably delays or protracts the proceedings.

The record indicates that Complainant failed to submit answers to Respondent's discovery requests. Respondent filed an affidavit with its motion to dismiss averring that it served discovery requests on Complainant on May 17, 2005 and that it sent a follow-up letter on June 21, 2005, requesting Complainant to immediately produce his overdue responses. When Complainant's responses were not forthcoming, Respondent filed a motion to dismiss on July 21, 2005, to which Complainant failed to respond, although given time in which to do so.

The Commission will not search the record to find reasons to deny a motion where the party opposing the motion has failed to file a response and where the motion

appears valid on its face. **Jones & Burlington Northern Railroad**, 25 Ill HRC Rep. 101 (1986). Because Complainant has done nothing to oppose this motion, there is no reason for me to deny it.

RECOMMENDATION

Accordingly, I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

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

ENTERED: September 20, 2005