



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
)	
REBECCA DOBBS,)	
)	
Complainant,)	
)	
and)	CHARGE NO(S): 1999 CP 2486
)	EEOC(S):
)	ALS NO(S): 11339
WAL-MART STORES, INC.)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter is before me for hearing on damages after Respondent was held in default. Before a date for the hearing could be set, Respondent filed a Motion to Dismiss and a subsequent Motion for Default. Complainant has filed no response.

Procedural History

On July 10, 2000, this matter was transmitted to the Administrative Law Section by a Commission panel pursuant to the entry of an Order of Default based on a Petition for Entry of Default Order against Respondent submitted by the Illinois Department of Human Rights. An order was entered by the Administrative Law Judge on August 7, 2000, scheduling a status to set a hearing on damages.

Findings of Fact

1. Respondent has been held in default by order of a Commission panel entered on July 10, 2000, and thus has been found liable for discriminating against Complainant on the basis of race as alleged in the Charge.
2. The case was submitted to the Administrative Law Section to schedule a hearing on damages.
3. An order was entered on August 7, 2000 scheduling a status to set a hearing on damages.
4. Thereafter, discovery was initiated.
5. On September 8, 2000, Respondent filed a Motion to Dismiss for Complainant's failure to comply with discovery.

6. On September 13, 2000, an order was entered requiring Complainant to file answers to discovery and warning Complainant that failure to answer discovery by September 27, 2000 would result in a recommendation to dismiss to be taken under advisement.
7. On September 21, 2000, Complainant, through her attorney, filed a Motion to Stay Proceedings while she pursued her claim in federal court.
8. By order of October 19, 2000, Complainant's Motion to Stay and Respondent's Motion to Dismiss were continued until November 13, 2000.
9. On November 17, 2000, Respondent filed a Suggestion of Death of Complainant.
10. An order was entered on November 20, 2000, ordering the Complainant to file a motion to substitute the Administrator of Complainant's estate within 90 days pursuant to section 5300.660(b) of the Commission's procedural rules and warning Complainant that failure to file a motion to substitute may result in dismissal of the Complaint.
11. On March 5, 2001, Respondent appeared; Complainant failed to appear. An order was entered ordering Respondent to file a motion to dismiss by March 12, 2001, ordering Complainant to respond by March 26, 2001 and ordering Respondent to reply by April 2, 2001. The order indicated that a decision would be issued by mail.
12. Respondent filed a Motion to Dismiss for Failure to Substitute the Administrator on March 7, 2001.
13. Complainant submitted no response.
14. Prior to the issuance of a decision on Respondent's Motion to Dismiss, Respondent filed a Motion for Default Judgment on April 3, 2001.
15. On April 12, 2001, Respondent appeared; Complainant did not appear. An order was entered taking the Motion for default under advisement.

Conclusion of Law

1. Complainant is an "aggrieved party" and Respondent is a "place of public accommodation" as defined by the Illinois Human Rights Act.
2. The Commission has jurisdiction over the parties and the subject matter of this action.
3. As a consequence of an order of default issued against Respondent, all of the allegations in the Charge were deemed admitted.
4. 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 estate administrator and by failing to file a response to Respondent's motion to dismiss, Complainant is not entitled to relief in the form of a monetary award.

Discussion

The record indicates Complainant failed to comply with the November 20, 2000 order to file a motion for substitution; no representative of Complainant appeared for the March 5, 2001 status hearing; Complainant failed to file a response to Respondent's motion to dismiss; and no representative appeared on behalf of Complainant for the motion hearing on April 12, 2001. The Complainant's actions have indicated that she has abandoned her claim and has no further interest in pursuing a damages determination.

Generally, once a finding of liability is made against a Respondent, the next step is to determine the amount of damages due to the Complainant. Complainant's actions have thwarted this determination, making it impossible for this tribunal to determine what relief, if any, Complainant might be entitled to. Under these circumstances, it is appropriate to allow the default finding against the Respondent to stand but to deny the Complainant any award for damages. See, Magraff and Alexopolis, __ Ill.HRC Rep. __ (1990CN0209, November 8, 1993); Dewitt and Illinois Pork Corp. __ Ill. HRC Rep. __ (1988 CN3214, June 29, 1992); Bannister and Sudden Service Mounting and Finishing, __ Ill.HRC Rep. __, (1991CF2175, April 11, 1994); and Jackson and Jones, __ Ill. HRC Rep. __ (1992CN0362, May 18, 1994).

The Commission held in Magraff that it is in the public interest to enter an order which requires Respondent to cease and desist from further unlawful discrimination, stating such an order is proper notwithstanding the fact that Complainant failed to appear for the damages hearing. Based on this holding, I will recommend a cease and desist order be entered against Respondent pursuant to the order of default; however, no damages will be awarded.

Because I am disposing of this matter based on my recommendation not to award damages, Respondent's pending motions to dismiss and for default are rendered moot.

Recommendation

Based on Complainant's failure to appear to respond to orders or to otherwise take action to pursue a determination of her damages, it appears that she has abandoned her claim. Because a default order has already been entered against Respondent, I recommend that the Commission reaffirm its finding of default and order Respondent cease and desist from further discrimination based on race in its public accommodation. I further recommend that the Commission award Complainant no damages because of her failure to show she is entitled to any award.

HUMAN RIGHTS COMMISSION

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

ENTERED: APRIL 17, 2001