



STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
<b>MARY A. FLOURNORY,</b>	)	
	)	
Complainant,	)	
	)	
and	)	CHARGE NO: 2002CF0112
	)	EEOC NO: 21BA12962
<b>LITTLE RED WAGON, INC.,</b>	)	ALS NO: S-11973
	)	
Respondent.	)	

**RECOMMENDED ORDER AND DECISION**

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On June 7, 2004, Respondent, Little Red Wagon, Inc., filed a motion to dismiss this action due to Complainant's repeated failure to respond to outstanding discovery requests or to comply with Commission Orders directing her to do so. On August 19, 2004, an Order was entered which held in abeyance Respondent's motion to dismiss and directed Complainant to serve sworn responses to all outstanding discovery requests on or before September 8, 2004. On September 14, 2004, Respondent filed a status report indicating that Complainant had not served any responses to the outstanding discovery requests.

**Contentions of the Parties**

In its motion, Respondent submits that dismissal of this case is warranted since Complainant has failed to comply with prior Commission Orders directing her to serve responses to outstanding discovery requests. Respondent also maintains that Complainant's failure to comply with Commission directives has unreasonably delayed these proceedings and has forced it to incur significant and unnecessary legal fees.

Complainant has not filed a response to Respondent's motion to dismiss or otherwise contested the allegations made in Respondent's status report.

### **Findings of Fact**

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

1. On July 19, 2001, Complainant filed a Charge of Discrimination on her own behalf, alleging that she was the victim of sexual harassment.

2. On December 27, 2002, the Department of Human Rights filed the instant Complaint, alleging that Complainant was the victim of sexual harassment.

3. On May 21, 2003, Respondent filed a motion for summary decision alleging that it was entitled to a judgment as a matter of law because Complainant had failed to file a response to its affirmative defenses.

4. On January 20, 2004, an Order was entered, which denied the motion for summary decision on the ground that section 5300.640(e) of the Commission's procedural rules (56 Ill. Admin. Code, Ch. XI, §5300.640(e)) deemed said affirmative defenses to be denied and directed the parties to participate in a telephone status conference on February 10, 2004.

5. On February 10, 2004, the Commission contacted Respondent's counsel for the scheduled telephone conference, but was only able to get to Complainant's answering machine.

6. On February 11, 2004, an Order was entered which re-scheduled the telephone conference for February 23, 2004. The Order specifically required Complainant to contact the Commission at 10:00 a.m. on February 23, 2004 so that the parties could proceed with the status conference.

7. On February 23, 2004, Complainant did not contact the Commission's Office as directed by the Order of February 11, 2004, and a clerk from the Commission was only able to reach Complainant's answering machine. On that same day, an Order

was entered which re-scheduled the telephone conference for March 9, 2004. The Order also informed Complainant that should she not comply with the Order that she risked the entry of an Order recommending that the case be dismissed with prejudice due to her failure to prosecute her claim.

8. On March 9, 2004, Complainant and Respondent participated in a telephone conference which established deadlines for initiating discovery requests.

9. On May 7, 2004, Respondent filed a motion to compel alleging that Complainant had not responded to any of its discovery requests. Complainant did not file a response to this motion, and, on May 24, 2004, Complainant was directed to serve Respondent with sworn responses to all outstanding discovery requests on or before June 4, 2004.

10. On June 7, 2004, Respondent filed a motion to dismiss this case with prejudice after noting that Complainant had not served it with any responses to discovery requests. Complainant did not respond to this motion.

11. On August 18, 2004, an Order was entered which held in abeyance Respondent's motion to dismiss, but gave Complainant one more opportunity to serve Respondent with responses to all outstanding discovery requests by September 8, 2004. In the Order, Complainant was warned that she could not continue to ignore legitimate discovery requests or Orders by the Commission directing her to file responses thereto, and that she risked the entry of a recommended Order dismissing this case for failure to prosecute her case.

12. On September 14, 2004, Respondent filed a status report indicating that Complainant has not responded to its outstanding discovery requests in any fashion. Complainant has not filed any response to the status report.

### **Conclusions of Law**

1. A Complaint may be dismissed when a party engages in conduct that unreasonably delays or protracts proceedings. See, 56 Ill. Admin. Code, Ch. XI, §5300.750(e).

2. The Complainant has unreasonably delayed proceedings by failing to tender responses to outstanding discovery requests or otherwise comply with directives contained in Commission Orders.

### **Determination**

The Commission should dismiss the Complaint and the underlying Charge of Discrimination due to Complainant's failure to tender timely discovery responses or otherwise advance her case.

### **Discussion**

Under the Commission's procedural rules, an administrative law judge may recommend to the Commission that a Complaint be dismissed where a complainant engages in conduct that unreasonably delays or protracts proceedings. (See, 56 Ill. Admin. Code, Ch. XI, §5300.750(e).) On review, the Commission has upheld the use of such discretion to dismiss complaints in circumstances which are analogous to the case at bar. See, for example, **Ramirez and Wesco Spring Company**, 40 Ill. HRC Rep. 266 (1988), and **Hariford and Mitsubishi Motor Manufacturing of America**, \_\_\_ Ill. HRC Rep. \_\_\_ (1988SF0357, August 16, 2000).

Here, the circumstances also indicate that Complainant's inaction has served to unreasonably delay these proceedings. Specifically, I note that Complainant has not served responses to outstanding discovery requests, even though she was directed to do so on two separate occasions (i.e., on May 24, 2004 and August 18, 2004). Moreover, Complainant has failed to respond to this motion to dismiss, or for that matter, to the prior motion to compel her compliance with outstanding discovery requests.

These failures have resulted in unreasonable delay and render it difficult for the Commission to take any action with regard to this case except to dismiss it. See, for example, **Foster and Old Republic General Services, Inc.**, \_\_\_ Ill. HRC Rep. \_\_\_ (1990CA2290, November 8, 1993).

**Recommendation**

Accordingly, I recommend that the Complaint and the underlying Charge of Discrimination of Mary A. Flournory be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 7TH DAY OF OCTOBER, 2004