This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 10/24/05

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	**)**
	)
GREGORIO GOMEZ,	**)**
Complainant,	**) CHARGE NO: 2003CF1933**
	) EEOC NO: 21BA30915
and	**) ALS NO: 04-196**
	)
	)
AUTO ZONE,	**)**
Respondent.	**)**

RECOMMENDED ORDER AND DECISION

This matter is before me on my own motion, *sua sponte*, to dismiss this matter for Complainant's failure to answer Respondent's discovery requests.

FINDINGS OF FACT

1. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on December 16, 2002, perfected on January 2, 2003 and amended on August 4, 2003.

2. The Department filed a Complaint, on behalf of the Complainant, with the Illinois Human Rights Commission (Commission) on May 17, 2004, alleging that Respondent discriminated against him on the bases of race and national origin in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et.seq*.

3. On July 28, 2004, Respondent appeared through counsel; Complainant appeared *pro se*. A copy of the Commission legal services pamphlet was tendered to Complainant in open tribunal and I advised Complainant to utilize it as a resource to seek counsel prior to the next status date.

4. On August 25, 2004, Attorney Frank Lopez appeared for Complainant; Respondent did not appear. An order was entered granting Respondent until

September 24, 2004 to file a verified answer to the Complaint and setting a status for September 29, 2004.

5. On September 29, 2004, Respondent appeared through counsel; Complainant did not appear. Respondent filed a verified answer to the Complaint. A discovery schedule was entered ordering the Parties to serve initial discovery no later than October 29, 2004 and to appear for a discovery status on December 14, 2004.

6. On December 14, 2004, Respondent appeared through counsel; Complainant did not appear. An Order was entered extending the date for the Parties to serve initial discovery until January 7, 2005. The Parties were ordered to appear for a discovery status on February 23, 2005.

7. Respondent served interrogatories and production requests on Complainant and filed proof of service with the Commission on January 7, 2005.

8. On February 23, 2005, Respondent appeared; Complainant did not appear. Respondent represented that Complainant had not served answers to its discovery requests. A review of the file indicated that no proof of service of discovery answers had been filed by Complainant. An Order was entered granting an extension for Complainant to answer discovery by March 25, 2005. The matter was set for a discovery status on April 12, 2005.

9. On March 29, 2005 Complainant's attorney, Frank Lopez, filed a motion to withdraw. On April 12, 2005, both Parties appeared represented by respective counsels. An order was entered setting Mr. Lopez' motion to withdraw for April 27, 2005 at 2:00 p.m.

10. On April 27, 2005, Mr. Lopez filed a certification of hand delivery of its motion signed by Complainant on April 14, 2005. Mr. Lopez appeared for the 2:00 p.m. argument on the motion, but Complainant was not present at that time. I granted the motion. While the Order was being hand written by Mr. Lopez, Complainant

personally appeared at the hearing room at 2:30 p.m. and received a copy of the Order in open tribunal. The Order ordered Complainant to file a proof of service of all discovery pleadings and the matter was set for status on May 25, 2005.

11. On May 25, 2005, Complainant appeared *pro se* accompanied by a friend to assist Complainant in interpreting English. Respondent did not appear. Complainant advised that he was in the process of seeking counsel and that he had not yet answered discovery. An Order was entered granting an extension for Complainant to answer discovery no later than June 15, 2005 and setting a discovery status for June 29, 2005.

12. On June 29, 2005, Respondent appeared through counsel; Complainant appeared *pro se* accompanied by a friend to help assist Complainant in interpreting English. On Complainant's representation that he was scheduled to meet with an attorney that evening to assist him with answering discovery, I entered an Order allowing Complainant a final opportunity to answer discovery no later than July 22, 2005. A status was set for July 27, 2005.

13. On July 27, 2005, Respondent appeared through counsel. Complainant appeared *pro se* accompanied by a friend to assist Complainant in interpreting English. Complainant had yet to answer discovery. Respondent made an oral motion to dismiss the Complaint. An Order was entered allowing Complainant until August 12, 2005 to either file a written response to Respondent's oral motion to dismiss based on Complainant's failure to answer discovery or serve Respondent with complete answers to discovery.

14. August 24, 2005, Complainant appeared *pro se*; Respondent appeared through counsel. In open tribunal, Complainant tendered a copy of his discovery answers and a copy of the mailing envelope addressed to Respondent for the record. The postmark on the envelope appeared to be August 9, 2005. Respondent

represented that, notwithstanding that the answers arrived to its office by U.S. mail after the August 12, 2005 deadline, the answers were not responsive to Respondent's interrogatories and production requests.

15. I reviewed Respondent's interrogatories and production requests and Complainant's 3-page handwritten answers to discovery and determined that Complainant's answers were woefully incomplete, inadequate and non-responsive.

CONCLUSION OF LAW

The failure of Complainant to submit complete, responsive answers to Respondent's discovery requests, although given several opportunities in which to do so, 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, resulting in unreasonable delay of this matter.

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 responsive answers to Respondent's discovery requests, although given several extensions of time in which to do. Respondent served its interrogatories and request for production on Complainant on January 7, 2005, which answers were due 28 days later, on February 4, 2005. When those answers were not submitted, Complainant was allowed several extensions until March 25, 2005, June 15, 2005, July 22, 2005 and August 12, 2005 to serve answers to discovery and file proof of such service with the Commission.

Although Complainant finally submitted a discovery response to Respondent on or around August 9, 2005, the response was in the form of a narrative, it was not numbered and a reading of the response indicated that it was woefully inadequate, incomplete and unresponsive to Respondent's interrogatories and request to produce.

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: August 31, 2005