	This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 9/22/04.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
DeSHAWN MOSS and JOE E. HENDERSON,	)	
	)	
	)	**CHARGE NOS: 1999CP0375**
Complainants,	)	**1999CP0454**
	)	**EEOC NOS: N/A**
and	)	**CASE NOS: 10788**
	)	**10789**
TNDE CORPORATION d/b/a HOUSE OF BOTTLES,	)	
	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER AND DECISION

On April 14, 1999, the Illinois Department of Human Rights filed Complaints on behalf of Complainants, DeShawn Moss and Joe E. Henderson. Those Complaints alleged that Respondent, TNDE Corporation, d/b/a House of Bottles, denied the Complainants the full and equal enjoyment of Respondent's facility due to their race (black), in violation of Section 5-102(A) of the Illinois Human Rights Act. On June 11, 1999, an order was entered by the Chief Administrative Law Judge consolidating both cases.

This matter was set for final status on April 25, 2000. Neither party appeared for the final status and had not contacted the Commission in regards to this case. On February 6, 2003, the present ALJ sent out an order to the parties setting the matter for a telephone conference hearing for February 18, 2003. On February 18, 2003, the two Complainants and Respondent's counsel participated in the telephone status hearing. Since that time, the Complainants have consistently failed to abide by the orders sent by

the Commission to make themselves available for numerous scheduled telephone status hearings. This matter is now ready for decision.

FINDINGS OF FACT

The following findings of fact are based upon the case file for this matter.

1. On April 14, 1999, the Illinois Department of Human Rights filed Complaints on behalf of Complainants, DeShawn Moss and Joe E. Henderson. Those Complaints alleged that Respondent, TNDE Corporation, d/b/a House of Bottles, denied the Complainants the full and equal enjoyment of Respondent's facility due to their race (black), in violation of Section 5-102(A) of the Illinois Human Rights Act.

2. On June 11, 1999, an order was entered by the Chief Administrative Law Judge consolidating both cases.

3. This matter was set for final status on April 25, 2000. Neither party appeared for the final status and had not contacted the Commission in regards to this case. On February 6, 2003, the present ALJ sent out an order to the parties setting the matter for a telephone conference hearing for February 18, 2003.

4. On February 18, 2003, the two Complainants and Respondent's counsel participated in the telephone status hearing. An order was entered granting time for Respondent's counsel to contact his client. The matter was set for status on February 27, 2003 with Complainants not being required to attend the status call.

5. On February 27, 2003, Respondent's counsel appeared before the Commission and related that he could not ascertain the whereabouts of Respondent. At that time, Respondent's counsel made an oral motion to withdraw as counsel. Counsel's

motion was entered and continued for a telephone conference call on March 18, 2003 with notice to the Complainants.

6. On March 18, 2003, Complainants failed to make themselves available for the telephone status. An order was entered resetting Respondent counsel's motion to withdraw for April 8, 2003 with notice to all parties.

7. On April 8, 2003, Complainants again failed to make themselves available. Respondent's motion was heard and an order was entered granting his motion to withdraw. The order further set the matter for a telephone status hearing on April 22, 2003 with the indication that, "All named parties must be available." "Failure of any party to be available may result in the default or dismissal of this matter." The Complainants were served with a copy of the order.

8. On April 22, 2003, Complainants again failed to make themselves available for the scheduled telephone status hearing and an order was entered setting the matter for a telephone status hearing on May 5, 2003. Again, the order indicated that, "All named parties must be available." "Failure of any party to be available may result in the default or dismissal of this matter." The Complainants were served with a copy of the order.

9. On May 5, 2003, the Complainants again failed to make themselves available for the scheduled telephone status hearing. An order was then entered indicating that on the Commission's own advice, the matter was dismissed for want of prosecution. The order further indicated that a Recommended Order and Decision would be rendered and sent out to the parties.

CONCLUSION OF LAW

1. Complainants' apparent refusal to respond to the Commission's numerous orders to make themselves available for status dates or to explain their refusal has unreasonably delayed the proceedings in this matter.

2. In light of Complainants' apparent abandonment of their claims, it is appropriate to dismiss this matter with prejudice.

DISCUSSION

On April 14, 1999, the Illinois Department of Human Rights filed Complaints on behalf of Complainants, DeShawn Moss and Joe E. Henderson. Those Complaints alleged that Respondent, TNDE Corporation, d/b/a House of Bottles, denied the Complainants the full and equal enjoyment of Respondent's facility due to their race (black), in violation of Section 5-102(A) of the Illinois Human Rights Act. On June 11, 1999, an order was entered by the Chief Administrative Law Judge consolidating both cases.

This matter was set for final status on April 25, 2000. Neither party appeared for the final status and had not contacted the Commission in regards to this case. On February 6, 2003, the present ALJ sent out an order to the parties setting the matter for a telephone conference hearing for February 18, 2003. On February 18, 2003, the two Complainants and Respondent's counsel participated in the telephone status hearing. An order was entered granting time for Respondent's counsel to contact his client. The matter was set for status on February 27, 2003 with Complainants not being required to attend the status call.

On February 27, 2003, Respondent's counsel appeared before the Commission and related that he could not ascertain the whereabouts of Respondent. At that time, Respondent's counsel made an oral motion to withdraw as counsel. Counsel's motion was entered and continued for a telephone conference call on March 18, 2003 with notice to the Complainants. On March 18, 2003, Complainants failed to make themselves available for the telephone status. An order was entered resetting Respondent counsel's motion to withdraw for April 8, 2003 with notice to all parties. On April 8, 2003, Complainants again failed to make themselves available. Respondent's motion was heard and an order was entered granting his motion to withdraw. The order further set the matter for a telephone status hearing on April 22, 2003 with the indication that, "All named parties must be available." "Failure of any party to be available may result in the default or dismissal of this matter." The Complainants were served with a copy of the order.

On April 22, 2003, Complainants again failed to make themselves available for the scheduled telephone status hearing and an order was entered setting the matter for a telephone status hearing on May 5, 2003. Again, the order indicated that, "All named parties must be available." "Failure of any party to be available may result in the default or dismissal of this matter." The Complainants were served with a copy of the order. On May 5, 2003, the Complainants again failed to make themselves available for the scheduled telephone status hearing. An order was then entered indicating that on the Commission's own advise, the matter was dismissed for want of prosecution. The order further indicated that a Recommended Order and Decision would be rendered and sent out to the parties.

Complainants' apparent inaction has unreasonably delayed the proceedings in this matter, and it appears that Complainants simply have abandoned their claims. As a result, it is appropriate to dismiss this case with prejudice. See **Leonard and Solid Matter, Inc.**, ___ Ill. HRC Rep. ___, (1989CN3091, August 25, 1992).

RECOMMENDATION

Based upon the foregoing, it appears that the two named Complainants have abandoned their claims. Accordingly, it is recommended that this case be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:_____
NELSON E. PEREZ
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: May 20, 2003