This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 7/26/05

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
HAROLD JENKINS,	)	
	)	**CHARGE NO. 1999CA1137**
Complainant,	)	**ALS NO. 11774**
	)	
	)	
AND	)	
	)	
	)	
VILLAGE OF MAYWOOD,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is before this tribunal on Respondent's *Motion to Dismiss For Want of Prosecution* filed on January 5th, 2005. Complainant filed its Response to that motion on January 18th, 2005. The matter is now ripe for decision.

FINDINGS OF FACT

1. On May 3rd, 2002, a *Complaint of Civil Rights Violation* was filed by the Illinois Department of Human Rights on behalf of Complainant Harold Jenkins.
2. On September 17th, 2002, former Administrative Law Judge Nelson Perez, granted Complainant's motion for a default judgment.
3. On December 2nd, 2002, a damages hearing was held before former Administrative Law Judge William H. Hall.
4. Complainant and his counsel participated in that damages hearing. Respondent did not participate in the hearing.
5. On December 30th, 2002, for the first time, counsel for Respondent filed an appearance at the Commission.

6. Judge Hall left the Commission's employ prior to issuing a written *Recommended Order and Decision* in this matter. Respondent's counsel did not agree to have a different administrative law judge write the *Recommended Order and Decision.*

7. On February 17, 2004, this tribunal entered an order scheduling a new damages hearing for March 30, 2004.

8. On March 29, 2004, Complainant's counsel filed an *Emergency Motion to Continue the Damages Hearing.* That motion stated that Complainant Jenkins would be unable to participate in the March 30th hearing due to his recent incarceration in Cook County Jail.

9. This tribunal granted Complainant's *Emergency Motion to Continue the Damages Hearing* on March 29, 2004. The matter was continued generally to May 5th, 2004 at 10:00 a.m.

10. On May 5th, 2004, Complainant's counsel informed this tribunal that Complainant had been transferred to a state correctional facility and that attempts would be made for Complainant to participate in a new damages hearing. The parties were ordered to appear on July 20, 2004 at 2:00 p.m. for status.

11. On July 20, 2004, both parties appeared for status. On that date, Complainant's counsel indicated that he was still making efforts to have Complainant participate in a new damages hearing. The matter was continued to August 17, 2004 at 2:00 p.m.

12. On August 17, 2004, Respondent's counsel appeared and Complainant's counsel failed to appear. This tribunal continued the matter to August 25, 2004 at 11:00 a.m.

13. On August 25, 2004, Respondent's counsel appeared and Complainant's counsel failed to appear. This tribunal continued the matter to September 8, 2004 and entered an order warning that Complainant's counsel must appear on that date or risk the imposition of sanctions.

14. On September 8, 2004, Complainant's counsel appeared, as did Respondent's counsel. On that date, this tribunal ordered Complainant's counsel to arrange a date and time in which a damages hearing could take place at the Illinois corrections facility where Complainant was incarcerated. The matter was continued to September 16, 2004.

15. On September 16, 2004, Complainant's counsel appeared and Respondent's counsel also appeared. Complainant's counsel indicated that he had made contact with an Illinois Department of Corrections counselor at the facility in which Complainant was being held and that space was available to conduct a hearing. The matter was continued to October 19, 2004. Attorney Shepherd was ordered to provide this tribunal with dates on which the hearing could take place by the October 19th status. Attorney Shepherd was also directed to discuss potential dates with opposing counsel prior to October 19, 2004.

16. On September 29, 2004, Respondent's counsel sent a letter to Complainant's counsel requesting that he contact her prior to the scheduled status date of October 19, 2004 in order to coordinate date availability for the new damages hearing. Complainant's counsel, however, did not contact Respondent's counsel prior to the October 19, 2004 status hearing to discuss scheduling.

17. On October 19, 2004, an attorney, other than Complainant's attorney of record, appeared at the Commission on behalf of Complainant.

Respondent's counsel also appeared. On that date, Complainant did not provide a date on which the hearing could be held.

18. Also on October 19, 2004, as an alternative to having the damages hearing held at the correctional facility, this tribunal directed the parties' counsel to confer about the possibility of conducting an evidence deposition of Complainant for use at a damages hearing, which would then be conducted at the Commission's Chicago offices. The parties' attorneys were ordered to confer regarding agreeable dates and times for such deposition. The matter was continued to November 16, 2004 at 2:00 p.m.

19. On November 2, 2004, Respondent's counsel sent a letter to Complainant's counsel requesting that he contact her prior to the November 16, 2004 status date so that the parties could agree on a date and time for the taking of Complainant's testimony. Complainant's counsel did not contact Respondent's counsel prior to the November 16, 2004 status date.

20. On November 16, 2004, Respondent's counsel appeared and Complainant's counsel failed to appear. On that date, this tribunal entered an order continuing the matter to December 21, 2004 and warning that if counsel for Complainant failed to appear on December 21, 2004, he would be subject to sanctions for the costs of Respondent's counsel's appearance.

21. On November 17, 2004, Respondent's counsel sent a letter to Complainant's counsel requesting that he contact her prior to the December 21, 2004 status date so that the parties could agree on a date and time for a hearing or evidence deposition of Complainant Jenkins.

Complainant's counsel did not contact Respondent's counsel prior to the December 21st status hearing.

22. On December 21st, 2004 at 2:00 p.m., Respondent's counsel appeared for the status hearing, but Complainant's counsel once again failed to appear. On that date, this tribunal granted Respondent leave to file a motion to dismiss for want of prosecution by January 5, 2005. Complainant was ordered to respond by January 17th, 2005.

23. Respondent filed its motion to dismiss for want of prosecution on January 5, 2005. Complainant filed its response on January 18, 2005.

CONCLUSIONS OF LAW

1. This tribunal has jurisdiction over the subject matter of this action and the parties hereto.

2. Complainant's failure to appear at scheduled status hearings, failure to comply with the orders of the administrative law judge, and failure to respond to Respondent's counsel's inquiries regarding date availability for a new hearing and/or the taking of Complainant's evidence deposition, has unreasonably delayed the proceedings in this matter.

DISCUSSION

A damages hearing in this matter was held on December 2nd, 2002 before former Administrative Law Judge William H. Hall IV. Respondent did not participate in that hearing. At the hearing, Complainant was represented by Attorney Shepherd. As of the date of this *Recommended Order and Decision*, Attorney Shepherd continues to serve as counsel for Complainant. On December 30, 2002, after the prove-up hearing, counsel for Respondent filed an appearance.

Unfortunately, Judge Hall left the Commission's employ before issuing a *Recommended Order and Decision* in this matter. As the Respondent would not agree

to allow a different administrative law judge to write a *Recommended Order and Decision (See* 775 ILCS 5/8A-102(I)*,* this tribunal had no choice but to schedule a new damages hearing in the matter. Thus far, this tribunal's attempts to have that hearing scheduled have been unsuccessful.

On February 17, 2004, during a scheduled status hearing, this tribunal scheduled a new hearing for March 30, 2004. On March 29, 2004, Complainant's counsel filed an *Emergency Motion to Continue the Damages Hearing.* That motion stated that Complainant Jenkins would be unable to participate in the March 30th hearing due to his incarceration at the Cook County Jail. This tribunal granted Complainant's motion and continued the matter generally to May 5, 2004. On May 5th, Complainant's counsel informed this tribunal that Mr. Jenkins had been transferred to a state correctional center and, after discussing the matter, agreed that attempts would be made for Mr. Jenkins to participate in a damages hearing. The matter was continued generally to July 20, 2004. On July 20th, the matter was continued again to August 17, 2004, as Complainant's counsel requested additional time.

On August 17, 2004, Respondent's counsel appeared and Complainant's counsel failed to appear for reasons unknown to this tribunal and without cause. On that date, the matter was continued to August 25, 2004. Despite being properly served with the August 17th order, Complainant's counsel once again failed to appear without cause on August 25th. The August 25th order continued the matter to September 8, 2004 and warned that if Complainant's counsel failed to appear sanctions would be entered against him. On September 8, 2004, with the threat of sanctions looming, Complainant's counsel finally appeared. Respondent's counsel was also present. Complainant was again granted additional time to determine if there was a possibility that the hearing could be held at the correctional center. The matter was continued to September 16, 2004 for status.

On September 16th, counsel for both parties appeared. This time, Complainant's counsel indicated that he had made contact with a counselor at the correctional facility and that there was space available for a hearing. After discussing several dates in November, the parties' attorneys, along with this tribunal, found common availability for the hearing on November 5th, 15th, and 19th. The matter was then continued to October 19, 2004 and Complainant's counsel was ordered to have a definite date and time secured for the taking of Complainant's testimony by the October 19th status date. The parties' attorneys were directed to confer regarding their common availability in November for participation in the hearing. In attempting to follow this tribunal's order, on September 29, 2004, Respondent's counsel wrote a letter to Complainant's counsel requesting confirmation regarding one of the November 2004 dates. Complainant's counsel, however, never bothered to respond to that letter.

On October 19, 2004, Respondent appeared and Complainant's counsel sent an attorney relative who is not an attorney of record in this case. On that date, Complainant still did not provide this tribunal with a definite date and time in which the new hearing could be held. The matter was continued to November 16, 2004 and this tribunal advised the parties to consider taking an evidence deposition of Complainant. This tribunal ordered the parties to agree on a date and time by the November 16th status hearing.

Once again, in attempting to follow this tribunal's order, Respondent's counsel wrote Complainant's counsel a letter on November 2, 2004 requesting that he contact her prior to the November 16th status date. However, Complainant's counsel never responded to that letter either. Then, on November 16, 2004, Respondent's counsel appeared and Complainant's counsel failed to appear without explanation. This tribunal entered an order continuing the matter to December 21, 2004 at 2:00 p.m. That order

also warned that if Complainant's counsel failed to appear on December 21st sanctions would be imposed.

Although Complainant's counsel had been properly served with this tribunal's November 19th, 2004 order, he again failed to appear on December 21, 2004 at 2:00 p.m. In his response to Respondent's motion to dismiss, Complainant's counsel claims that he personally appeared at the Commission at 9:00 a.m. on December 21st only to be told by an unnamed Commission staff member that the matter was not scheduled for status that day. Why Complainant's counsel would appear at 9:00 a.m. on that day, when the November 19th order clearly states that the matter was scheduled for 2:00 p.m., is simply unknown and, quite frankly, does not make much sense. Furthermore, without a formal affidavit from Complainant's counsel detailing his conversation with Commission staff on the 21st, this tribunal simply cannot accept that explanation for his failure to appear.

No doubt, Complainant's counsel has continually and unreasonably delayed the proceedings in this matter. 56 Ill. Admin. Code Part 5300.750 (e). Since August of 2004, he has failed to appear without cause for several status hearings. Complainant's counsel apparently believes that he can pick and choose which orders of this tribunal he will follow. Simply not showing up for scheduled status hearings, without filing a proper motion, is unacceptable and inappropriate procedural practice before the Commission. Aside from directly ignoring this tribunal's orders, he has also ignored Respondent's counsel's independent attempts to schedule a new damages hearing in this matter.

RECOMMENDATION

Based upon the above Findings of Fact and Conclusions of Law, I recommend that the Illinois Human Rights Commission grant *Respondent's Motion to Dismiss for Want of Prosecution*. I further recommend that the complaint, together with the underlying Charge Number 1999CA1137, be dismissed with prejudice.

ENTERED: May 12, 2005

HUMAN RIGHTS COMMISSION

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MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION