	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:	**)**	
	)	
THELMA LASLEY,	**)**	
Complainant,	**)**	
	)	**CHARGE NO: 1998CF2212**
and	**)**	**EEOC: 21B98183**
	)	**ALS NO: 10777**
COMBINED INSURANCE COMPANY	**)**	
OF AMERICA,	**)**	
Respondents.	**)**	

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's *Motion to Enforce Settlement* filed April 21, 2005. . Both Parties have submitted legal briefs on the motion. This matter is ready for a decision.

CONTENTIONS OF THE PARTIES

Respondent contends that this matter should be dismissed because the parties and their respective counsels appeared before this Administrative Law Judge (ALJ) on January 14, 2005 and participated in a settlement conference where an agreement was reached by both Parties.

Complainant argues that, although oral agreements are generally enforceable, Section 5/8-105 of the Act creates an exception to that principle, requiring that settlement terms shall be reduced to writing, signed by the parties and submitted to the Commission for approval in order for the Commission to retain jurisdiction over the matter for purposes of enforcing the terms of the settlement. Because Complainant has refused to execute the formal settlement agreement, Complainant contends that the Commission lacks jurisdiction for enforcement purposes. Complainant further argues that the agreed settlement was unfair.

FINDINGS OF FACT

Based on the record, I make the following findings of fact:

1. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on March 11, 1998. The Department filed a Complaint on behalf of Complainant with the Illinois Human Rights Commission (Commission) on April 1, 1999, alleging Complainant to have been aggrieved by practices of race discrimination in violation of the Illinois Human Rights Act 775 ILCS 5/1-101 et. seq., (Act).
2. Respondent filed a verified answer to the Complaint on April 30, 1999.
3. After an extensive pre-hearing process, a public hearing on the merits was held on March 29th and 30th, 2001 presided over by Administrative Law Judge William Hall (ALJ Hall). A Recommended Liability Determination (RLD) in favor of Complainant was issued September 10, 2002. A Recommended Order and Decision, (ROD), which incorporated the RLD by reference, was issued February 25, 2003. The ROD awarded Complainant damages in the amount of $70,197.83 in back pay plus interest; $14,800.00 in reimbursement for health insurance payments; $8,000.00 for emotional distress, $30,400.00 in pension benefits; reinstatement; attorney's fees of $43,172.50 and costs of $544.06.
4. On March 8, 2004, a Commission panel issued an *Order and Decision* modifying the award by reversing the $30,400.00 pension award. The remaining award was sustained.
5. On April 7, 2004, Respondent filed an application for re-hearing en banc. In its *Order and Decision* dated April 28, 2004, addressing the application, the Commission remanded the matter back to the Chief Administrative Law Judge (CALJ) solely for the purpose of allowing the Complainant the opportunity to present proof updating damages, fees and mitigation and the Respondent the opportunity to respond.
6. The CALJ assigned the matter to Administrative Law Judge Michael Robinson (ALJ Robinson) on May 12, 2004. ALJ Robinson entered an Order December 3, 2004, indicating that the Parties desired to enter into a settlement conference with the understanding that, if the matter did not settle, the parties would be directed to file written briefs on the outstanding issue of additional damages. The parties were ordered to appear for a settlement conference on January 14, 2005.

7. On January 14, 2005, both parties appeared represented by respective counsels. Complainant also personally appeared. This ALJ was assigned to mediate the settlement conference. Complainant was personally involved in the negotiations during the settlement conference.
8. During the conference, both parties agreed to a settlement offer of $385,000.00, which included all damages and compensation for reinstatement and attorney's fees. An Order was entered indicating that the matter was settled and a settlement status was set for April 5, 2005 for the purpose of allowing the Parties time to draft and execute settlement documents.
9. On April 5, 2005, the parties appeared through respective counsels, with Complainant also personally appearing. The parties advised that Complainant refused to execute documents pursuant to the settlement agreement. An Order was issued setting a briefing schedule to allow Respondent to file a motion to enforce the settlement agreement. The parties subsequently submitted legal briefs on the issue.
10. After reviewing the briefs, this ALJ issued an Order on May 25, 2005 allowing Complainant until June 15, 2005 to execute the settlement agreement and file a voluntary motion to dismiss this matter. The Order warned that failure to do so would result in the issuance of a recommended order and decision dismissing this matter with prejudice.
11. On June 23, 2005, the parties appeared represented by respective counsels and advised that Complainant would not be filing a voluntary motion to dismiss this matter. I ordered the matter dismissed pursuant to my May 25, 2005 Order.

CONCLUSIONS OF LAW

1. The Illinois Human Rights Commission has jurisdiction over the Parties and subject matter of this action.
2. The Commission has the authority to dismiss a case where a valid settlement agreement has been reached between the Parties. **Watkins and State of Illinois, Dept. of Correction**, __ Ill. HRC Rep. ___, (1990CF1303, June 2, 1999), citing **Bordner and Chairpeople Inc.**, __ Ill HRC Rep. __ (1991CN2108, Dec. 10, 1998).
3. The Complainant agreed to settle the instant Complaint and underlying Charge in return for adequate consideration. The terms of the settlement were not entered into by mistake or fraud and are not unfair or unconscionable.

DETERMINATION

Complainant entered into a valid agreement to dismiss this Complaint in return for $385,000.00, which included all damages and compensation for reinstatement and attorney's fees. The terms of the settlement prevent further prosecution of this case.

DISCUSSION

The issue presented is whether an oral settlement agreement should be enforced. Both the Commission and Illinois courts have held that oral settlement agreements are enforceable absent mistake or fraud. **Rogers and Sara Lee Bakery**, __ Ill HRC Rep. __ (1988CF0289, February 4, 1994) p. 12; **Fishburn v. Barker**, 165 Ill App.3d 229, 116 Ill.Dec 233, 518 N.E.2d 1054 (3rd Dist.).

Respondent's motion pleading includes an uncontested letter from Complainant's attorney to Respondent dated March 18, 2005, in which Complainant agrees that a settlement was reached, but wishes to renegotiate the terms. Respondent contends that, because there is no dispute that the Parties have reached an agreement, the agreement should be enforced.

Complainant, while not contesting the terms of the settlement agreement, argues that the Commission cannot enforce the terms of the settlement in this case because Section 5/8-105(A)(2) of the Act requires that the terms of a settlement be reduced to writing and signed by the parties in order for the Commission to retain jurisdiction over the matter for the purpose of enforcing the agreement.

Although the Commission has ruled that an Administrative Law Judge does not have the power to recommend enforcement of the terms of a private settlement, the Commission has stated that if the settlement agreement has not been submitted to the Commission for approval, the most the Commission can say is that the terms of the settlement prevent further prosecution of the case. **Watkins and State of Illinois, Department of Corrections**, Ill. HRC Rep., (Charge No. 1990CF1303, June 2, 1999); citing, **Bordner and Chairpeople Inc.**,__ Il. HRC Rep.__ , (1991CN2108, December 10, 1998). Therefore, the Commission can decide whether agreement on a settlement makes the matter ripe for dismissal.

Complainant further argues that the terms of the agreement should not be enforced because they are unfair. Complainant contends that the additional $100,000.00 above the relief to which Complainant was awarded under the previous ROD is insufficient to compensate her for the right to reinstatement and the loss of medical benefits. I am unconvinced. The Parties agreed to a total damages award of

$385,000.00, which included consideration for reinstatement and attorney's fees. Complainant was represented by counsel during the entirety of the settlement conference and, as the ALJ who mediated the settlement conference, I can readily say that I am aware of the particulars of that conference and recollect that Complainant, herself, was very involved in the negotiations. I recall that, in negotiating the final compensation, Complainant considered such detail as demanding compensation for a grandfather clock she maintains she would have received for long-term service to Respondent company and that she insisted the market value of this clock be included as part of the compensation. It should also be noted that I took written notes concerning the terms of the agreement made by the parties and that I also made a notation on my calendar that I mediated that settlement conference and that the parties agreed to a settlement.

There is no dispute that there was an agreement between the parties and Complainant has not put forth an argument of mistake or fraud. Moreover, the record supports no bases for concluding that the terms of the agreement are unfair, unreasonable or unconscionable. Thus, the agreement prevents further prosecution of this matter.

RECOMMENDATION

Accordingly, I recommend that the Complaint and underlying Charge in this matter be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

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

ENTERED: July 5, 2005