This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 8/11/05

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	**)**
	)
SHERMAN RIVERS,	**)**
Complainant,	**) CHARGE NO: 2003CA0950**
	) EEOC NO: N/A
and	**) ALS NO: 04-264**
	)
	)
IOWA GRAIN COMPANY,	**)**
Respondent.	**)**

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's *Motion to Compel and For Sanctions,* including dismissal, filed May 19, 2005. The record indicates the motion has been served on the Illinois Department of Human Rights (Department). Complainant has failed to file a response in opposition to this motion, although given time in which to do so.

FINDINGS OF FACT

1. Complainant filed a Charge with the Department on August 16, 2003.
2. The Department filed a Complaint on behalf of the Complainant with the Illinois Human Rights Commission (Commission) on July 2, 2004, alleging that Respondent discriminated against him on the bases of race and age in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 et.seq.
3. Respondent filed a verified answer to the Complaint on August 11, 2004.
4. On August 10, 2004, both Parties appeared represented by their respective counsels. A discovery schedule was entered ordering Parties to propound discovery no later than September 10, 2004 and to appear for discovery status on October 12, 2004.

5. On October 12, 2004, both Parties appeared. The discovery schedule was extended allowing the Parties to serve discovery by October 29, 2004 and further ordering the Parties to appear for a discovery status on December 14, 2004.

6. On December 1, 2004, Respondent filed a proof of service that interrogatories and request to produce documents were served upon Complainant on September 10, 2004.

7. On December 14, 2004, both Parties appeared. Respondent filed a motion to compel contending that Complainant had failed to respond to its discovery. An Order was entered continuing the motion to compel and granting Complainant until January 4, 2005 to respond to Respondent's discovery. A status was set for January 26, 2005.

8. On January 26, 2005, Respondent appeared; Complainant did not appear. On Respondent's representation that Complainant's attorney had informed him that she was ill, an Order was entered granting Complainant a further extension until February 17, 2005 to answer discovery. Respondent's motion to compel was continued until February 23, 2005

9. On February 23, 2005, Complainant appeared; Respondent did not appear. On Complainant's representation, an agreed Order was entered extending the discovery process until March 25, 2005 and setting a status for May 10, 2005.

10. On March 10, 2005, Respondent filed a *Motion to Vacate Order of February 23, 2005* to be heard on April 12, 2005. The motion contended that the February 23, 2005 Order was not in accordance with the terms as agreed upon by the Parties.

11. On April 12, 2005, Respondent appeared; Complainant did not appear. Respondent's pending motion to compel was set for hearing on April 27, 2005.

12. On April 27, 2005, both Parties appeared. Respondent's motion to compel was granted. Complainant tendered answers to Respondent's discovery in open

tribunal. An order was entered allowing Respondent until May 19, 2005 to review said answers and allowing Complainant an extension of time until May 9, 2005 to serve his discovery. The matter was set for discovery status on May 19, 2005.

13. On May 19, 2005, Respondent appeared and filed a second written *Motion to Compel and for Sanctions,* including dismissal, and written motions to withdraw as counsel and to substitute counsel. Complainant did not appear. Respondent contends in its motion pleading that Complainant's discovery responses are deficient in that they are unresponsive, unsigned and not specific. An Order was entered ordering Complainant to file a written response to Respondent's motion no later than June 3, 2005 and to appear for a hearing on the motion on June 14, 2005. Respondent's motions to withdraw and substitute counsel were granted.

14. On June 14, 2005, Respondent appeared for hearing on the motion; Complainant did not appear. Complainant had not filed a response to Respondent's motion to compel and for sanctions. Respondent's motion pleading includes what purports to be Complainant's unsigned responses and references Exhibit B, a letter by Respondent purportedly sent to Complainant dated May 12, 2005, in which Respondent delineates its specific objections to Complainant's discovery responses. I granted Respondent's motion to dismiss this matter.

CONCLUSIONS OF LAW

1. The failure of Complainant to file a written response to Respondent's motion to dismiss and for sanctions and the failure of Complainant to appear for a scheduled hearing on the motion has resulted in unreasonable delay, justifying dismissal of this Complaint with prejudice.

2. The Commission will not search the record to find reasons to deny a motion where the party opposing the motion has failed to file a response and where the motion

appears valid on its face. **Jones & Burlington Northern Railroad**, 25 Ill HRC Rep. 101 (1986).

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 timely answer discovery prompting Respondent to file a motion to compel on December 14, 2004. Subsequently, Complainant was allowed two extensions -- until January 4, 2005 and February 17, 2005, respectively -- to answer discovery. When Complainant missed these two deadlines, she appeared on April 27, 2005 and tendered *Complainant's Answers to Interrogatories* to Respondent in open tribunal. After reviewing these answers, Respondent determined that they were unsigned, unresponsive and deficient and filed a second *Motion to Compel and for Sanctions* on May 19, 2005. Respondent's motion pleading includes what purports to be Complainant's submitted unsigned discovery responses and Respondent's May 12, 2005 letter to Complainant specifically identifying Respondent's objections to each response.

Although the May 19, 2005 Order ordered Complainant to file a response to Respondent's motion no later than June 3, 2005, the record indicates that Complainant failed to file a response in opposition to the motion. Further, Complainant failed to

appear for the June 14, 2005 scheduled hearing on the motion. The Commission will not search the record to find reasons to deny a motion where the party opposing the motion has failed to file a response and where the motion appears valid on its face. **Jones & Burlington Northern Railroad**, 25 Ill HRC Rep. 101 (1986). Because Complainant has done nothing to oppose this motion or to challenge the validity of the exhibits supporting the motion, there is no meritorious reason for me to deny it.

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: June 28, 2005