



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF: |) | |
| |) | |
| MARLENE SANSON, |) | |
| |) | CHARGE: 1998 CN 2208 |
| Complainant, |) | EEOC: |
| |) | ALS NO: 10876 |
| |) | |
| and |) | |
| JOHN LAWRENCE ENTERPRISES, |) | |
| |) | |
| Respondent. |) | |

RECOMMENDED ORDER AND DECISION

Statement of the Case

This matter comes on to be heard pursuant to the Illinois Human Rights Commission’s (Commission) order of June 24, 1999, questioning whether the complaint in this matter was timely filed, and hence whether the Commission had jurisdiction over it. The Commission ordered the parties to submit briefs regarding this issue. Pursuant to that Order, the Illinois Department of Human Rights (Department) filed a Memorandum arguing its, and Complainant’s case, and the Respondent, John Lawrence Enterprises (Lawrence), filed a Reply¹. This matter is ready for decision.

Contentions of the Parties

Respondent and the Department agree that the Charge in this matter was filed on March 11, 1998. An extension of the 365 days by which the Department must make a decision whether to file a complaint with the Commission (775 ILCS 5/7A-

¹ Respondent’s document is actually a Response to the Department’s Memorandum. However Respondent termed its document a Reply, so for the sake of continuity, this tribunal will refer to it as a Reply as well.

102(G)(1)(1995) was extended for 90 days, to June 9, 1999, by agreement. The Department did not file a complaint by that date, therefore Complainant had 30 days, until July 9, 1999 to file a complaint on her own behalf. (775 ILCS 5/7A-102(G)(2). The Department filed a complaint in this matter, on Complainant's behalf, on June 21, 1999.

The Department contends that the complaint conforms with Section 7A-102(G)(2) of the Human Rights Act, and that the Department has the authority to construe statutory provisions, therefore the fact that the Department filed the complaint on Complainant's behalf should not render it untimely.

Further, the Department states that its, and the Commission's inaction has jeopardized Complainant's due process rights, therefore the doctrine of equitable tolling should apply. The Department states that the Commission failed to serve it with the June 24, 1999 order, therefore the Department did not apprise Complainant of the jurisdictional issue and explain to her that she had the right to preserve this action by filing a complaint during the remainder of the 30 day period after the Department's 365 days had expired. The Department argues that given these circumstances, equitable principles should apply in this case and the complaint should be ruled timely filed.

In its Reply, Respondent states that the language of 775 ILCS 7A-102 clearly shows that only the Complainant may file a complaint within the 30 day window after the Department's 365 day deadline has expired. The Department may not file a complaint on Complainant's behalf after its 365 days have expired. Further, Respondent states that Section 7A-102(6)(2) of the Act directs a Complainant to serve a copy of a complaint that he/she files on the Department. If the Department were allowed to file a complaint on a

Complainant's behalf within the 30 day window, it would be nonsensical to require the Department to serve a copy of the complaint that it files on itself.

Finally, Respondent argues that the Department's negligence in not filing a timely complaint should not be cured by applying the doctrine of equitable tolling. Respondent states that this doctrine would be applicable only if the Department had misled Complainant, which the Department admits it did not do. For all of these reasons, Respondent requests that the complaint in the instant case be dismissed for lack of jurisdiction.

Findings of Fact

1. A charge was filed in the case at bar on March 11, 1998.
2. The Department had 365 days from that date to file a complaint with the Commission or order that no complaint be issued and dismiss the charge with prejudice.
3. The parties agreed to extend that 365 day period by 90 days, to June 9, 1999.
4. If the Department did not file a complaint with the Commission on or before June 9, 1999, the Complainant had 30 days, or until July 9, 1999, to file a complaint on her own behalf.
5. Complainant did not file a complaint in this case on her own behalf.
6. The Department filed a complaint in this matter on June 21, 1999.

Discussion

The Charge in this matter was filed on March 11, 1998. The Department must make a decision whether to file a complaint with the Commission within 365 days of the date that the charge was filed. (775 ILCS 5/7A-102(G)(1)(1995). In the case at bar, that deadline was extended for 90 days, to June 9, 1999, by agreement. If the Department did not file a complaint by that date, the Complainant would have until July 9, 1999, or 30 days, to file a complaint on her own behalf. (775 ILCS 5/7A-102(G)(2). The Department filed a complaint on Complainant's behalf on June 21, 1999, after the Department's statutory deadline.

The Department's argument that the doctrine of equitable tolling should apply here is unpersuasive. It is true that the Commission's June 24, 1999 order was not served on the Department. However, the Department filed the complaint on June 21, 1999—three days before that order was entered. On June 21, 1999, the Department knew or should have known that a complaint could only be filed by the Complainant on her own behalf. The Department could have, and should have informed Complainant of this at that time because Complainant had until July 9, 1999 to file a complaint.

The Department's reliance on Whitaker v. Human Rights Commission, 184 Ill.App3d 356, 540 N.E.2d 361, 132 Ill. Dec. 621 (1st District, 1989), is incorrect. Whitaker indicates that if a complaint is untimely filed due to a party's misleading conduct, that party is estopped from raising the untimeliness of the complaint as a defense. See also, Lee v. Human Rights Comm'n, 126 Ill. App. 3d 666, 467 N.E.2d 943, 81 Ill. Dec. 821(First District, 1984). In the case at bar, Respondent requests that the complaint be dismissed because it is untimely, but it is not the Respondent's conduct that

led to the filing of an untimely complaint—the Department’s conduct is the cause. Even if the Department’s conduct could trigger the doctrine of equitable tolling, the Department admits that it did not mislead Complainant. Misleading conduct is required for the doctrine to apply.

Further, if this tribunal were to grant the Department’s request, the 365 day statutory deadline that the Department is given to decide whether to file a complaint pursuant to a charge would be meaningless. Essentially, the Department would have 395 days to make its decision. Also, if, for example, the Department did take 395 days to decide, and then decided to dismiss the charge, the Complainant would have no time to file a complaint on his/her own behalf. Clearly, this is not what the legislature intended.

Conclusions of Law

On the basis of the controlling precedent, statutory authority, the findings of fact and the discussion, I conclude that the complaint in the instant case is untimely and the Commission lacks jurisdiction.

Recommended Order

For the foregoing reasons, I recommend that the complaint in the case at bar be DISMISSED WITH PREJUDICE, due to the Commissions lack of jurisdiction.

HUMAN RIGHTS COMMISSION

BY:
WILLIAM H. HALL
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: April 10, 2001