

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
HURLEY SUTTON,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 1998CA0523
)	EEOC NO: 21B973626
THE LOEWEN GROUP,)	ALS NO: S-10564
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On April 12, 2002, an Order was entered that required the parties to address whether the Commission could continue to exercise jurisdiction over this matter once Complainant had executed a settlement agreement in Bankruptcy Court with respect to this claim. In their responses, both parties agreed that the Commission lacks jurisdiction over this case.

Findings of Fact

Based upon the record in this matter, I make the following findings of fact:

1. On August 15, 1997, Complainant filed on his own behalf a Charge of Discrimination, alleging that he was the victim of age discrimination when Respondent demoted him from his combined position as manager and sales manager to the position of family service supervisor.

2. On August 14, 1998, the Department of Human Rights filed a Complaint on behalf of the Complainant, alleging that Complainant was the victim of age discrimination when Respondent demoted him from his combined position of manager and sales manager to the position of family service supervisor.

3. On June 17, 1999, an Order was entered which stayed this proceeding due to Respondent's filing of a Chapter 11 Bankruptcy petition and directed the parties to file periodic status reports.

4. On July 18, 2000, the parties filed status reports indicating that they had settled this matter in the form of an unsecured, non-priority claim of \$50,000 in Respondent's Bankruptcy estate. The parties also requested more time to complete the draft of the settlement agreement.

5. In December of 2000, the parties participated in a telephone conference, during which counsel for Complainant indicated that she would be unwilling to file a motion to dismiss this case unless the unsecured, non-priority claim was paid in full. The parties were then ordered to file additional reports indicating when the Bankruptcy Court might determine when and in what percentage Complainant might receive payment on his claim.

6. In June of 2001, the parties reported that the Bankruptcy Court had approved payment of Complainant's settlement figure, but that no payment had actually been received. Counsel for Respondent further indicated that there was no scheduled date for the payment of unsecured claims, and that it was impossible to tell at that time the percentage of allowed unsecured, non-priority claims, if any, that would be paid.

7. On April 12, 2002, an Order was entered which required the parties to address the question of whether, under **Watkins and State of Illinois Department of Corrections**, ___ Ill. HRC Rep. ___ (1990CF1303, June 2, 1999), the Commission continued to have jurisdiction over this case given the existence of the parties' settlement.

8. In May of 2002, both parties filed status reports indicating that this case should be dismissed due to the existence of a settlement agreement.

Conclusion of Law

1. The Commission lacks jurisdiction to enforce terms of a private settlement.

Discussion

In **Watkins and State of Illinois Department of Corrections**, ___ Ill. HRC Rep. ___ (1990CF1303, June 2, 1999) the Commission considered an issue as to whether it could enforce the terms of an oral settlement that included a payment of \$40,000 from the respondent to the complainant. After rejecting complainant's contention that the parties had not made a viable settlement agreement, the Commission concluded that it did not have jurisdiction to enforce the agreement and dismissed the case after noting that the parties had agreed to drop the case in exchange for adequate consideration. Significantly, the Commission did not set any precondition regarding the actual payment of the settlement figure prior to the dismissal of the case.

In this case, the parties have not contended that there is any ambiguity with respect to the terms of the settlement. Here, the record shows that Complainant agreed to release his claims against Respondent in exchange for an unsecured, non-priority claim in the amount of \$50,000 in the bankruptcy proceeding. Moreover, while it is true that Complainant has not been paid this amount, it would seem that under **Watkins**, Complainant's remedy would be some sort of civil action to enforce the terms of the settlement agreement, rather than the resumption of this lawsuit against an otherwise bankrupt employer who sought relief from the Bankruptcy Court. Indeed, Complainant has essentially conceded this point in his latest status report.

Recommendation

Accordingly, I recommend that the Complaint and the underlying Charge of Discrimination of Hurley Sutton be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 19TH DAY OF JULY, 2002

