



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
CARLA A. TOMINO,)	
)	
Complainant,)	
)	
and)	Charge No.: 2002CA1402
)	EEOC No.: 21BA20683
NORTHWESTERN UNIVERSITY,)	ALS No.: 11996
)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On January 15, 2003, Complainant, Carla A. Tomino, filed a complaint on her own behalf against Respondent, Northwestern University. On November 17, 2003, Administrative Law Judge William H. Hall signed a Final Order and Decision disposing of the case and dismissing the underlying charge of discrimination.

This matter now comes on to be heard on the Department's Motion for Leave to Respond to Final Order and Decision and Motion to Modify Final Order and Decision. The motions were brought by the Illinois Department of Human Rights (IDHR). Neither Complainant nor Respondent has filed any response to the IDHR's motions and the time for filing such a response has passed. The matter is ready for decision.

FINDINGS OF FACT

The following facts were derived from the record file in this matter and from the documentation submitted with the motions.

1. Complainant, Carla A. Tomino, filed her initial charge of discrimination with IDHR on December 19, 2001. She amended that charge on June 18, 2002. The charge alleged that Respondent, Northwestern University, discriminated against Complainant on the basis of her

age. The charge further alleged that Respondent unlawfully retaliated against Complainant

2. On October 24, 2002, pursuant to section 7(A)-102(G)(1) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act"), the parties agreed to extend IDHR's investigation period by 120 days. On January 24, 2003, the parties agreed to a second extension of 120 days.

3. On January 15, 2003, Complainant filed her complaint with the Illinois Human Rights Commission.

4. On March 5, 2003, Administrative Law Judge William H. Hall entered an order granting Complainant's motion to dismiss her complaint without prejudice.

5. On April 8, 2003, IDHR dismissed Complainant's charge of discrimination for Lack of Substantial Evidence.

6. On September 15, 2003, IDHR's Acting Legal Counsel Designee sustained the dismissal of Counts A through F of Complainant's charge. The dismissal of counts G, H, and I was vacated and those counts were remanded to IDHR's Charge Processing Division for additional investigation. At the time the current motions were filed, those counts were still pending before IDHR.

7. On November 17, 2003, Judge Hall entered a Final Order and Decision dismissing with prejudice Complainant's case before the Human Rights Commission. Judge Hall's order also dismissed the underlying charge of discrimination.

CONCLUSIONS OF LAW

1. Complainant's complaint in this forum was untimely filed.

2. Because the complaint in this forum was not filed within the time limits set forth in the Act, the Human Rights Commission never acquired subject matter jurisdiction in this matter.

3. Challenges to subject matter jurisdiction may be raised at any time.

4. Because the Human Rights Commission never had subject matter jurisdiction in this matter, all actions taken with regard to that complaint are nullities and have no legal force or effect.

5. The complaint in this forum should be dismissed without prejudice.

6. The Human Rights Commission has no power to dismiss the underlying charge in this matter at this time.

DISCUSSION

This case is in a very unusual procedural posture, because a Final Order and Decision has been entered. The Human Rights Act contains no procedure for review of a Final Order and Decision. As a result, once such an order is entered, the case is finished. In this case, though, the Illinois Department of Human Rights (IDHR) has asked that a Final Order and Decision be modified. Moreover, IDHR has provided compelling reasons for its request.

Under Section 7A-102(G)(2) of the Act, a complainant can file a complaint on her own behalf once the time for the IDHR's investigation has expired. Such a complaint can only be filed during a thirty-day "window" immediately following the end of the investigation period. Normally, the investigation period runs for 365 days, but the period can be extended by agreement of the parties.

In this case, the parties agreed to two separate extensions. The first was on October 24, 2002 and the second was on January 24, 2003. Each of those agreed extensions was for 120 days, so the parties agreed to extend IDHR's investigation period by a total of 240 days.

Despite those agreed extensions, on January 15, 2003, Complainant filed her complaint with the Human Rights Commission. That complaint was premature, as IDHR's investigation period had not yet expired.

In essence, IDHR's motion asserts that the Human Rights Commission never acquired subject matter jurisdiction in this matter. Disputes over an alleged lack of subject matter

jurisdiction can be raised at any time. **City of Marseilles v. Radke**, 287 Ill. App. 3d 757, 679 N.E.2d 125 (3d Dist. 1997); **Haney and University of Illinois**, ___ Ill. HRC Rep. ___, (1993SP0431, September 14, 1994). Therefore, despite the issuance of a Final Order and Decision, IDHR's motion is timely.

As noted above, the parties agreed in writing to two extensions of the time for IDHR to conduct its investigation of Complainant's claims. When Complainant filed her complaint in this forum, the investigation period had not yet ended. Because the investigation period had not ended, the "window" in which Complainant could file her own complaint had not yet opened.

When a complaint is filed outside the statutory window, that complaint is a nullity and the Commission has no jurisdiction over it. **Cummings and Hair Club For Men**, ___ Ill. HRC Rep. ___, (1992CF3482, May 18, 1994). A nullity has no legal force or effect. **Lefevre and American Colloid Co.**, ___ Ill. HRC Rep. ___, (1993SA0736, February 27, 1995). Thus, the Human Rights Commission never had jurisdiction over Complainant's complaint and the actions taken on that complaint have no legal effect. Jurisdiction over that underlying charge never left IDHR. Accordingly, Judge Hall's Final Order and Decision could not have dismissed the underlying charge of discrimination.

RECOMMENDATION

Based upon the foregoing, it is clear that the Human Rights Commission never acquired subject matter jurisdiction in this case. Accordingly, it is recommended that the complaint in this matter be dismissed without prejudice and that Complainant be allowed to pursue her claim before IDHR.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION



ENTERED: December 22, 2003