



STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
<b>BERNARD WILLIAMS,</b>	)		
	)		
Complainant,	)		
	)		
and	)	CHARGE NO:	2005SF3492
	)	EEOC NO:	NA
<b>DL COLE &amp; ASSOCIATES D/B/A</b>	)	ALS NO:	S06-119
<b>NATIONAL RENT TO OWN,</b>	)		
	)		
	)		
Respondent.	)		

**RECOMMENDED ORDER AND DECISION**

This matter comes to me on Respondent's motion to dismiss this Complaint on the grounds that the instant Complaint is untimely. Complainant has also filed a motion to withdraw the Complaint in favor of proceeding on a later-filed Complaint. The time for filing responses to either motion has expired.

**Contentions of the Parties**

In its motion to dismiss, Respondent contends that the instant Complaint is untimely since the Complainant filed his own Complaint prior to the statutory period for filing such complaints and during a time when the Department had obtained an extension of time to complete its investigation of the matter. In its motion to withdraw, Complainant essentially agrees that this Complaint should be withdrawn on the grounds cited by Respondent.

**Findings of Fact**

Based on the record in this matter, I make the following Findings of Fact:

1. On May 18, 2005, Complainant filed a Charge of Discrimination alleging on his own behalf that he was the victim of sexual harassment by his male supervisor,

and that he was terminated in retaliation for having made a protest of sexual harassment.

2. On December 15, 2005, the parties agreed to a 180-day extension of time beyond the applicable 365-day deadline for the Department of Human Rights to complete its investigation.

3. On April 5, 2006, Complainant filed the instant Complaint, alleging both sexual harassment and retaliation. April 5, 2006 is only 322 days after the filing of his Charge of Discrimination.

4. On May 22, 2006, the Department filed a Complaint on behalf of Complainant in **Williams and D.L. Cole and Associates, d/b/a National Rent to Own**, ALS No. 06-163, asserting that Complainant was the victim of sexual harassment arising out of the same allegations contained in the Charge of Discrimination at issue in the instant Complaint.

5. On May 30, 2006, Respondent filed a motion to dismiss the instant Complaint, alleging that the Commission lacked subject-matter jurisdiction based on Complainant's premature filing of his own Complaint.

6. On June 12, 2006, Complainant filed a motion to withdraw the instant Complaint.

### **Conclusions of Law**

1. Complainant is an individual claiming to be aggrieved by a violation of the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.).

2. The Human Rights Commission has authority to determine whether it has jurisdiction over the instant Complaint.

3. Section 7A-102(G)(2) of the Human Rights Act (775 ILCS 5/7A-102(G)(2)) provides that for a three hundred sixty-five day period after the filing of a charge of discrimination, the Department of Human Rights has exclusive authority to file

with the Commission a complaint based on the allegations contained in the charge of discrimination.

4. Section 7A-102(G)(2) of the Human Rights Act (775 ILCS 5/7A-102(G)(2)) grants complainants the ability to file their own complaints with the Commission, but only between 365 and 395 days after a charge of discrimination has been filed, or 30 days after such longer period agreed to in writing by all parties.

5. The instant complaint is not timely because Complainant filed his Complaint prior to the expiration of the Department's exclusive period for filing complaints under Section 7A-102(G)(2).

#### **Determination**

The Commission lacks jurisdiction to proceed on the instant Complaint because it was not timely filed pursuant to the statutory time frame set forth in Section 7A-102(G)(2) of the Human Rights Act (775 ILCS 5/7A-102(G)(2)). Complainant, however, should be permitted to proceed on the underlying Charge in ALS No. 06-163.

#### **Discussion**

Section 7A-102(G)(2) of the Human Rights Act (775 ILCS 5/7A-102(G)(2)) authorizes a complainant to file a complaint on his own behalf with the Commission within 30 days after the expiration of 365 days from the filing of his charge of discrimination if the Department has not sooner ordered that no complaint be issued. The Commission has considered instances where complainants have filed their own complaints outside this thirty-day window period and have found these filings to be jurisdictionally deficient (see, **Quigley and Peoria Civic Center**, \_\_\_ Ill. HRC Rep. \_\_\_, (1989CA2819, July 22, 1991), even when a complainant has filed a complaint before the expiration of the Department's exclusive investigation period. See, **Leuellen and White County Coal Corporation**, \_\_\_ Ill. HRC Rep. \_\_\_, (1995SF0398, January 26, 1996).

Here, the instant Complaint was filed only 322 days after Complainant filed his Charge of Discrimination. Accordingly, the instant Complaint is not timely under the instant record, and Complainant has essentially conceded in his motion to withdraw that the Commission lacks jurisdiction to proceed on this Complaint. Normally, the appropriate remedy is to dismiss the instant Complaint and remand the matter back to the Department of Human Rights for further proceedings. However, because the Department has now filed its own Complaint on behalf of Complainant in **Williams and D.L. Cole & Associate, d/b/a/ National Rent to Own**, ALS No. 06-163, stemming from the same Charge of Discrimination at issue in the instant Complaint, a remand is not required, and Complainant should be permitted to proceed on his claim in ALS No. 06-163.

**Recommendation**

For all of the above reasons, I recommend that Respondent's motion to dismiss and Complainant's motion to withdraw the instant Complaint be granted, and that Complainant be permitted to proceed on the underlying Charge of Discrimination in ALS No. 06-163.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 28TH DAY OF AUGUST, 2006