This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 10/29/01.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
COLLEEN YATES,	)	
	)	
Complainant,	)	
	)	
and	)	CHARGE NO: 1997SF0246
	)	EEOC NO: 21B970107
REINBOLD ENTERPRISES, INC., d/b/a SERVICE MASTER BUSINESS CLEANING OF DECATUR,	)	ALS NO: S-10028
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes to me on review of the instant file. On May 29, 2001, an Order was entered which required Complainant to file a status report indicating whether she still wished to proceed with this case in view of Respondent's bankruptcy and the prior distribution of Respondent's assets. Complainant failed to file the required status report and has otherwise failed to indicate an intention to further pursue her claim before the Commission.

Findings of Fact

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

1. On June 17, 1996, Complainant, Colleen Yates, filed a Charge of Discrimination, alleging that, as a Caucasian, she was the victim of reverse discrimination when Respondent terminated her for a workplace infraction but did not terminate African-American co-workers who had committed similar offenses.

2. On July 15, 1997, the Department of Human Rights filed the instant Complaint on behalf of Complainant, alleging that Complainant had been the victim of

race discrimination when Respondent terminated Complainant but did not terminate similarly situated co-workers of a different race.

3. On August 27, 1998, an Order was entered which stayed this action pending disposition of Respondent's bankruptcy proceedings.

4. On March 8, 1999, Complainant filed a motion seeking leave to conduct additional discovery from Respondent to determine the status and disposition of Respondent's assets. Complainant's motion was denied on March 29, 1999.

5. On August 27, 1999, Respondent's counsel filed a status report indicating that the Bankruptcy Court had entered a final order in Respondent's bankruptcy petition. Respondent also attached a copy of the Bankruptcy Court order indicating that Respondent had total assets of $4,666.11, $3,472.47 of which were available for distribution to certain priority and unsecured creditors. The order, however, made no mention of Complainant as being a creditor or of Complainant's cause of action.

6. On August 31, 1999, Judge Kirbach entered an Order, which lifted the stay and granted Complainant's request for additional discovery to determine the existence and location of Respondent's assets. The Order also set a due date of March 23, 2000 for filing a pre-hearing memorandum.

7. On September 24, 1999, an Order was entered which granted a motion by Respondent's counsel to withdraw from the case. The Order was served on Cathy Bramel in care of Respondent at a Wyoming address.

8. On April 11, 2000, Complainant filed a status report requesting additional time in which to conduct discovery as to a purported asset sale by Respondent. Complainant also stated in the report that she did not want to "waste the time of the Human Rights Commission" if her discovery indicated that there was no chance of a damage award because of insufficient funds or the inability to pierce the corporate veil and retrieve funds from Respondent's shareholders.

9. On June 7, 2000, an Order was entered which granted Complainant's request for more time to conduct additional discovery and directed Complainant to file a status report on August 4, 2000 indicating whether Complainant still wished to proceed on the instant matter.

10. On August 23, 2000 an Order was entered which granted Complainant's request for additional time to conduct discovery on Respondent's assets. The Order also directed Complainant to provide a status report by September 15, 2000 regarding her intention to proceed with the case.

11. On September 25, 2000, Complainant filed a status report indicating that she obtained a new address for Respondent and that she was awaiting Respondent's responses to her discovery requests.

12. On September 29, 2000, an Order was entered which directed Complainant to file a status report by October 23, 2000 indicating her intention to continue with the prosecution of this case.

13. On October 12, 2000, Complainant filed a motion to compel Respondent to respond to outstanding discovery requests pertaining to Respondent's assets. Respondent served the motion on Cathy Bramel as President of Respondent.

14. On October 20, 2000, Respondent's Bankruptcy Court attorney sent the Commission a copy of a motion to reopen Respondent's Chapter VII bankruptcy case. In the motion, Respondent's counsel asserted that: (1) Complainant was listed on the debtor's Schedule F as an individual suing Respondent on a discrimination claim before the Illinois Human Rights Commission; (2) Complainant did not seek leave before the Bankruptcy Court to lift the automatic stay to allow the Human Rights Act claim to proceed; and (3) Complainant did not file a claim with the Bankruptcy Court or object to the Final Report distributing Respondent's assets to other creditors. The motion essentially sought reinstatement of an automatic stay of the instant Human Rights Act

claim, as well as a determination from the Bankruptcy Court as to what obligations Respondent had with respect to responding to Complainant's motion to compel in view of the Final Report.

15. On November 14, 2000, Cathy Bramel sent to the Commission a copy of a letter sent to Complainant's counsel indicating that as of November 1, 1999, she resigned as a corporate officer of Respondent, and that Respondent had been dissolved as a corporation as of November 1, 1999. Bramel also requested that counsel for Complainant stop serving her with documents intended for Respondent.

16. On November 16, 2000, counsel for Complainant sent to the Commission a copy of a letter he had sent to Bramel questioning her statement that she no longer was acting as a representative of Respondent.

17. On November 20, 2000, Respondent's Bankruptcy Court lawyer sent a copy of the Bankruptcy Court's docket sheet which indicated that on November 2, 2000, the Bankruptcy Court conducted a hearing on the motion to reopen Respondent's bankruptcy case.

18. On March 27, 2001, an Order was entered which noted that the Commission had not received any information as to the status of the motion to reopen Respondent's Bankruptcy Court case. The Order further directed Complainant to file a report by April 13, 2001 indicating whether Complainant still wished to proceed with the case in view of the Bankruptcy Court matters and in view of the information on certain Bankruptcy Court forms identifying where Respondent's assets had been distributed. Complainant did not file a status report as directed by this Order.

19. On May 29, 2001, an Order was entered which noted that the Bankruptcy Court denied Bramel's motion to reopen Respondent's Bankruptcy Court case on December 7, 2000. The Order further directed Complainant to file a report by June 15, 2001 indicating her intention to proceed with this case and informed Complainant that

she could not continue to do nothing with respect to advancing her case before the Commission. The Order also cautioned Complainant that a failure to file a status report by the due date set forth in the Order could result in the entry of an Order recommending that the matter be dismissed with prejudice.

20. Complainant has not filed a status report indicating an intention to proceed by the date of this Order.

Conclusions of Law

1. A Complaint may be dismissed when a party engages in conduct that unreasonably delays or protracts proceedings. See, 56 Ill. Admin. Code, Ch. XI, §5300.750(e).

2. Complainant has unreasonably delayed proceedings by failing to file status reports indicating her intention on proceeding with this case.

3. The appropriate sanction for Complainant's failure to advance her case is dismissal of the Complaint and the underlying Charge of Discrimination.

Determination

The Complaint and the underlying Charge of Discrimination should be dismissed with prejudice due to Complainant's failure to advance her case.

Discussion

Under the Commission's procedural rules, an administrative law judge may recommend to the Commission that a Complaint be dismissed where a complainant engages in conduct which unreasonably delays or protracts proceedings. (See, 56 Ill. Admin. Code, Ch. XI, §5300.750(e).) On review, the Commission has upheld the use of such discretion to dismiss complaints in circumstances which are analogous to the case at bar. See, for example, **Ramirez and Wesco Spring Company**, 40 Ill. HRC Rep. 266 (1988), and **Vollbracht and Bunn-O-Matic Corporation**, ___ Ill. HRC Rep. ___ (1997SF0557, May 6, 1999).

Here, the circumstances also indicate that Complainant's inaction has served to unreasonably delay the instant proceedings. Specifically, On August 31, 1999, Complainant was granted leave to conduct additional discovery as to the existence and or distribution of Respondent's assets based in part on Complainant's own assessment that to continue with this case without a reasonable chance at obtaining any financial recovery would be a "waste of time". During this process Complainant as well as the Commission discovered that: (1) Respondent had $3,472.47 in assets available to be distributed to various priority and unsecured creditors; and (2) Respondent's assets were distributed to these creditors without Complainant ever having filed a claim in Bankruptcy Court. As a result, Complainant was directed on two separate occasions to inform the Commission as to her intention on proceeding with this case in view of the information from the Bankruptcy Court. However, Complainant has not complied with either order, even when the Order of May 29, 2001 expressly warned Complainant that the failure to file an intention to proceed with the case could result in the entry of an Order recommending that the case be dismissed. Complainant's inaction has caused unreasonable delay and renders it difficult for the Commission to take any action with regard to this case except to dismiss it. See, for example, **Foster and Old Republic General Services, Inc.**, ___ Ill. HRC Rep. ___ (1990CA2290, November 8, 1993).

Recommendation

For all of the above reasons, I recommend that the Complaint and the underlying Charge of Discrimination of Colleen Yates be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

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

ENTERED THE 14th DAY OF SEPTEMBER, 2001.