

**STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES  
OFFICE OF PUBLIC HEARINGS**

**Commission on Human Rights and Opportunities, *ex rel.*  
Yvonne Collette,  
Complainant** : **CHRO CASE Nos. 0610446  
Federal No. 523200600150**

v.

**University of Connecticut  
Health Center,  
Respondent** : **July 22, 2008**

**RULING**  
**RE: Respondents' Motion to Dismiss**

***Preliminary Statement***

On April 28, 2008, the respondent filed a motion to dismiss the complaint on the grounds that the complaint allegations are barred by the statute of limitations. In the alternative, the respondent argued that the complainant's claims pursuant to General Statutes §§ 46a-58 (a), 46a-70 and 46a-77 fail to state a valid cause of action. On June 5, 2008, the commission on human rights and opportunities (commission) filed a memorandum of law in opposition to the respondent's motion to dismiss. The commission argued that the complainant's state law claims are not barred by the statute of limitations and do state a valid cause of action.

For the reasons stated herein, the motion to dismiss is hereby Granted in part and Denied in part.

### ***Procedural History***

On May 26, 2006, the complainant filed an affidavit of illegal discriminatory practice (complaint) alleging that the respondent violated the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. when it denied her a reasonable accommodation on the basis of her physical disability (migraine headaches) on February 9, 2006. The complainant amended her complaint on June 5, 2007 to allege the respondent also violated General Statutes §§ 46a-58 (a), 46a-60 (a) (1) and 46a-70. She again amended her complaint on September 6, 2007 to allege the respondent also violated General Statutes § 46a-77. The amended complaint was certified to public hearing on September 18, 2007 and assigned to the undersigned presiding human rights referee. On November 7, 2007, the respondent filed an answer to the amended complaint.

### **DISCUSSION AND CONCLUSION**

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. See *Federal Deposit v. Peabody N.E.*, 239 Conn. 93, 99 (1996); see also *Jolly, Inc. v. Zoning Board of Appeals*, 237 Conn. 184 (1996); *Upson v. State*, 190 Conn. 622, 624 (1983). The motion admits all facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts. See *Malasky v. Metal Products Corp.*, 44 Conn. App. 446, 451-52, cert. denied, 241 Conn. 906 (1997). In evaluating the motion, the complainant's allegations and evidence must be accepted as true and interpreted in a light most favorable to the complainant; every reasonable inference is to be drawn in her favor; see *New England Savings Bank v. Bedford Realty Corp.*, 246 Conn. 594, 608 (1998); and “[e]very presumption favoring jurisdiction shall be indulged.” *Conn. Light & Power Co. v. Costle*,

179 Conn. 415, 421 (1980). See also *Magda v. Diageo North America, Inc.*, 2006 WL 4844065 (CHRO No. 0420213, March 16, 2006).

### **Statute of Limitations**

First, the respondent argued that because the complainant only alleged a violation of federal law, the American with Disabilities Act (ADA), in her original complaint, her state law claims (§§ 46a-58 (a), 46a-60 (a) (1), 46a-70 and 46a-77) that were alleged in her amended complaints of June 5, 2007 and September 6, 2007 are barred by the 180-day statute of limitations pursuant to General Statutes § 46a-82 (e). The respondent argued that the doctrines of equitable tolling, consent and waiver do not apply to the complainant's state law claims. In addition, the respondent argued that the equal employment opportunity commission (EEOC) dismissed the complainant's ADA claim on October 24, 2006 and, therefore, the commission has no authority to adjudicate the ADA claim.

Although the EEOC closed its file regarding the complainant's federal claim, the commission investigator investigated the claim pursuant to the worksharing agreement between the EEOC and the commission. Subsequently, the commission investigator certified the complaint as amended to public hearing on September 18, 2007 pursuant to General Statutes § 46a-84. Because the complaint was amended as a matter of right prior to the appointment of the undersigned presiding referee pursuant to § 46a-54-38a (a) of the Regulations of Connecticut State Agencies, the state law claims are not time-barred.

### **Failure to State Valid Claims**

Next, in the alternative, the respondent argued that the complainant failed to state valid claims under §§ 46a-58, 46a-70 and 46a-77. The respondent argued that the specific cause of action provided for in § 46a-60 supersedes the general cause of action embodied in § 46a-58 (a). This is correct. However, the complainant's basis for her § 46a-58 (a) claim is not a cause of action under § 46a-60 but is a cause of action under the federal ADA. "[Section] 46a-58 (a) has expressly converted a violation of federal antidiscrimination laws into a violation of Connecticut antidiscrimination laws." *Trimachi v. Connecticut Workers Compensation Committee*, 2000 WL 872451, 7 (Conn.Super.) Therefore, the complainant's federal ADA claim has been converted to a claim under state law by way of § 46a-58 (a) and is a valid claim.

Also, the respondent argued that the complainant did not allege that the respondent failed to perform any of the actions: recruit, appoint, assign, train, evaluate or promote under § 46a-70. The complainant's claims under § 46a-70 are valid because § 46a-70 applies to employment discrimination in state agencies and the respondent's alleged failure to provide a reasonable accommodation in order for the complainant to resume working is covered within § 46a-70. The complainant does state a valid claim under § 46a-70.

The respondent argued that § 46a-77 requires state agencies to "comply in all of its services, programs or activities with the provisions of the ADA . . . ." It argued that "employment is not a service, program or activity" under § 46a-77. Section 46a-77 applies to services provided to the public by state agencies and does not apply to

employment discrimination claims, therefore, the complainant does not state a valid claim under § 46a-77 and her claims pursuant to § 46a-77 are dismissed.

**It is so ORDERED.**

Dated at Hartford, this \_\_\_\_\_ day of July 2008.

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Donna Maria Wilkerson Brillant  
Presiding Human Rights Referee

- c. Assistant Attorney General Donald R. Green  
Attorney Margaret Nurse-Goodison  
Ms. Yvonne Collette