

**STATE OF CONNECTICUT
Commission on Human Rights and Opportunities
OFFICE OF PUBLIC HEARINGS**

**Commission on Human Rights and Opportunities ex rel.
Cheryl Roberts,
Complainant** : **CASE NO. 0640147
Fed No. 16aa600215**

v.

**Germania Lodge,
Respondent** : **March 3, 2009**

Ruling

RE: Complainant's Request To Amend Complaint

and

Decision

RE: Dismissal of Complainant's Retaliation Claim

The complainant filed a motion to amend the complaint to add public accommodation discrimination on January 21, 2009. The respondent filed an objection to the motion on February 13, 2009. On February 23, 2009, the complainant filed a proposed amended complaint adding public accommodation allegations and attempting to clarify the names of various entities stated in the complaint. On February 26, 2009, the respondent filed a supplementary objection to the request to amend the complaint. After having received all pertinent documents in this matter, including the investigator's no reasonable cause finding of September 5, 2007, the executive director's decision on reconsideration of December 12, 2007 and the investigator's reasonable cause finding of August 21, 2008¹, and having reviewed the same, this tribunal orders the following:

¹ The investigator's no reasonable cause finding and reasonable cause finding as well as the decision on the reconsideration request were filed pursuant to orders of the presiding referee. These pre-certification documents were considered for the limited purpose of determining whether to allow the complainant to amend the complaint to add the claim of public accommodation discrimination. No evidentiary significance is attributed to these pre-certification documents. The final decision shall be based solely on the evidence presented at the public hearing.

Motion to Amend to add Claim of Public Accommodation Discrimination

The complainant's original complaint alleged a violation of General Statutes §§ 46a-60 (a) (1) and 46a-58 (a), specifically stating the respondent discriminated against the complainant because of her sex (female) when it terminated her employment at Germania Lodge and denied her membership in its social club. She also alleged in particular, "I believe Respondent's reasons for terminating my employment are a pretext for discrimination based on my sex female and in retaliation for my filing an application for membership with the Respondent." Complaint, ¶ 11. In the complainant's proposed amendment, she alleged a violation of §§ 46a-63 and 46a-64 (a) (public accommodation discrimination). In particular, she stated as the proposed amendment, "I believe Germania's reasons for terminating my employment are a pretext for discrimination based on my sex female and in retaliation for my filing an application for membership with the Germania Lodge. . . ." ² Proposed Amended Complaint, ¶ 11.

The respondent argued, among other things, that it has not been afforded due process in that the public accommodation claim was not fully investigated as required by General Statutes § 46a-83 et seq. and the Regulations of Connecticut State Agencies. After a finding of no reasonable cause was made and the complainant's request for reconsideration was granted, the decision on reconsideration directed the investigator to conduct further investigations of the public accommodation claim. The final reasonable cause finding and summary dated August 21, 2008 contained no findings of fact on the public accommodation claim. The investigator merely stated that she was adopting the public accommodation analysis as stated in the decision on reconsideration. Although the investigator did not articulate findings of fact or conduct further investigations on the public accommodation claim as directed by the decision on reconsideration, the public hearing process is not an appeal of the reasonable cause finding. Pursuant to § 46a-84 (b), upon certification of the complaint, "the [public] hearing shall be a de novo hearing on the merits of the complaint and *not an appeal of*

² Additional words written were illegible.

the commission's processing of the complaint prior to its certification.” (Emphasis added.)

The complainant alleged “Denied membership at social club” in her original complaint. The respondent was served with the original complaint, which made it aware of this allegation of public accommodation discrimination. Also, the proposed amended complaint specifically alleged the pertinent public accommodation statutes of §§ 46a-63 and 46a-64 (a). An amendment is reasonable if it includes a matter arising out of the investigation as provided for in section 46a-54-79a (e) of the Regulations of Connecticut State Agencies. The respondent argued the public accommodation claim was not fully investigated because after the complaint was returned to the investigator no further investigation was done. Although this was the case, the respondent was on notice of the public accommodation claim by way of the original complaint and because the investigator initially investigated the respondent’s status as a public accommodation as stated in the finding of no reasonable cause. In addition, all parties received the decision on reconsideration, which discussed in detail the issue of public accommodation and directed the investigator to conduct further investigations. Hence, the investigator issued a reasonable cause finding which covered the claims of termination, retaliation and public accommodation based on sex, albeit without a complete discussion of her findings. The respondent was fully aware of the complainant’s claim of public accommodation. See *Demoss v. City of Norwalk Board of Education*, United States District Court, Docket No. 3:05cv736 (D.Conn. November 14, 2007) (2007 WL 3432986, 3). The entire complaint was certified to public hearing and because the public hearing process is not an appeal of the investigator’s complaint processing, the public accommodation amendment is allowed and the motion to amend is granted.

Dismissal of Retaliation Claim

In regard to the complainant’s retaliation claim, the complainant never alleged a violation of General Statutes § 46a-60 (a) (4). Section 46a-60 (a) provides in relevant part: “It shall be a discriminatory practice in violation of this section: (4) For any person, employer, labor organization or employment agency to discharge, expel or otherwise

discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84.” The act of filing a membership application does not equate to “having opposed discriminatory employment practices” to constitute protected activity. Hence, the complainant does not state a claim for retaliation pursuant to § 46a-60 (a) (4). Therefore, pursuant to § 46a-54-88a (d) (2) of the regulations of Connecticut State Agencies, the complainant’s retaliation claim is hereby dismissed for failure to state a claim for which relief can be granted.

Conclusion

The complainant’s allegation of termination based on discrimination because of her sex (female) is a separate claim and her allegation of being denied membership to a public accommodation based on discrimination because of her sex (female) is another claim. The two separate claims are the sole issues for public hearing. The retaliation claim is hereby dismissed. In addition, the complainant’s proposed amendment alleges “Germania Lodge” as the respondent. Proposed Amendment, ¶ 1. Therefore, the sole respondent named in this complaint is Germania Lodge. Lastly, the complainant is ordered to provide the proposed amendment to the complaint in a legible form.

So Ordered.

The Honorable Donna Maria Wilkerson Brilliant
Presiding Human Rights Referee

c. Attorney Donald L. Williams
Attorney David L. Kent
Attorney Richard J. Pascal