

**STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS**

Kenneth C. Floyd, : No. OPH/WBR-2008-085
Complainant

v. :

State of Connecticut : October 29, 2008
Department of Correction,
Respondent

RULING ON MOTION TO DISMISS

On August 14, 2008, Kenneth Floyd (the complainant) filed this complaint pursuant to General Statutes § 4-61dd (b) (3) (A), alleging that his former employer, the Connecticut Department of Correction (the respondent), retaliated against him for engaging in protected “whistleblowing” activities.

On September 3, 2008, I conducted an “initial conference” in accordance with § 4-61dd-9 of the Regulations of Connecticut State Agencies. At that conference, I directed the respondent to file its anticipated motion to dismiss (the motion) no later than September 24, 2008. I further directed the complainant to file his response to the motion no later than October 24, 2008. I reiterated these directives in my written September 3, 2008 “Conference Summary and Order,” which was mailed to all parties that same day.

On September 23, 2008, the respondent filed a timely motion to dismiss, claiming that the complainant did not satisfy the jurisdictional prerequisites to bring this action. In particular, the respondent asserts (1) that the complainant made no whistleblower disclosures pursuant to § 4-61dd (a) and thus cannot invoke the statute’s protection against retaliation for such disclosures; (2) that the complaint was untimely—i.e., it was filed more than thirty days after the occurrence of eight of the nine alleged retaliatory actions;¹ and (3) that the sole action that might be considered timely—a superior officer

¹ The complainant does not attempt to link these eight untimely actions with the one potentially timely action in order to assert a theory of continuing violation. As described in the complaint, these particular actions are discrete matters, each subject to its own filing deadline.

closing a door in the complainant's face—does not constitute an adverse personnel action.

The complainant failed to file his response to the motion by the October 24, 2008 deadline. As of today's date, the complainant still has filed no response or any other pleading relating to the motion.

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *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. *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 his favor. *New England Savings Bank v. Bedford Realty Corp.*, 246 Conn. 594, 608 (1998). See *Proietto v. Whitney Manor Convalescent Center, Inc.*, No. OPH/WBR-2005-009 (Ruling on Motion to Dismiss, March 1, 2006). The scant record before me, even when construed in the complainant's favor, supports each of the respondent's three arguments.

Absent any objection to the motion to dismiss, as well as for each of the reasons set forth in the motion, I hereby grant the motion and dismiss this complaint. See *Espinosa v. Bethel Board of Education*, 2008 WL 4512122 (OPH/WBR-2008-084, September 23, 2008).

Dated at Hartford, CT this ____ day of October, 2008.

David S. Knishkowy
Human Rights Referee

Copies sent certified mail
on this date to:
Kenneth Floyd
Attorney Antoria Howard