

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

Commission on Human Rights & Opportunities ex rel. Arnell Barnes, Complainant	: : :	CHRO No. 0710395 Fed No. 16a200701081
v.	:	
Alan S. Goodman, Inc., Respondent	:	June 5, 2009

Ruling on Motion For Summary Judgment

Procedural background

On or about May 7, 2007, the complainant, Arnell Barnes (“complainant”), filed an affidavit of illegal discriminatory practice with the Commission on Human Rights and Opportunities (“commission”). He alleged that the respondent discriminated against him by terminating his employment based on his race (black) and that such termination violated Connecticut General Statutes §§ 46a-58 (a), 46a-60 (a) (1) and Title VII of the Civil Rights Act of 1964, as amended (“Title VII”). On or about April 17, 2009, respondent filed a Motion for Summary Judgment along with a supporting memorandum of law, documentary evidence and various affidavits in support of said documentary evidence. On or about May 12, 2009, the commission filed an Objection to the Respondent’s Motion for Summary Judgment, also accompanied by a memorandum of law and documentary evidence in support of said objection. On or about May 14, 2009, respondent filed a reply to the commission’s objection to the Motion for Summary Judgment. For the reasons set forth below, I hereby deny the Respondent’s Motion for Summary Judgment.

Authority of Human Rights Referees to Rule on a Motion For Summary Judgment

I will first address the commission's argument that the filing of a Motion for Summary Judgment is not an allowable motion under the commission's regulations or under the General Statutes including the Uniform Administrative Procedures Act ("UAPA"). As set forth in *Carretero v. Hartford Public Schools*, 2005 WL 5746419 (2005) at page 5, "Motions for Summary Judgment have been recognized as appropriate means of resolving employment cases." A motion for summary judgment is "designed to eliminate the delay and expense of litigating an issue where there is no issue to be tried.;" *Id.* at 5. citing *Dingle v. Fleet Bank*, 2002 Conn. Super Lexis 1837, quoting *Wilson v. New Haven*, 213 Conn. 277, 279 (1989). In deciding the *Carretero* case, Human Rights Referee David S. Knishkowsky held that referees have the authority to rule on such motions in administrative adjudications. *Carretero*, *Supra* at p. 5.

In his ruling, Referee Knishkowsky cites to an earlier decision known as *Commission on Human Rights and Opportunities ex rel. Blake v. Beverly Enterprises*, 1999 WL 34765982 (1999). The *Blake* case is particularly appropriate and instructive as it sets forth the full authority of the presiding referee to control the proceedings including the authority to dismiss. In the *Blake* case, the presiding referee notes that, "Notwithstanding the Commission's claims in this case that there is never authority to dismiss a certified complaint prior to a hearing, the commission has not only recognized such authority, but has either requested this action itself or not opposed pre-hearing dismissal on a number of prior occasions.It is not a viable position for the

commission to contend in some instances that hearing officers have the power to enter pre-hearing dismissals, but not in others. The authority to do so exists or it doesn't ". *Id.* at p. 4-5. Also see *Commission on Human Rights & Opportunities, ex rel. Meredith Payton v. State of Connecticut Department of Mental Health and Addiction Services*, 2004 WL 5380916 ruling characterizing Respondent's Motion To Dismiss as "more properly a motion for summary judgment." *Id.* at 2.

I reject the commission's argument and rule that a Summary Judgment Motion is permissible based upon existing precedent and therefore a permissible procedural motion in this matter.

The Summary Judgment Motion

Next, I examine the standards for granting a motion for summary judgment as applied to this case. The generally accepted standard of measurement or yardstick used to determine whether to grant a motion for summary judgment is that there is no genuine issue of material fact and that therefore the moving party is entitled to judgment as a matter of law. *Carretero v. Hartford Public Schools* , Supra at p. 5. In deciding a motion for summary judgment, the tribunal must view the evidence in a light most favorable to the non-moving party and draw all reasonable inferences against the moving party. A "material fact:" has been defined as "a fact which will make a difference in the result of the case." *Id.*, p. 6.

The present case is based on a claim of racial discrimination and disparate treatment. The complainant signed a sworn affidavit when he filed his complaint. In it, he alleges that he was treated differently and less favorably than his Caucasian co-workers. The respondent vigorously contests these allegations. The materials produced so far in response to the complainant's and commission's production requests appear to show some differences in how the complainant was treated and how the respondent disciplined him vis-à-vis other employees. The complainant has shown that there is a genuine issue of material fact: whether he was discriminated against because of his color. Due to the limited nature of the discovery rules under the Connecticut UAPA (no interrogatories or depositions are normally allowed), it is difficult for the complainant to provide more evidence of material facts at this time. The complainant should have an opportunity to demonstrate, through a public hearing, that he can establish a case of racial discrimination and disparate treatment.

Conclusion

I conclude that there are disputed issues of material fact and that therefore it would be inappropriate to grant the respondent's motion for summary judgment.

Dated at Hartford, Connecticut this 5th day of June, 2009.

It is so ordered.

Jerome D. Levine
Presiding Human Rights Referee

cc.

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