

Commission on Human Rights and	:	Commission on Human Rights
Opportunities ex rel.	:	and Opportunities
Sandor Nemeth	:	
	:	CHRO No. 0920337
v.	:	
	:	
Westport Big & Tall, Inc.	:	July 23, 2010

Order of dismissal of the complaint

I

Pursuant to Section 46a-54-88a (d) (3) of the Regulations of Connecticut State Agencies, the undersigned presiding human rights referee on his own motion dismisses the complaint for the failure of the complainant to attend the lawfully noticed hearing conference without just cause. Neither the complainant nor his attorney attended the hearing conference lawfully noticed for July 23, 2010.

II

On July 14, 2010, this office issued to parties and their counsel a Notice of Contested Case Proceeding and Hearing Conference (Notice). Section II of the Notice informed them that the hearing conference would be held on July 23, 2010 at 10:00 AM, 21 Grand Street, Hartford, and that failure to appear at any proceeding could result in the dismissal of the complaint. Section IV of the Notice set forth the procedure for requesting continuances. Section V of the Notice explained the requirement that copies of all documents filed with this office are to be served on all parties, including the counsel for the commission, and that the documents certify that copies had been served. Section VII of the Notice explained the procedure for filing a motion to appear telephonically at a conference.

On July 19, 2010, at 5:16 PM, the complainant's attorney faxed to this office correspondence stating that she was not available to attend the hearing conference on the assigned date. She wanted the date changed. She provided no alternative dates when she and the other parties would be available. Although her correspondence was copied to the respondent, there was no certification that it had been served on the office of the commission counsel. On July 20, 2010, her request was denied because she had failed to comply with section IV of the Notice detailing the procedure for requesting continuances. The denial also informed the attorney that, pursuant to General Statutes § 46a-84 (b), the hearing conference could be held no later than July 23, 2010. By correspondence faxed on July 20, 2010, she notified this office that the reason she was

not available to attend the hearing conference was that she would be in Florida. She stated that she needed to appear telephonically and that she could not have complied with the ten-day requirement of section IV because of the date on which she received the Notice. No explanation was provided as to why the complainant himself could not personally appear at the hearing conference. As stated in section II of the Notice: **“The purpose of the hearing conference is to schedule the dates for a settlement conference, a pre-hearing conference, a public hearing, production requests and compliance; and to discuss related procedural matters. Please note: no evidence or testimony will be taken at the hearing conference.”** (Emphasis in the original.)

III

In this case, the less than ten-day time frame between the issuance of the Notice and the assigned date hearing conference date would, as the complainant’s attorney correctly noted, have prevented her from complying with the ten-day filing requirement set forth in the first sentence of section IV and would have constituted good cause for the untimely filing of the motion. Section IV, however, also provides in relevant part that a “moving party, prior to submitting a motion for continuance shall confer with the other parties and shall represent in the motion their position with respect to the continuance. If the motion is to continue a conference or hearing, the motion shall include three alternative dates and times that all parties have agreed are mutually convenient if the motion is granted.” Notwithstanding the complainant’s attorney’s inability to comply with the ten-day filing of her motion, she made no attempt, and offered no just cause for making no attempt, to comply with the other provisions of section IV: there is no representation of the position of the other parties as to continuing the hearing conference and there are no alternative dates and times that all parties have agreed are mutually convenient if the motion is granted. The obvious purpose of providing mutually agreed dates is to prevent the selection of a date when one or more parties are unavailable to attend.

In addition, the attorney for the complainant failed to comply with section V of the Notice which provides, in relevant part, that all documents filed with this office “include a certification that copies have been served on all parties of record. **Copies of all such papers, motions, pleadings, requests or documents shall be served on all parties of record, including counsel for the commission.**” (Emphasis in the original.) The July 19, 2010, July 20, 2010 and the July 22, 2010 correspondences from the attorney or her office do not include a certification that copies were sent to the office of the commission counsel.

Finally, the request to participate telephonically in the hearing conference did not comply with the procedural requirements set forth in section VII of the Notice. Section VII provides that: “Prior to filing a motion for a telephonic conference or to appear

telephonically, the moving party shall contact all parties to inform them of the motion and determine which parties agree to participate in the conference by telephone. The motion shall be in writing, filed with the Office of Public Hearings and served on all parties. The motion shall: (1) state that all parties have been contacted and informed of the motion; (2) indicate which parties also request to participate in the conference telephonically; (3) describe the arrangements for the telephone conference call and (4) state that the moving party will be responsible for arranging the telephone conference call and for all costs associated therewith. Motions may be granted at the discretion of the human rights referee. If a human rights referee, on his or her own initiative, orders a telephonic conference call, such call shall be arranged by the Office of Public Hearings.” In this case, the correspondence stating that the complainant’s attorney needed to appear telephonically did not represent that all parties had been contacted and informed of the motion prior to its filing, did not indicate which, if any, parties were also requesting to participate in the conference telephonically and was not certified as having been served on the commission.

Notwithstanding the policy in favor of having cases heard on their merits, parties and their attorneys do not, without consequences, decide for themselves if they will attend hearings, what hearings they will attend, what procedures they will follow and what procedures are too inconvenient for them to attempt compliance.

Hon. Jon P. FitzGerald
Presiding Human Rights Referee

c:
Mr. Sandor Nemeth
Victoria de Toledo, Esq.
Mr. Thomas J. Altieri
David L. Kent, Esq.