

STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Peggy Ann Carey, Complainant : OPH/WBR No. 2010-141

v.

M. Trudel and Middlesex Hospital, : March 29, 2012
Respondents

ORDER

Re: Dismissal of Complaint

On June 7, 2010, Peggy Ann Carey (complainant) filed a whistleblower retaliation complaint (the complaint) with the Office of Public Hearings (OPH) for the Commission on Human Rights and Opportunities (CHRO) against Middlesex Hospital and its employee, Margaret Trudel (collectively, respondent).

Chief Human Rights Referee J. Allen Kerr, Jr., designated Thomas C. Austin, Jr., as presiding referee in the matter and, on June 15, 2010, issued a “Notice of Contested Case Proceeding, Initial Conference and Hearing” (notice of contested case proceeding).

The notice of contested case proceeding:

1. contained a detailed explanation of the contested case process¹, including statutory and regulatory references;
2. instructed respondent to answer the complaint enclosed therewith;
3. scheduled a June 30, 2010 initial conference to establish procedures and set the dates for all prehearing matters; and
4. set July 12 – 15, 2011 for a hearing and final disposition of the case.

Respondent filed an answer to the complaint, as well as affirmative defenses on June 28, 2010.²

¹ Section VIII of the notice of contested case proceeding instructs parties on the issues of default and dismissal, alerting them to, among other things, the presiding referee’s authority to dismiss a complaint if a complainant fails to appear at a lawfully noticed hearing or conference.

² Two of respondent’s affirmative defenses challenge OPH’s jurisdiction over the complaint. While a motion to dismiss is an appropriate means to challenge a tribunal’s jurisdiction to hear an action (Jolly, Inc. v. Zoning Board of Appeal, 237 Conn. 184 (1996)), even in the absence of respondent’s filing such a motion, we note both the apparent validity of its jurisdictional challenge (respondent is not a large state contractor) as well as the power of the presiding

At the initial hearing conference on June 30, 2011, the presiding referee established dates, times and deadlines to control subsequent proceedings in the matter. He memorialized these in the hearing conference summary and order that he issued on July 12, 2010 and also reiterated the standards for default and dismissal, instructing the parties once again that absent a showing of good cause, failure to appear at any proceeding or to comply with an order of the referee, could result in sanctions, including an order of default [or dismissal] against the noncomplying party.

By letter dated September 16, 2010, complainant's attorney (Axelrod & Associates) notified OPH and respondent of complainant's August 27th death.

In an order dated June 7, 2011, the presiding referee noted that since the date of complainant's death no action appeared to have been taken to substitute a representative for complainant, or to pursue discovery. Accordingly, referee Austin ordered the parties to submit status reports to him by June 12, 2011 and reminded them of the prehearing conference scheduled for June 14, 2011.

Complainant's attorney responded to the order for a status update via letter dated June 13, 2011. He stated that complainant's executor had refused to participate in any effort to substitute himself for complainant, or to instruct the attorney as to how to proceed with respect to the matter. He requested permission to withdraw from the case.

Referee Austin construed that request as a motion, which he denied without prejudice, instructing complainant's attorney to re-file its motion in technical compliance with the requirements of §4-61dd-11(3) of the Regulations of Connecticut State Agencies (the Regulations).

No party or any representative of either party appeared at the duly noticed June 14, 2011 pretrial conference.

Referee Austin's term (and those of all other OPH human rights referees) expired on June 30, 2011 and, effective July 1, 2011, all parties with pending OPH proceedings were notified of a blanket stay pending gubernatorial appointment of new human rights referees.

Governor Malloy appointed new human rights referees, including the undersigned Ellen E. Bromley, on December 12, 2011. Thereafter, the undersigned was assigned to act as presiding referee in this matter for such further processing as might be required.

referee to dismiss a complaint sua sponte where the complainant fails to establish subject matter or personal jurisdiction. (Regulations §4-61dd-15 (c) (1)) Nevertheless, in deference to Referee Austin's decision not to exercise that discretion in this matter, we are dismissing the complaint on alternate grounds.

Accordingly, I am dismissing the complaint, sua sponte, due to complainant's representative's failure to appear at the lawfully noticed prehearing conference on June 14, 2011, including its failure to request an extension or to provide any explanation for its absence that would constitute good cause. (Regulations §4-61dd-15 (c) (2))

It is so ordered this 29th day of March, 2012

Ellen E. Bromley, Human Rights Referee

Cc:

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