

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

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PUBLIC HEARINGS - CHRO
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Commission on Human Rights and Opportunities, ex rel.
CarolAnne Rowe, Complainant

CHRO 1810381

v

Allied World Assurance Company (US), Respondent

December 29, 2021

Ruling re: the respondent's motion for sanctions

On February 18, 2021, the respondent filed a motion for sanctions and dismissal for the complainant's failure to respond to its request for documents and her failure to comply with the presiding referee's August 26, 2020 order to produce documents. While the complaint is not being dismissed, sanctions are being imposed as set forth herein.

On March 26, 2018, the complainant filed her complaint with the commission. She alleged that the respondent had terminated her employment because of her physical disability in violation of General Statutes § 46a-60 (b) (1) and the federal Americans with Disabilities Act as enforced through General Statutes § 46a-58. The complainant amended her complaint on June 3, 2019 to include an allegation of discrimination based on perceived disability. On November 26, 2019, the respondent filed its answer denying the allegations of discrimination.

On November 19, 2019, a hearing conference was held at which time it was ordered, in part, that requests for production of document, pursuant to General Statutes § 4-177c and Section 46a-54-89a of the Regulations of Connecticut State Agencies, were to be served on or before April 20, 2020 and that objections and compliance thereto were to served and filed on or before

June 29, 2020. Following the granting of a motion for extension of time, production requests were served by the commission and the respondent May 22, 2020. Thereafter, the commission filed several position statements regarding the production request served by the respondent on the complainant.

On June 24, 2020, the parties filed a joint motion for extension of time to comply or object to production requests. The parties' request of an extension to July 13, 2020 was granted. On July 13, 2020, the complainant served on the commission and the respondent (but apparently did not file) a request for an extension of time until August 10, 2020 to respond to the respondent's production requests. Notwithstanding the two extensions, the complainant failed to object to or comply with any of the production requests.

In response to the complainant's failure both to object to any of the respondent's request and to produce any responsive documents, the respondent, on August 24, 2020, filed a motion to compel the complainant to produce documents. The respondent's motion was granted on August 26, 2020 and the complainant was ordered to produce documents within seven days of the date of the order. The complainant failed to comply with the order. Thereafter, on February 18, 2021, the respondent filed the present motion for sanctions and dismissal against the complainant for her failure to comply with the referee's August 26, 2020 order and, on December 22, 2021, the commission filed its objection thereto.¹ The complainant did not file an objection to the motion.

¹ In its objection to the motion for sanctions, the commission seems to argue in part that the complainant's noncompliance with the referee's order should be excused because the respondent, in its motion to compel, failed to certify that good faith efforts to resolve discovery disputes had been attempted before the motion to compel was

Sanctions for failing to comply with an order to produce documents are set forth in Section 46a-54-89a of the Regulations of Connecticut State Agencies and General Statutes § 46a-84 (h). Section 46a-54-89a (b) provides that:

If a party fails to comply with an order of the presiding officer regarding a request for disclosure or production, the presiding officer may issue a non-monetary order. The order may include: (1) An order that the matters that are the subject of the request for production or disclosure shall be established in accordance with the claim of the party requesting such order; and (2) An order prohibiting the party who has failed to comply from introducing designated matters into evidence.

Similarly, General Statutes § 46a-84 (h) provides that the presiding officer

may issue a nonmonetary order that the presiding officer deems just and appropriate, including, but not limited to, an order (1) finding that the matters that are the subject of the order are established in accordance with the claim of the party requesting such order, (2) prohibiting the party who has failed to comply with such order from introducing designated matters into evidence, (3) limiting the participation of the noncomplying party with regard to issues or facts relating to the order, and (4) drawing an adverse inference against the noncomplying party.

In this case, the complainant clearly did not comply with the order to produce documents within the time frame set by the presiding referee.² Indeed, despite receiving the respondent's

filed. First, given that the complainant never objected to any of the requests, there were no disputes to be resolved. Second, given the complainant's failure to object to or to produce documents to all the respondent's requests, the respondent was not required to engage in a pointless exercise.

² In footnote 1 of its objection to the motion for sanctions, the commission reports that on October 21, 2021, "the Complainant submitted responses and discovery documents to the Respondent." Coming over a year after the issuance of the order, the unidentified documents which may or may not be responsive to unidentified production requests do not constitute compliance. Further, no objections to the requests were filed with this office by the complainant.

February 18, 2021 motion for sanctions seeking considerable penalties against her for noncompliance, the complainant still did not comply with the order to produce documents.

As a result, the following sanctions are imposed:

1. The complainant may not introduce as an exhibit any document not already in the possession of the respondent that would have been responsive to the respondent's production request to the complainant.
2. The commission may not introduce as an exhibit any document not already in the possession of the respondent that it received from the complainant that would have been responsive to the respondent's production request to the complainant.
3. No witness may refer to or utilize any document not already in the possession of the respondent that would have been responsive to the respondent's production request to the complainant.
4. As a result of the complainant's failure to object to or to produce documents responsive to request number 12, 14 and 27, neither the commission nor the complainant may introduce testimony or documents regarding any claim for emotional distress damages. *State of Connecticut Judicial Branch v Gilbert*, Superior Court judicial district of New Britain, Docket No. HHV-CV-18-6048927 (October 15, 2019). Further, as provided in General Statutes § 46a-86 (h) (4), an adverse inference is drawn that the complainant suffered no emotional distress.
5. As a result of the complainant's failure to object to or to produce documents responsive to requests number 15, and 19-25, neither the commission nor the complainant may offer

documents or testimony regarding the complainant's efforts to find employment after her termination by the respondent. Further, as provided in General Statutes § 46a-84 (h) (4), an adverse inference is drawn that the complainant has fully mitigated her economic damages.

/s/ Jon P. FitzGerald

Hon. Jon P. FitzGerald
Presiding Human Rights Referee