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

Commission on Human Rights and Opportunities ex rel. Holly Blinkoff, Complainant : CHRO No. 9530406

v.

City of Torrington, Respondent : June 28, 2004

Ruling re: Commission's motion for articulation

I.

By motion filed on June 7, 2004, the commission moves for an articulation of the undersigned's order of dismissal issued on May 10, 2004 or, in the alternative, a determination of the applicability of the doctrine of collateral estoppel.[1] In that order of dismissal, the undersigned determined that the doctrine of res judicata applied to this case as a result of the federal lawsuit between the complainant and the respondent resulting in a judgment for the respondent.

Pursuant to Section 46a-54-87a of the Regulations of Connecticut State Agencies, the respondent and the complainant were given the opportunity to file responses to the commission's motion. The respondent filed its objection to the motion on June 25, 2004. The complainant did not file a response.

II.

The complaint was filed on January 20, 1995. On July 14, 1997, the commission filed a motion to stay this CHRO administrative proceeding because "[t]he complainant in this matter has just filed an action against the Respondents in U.S. District Court, in which she has raised the same claims which appear in her CHRO Complaint No. 953040."[2] The respondent filed a motion to dismiss dated July 28, 1997 arguing that, because a federal action had been filed, this CHRO complaint should be dismissed. The then-presiding hearing officer granted the commission's motion for stay and denied the respondent's motion to dismiss. The commission reaffirmed its desire that this proceeding be stayed in its status reports filed on April 8, 1999, January 29, 2001, January 17, 2002, September 25, 2002, and September 19, 2003.

Having moved in 1997 to stay these proceedings and having reaffirmed that position five times in the last five years, the commission now advances the contention that it is not bound by the federal decision in favor of the respondent. Presumably, had the complainant prevailed in federal court and the commission dissatisfied with the relief awarded, it would still raise the same arguments as to why it should not be bound by that federal decision. Given this proposition, one wonders why the commission initially agreed to the stay and why any respondent, or any presiding human rights referee, would agree to a stay of any future case.

III.

A.

The undersigned's ruling of May 10, 2004 granting the respondent's motion to dismiss provided a detailed articulation of the complainant's opportunity, and self-inflicted failure, to have her state discrimination claims heard in federal court. The commission now argues that the "Referee's ruling overlooks a more basic and salient component of the doctrine of res judicata. It has long been established that for res judicata to apply there must be an actual identity of parties or the parties in the original action must somehow be in privity with those in the second." (Motion, 2). The commission argues that it was not a party in the federal action and not in privity with the complainant in that action. However, this "basic and salient component" was not raised at all in the commission's April 19, 2004 objection to the respondent's motion to dismiss.

Further, the commission's 1997 motion to stay effectively deferred to complainant's counsel the presentation of the case, albeit in federal court. This situation is analogous to General Statutes § § 46a-84(d) and 46a-101. Section 46a-84(d) allows the commission to defer to the complainant's attorney "to present all or part of the case in support of the complaint" at the administrative hearing. Section 46a-101 provides a mechanism for the complainant to bring her action in superior court – without the commission as a party. The effect of the commission's 1997 motion for stay is simply an amalgamation of these statutes, and the commission's unhappiness with the results of the federal action or the complainant's attorney's presentation in federal court is no

different than an unfavorable administrative or superior court decision following a presentation by the complainant's attorney.

B.

1.

The commission's next general argument is that "[c]ase law, moreover, also reaffirms the principle that the CHRO is not an ordinary party to lawsuits or a stand-in for complainants, but has its own institutional interests that are unique to its public purpose as a guardian of the public's right to be free from discrimination." (Motion, 4.) Although not dispositive of this motion, the commission fails to explain why it put its unique institutional interests on hold for the past seven years while the complainant proceeded in federal court. Instead, the commission asserts that it "had no opportunity to litigate any claims raised in the CHRO complaint in federal court, as it was not a party to the Complainant's suit in the District of Connecticut" (Motion, 3). Importantly, however, the commission did have the opportunity to object to the motion to stay and to administratively litigate its unique institutional interests here in 1997. Instead, the commission itself filed the motion to stay and repeatedly reaffirmed its desire that the stay remain in effect. If the commission did not wish to assume the risks of an adverse federal decision, it should not have voluntarily and repeatedly agreed to a stay of the administrative proceeding.

2.

The commission identifies three cases "speaking authoritatively" on the subject of its unique institutional interests, *Williams v. Commission on Human Rights and Opportunities*, 54 Conn. App. 251 (1999), rev'd 257 Conn. 258, on remand, 67 Conn. App. 316 (2001); *Miko v. Commission on Human Rights and Opportunities*, 220 Conn. 192 (1991); and *Commission on Human Rights and Opportunities v. Human Rights Referee*, 66 Conn. App. 196 (2001). These cases are legally and factually inapplicable to this complaint.[3] The legal issue in *Williams* was whether the 180-day filing requirement was jurisdictional or subject to tolling; the statute of limitation was not an issue in this case.

Likewise, the factual situations are also significantly different. *Williams* involved an agreement by the complainant and the respondent to waive the statute of limitations. In *Miko*, the complainant and the respondent had entered into an agreement after an investigator had determined that reasonable cause existed and the commission became a party. In both of those cases, the agreements entered into by the respondents and the complainants were without the knowledge and consent of the commission. In this case, however, the commission itself proposed the motion for stay. In *Human Rights Referee*, the commission appealed an adverse ruling by the presiding human rights referee opening the executive director's default. In this case, however, the commission now appeals the consequences of its own motion for stay that had been granted by the presiding hearing officer.

C.

The commission also seeks a determination on the respondent's alternative argument that the doctrine of collateral estoppel bars the commission from proceeding on this complaint. As discussed in the ruling on the motion to dismiss, this argument need not be addressed given the applicability of the doctrine of res judicata.

IV.

The commission's essential arguments are based upon two erroneous suppositions. The commission first errs in its misconception that because of its institutional interests a complaint can never be dismissed because of a complainant's actions. However, its own regulations provide otherwise. For example, Section 46a-54-88a(d) provides that a "presiding officer may, on his or her own or upon motion by a party dismiss a complaint or a portion thereof it the complainant **or** the commission: (1) Fails to establish jurisdiction; (2) Fails to state a claim for which relief can be granted; (3) Fails to appear for a lawfully noticed conference or hearing without good cause; or (4) Fails to sustain his or her burden after presentation of the evidence." (Emphasis added.) Note that the connector is "complainant or commission", not "both the commission and the complainant …." Thus, a case could be dismissed for the complainant's failure to appear at a duly noticed conference or hearing, regardless of whether the commission appeared and regardless of its institutional interests.

The commission next errs in its misconception that if this or any case is dismissed because of the complainant's actions, the commission looses its opportunity to defend the public interest against discrimination. The General Statutes and the commission's own regulations again provide otherwise. General Statutes § 46a-54 provides in part that "[t]he commission shall have the following powers and duties: … (8) to receive, initiate as provided in section 46a-82, investigate and mediate discriminatory practice complaints …." See also Section 46a-54-39a of the Regulations of Connecticut State Agencies (effective November 4, 2002) and Section 46a-54-51 of the Regulations of Connecticut State Agencies (effective January 1. 1993 to November 3, 2002). Thus, using the example in the previous paragraph, if a complaint were dismissed because of the complainant's failure to appear, the commission could initiate a complaint in its own right in lieu of maintaining the action on behalf of the complainant's now dismissed complaint. Likewise, in this case, if the commission, nearly ten years after the filing of this complaint and seven years after it moved to stay the proceedings, believes that it still has unique institutional interests and that the respondent has been or still is engaging in discriminatory practices, the commission can initiate its own complaint against this respondent.

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Hon. Jon P. FitzGerald
Presiding Human Rights Referee

C:
Ms. Holly Blinkoff
Albert G. Vasko, Esq.
Charlie Krich, Esq.
David M. Teed, Esq.

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[1] As noted by the respondent in its objection, the commission's motion for articulation is essentially a motion for reconsideration. Motions for reconsideration are to be filed within fifteen days of the date of the issuance of the final decision. General Statutes § 4-181a; Regs., Conn. State Agencies § 46a-54-95. In this case, the final decision was issued on May 10, 2004; the commission filed its motion on June 7, 2004.

[2] The commission's 1997 motion for stay did not provide any specific case law, statutory or regulatory authority for its proposition that a case could be stayed, rather than released, while the complainant pursued her complaint in federal court.

[3] As the respondent notes in its objection, the other cases cited by the commission in support of its motion also appear to have no relation to the facts of this case.