

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

CHRO ex rel. Robin B. Elliot, Complainant

CHRO No. 1940232

OFFICE OF
PUBLIC HEARINGS -CHRO
DATE 11/24/20
TIME 12:46pm
RECEIVED BY CM

v.

State of Connecticut,
Department of Corrections, Respondent

November 24, 2020

Ruling and Order on Respondent's Motion to Decertify

On January 11, 2019, the complainant, Robin B. Elliot, filed a complaint with the Commission on Human Rights and Opportunities (commission) alleging a cause of action against the respondent, State of Connecticut, Department of Corrections, for discrimination in public accommodation based upon his physical, mental, and learning disabilities in violation of General Statutes §§ 46a-64 (a), 46a-71, and through § 46a-58 (a), the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.¹

In his complaint, the complainant alleges, inter alia, that in 2012 when he was incarcerated in New Mexico, he suffered a stroke which left him with several impairments, including paralysis on the right side of his body, cognitive and speech deficits, and mobility issues. He further alleges that, during the period from March 27, 2015 to November 4, 2018, while he was being housed at Northern Correctional Institution, he requested that the respondent to provide him with a number of therapies and accommodations for his medical disabilities, including a walking cane, physical and speech therapy, a raised toilet seat, hand rails for his cell, special transport for court and hospital visits, and prisoner assistance for writing and paperwork, but that the respondent failed to provide the requested services and accommodations.

Upon the commission's determination of reasonable cause, on June 23, 2020 the matter was certified to a public hearing as a contested case. On September 11, 2020, the respondent filed a motion requesting the tribunal to decertify the complaint for further proceedings because, after the commission investigator made a reasonable cause finding, a conciliation conference pursuant to General Statutes § 46a-83 (i), although attempted, was not completed due to procedures and protocols put in place in response to the Covid-19 pandemic. Both the commission and the complainant have filed memoranda, with exhibits, in opposition to the motion to decertify. For the reasons discussed below, the motion to decertify the complaint is denied.

Only Commission Legal Counsel May Withdraw His or Her Certification of the Complaint

The Office of Public Hearings is an administrative tribunal of limited jurisdiction. The authority to issue decisions and orders in contested cases is dependent entirely upon the statutory provisions conferring jurisdiction on the office. See *H-K Properties, LLC v. Town of Mansfield Planning & Zoning Commission*, 165 Conn. App. 488, 496 (2016), cert. granted on other grounds, 322 Conn. 902 (2016) (appeal withdrawn August 5, 2016); *Groton v. Commission on Human Rights & Opportunities*, 169 Conn. 89, 100 (1975). As

¹ The complaint also alleges a cause of action for violations of General Statutes §§ 52-571a, 53-20, and 53-37b, if applicable.

an administrative adjudicative body, the tribunal must act strictly within the bounds of its statutory authority, which, in the present matter, derives from Connecticut Uniform Administrative Procedures Act and the statutes and regulations governing the Commission on Human Rights and Opportunities. See, *Groton v. Commission on Human Rights & Opportunities*, supra. The tribunal can only grant requested relief that it is authorized by law to grant.

Turning to the issue at hand,² the statutory provisions under which the tribunal acquires authority to act do not confer on a hearing officer the power to overrule the certification by commission legal counsel once a complaint has been certified as meeting certain criteria for review and adjudication on the merits as a contested case. The statutory framework governing these proceedings specifies that “[i]f the ... commission legal counsel determines that a material mistake of law or fact has been made in the finding of reasonable cause ... the commission legal counsel may withdraw the certification of the complaint ...” General Statutes § 46a-84 (d).³ In the present matter, the commission’s legal counsel has not withdrawn the certification of the complaint. The respondent has cited no authority, and the undersigned is aware of none, that would permit the undersigned hearing officer to overrule commission counsel’s certification that the criteria have been met for purposes of transferring a complaint to the Office of Public Hearings as a contested case.

The statutory framework delineates the limits of a human rights referee’s authority. In the absence of language that specifically authorizes the hearing tribunal to overrule the certification of complaints by commission legal counsel, the undersigned cannot enlarge, modify, abridge, or otherwise change the governing provisions under which the tribunal is authorized to adjudicate complaints which have been certified after a reasonable cause finding or transferred for a hearing pursuant to the commission’s early legal intervention process. *H- K Properties, LLC v. Town of Mansfield Planning & Zoning Commission*, supra, 165 Conn. App. at 496.

The Hearing of a Contested Case is De Novo

Relevant to the present motion is General Statutes § 46a-84 (b), which provides in pertinent part that a hearing on a complaint filed pursuant to subsection (a) or (b) of General Statutes § 46a-82 “shall be a de novo hearing on the merits of the complaint and not an appeal of the commission’s processing of the complaint prior to its certification.” In accordance with the governing statute, the case before the tribunal is a de novo matter. *Commission on Human Rights & Opportunities, ex rel. Pallet v. Oral Care Dental Group II, LLC*, 2015 WL 2152657, *2-3, CHRO No. 1310478 (April 16, 2015, Ruling on motions for referee subpoenas); *Commission on Human Rights & Opportunities, ex rel. Taylor v. Salvation Army, ARC*, 2013 WL 1409348, *2-3, CHRO No. 1010252 (March 28, 2013, Response to motion for clarification). “This proceeding is not an appeal or review of what occurred prior to certification” *Muriel Magda v. Diageo*

² The respondent does not claim that the conciliation step prior to certification of a complaint is a jurisdictional requirement. Indeed, the statutory amendment in General Statutes § 46a-83 (e) authorizing an early legal intervention process (ELI), in which the parties can bypass a full investigation or related conciliation prior to the certification or ELI transfer of a complaint for public hearing, strongly suggests that a completed conciliation is not a prerequisite to the tribunal’s exercise of jurisdiction over the present complaint.

³ Although General Statutes § 46a-84 (d) also authorizes the attorney general to decertify a complaint, the attorney general is only so authorized when acting in a representational capacity of the commission. General Statutes § 46a-55. The attorney general cannot represent the commission in cases where, as in the present matter, “any state agency or state officer is an adversary party.” *Id.*

North America, Inc., 2006 WL 4844065, *2; CHRO No. 0420213 (March 16, 2006, Ruling on motion to dismiss).

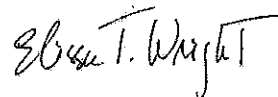
When the commission refers a case to the Office of Public Hearings pursuant to the certification process, it sends only the affidavit of illegal discrimination and a copy of the letter from the commission certifying that, after a full investigation and the failure of conciliation efforts to eliminate the discriminatory practices complained of,⁴ there was reasonable cause to believe a discriminatory practice was being committed as alleged in the complaint. No other documents submitted during the investigation and conciliation process are sent to this office and are not a part of the Office of Public Hearings record.

"[It] is the charges contained in the complaints filed pursuant to the Fair Employment Practices Act that ... frame the issues to be decided by the hearing tribunal." (Citations omitted; internal quotation marks omitted.) *Town of West Hartford v. Commission on Human Rights & Opportunities*, 176 Conn. 291, 296-97 (1978). The referee only has the limited information about the case that is alleged in the complaint sent to the Office of Public Hearings. The basis on which the commission's legal counsel would choose to send the complaint to this office, or what may have motivated that decision, is not at issue in the case.

For the foregoing reasons, the discriminatory practices alleged in the complaint remain before this tribunal. To conclude otherwise would require the undersigned to adopt a view that is in apparent conflict with the underlying principle embodied in § 46a-84 (b) that the case before the tribunal is a de novo matter and not an appeal from the commission's pre-certification determinations or proceedings. Such a result also would be inconsistent with the statutory directive of § 46a-84 (d) which specifically assigns to commission legal counsel the authority to withdraw, or revoke, certification of the complaint.

The respondent's motion to decertify the complaint is DENIED.

It is so ordered this 24th day of November 2020.



Hon. Elissa T. Wright
Presiding Human Rights Referee

cc.

James Donahue, Esq.
James.Donohue@ct.gov

Anne-Marie Puryear, Esq.
anne-marie.puryear@ct.gov

Kasey Considine, Esq.
kasey.considine@disrightsct.org

⁴ In the present matter, the commission investigator certified that efforts to eliminate the discriminatory practices complained of by conciliation failed on June 23, 2020.