

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

Aimee L. Dutkiewicz,
complainant

OPH/WBR 2006-015

v.

Home Depot, U.S.A., Inc., et al.,
respondent

March 21, 2006

Ruling on Renewed Motion to Dismiss

The complainant filed this complaint on December 28, 2005, pursuant to General Statutes § 4-61dd. The respondent, Home Depot, U.S.A., Inc., filed a motion to dismiss on January 20, 2006, claiming the respondent was not a “large state contractor” under General Statute § 4-61dd (h) (2) and that the complainant had not reported the alleged whistleblower protection violation as required by law. The complainant did not object or respond to the motion, but chose instead to file an amended complaint on February 23, 2006. Section 4-61dd-7 of the Regulations of Connecticut State Agencies provides for amendment by motion, but the complainant filed no such motion with her proposed amended complaint. The respondent, however, made no objection to the amendment, and instead filed a renewed motion to dismiss on March 3, 2006. No objection to the renewed motion has been filed as of this date. Given the complainant’s pro se status, the respondent’s apparent acceptance of the filing of the amended complaint, and in the interest of the expeditious resolution of this matter, the implicit motion to amend the complaint is herewith procedurally granted, and the renewed motion to dismiss will be considered as to the substantive merits of the amended complaint.

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *Jolly v. Zoning Board of Appeals*, 237 Conn. 184 (1996); *Upson v. State*, 190 Conn. 622 (1983). The amended complaint eliminates any reference to a violation under General Statute § 4-61dd (outlining whistleblower protection violations and procedures) and claims instead violations of various sections of the United States Code as well as violations of General Statutes §§ 46a-58 (a), 46a-60, 46a-60 (a) (1) and 46a-60 (a) (4). While the office of public hearings ("OPH") is authorized by law to hear contested cases predicated on violations of some, if not all, of the above authorities, this is only pursuant to a detailed statutory procedure which must first be initiated by a complaint made to the commission on human rights and opportunities ("commission") pursuant to General Statutes §§ 46a-82 et seq., under which the commission will review and/or investigate the allegations of the complaint and determine whether it merits certification for public hearing. Only upon such certification is the matter transmitted to the OPH, and there is no procedure that allows for the filing of complaints directly with the OPH.

While whistleblower protection related complaints initiated pursuant to General Statutes §§ 4-61dd et seq. may be filed (assuming the completion of essential prerequisites) directly with the OPH (through its chief human rights referee), the amended complaint clearly sets forth that all whistleblower protection allegations and/or remedies have been abandoned and that this matter is no longer being pursued pursuant to those sections of the general statutes.

As such, the complainant's amended complaint is herewith DISMISSED.

It is so ordered this 21st day of March 2006

J. Allen Kerr, Jr.
Human Rights Referee

cc.

Aimee Dutkiewicz
Attorney Allison Romantz
Attorney Mark Whitney