Commission on Human Rights and Opportunities ex rel. John Ellis	: Commission on Human Rights and Opportunities
	: CHRO No. 0620472
v.	: EEOC No. 16aa601183
ACE International	: October 25, 2010

Ruling re: the respondent's motion to dismiss for lack of jurisdiction

On May 12, 2006, John Ellis (the complainant) filed an affidavit of illegal discriminatory practice (affidavit or complaint) with the commission on human rights and opportunities (the commission). In his affidavit, Mr. Ellis alleged his former employer, ACE International (more properly identified as ACE American Insurance Co.) (the respondent) violated Title VII, the Age Discrimination in Employment Act (ADEA) and General Statutes §§ 46a-58 (a) and 46a-60 (a) (1) and (4) when it discriminated against him in the terms and conditions of his employment, retaliated against him and subsequently terminated his employment because of his age and his previous opposition to the respondent's alleged discriminatory employment practices. On May 25, 2010, the respondent filed its post-certification answer, denying the allegations of discrimination.

On June 10, 2010, the respondent filed a motion to dismiss the complaint for lack of subject matter jurisdiction (motion). The commission and the complainant filed their responses on September 9, 2010. On September 22, 2010, the respondent filed a reply brief in which it raised the claim of lack of personal jurisdiction due to insufficient

contacts between the respondent and the State of Connecticut (reply). On October 21, 2010, the commission and the complainant filed their sur-responses. For the reasons set forth herein, the motion is denied.[1]

I

Subject matter jurisdiction

In its motion, the respondent argues that the commission lacks subject matter jurisdiction over the complainant's Connecticut claims. Subject matter jurisdiction is the power of the commission to hear and determine cases of the general class to which the commission is statutorily authorized to adjudicate. *Dept. of Public Safety v. Freedom of Information Commission*, 103 Conn. App. 571, 577-78, cert. denied, 284 Conn. 930 (2007).

The commission operates under General Statues §§ 46a-51 et seq. General Statutes § 46a-82 provides that any person claiming to be aggrieved by an alleged discriminatory practice may file a complaint with the commission. "Discriminatory practice" is defined in § 46a-51 (8), which references § 46a-60. Section 46a-60, in part, prohibits an employer from discharging an employee and from discriminating against an employee in the terms and conditions of employment because of the employee's age. § 46a-60 (a) (1). It also prohibits an employer from discharging or otherwise discriminating against an employee in retaliation for the employee's opposition to the employer's discriminatory employment practices. § 46a-60 (a) (4). Upon receipt of a complaint, the

[1] The complainant's ADEA, Title VII and § 46a-58 (a) claims were previously dismissed.

commission is statutorily authorized to review and investigate the complaint and, if reasonable cause is found, conduct a hearing on the merits of the complaint. General Statutes §§ 46a-83 and 46a-84.

In this case, Mr. Ellis alleges that the respondent violated General Statutes § 46a-60 when it terminated his employment and discriminated against him in the terms and conditions of his employment because of his age and in retaliation for his opposition to discriminatory employment practices. Clearly, the allegations are within the scope of the commission's statutory authority to investigate and adjudicate.

II

Extraterritorial application of Connecticut's anti-discrimination law

The complainant was living in Connecticut at the time that the respondent hired him in May 2003 to work in Egypt, and he remained working in Egypt up to and including the date of his termination in November 2005. The respondent argues that the commission cannot apply Connecticut's anti-discrimination law extraterritorially. First, however, it is not evident that this case would involve extraterritorial application of Connecticut's anti-discrimination law. From a reading of the affidavit, answer and the parties' supporting documentation to the motion and responses, and considering the allegations in a light most favorable to the complainant, it may be possible for Mr. Ellis to establish that a discriminatory decision to terminate his employment was made in Connecticut. If so, there would be no extraterritorial application of the law as the respondent would be liable for conduct that occurred in Connecticut – its Connecticut

decision to take adverse actions against Mr. Ellis because of his protected bases. That this decision has an extraterritorial effect does not make the application of the law extraterritorial. *Malek v. United Tech. Corp.*, United States District Court, Civil Docket No. 3:06CV01092 (D. Conn. August 18, 2007)(2007 WL 2384383, 3-4).

Second, a recent decision of our Supreme Court makes clear that there are situations in which Connecticut statutes may be applied extraterritorially, notwithstanding the presumption against extraterritorial application and even in the absence of express statutory language to apply a law extraterritorially. *Abel v. Planning & Zoning Commission*, 297 Conn. 414, 424-27 (2010).

III

Personal jurisdiction

In its reply, the respondent argues that it has insufficient contacts with Connecticut to establish personal jurisdiction. It is axiomatic that "[a] foreign corporation may be haled into court in Connecticut only if a plaintiff alleges jurisdictional facts that, if proven, would satisfy one of the provisions of the long-arm statute, General Statutes § 33-929 (f)." *Pitruzello v. Muro,* 70 Conn. App. 309, 311 (2002). "If the defendant challenging the court's personal jurisdiction is a foreign corporation or a nonresident individual, it is the plaintiff's burden to prove the court's jurisdiction." (Internal quotation marks omitted.) *Vision Controls/Champ Inc. v. College of Westchester*, Superior Court, judicial district of Ansonia-Milford at Milford, Docket No. AAN-CV-09-5010401-s (July 22, 2010) (2010 WL 3260159, 1).

"When a defendant challenges personal jurisdiction in a motion to dismiss, the court must undertake a two-part inquiry to determine the propriety of its exercising such jurisdiction over the defendant. The trial court must first decide whether the applicable state long-arm statute authorizes the assertion of jurisdiction over the [defendant]. If the statutory requirements [are] met, its second obligation [is] then to decide whether the exercise of jurisdiction over the [defendant] would violate constitutional principles of due process. . . . Therefore, the court must determine first whether [General Statute] § 33-929 (f) (1) authorizes jurisdiction over the defendant, and if so, whether the defendant has the requisite minimum contacts with this state to satisfy constitutional due process" (Citations omitted; internal quotation marks omitted.) Id., 2010 WL 3260159, 2.

The commission and the complainant have established that the commission's exercise of personal jurisdiction over the respondent satisfies statutory and constitutional requirements.

A

Longarm Statute

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Section 33-929 (f) provides, in relevant part, that: "Every foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in

interstate or foreign commerce, on any cause of action arising as follows: (1) Out of any contract made in this state . . . . .”

“Cases interpreting General Statutes § 33-929 (f) direct the court to inquire not only into the various elements of the plaintiff's cause of action . . . but also into the totality of contacts which the defendant may have with the forum . . . .[I]n enacting [§ 33-929 (f)] . . . the legislature intended to exercise its full constitutional power over foreign corporations in cases falling within one of the designated causes of action. Under [§ 33-929 (f)], consistent with the constitutional demands of due process, it is the totality of the defendant's conduct and connection with this state that must be considered, on a case by case basis, to determine whether the defendant could reasonably have anticipated being haled into court here.” (Internal quotation marks omitted.) *Vision Controls/Champ Inc. v. College of Westchester*, supra, 2010 WL 3260159, 3.

“Moreover, [t]he language of § 33-929 (f) (1) does not expressly require contemplated performance in this state by the party over whom jurisdiction is sought . . . .There is no indication . . . that the Connecticut legislature intended that the language ‘to be performed in this state’ should be given a limited construction to require performance in this state by the party over whom jurisdiction is sought..” (Internal quotation marks omitted.) Id., 2010 WL 3260159, 3.

In this case, the employment contract between Mr. Ellis and the respondent was made in Connecticut. Mr. Ellis owned a home in Connecticut at the time he interviewed with the respondent for the position in Egypt. Mr. Ellis had four telephonic interviews

from his home with Mr. Oommen, a managing director for the respondent. The respondent interviewed Mr. Ellis in Connecticut for the position. After he was offered the position, Mr. Ellis signed the employment contract in Connecticut. Mr. Ellis received various documents and business-related materials from the respondent while he was in Connecticut. While he was in Connecticut, Mr. Ellis also spoke with various employees of the respondent's human resources department regarding his employment contract, benefits, personal property, and various documents. Complainant's sur-rebuttal, Affidavit of John M. Ellis, ¶ 7, 9, 10. 11, 14, 28, 29, 31.[2]

The respondent, when it drafted two May 8, 2003 correspondences to Mr. Ellis confirming their mutual understanding of Mr. Ellis' compensation and benefits, did not include a choice-of-law clause.

The respondent had (and has) an office lease on property located in Stamford, Connecticut, from May 1, 2002 to August 31, 2012. A copy of the lease is attached to the commission's sur-rebuttal. The business card of the respondent's president gives an office address of Stamford, Connecticut. A copy of the business card is attached to the complainant's sur-rebuttal.

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[2] In *Healey v. Hawkeye Constr. LLC.*, 124 Conn. App. 215, 216, the court held that "because the employment contract between the plaintiff employee, who at all relevant times was a resident of this state, and the defendant employer was formed in Connecticut, this state possessed a significant relationship to that contract" for purposes of holding the defendant New York corporation liable under Connecticut's workers compensation laws. The plaintiff had been injured while on assignment in Florida. The remedial purposes underlying this state's workers' compensation act and this state's interest in compensating injured employees is no less than the remedial purposes

Based upon the foregoing, I find that the commission and the complainant have satisfied the threshold requirement of compliance with the longarm statute.

B

Constitutional Requirement of Due Process

"As the plaintiff has satisfied the threshold requirement of compliance with the applicable longarm statute, the court must determine next whether the defendant has the requisite minimum contacts with this state to satisfy constitutional due process. Constitutional due process requires that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that maintenance of the suit does not 'offend traditional notions of fair play and substantial justice. . . The due process test for personal jurisdiction has two related components: the minimum contacts inquiry and the reasonableness inquiry. The court must first determine whether the defendant has sufficient contacts with the forum state to justify the court's exercise of personal jurisdiction." (Citations omitted; internal quotation marks omitted.) Id., 2010 WL 3260159, 5.

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Given that the respondent had an office in Connecticut that was utilized by its president, it is not clear that the respondent actually is "not within the territory of this forum". Assuming for purposes of this motion that the respondent is not within the

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underlying this state's anti-discrimination laws and this state's interest in compensating

territory, the commission and the complainant have demonstrated that the respondent has the minimum contacts to justify the exercise of jurisdiction.

"Whether a given defendant has contacts with the forum state sufficient to satisfy due process is dependent upon the facts of the particular case. Like any standard that requires a determination of reasonableness, the minimum contacts test of *International Shoe Co. v. Washington, supra,* 326 U.S. at 316, is not susceptible of mechanical application rather the facts of each case must be weighed to determine whether the requisite affiliating circumstances are present . . . ." (Internal quotation marks omitted.) Id., 2010 WL 3260159, 6.

In this case, the respondent's contact with Connecticut includes a ten year office lease agreement for property in Stamford, Connecticut. This location is, according to his business card, the office location for the respondent's president. The respondent solicited and hired a Connecticut resident. In his affidavit, Barry Jacobsen, respondent's president and Mr. Ellis' then-supervisor, acknowledged that he would at times work from the Stamford, Connecticut, office as well as from his personal residence in Connecticut. I find these contacts sufficient to meet the minimum contacts test.

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"Once minimum contacts have been established, [t]he second stage of the due process inquiry asks whether the assertion of personal jurisdiction comports with traditional notions of fair play and substantial justice – that is, whether it is reasonable

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victims of discrimination.

under the circumstances of the particular case. . . . While the exercise of jurisdiction is favored where the plaintiff has made a threshold showing of minimum contacts at the first stage of the inquiry, it may be defeated where the defendant presents a compelling case that the presence of some other considerations would render jurisdiction unreasonable. . . [T]he court must evaluate the following factors as part of this reasonableness analysis: (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; 4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies." (Citations omitted; internal quotation marks omitted.) Id., 2010 WL 3260159, 6.

In this case, the respondent offers no compelling arguments that the presence of some other considerations would render jurisdiction unreasonable. The respondent argues that "[a]t the time of the events giving rise to this lawsuit, Respondent had done nothing to avail itself of the benefits or protections of Connecticut law, and therefore could not have reasonably anticipated being haled into court here. Furthermore, Connecticut has no interest in adjudicating this action against Respondent. The critical events associated with Complainant's termination took place outside of Connecticut. In fact, most if not all, of them took place outside the territorial boundaries of the United States." Reply, p. 3.

With respect to the respondent's argument that it had not availed itself of the benefits and protections of Connecticut law, with its office and president locating in Stamford, Connecticut, nothing prevented the respondent from availing itself of Connecticut law if the need arose. As to the respondent's claim that "Connecticut has no interest in adjudicating this action against Respondent," the Commission on Human Rights and Opportunities, a Connecticut state agency, after investigating the allegations of the complaint, apparently disagrees. Further, whether the critical events associated with complainant's termination, i.e., the decision to terminate his employment, actually took place outside of Connecticut is a disputed issue of material fact.

Further, the respondent offers no facts demonstrating that the exercise of jurisdiction will impose an unreasonable burden on it. Also, the Commission on Human Rights and Opportunities, through its merit assessment review of the case, investigation, finding of reasonable cause and decision to pursue these claims to public hearing has demonstrated that Connecticut has a strong interest in adjudicating this case, as it has a strong interest in adjudicating all claims of discrimination. Similarly, the complainant's pursuit of this case in this forum, rather than seeking a release of jurisdiction and pursuing the matter in state or federal court, demonstrates his belief that this is a convenient forum wherein, if he prevails on the merits of his claim, he can obtain effective relief. Clearly, the existence of federal and multi-state anti-discrimination laws demonstrates that the elimination of discrimination is an interest shared by federal and state governments.

IV

For the foregoing reasons, the respondent's motion is denied.

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Hon. Jon P. FitzGerald
Presiding Human Rights Referee

C:
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