STATE OF CONNECTICUT

OFFICE OF PUBLIC HEARINGS

Linda Jackson, Complainant	:	No. OPH/WBR-2006-030
v.	:	
Carole Antonetz, Respondent	:	October 5, 2006

RULING ON MOTIONS TO DISMISS

The respondent filed a motion to dismiss on August 28, 2006, contending that this tribunal lacks subject matter jurisdiction over the complaint because (a) the respondent is not an employee or officer of a state agency, a quasi-public agency,[1] or a large state contractor, and (b) the complainant did not make a whistleblower disclosure to the proper entity, as prescribed by statute. I directed the complainant to file her response to the motion on or before September 27, 2006. As of this date, the complainant has filed no response.

In a second motion dismiss, filed September 7, 2006, the respondent argues that the complainant failed to comply with this tribunal's order that she file an amended complaint on or before August 26, 2006. The complainant filed no response to the second motion. See § 4-61dd-14 (b) of the Regulations of Connecticut State Agencies ("regulations"), which requires the complainant to file her response not more than ten days after the filing of the motion.

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *Jolly, Inc. v. Zoning Board of Appeals*, 237 Conn. 184 (1996);

[1] For purposes of § 4-61dd, a "quasi-public agency" means the Connecticut Development Authority, Connecticut Innovations, Incorporated, Connecticut Health and Educational Facilities Authority, Connecticut Higher Education Supplemental Loan Authority, Connecticut Housing Finance Authority, Connecticut Housing Authority, Connecticut Resources Recovery Authority, Connecticut Hazardous Waste Management Service, Capital City Economic Development Authority and Connecticut Lottery Corporation. See General Statutes § 1-120.

Upson v. State, 190 Conn. 622, 624 (1983). The motion admits all facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that contain undisputed facts. *Malasky v. Metal Products Corp.*, 44 Conn. App. 446, 451-52, cert. denied, 241 Conn. 906 (1997). In evaluating the motion, the complainant's allegations and evidence must be accepted as true and interpreted in a light most favorable to the complainant; every reasonable inference is to be drawn in her favor. *New England Savings Bank v. Bedford Realty Corp.*, 246 Conn. 594, 608 (1998).

The main purpose of General Statutes § 4-61dd is to protect employees of the state, quasi-public agencies, or large state contractors who have disclosed information about corruption, unethical practices, violation of laws, mismanagement, gross waste of funds, abuse of authority, or danger to the public safety occurring in any state department or agency, any quasi-public agency, or any large state contract. A person disclosing such information is known in lay terms as a "whistleblower." A whistleblower should feel free to report such information without fear of retaliation. Thus, according to § 4-61dd (b) (1),

> No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's or contractor's disclosure of information to an employee of (i) the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section; (ii) the state agency or quasi-public agency where such state officer or employee is employed; (iii) a state agency pursuant to a mandated reporter statute; or (iv) in the case of a large state contractor, to an employee of the contracting state agency concerning information involving the large state contract.

Thus, the statute clearly delineates (1) the types of disclosure covered by the statute; (2) the persons or entities to whom such disclosures must be made; (3) which employees are protected from retaliation after making such disclosures;

and (4) which persons and entities are prohibited from retaliating. A complainant must satisfy all four of these criteria to invoke the jurisdiction of this tribunal.

The First Motion to Dismiss

As stated in her complaint, the complainant was and continues to be employed by Norwalk Emergency Shelter, Inc. ("the shelter"). The named respondent, Carole Antonetz, is the executive director of the shelter. None of the information in the complaint or the documents attached thereto even suggests—much less demonstrates—that the shelter is a state or quasi-public agency or a large state contractor. Thus, the respondent is not and cannot be an officer or employee of a state or quasi-public agency or a large state contractor. However, the inquiry into the respondent's status does not end with this conclusion, as § 4-61dd also prohibits appointing authorities from retaliating against protected whistleblowers.

In section 6 of the complaint form—a section in which one must check a box to identify the respondent as an employee of a state or quasi-public agency, a large state contractor, or an appointing authority—the complainant identifies the respondent as an "appointing authority." The complainant, however, misconstrues the meaning of that term, apparently believing it simply to mean the person who hired her. In fact, when read in the context of the entire statute, the term applies to an authority who appointed an employee to a position with a state or quasi-public agency or a large state contractor. Even construing the handful of documents in the record (notably the complaint, the attachments thereto, and the respondent's affidavit) in a light most favorable to the complainant, I cannot find that either the respondent or the shelter is an appointing authority. Thus, the respondent is not governed by § 4-61dd.

Even if the respondent were such an appointing authority, another reason exists for dismissing this matter. Section 4-61dd (b) unambiguously asserts that "[n]o state officer or employee . . . , no quasi-public public agency or employee, no officer or employee of a large state contractor and no appointing authority shall

take or threaten to take any personnel action against any state or quasi-public agency employee[s] or any employee of a large state contractor in retaliation . . ." (Emphasis added.) Because the shelter is neither a state or quasi-public agency nor a large state contractor, no employee of the shelter—including the complainant—is afforded the protection available to employees of such entities under § 4-61dd.

The respondent is also correct that the complainant did not make the requisite disclosure to the proper entity or entities, and thus failed to trigger the coverage of § 4-61dd. As noted above, the statute prohibits retaliation when the employee has disclosed information to an employee of the Auditors or Attorney General, to the state or quasi-public agency where the retaliating officer or employee is employed, to a state agency pursuant to a mandated reporter statute or, in the case of a large state contractor, to an employee of the contracting state agency. Section 4-61dd (b) (1). In the present case, the complaint reveals only that the complainant disclosed certain information to the Occupational Safety & Health Administration (OSHA), a federal agency with the United States Department of Labor. Such reporting does not trigger the protection of § 4-61dd.

For each of the reasons discussed above, the first motion to dismiss is hereby granted, and this complaint is accordingly dismissed.

The Second Motion to Dismiss

The complainant unquestionably failed to provide all of the information requested in the complaint form. According to the § 4-61dd-4 (b) of the regulations, however, a complaint "shall not be deemed defective solely because of the absence of one or more of the [requisite] items . . . provided that the complaint be amended in accordance with section 4-61dd-7 as directed by the presiding officer." Having highlighted the numerous defects and missing information during the initial conference, I directed the complainant to file an amended complaint by

August 26, 2006. See § 4-61dd-9 (b) and (c). This she failed to do. Nevertheless, having granted the first motion to dismiss, I need not determine whether the complainant's nonfeasance warrants dismissal under the second motion.

_____
David S. Knishkowy
Human Rights Referee

c: T. Lambert
L. Jackson