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

Commission on Human Rights and Opportunities ex rel. Florence Parker-Bair, Complainant	CHRO no. 0510486 Fed No. 16aa501329
v.	
State of Connecticut, Department of Motor Vehicles, Respondent	December 15, 2009

Memorandum on
Respondent's Motions to Dismiss

Procedural Background

On June 14, 2005 the complainant filed an affidavit of illegal discriminatory practice (the complaint) with the commission on human rights and opportunities (commission or CHRO) naming as respondent the State of Connecticut, Department of Motor Vehicles. The complaint alleged that for approximately 10 years the complainant had been discriminatorily denied pay raises and promotions as a consequence of her race (African-American), gender (female) and maternity status.

On March 7, 2007, the complainant filed an amended complaint which incorporated the allegations of her previous complaint and further alleged that the respondent had retaliated against her (presumably for the filing of her original complaint dated June 14, 2005) and "making my work environment hostile because of my race and gender…."

On March 10, 2009 the respondent filed its third motion to dismiss which it supplemented and amended on March 13, 2009. The respondent's pending motion argues that the complainant's claim of being retaliated against warrants dismissal as a consequence of the commission's investigator finding no connection between the alleged activities that would provide for protection (her 2005 filing with CHRO) and the claimed adverse action taken against the complainant. While the reasonable cause finding did not specifically state that no reasonable cause was found to believe that the respondent had retaliated, the language used, leaves no doubt that the investigator found no evidence from which he could draw any inference that the complainant was a victim of retaliation brought on by her opposing discriminatory employment practice or for filing a complaint with the commission.[1]

On March 18, 2009 the commission filed its objection in which it argued *inter alia* that Connecticut General Statutes § 46a-84 et seq[2] requires that all allegations in a complaint, even those allegations where reasonable cause[3] is not found, be certified to public hearing (trial).

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[1] CGS 46a-60(a) (4) it shall be a discriminatory practice in violation of this section: For any …employer …[to] discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint… under 46a-82….

[2] CGS 46a-84 (a) if the investigator fails to eliminate a discriminatory practice complained of pursuant to section 46a-82 within fifty days of a finding of reasonable cause, he shall, within ten days, certify the complaint and the results of the investigation to the executive director of the commission and to the attorney general.

[3] CGS 46a-83(c) As used in…§ 46a-84, reasonable cause as used in CGS 46a-84 means a; bona fide belief that material issues of fact are such that a person of

For the reasons that follow the respondent's motion to dismiss complainant's allegation of retaliation is hereby GRANTED.

The commission after investigating the complainant's allegations issued its reasonable cause finding on September 13, 2007.[4] The commission's investigator found as to the allegation of retaliation the following: "There does not appear to be a causal connection between the two activities [complainant's filing her complaint with CHRO and being denied a promotion]. Therefore, there does not appear to be retaliation as alleged by the amended complaint."[5]

The investigator further opined that the complainant was not denied a promotion due to protected activity (filing with CHRO), but rather that filing her complaint with CHRO on June 14, 2005 brought about her promotion in 2005.[6]

The issue of whether every allegation alleged in a complaint survives to be adjudicated at public hearing despite the CHRO investigator clearly finding that no reasonable cause exists as to one or more of the claims has been ruled on by the office of public hearings on numerous occasions. *CHRO ex rel. Magda v.*

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ordinary caution, prudence and judgment could believe the facts alleged in the complaint.

[4] The reasonable cause finding was reviewed for purpose of this ruling, with no evidentiary significance being attributed to this finding. The public hearing will be de novo requiring the parties to present evidence and to met their respective burdens of proof.

[5] See page 5 of reasonable cause finding dated September 13, 2007.

[6] See page 9 of reasonable cause finding dated September 13, 2007.

Diageo North America, Inc., 2006 WL 4844065 (denial of motion to dismiss) "[w]hen an investigator certifies a complaint to public hearing, it is the entire complaint and not merely portions thereof, that is certified"; *CHRO ex rel. Gomez v. Connecticut General Life Insurance Co.,* CHRO No. 9710105 (Sept. 30, 1999). "The Connecticut General Statutes require that the entire complaint be certified for public hearing"; *CHRO ex rel. Lange v. Kelly Temporary Services,* CHRO No. 9210246 (March 18, 1998) (decision on motion to dismiss); but see contra. *CHRO ex rel. Okonkwo v. Bidwel Healthcare Center,* 2001 WL 36041445 (ruling on motion to dismiss) "The Supreme Court again warned against 'rendering the reasonable cause determination a nullity' by allowing unfounded allegations to result in a hearing. The reasonable cause determination must serve a practical purpose. *Adriani v. Commission on Human Rights and Opportunities,* 220 Conn. 307, 318 (1991)." *CHRO ex rel. Charette v. DSS*, 2001 WL 36041442 (ruling on motion to dismiss); *CHRO ex rel. Baker v. Lowe's Home Centers, Inc.,* 2005 WL 5746416 (ruling on leave to amend complaint)

Being cognizant of the two opposing lines of rulings, I conclude that the more logical and persuasive of the two is that where no reasonable cause is found as to an allegation then that allegation will not be heard with the remaining portion of the complaint where reasonable cause has been found. In simple terms the claim where no reasonable cause is found will be treated in the same manner as if it was the only claim raised in the complaint, and be dismissed.

My conclusion is arrived at based on the well reasoned decision in *CHRO ex rel. Okonkwo v. Bidwell Healthcare Center,* supra 2001 WL 36041445. The *Okonkwo* decision details six reasons why an allegation where reasonable cause is not found warrants no further expenditure of time, effort or expense of the parties, which decision I incorporate as follows:

> First, General Statutes § 46a-84(b) provides in relevant part that "[t]he hearing 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." To allow the complainant a hearing on a claim for which reasonable cause was not found would be to allow the complainant to impermissibly appeal the commission's processing that resulted in that finding of no reasonable cause. As the respondent cannot use the hearing process as an appeal of the investigator's finding of reasonable cause, likewise, the complainant cannot use the hearing process as an appeal of the investigator's finding of no reasonable cause. Precluding the commission and the complainant from a hearing on allegations for which reasonable cause was not found enforces the commission's processing of the complaint prior to its certification.
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> Second, the finding of reasonable cause is an essential and indispensable jurisdictional condition precedent to a public hearing. "When the commission attorney proffered the report [the investigator's reasonable cause finding], he and counsel for the complainants stated that it was offered solely for the purpose of establishing that the statutory prerequisites to the hearing had been met, one of those being that the commission had determined the existence of reasonable cause. See § 46-84(a) and (b)." *Menillo v. Commission on Human Rights and Opportunities*, 1996 WL 601982 *3 (Conn. Super., October 8, 1996).
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> The statutes require an investigation, reasonable cause finding, and conciliation prior to a hearing. One cannot have conciliation without a reasonable cause finding.
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> Third, the Connecticut Supreme Court has said "[i]t is quite apparent that a purpose of the statute is to guard against subjecting a respondent to a hearing upon every complaint which might be made to the commission, however unfounded. To guard against such an eventuality, the statute requires the commission, once a complaint has been filed, to investigate it, and it is only after such preliminary investigation has established that there is reasonable cause for action and after arbitration methods have failed that a hearing is authorized." *Waterbury v. Commission on Human Rights*

and Opportunities, 160 Conn. 226, 235 (1971). The Supreme Court again warned against "rendering the reasonable cause determination a nullity" by allowing unfounded allegations to result in a hearing. The reasonable cause determination must serve a practical purpose. *Adriani v. Commission on Human Rights and Opportunities*, 220 Conn. 307, 318 (1991). Likewise, a no reasonable cause determination also must serve a practical purpose.

These admonitions by the Supreme Court are as applicable to a complaint in which reasonable cause is not found on one allegation as it is to a complaint in which reasonable cause is not found on all of the allegations.

Fourth, had separate complaints been filed for each allegation, the investigator would have dismissed the complaint for which reasonable cause was not found …. As the Connecticut Supreme Court said in *Stamford Ridgeway Associates v. Board of Representatives*, 214 Conn. 407, 427 (1990), "This court traditionally eschews construction of statutory language which leads to absurd consequences and bizarre results." (Citations omitted; internal quotation marks omitted.) Requiring a hearing and compelling the respondent to defend against allegations that in another format would be dismissed as lacking merit is exactly the absurd consequence and bizarre result the court warned against.

Fifth, this ruling is consistent with the federal courts' requirement that the Equal Employment Opportunity Commission make an express finding of reasonable cause for each employment practice which it concludes to be violative of Title VII. *Equal Employment Opportunity Commission v. Sherwood Medical Industries*, 452 F. Sup. 678, 681-83 (M.D. Fla. 1978). As a general rule, Connecticut courts and agency hearing officers look to federal employment discrimination law to interpret Connecticut's antidiscrimination statutes. *Brittell v. Department of Correction*, 247 Conn. 148, 164 (1998); *Levy v. Commission on Human Rights and Opportunities*, 236 Conn. 96, 103 (1996). Although Connecticut courts have also found that federal interpretations of Title VII are not binding on the interpretation of Connecticut's antidiscrimination statutes (*State of Connecticut v. Commission on Human Rights and Opportunities*, 211 Conn 464, 470 (1989)), no special circumstances have been proposed supporting a deviation from the federal practice requiring an express finding of reasonable cause for each employment practice.

Finally, the Connecticut Supreme Court, in *Evening Sentinel v. National Organization for Women*, 168 Conn. 26, 33-34 (1975), noted that "[t]he [Connecticut Fair Employment Practice] act is a segment of legislation designed to protect individuals from discrimination because of their sex, age, religion, race, color,

> national origin or ancestry." Where, as here, "the investigator proceeded to conduct a thorough and complete investigation into the facts of the complaint" and concluded that "[t]he investigation did not support the complainant's allegations of sexual harassment" (Finding of Reasonable Cause and Summary, pp. 2, 5), there is no discriminatory act to remedy or from which to protect the individual.

Finally, in addressing the commission's argument that this tribunal's review of the investigator's reasonable cause finding is tantamount to performing an "appellate review of the commission's processing of the complaint" which is prohibited by § 46a-84 (b), I find no merit in this argument. While the reasonable cause finding was reviewed, the conclusion reached that no reasonable cause was found by the investigator was based solely on his direct statements contained within the document. At no time was any analysis made as to the methods used to arrive at any conclusion reached by the commission's investigator or the appropriateness of the findings made.

Conclusion

For the aforementioned reasons the respondent's motion to dismiss the complainant's claim of retaliation is hereby GRANTED.

It is so ordered this 15th day of December 2009.

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Thomas C. Austin, Jr.
Presiding Human Rights Referee

cc.
Florence Parker-Bair
Cheryl Sharp, Esq.
Joseph Jordano, Esq.