

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

Commission on Human Rights and Opportunities <i>ex rel.</i>	:	CHRO No. 0630292
Patricia Robinson, Complainant	:	
v.	:	
State of Connecticut,	:	March 26, 2008
Department of Mental Health and Addiction Services, Respondent	:	

RULING ON MOTION TO DISMISS

On or about November 30, 2005, the complainant filed a complaint with this commission, alleging that the respondent—her then employer—denied reasonable accommodation for her physical disability, harassed her, retaliated against her for opposing prior discriminatory conduct, and (according to the subsequently amended complainant) terminated her, all in violation of the Connecticut Fair Employment Practices Act (CFEPA, General Statutes §§ 46a-51 et seq.) and various federal anti-discrimination statutes.

The respondent filed a motion to dismiss on February 27, 2008 (with a supplemental pleading the following day) arguing (1) that this tribunal has no jurisdiction over the federal claims, and (2) that this tribunal lacks jurisdiction over the state statutory claims by virtue of the doctrine of sovereign immunity as explained in the recent decision of *Lyon v. Jones*, 104 Conn. App. 547 (2007), cert. granted, 285 Conn. 914 (2008)..

Because *Lyon v. Jones* is presently on appeal before the state Supreme Court, the respondent argues in the alternative that I stay this matter until the Supreme Court issues its ruling on the key issue, a ruling that should be dispositive of the issue of jurisdiction of the pending state claims.

The commission filed a timely objection to the motion, along with a memorandum of law, on March 20, 2008.

1. Motion to Dismiss.

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *Federal Deposit v. Peabody N.E.*, 239 Conn. 93, 99 (1996); *Jolly, Inc. v. Zoning Board of Appeals*, 237 Conn. 184 (1996); *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); and "[e]very presumption favoring jurisdiction shall be indulged." *Conn. Light & Power Co. v. Costle*, 179 Conn. 415, 421 (1980). See *Magda v. Diageo North America, Inc.*, 2006 WL 4844065 (CHRO No. 0420213, March 16, 2006).

After review of the parties' written arguments, along with the cases, pleadings, and other supporting materials referenced therein or attached thereto, I hereby deny the motion to dismiss (with one exception) for the reasons set forth below.

2. Jurisdiction over the ADA, ADEA and Title VII claims.

General Statutes § 46a-58 (a) provides in relevant part that "[i]t shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, sexual orientation, blindness or physical disability." In *Trimachi v. Connecticut Workers Compensation Committee* (sic), 2000 WL 872451, *7

(Conn. Super), the Connecticut Superior Court reiterated the legal tenet long espoused in commission administrative decisions that General Statutes § 46a-58 (a) expressly converts a violation of federal antidiscrimination laws into a violation of Connecticut antidiscrimination laws. See, e.g., *Commission on Human Rights & Opportunities ex rel. Adam Szydlo v. EDAC Technologies Corporation*, 2007 WL 4623072 (CHRO No. 0510368, November 19, 2007); *Commission on Human Rights & Opportunities ex rel. Dexter v. Connecticut Dept. of Correction*, 2005 WL 4828672 (CHRO No. 0320165, August 31, 2005). Thus, for example, this tribunal has jurisdiction to adjudicate a Title VII claim provided it is raised under the aegis of (and thus converted to a claim under) § 46a-58 (a).

Because § 46a-58 (a) does not include age in its enumeration of protected classes, this tribunal does lack jurisdiction over the ADEA claim. *Poeta-Tisi v. Griffin Hospital*, 2006 WL 1494078, *8 (Conn. Super.); *Commission on Human Rights & Opportunities ex rel. Ramseur v. Colonial Chimney and Masonry, Inc.*, 2005 WL 4828677 (CHRO No. 0440130, November 28, 2005). See also *Commission on Human Rights & Opportunities ex rel. Crebase v. Procter & Gamble Pharmaceuticals, Inc.*, 2006 WL 4844064 (CHRO No. 0330171, July 12, 2006) (federal action predicated upon age and mental disability cannot be adjudicated through § 46a-58 (a) because neither age nor mental disability is included as a protected class under that statute). Thus, while this tribunal has jurisdiction over the Title VII and ADA claims that, properly pleaded, have become violations of § 46a-58 (a), I have no jurisdiction over—and must therefore dismiss—the complainant's ADEA claim, without prejudice to the age discrimination claims under § 46a-60.

3. Sovereign immunity as a bar to the claims under state statutes.

The doctrine of sovereign immunity, as amply documented by the respondent, implicates subject matter jurisdiction and, if applicable, may justify dismissal. *184 Windsor Ave., LLC v. Connecticut*, 274 Conn. 302, 308 (2005). In *Lyon v. Jones*, supra, 104 Conn. App. 547, the plaintiff filed a discrimination complaint in Superior Court, alleging age and sex discrimination under CFEPA. The Superior

Court dismissed the case and, on appeal, the Appellate Court affirmed, holding that before a party can institute a suit against the state in state court, he or she must obtain permission to sue from the Connecticut Claims Commissioner. Since the complainant had not obtained such permission (or established any other basis for abrogating the state's immunity), the state had not waived its sovereign immunity and thus the trial court lacked jurisdiction.

The respondent opines that the same argument applies to a complaint filed with this commission. Indeed, such view would seem logical but for the fact that the administrative proceeding before the commission is explicitly exempt by the statute itself. According to General Statutes § 4-142, in pertinent part, "There shall be a Claims Commissioner who shall hear and determine all claims against the state except . . . (3) claims for which an administrative hearing procedure otherwise is established by law . . ." (Emphasis added.) The commission is a state administrative agency established by the legislature to investigate and adjudicate allegations of discriminatory practices. (See Chapter 814c of the General Statutes, in particular § 46a-84, which governs the commission's public hearing procedure, as well as the Uniform Administrative Procedure Act, §§ 4-166 et seq.)

For the foregoing reasons, the motion to dismiss as to the ADEA claim is hereby granted. In all other respects, the motion to dismiss is hereby denied.

/s/ D.S. Knishkowy

David S. Knishkowy
Human Rights Referee

c: H. Alexander
J. Jordano
D. Kent

M. Santos