Commission on Human Rights and Opportunities ex rel. Tracy A. Standard	: Commission on Human Rights and Opportunities
	: CHRO No. 0820445
v.	: EEOC No. 16a200801253
Esposito Design Associates, Inc.	: June 28, 2010

Ruling re: the commission's objection to the respondent corporation proceeding pro se

I

By correspondence dated April 6, 2010 and at the prehearing conference on April 20, 2010, Barry Esposito, president of the respondent corporation represented that, although the corporation had previously been represented by an attorney, he would be representing the corporation due to its financial hardship. As previously ordered, on June 9, 2010, Mr. Esposito filed and served a witness list and an exhibit list on behalf of the respondent. On June 25, 2010, the commission filed an objection to the respondent corporation proceeding pro se through Mr. Esposito (Objection).

Although section 46a-54-87a (b) of the Regulations of Connecticut State Agencies (Regulations) provides that a party shall respond to a motion within fourteen days of its filing, this ruling is being issued prior to the expiration of the respondent's time period because: (1) the prehearing conference in this matter is scheduled for July 8, 2010, the fourteenth day proceeding the filing of the motion, and the parties need to know how to proceed for the conference, and (2) the objection is being overruled. The

issuance of this ruling does not preclude the respondent from filing a response to the objection and requesting a reconsideration of this ruling.

II

Section 46a-54-82a (c) of the Regulations provides that: "The respondent may appear pro se or through counsel, as provided by law." As the commission's regulations permit a respondent to appear pro se unless otherwise provided by law, the issue, then, is whether there is any prohibition on corporate self-representation.

The commission raises four bases for its objection. First, corporations may not appear pro se in a court proceeding. Objection, pp. 1-3. Second, courts are divided as to whether corporations may appear pro se at proceedings of administrative agencies. Objection, pp. 3-6. Third, Mr. Esposito does not fall within the exception in General Statutes § 51-88 governing the practice of law by non-lawyers. Objection, p. 6. Fourth, public policy suggests that a corporation should not be permitted to represent itself. Objection, pp. 6-8.

A

The commission first argues that a corporation may not appear pro se in a court proceeding. While the commission is correct that corporations may not appear pro se in a court proceeding, this is not a court proceeding. This is an administrative proceeding governed not by Titles 51 and 52 of the General Statutes or by the Practice Book, but by the Administrative Procedure Act, General Statutes §§ 4-166 et seq., and sections

46a-54-78a et seq. of the Regulations. Neither the Administrative Procedure Act nor the Regulations contain any provisions prohibiting corporate self-representation. Indeed, as previously mentioned, section 46a-54-82a (c) of the Regulations specifically allows a respondent to appear pro se.

B

The commission next argues that the "Superior Courts appear to be divided on this issue of corporate self-representation in agency hearings." Objection, p. 3. The only explicit holding on this issue that the undersigned is aware of is *Briteside, Inc. v. Dept. of Public Health*, Superior Court, Docket No. CV-01-0505959s (December 19, 2001) (31 Conn. L. Rptr. 162) (2001 WL 1707040, 2). In *Briteside*, the court concluded that a corporation could appear pro se in an administrative proceeding. The court further noted that: "Neither the Uniform Administrative Procedure Act ("UAPA"), General Statutes § 4-166 et seq., nor Connecticut case law, nor any other Connecticut authority directly prohibits or even addresses the issue of whether a corporation can appear pro se at an agency hearing." 2001 WL 1707040, 2.

The commission cites to *Video Studio v. Administrator, Unemployment Compensation Act* and to *Walnut Street Service, Inc. v. Commissioner of Motor Vehicles* in support of its position that corporate self-representation at the agency level is a procedural defect. In *Video Studio v. Administrator, Unemployment Compensation Act* Superior Court, judicial district of New London at Norwich, Docket No. CV-94-

0105484s (March 15, 1996) (1996 WL 155378), the court dismissed the plaintiff-corporation's appeal "because a corporation can not prosecute an appeal in this *court* without an attorney." (Emphasis added.) 1996 WL 155378, 3. The corporation had also appeared pro se in the prior administrative proceeding before the employment security appeals division and, in dicta, the court remarked that "[i]t is surprising that no one raised this defect at the administrative level . . . ." Id. This language is not persuasive because: (1) it is dicta, (2) there is no information as to whether the administrative agency's regulations prohibited corporate self-representation, and (3) even if in 1996 corporate self-representation was a procedural defect, the 1991 *Briteside* decision unequivocally permits corporate self-representation in an administrative hearing absent a specific agency prohibition.

Similarly, the decision in *Walnut Street Service, Inc. v. Commissioner of Motor Vehicles* offers no support to the commission. In *Walnut Street Service, Inc.*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV-96-0562083 (November 6, 1996) (1996 WL 661819), the corporation had been represented in the administrative proceeding by an attorney who was unable to attend the administrative hearing because of a scheduling conflict with a pretrial in the superior court. The court in *Walnut Street Service, Inc.* sustained the corporation's appeal of the agency's decision and remanded the matter to the agency because, inter alia, the court found that, under the circumstances of that case, the agency's hearing officer had improperly proceeded

with the administrative hearing in the absence of the corporation's attorney. In this case, however, the respondent is no longer represented by an attorney and is willing to appear pro se.

C

The commission next argues that the respondent and Mr. Esposito do not fall within the exception, set forth in General Statutes § 51-88 (d) (2), that would permit a person who is not a licensed attorney to practice law. Mr. Esposito, however, does not need to fall within the exception. This statute does not apply to this case as Mr. Esposito is not engaged in the practice of law as defined by the statue. According to Section 51-88 (a):

> A person who has not been admitted as an attorney under the provisions of section 51-80 shall not: (1) Practice law or appear as an attorney-at-law for another, in any *court* of record in this state, (2) make it a business to practice law, or appear as an attorney-at-law for another in any such *court*, (3) make it a business to solicit employment for an attorney-at-law, (4) hold himself out to the public as being entitled to practice law, (5) assume to be an attorney-at-law, (6) assume, use or advertise the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in such manner as to convey the impression that he is a legal practitioner of law, or (7) advertise that he, either alone or with others, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law.

Emphasis added.

In this case, Mr. Esposito is not appearing before a court; he is appearing before an administrative agency and the prohibition of a person who is not an attorney from

practicing law in any court “does not expressly apply to agency hearings.” *Briteside, Inc. v. Dept. of Public Health*, supra, 2001 WL 1707040, 2. There is also no evidence that Mr. Esposito is holding himself out to an attorney, assuming to be an attorney or advertising himself as an attorney.

D

Finally, the commission argues that “[p]ublic policy suggests that the respondent should not be able to represent itself in this C.H.R.O. proceeding.” Objection, p. 6. As reasons for precluding corporations from appearing pro se, the commission cites: to the uniqueness of its mission; Id.; to “[p]rohibiting corporations from appearing pro se would force corporations to take claims more seriously and would have a deterrent effect on future discriminatory conduct”; Id., p. 7; to the substantial documentary evidence that the presiding human rights referee needs to review; Id.; to the number of days that hearings typically require; Id.; to the unusual burdens litigation by a non-lawyer creates for himself, the other parties and the tribunal; Id; and to the complexity of the issues and the importance of the public interest: Id, p. 8.

First, regardless of the public policy arguments, the commission’s regulations explicitly permit a respondent to appear pro se.

Second, as the court in *Briteside* observed, “[t]here are, in fact, good reasons to support the agency’s practice of allowing corporate self-representation. Administrative hearings are informal and not governed by the strict rules of evidence, so long as they

do not violate the fundamental rules of nature justice. . . In that respect, an administrative hearing is similar to a hearing in our small claims courts, which have traditionally allowed corporations to represent themselves through non-lawyer officers, agents, and employees. . . . Allowing corporate self-representation at agency hearings undoubtedly allows some smaller corporations to reduce expenses and perhaps enables others to defend themselves when they otherwise might not have the resources to do so." *Briteside, Inc. v. Dept. of Public Health*, supra, 2001 WL 1707040, 2.

Third, the public policy arguments raised by the commission are not compelling. Most of the concerns raised by the commission would also apply to attorneys who appear before the commission for the first time representing complainants and respondents. There is no evidence that Mr. Esposito is creating any unusual burden to the commission or this tribunal in his representation of the respondent; in fact, to date he has complied with all orders. The substantial documentary evidence to be reviewed by the referee and the number of trial dates a case may consume are irrelevant to a party's representation. That Mr. Esposito may not understand the complexity of discrimination law is a risk that a corporation knowingly and voluntarily assumes in choosing self-representation. There is also no evidence that the commission's performance of its mission is negatively impacted by corporate self-representation. Further, there is no evidence that corporate self-representation implies that a

corporation is not taking the claims seriously or that it has been or will be engaged in discriminatory conduct.

III

For the reasons set forth, the commission's objection is overruled. The respondent may continue to represent itself through Mr. Esposito.

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Hon. Jon P. FitzGerald
Presiding Human Rights Referee

C:
Robin S. Kinstler Fox, Esq.
Barbara J. Collins, Esq.
Mr. Barry Esposito