

STATE OF CONNECTICUT  
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and :  
Opportunities ex rel. :  
Thaddeus Taylor, :  
Complainant : CHRO No. 1010252  
v. :  
Salvation Army ARC, :  
Respondent : February 27, 2013

02-27-13A11:45 RCVD KDH

Ruling on Respondent's Motion for Order, dated February 12, 2013  
and Complainant's Motion to Compel, dated January 28, 2013

By letter dated August 16, 2012, Commission Counsel David Kent notified the Complainant that that the Commission, as authorized by law, deferred prosecution of this complaint to the Complainant.<sup>1</sup> Specifically, Attorney Kent's letter stated, "I write to notify you that the CHRO will only be litigating in this case the issue of the Respondent's policy of not allowing male employees to counsel female beneficiaries. Therefore, because we have determined that the interests of the state would not be adversely affected, the CHRO is deferring to you the presentation of any other claims you wish to present."

Although the Complainant is allowed to retain an attorney to represent him, he has elected to represent himself in this matter. As such, he is responsible for becoming familiar with and complying with the statutes, regulations, and orders that govern this proceeding. (See the Notice of Contested Case Proceeding and Hearing Conference, dated March 8, 2012, issued in this matter for references to the statutes and regulations that govern these proceedings.)

These orders include the Conference Summary and Order, dated April 9, 2012, ("CSO"), and any amendment to the CSO, that set forth the procedures, requirement and dates for filing production requests, complying or objecting to production requests, for good faith attempts to settle document discovery requests, to file and object to motions to compel, exhibit and witness lists. The CSO also set forth the dates for the Pre-Hearing Conference and the Public Hearing. Specifically, page 1 of the CSO states, "This order establishes the official requirements,

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<sup>1</sup> At the February 4, 2013, pre-hearing conference, the undersigned presiding Referee first was notified by the Commission of its election to defer prosecution. No copy of the August 16, 2012 letter had been received by the Office of Public Hearings prior to the pre-hearing conference. Additionally, the Complainant, on page 6 of his Objection to Respondent's Motion for Order, (received by the Office of Public Hearings ("OPH") on February 20, 2013), refers to an email that was sent to him on February 4, 2013. The email was from Commission Counsel David Kent -- it was not from the OPH as Complainant stated in his Objection -- and attached to it was a copy of Attorney Kent's letter, dated August 16, 2012.

dates, times and deadlines that shall control all subsequent proceedings held for the purpose of adjudicating the merits of the complaint until further order of the presiding referee."

The Complainant failed to appear at the pre-hearing conference in this matter. The pre-hearing was scheduled for February 4, 2013 at 10 a.m. at the Initial Hearing Conference on April 9, 2012 ("IHC"), convened by the then-presiding referee, Michele Mount.<sup>2</sup> The Complainant appeared at the initial hearing conference. The CSO memorialized that date and was sent to the Complainant, as well as to Commission Counsel and Respondent Counsel.

On page 5 of his Objection to Respondent's Motion for Order ("Complainant's Objection") received by OPH on February 20, 2013, the Complainant accurately notes that the Notice of Reassignment of Human Rights Referee, dated November 21, 2012, states that "[a]ll previously scheduled dates remain in effect."<sup>3</sup> On page 6 of his Objection, he states that because the public hearing date was moved (from February 25-28, 2013) to March 6-8, 2013, he was "unclear about the status conference meeting on 2/4/13." This statement indicates that the Complainant, indeed, had notice of the pre-hearing conference.

Although, the Complainant states he was confused, the OPH has no record of the Complainant seeking clarification from the Presiding Referee of any change to the pre-hearing conference date. He had the wherewithal to do so. (Note -- The Complainant was aware of how to contact the Office of Public Hearings ("OPH"). For example, he sent an email to OPH dated December 27, 2012, confirming that he was available on March 6-8, 2013 to attend the public hearing. Additionally, the Complainant responded, on January 11, 2013, to an email from OPH to all the parties seeking to clarify which Affidavit of Discrimination was in dispute in this matter.)

These facts, including the arguments made in Complainant's Objection, lead me to conclude that the Complainant failed to appear at the pre-hearing conference without good cause.

Although I reach this conclusion I will rule on Complainant's second Motion to Compel, dated January 28, 2013 ("Second Motion"), and reschedule the pre-hearing conference for March 8, 2013, at 11:00 a.m. – this is one of the days currently scheduled for the Public Hearing. This is done taking into account the following factors: (1) I was first informed that the Commission had deferred prosecution during the pre-hearing conference on February 4, 2013, (2) the representation in Complainant's Objection that the Commission had been in regular

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<sup>2</sup> The undersigned Referee was assigned to this case on November 21, 2012, in substitution for Human Rights Referee Mount.

<sup>3</sup> The undersigned Referee has no direct knowledge of any call made to Respondent Counsel to participate in a hearing. The record indicates that, except for the pre-hearing conference, the only other hearing held in this matter was the initial hearing conference on April 9, 2012. As noted in the Notice of Contested Case Proceeding and Hearing Conference, dated March 8, 2012, that initiated this case in the OPH, the purpose of that hearing was to schedule dates for managing this dispute – including the pre-hearing conference.

communication with him prior to January 2013 at various stages of the proceedings, and (3) the fact that Complainant is a self-represented litigant.

#### New Pre-Hearing and Public Hearing Dates

The Pre-hearing Conference is rescheduled for March 8, 2012, at 11:00 a.m. – this is one of the days currently scheduled for the Public Hearing.

The March 6 and 7, 2013 Public Hearing dates are cancelled.

The dates for the rescheduled Public Hearing will be set at the Pre-Hearing Conference on March 8, 2013, so that a fair hearing on this matter may be conducted.

All parties are reminded, and are on notice, that failure to comply with the statutes, regulations, and orders that govern these proceeding, can lead to sanctions, up to and including dismissal of the complaint and the exclusion of evidence at the public hearing.

#### Ruling on Complainant's Second Motion to Compel

In submitting his second Motion to Compel, dated January 28, 2013, ("Second Motion"), the Complainant failed to do as instructed in the undersigned's ruling, dated January 11, 2013, on Complainant's first Motion to Compel, dated October 25, 2012. Furthermore, the Complainant, in his Second Motion essentially submitted the same motion that he initially filed, and that was denied. Once again, he did not specify why the documents he seeks are relevant and material to the allegations contained in his Affidavit of Discrimination, sworn to by him on or about January 7, 2010.

As with the Complainant's first motion to compel, the Second Motion and attachment, dated January 16, 2013, contain statements that the documents sought are necessary for the Complainant to pursue his claims. However, he provides no explanation why, for each document sought, that is actually true.<sup>4</sup> His statements are, once again, conclusory.

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<sup>4</sup> Additionally, whether the Respondent provided information during the Commission's investigation of the Affidavit of Discrimination – for example, a Schedule A -- or has refused to stipulate to facts is not a basis for granting Complainant's Motion. Once the complaint is referred to the Office of Public Hearings, it is a de novo matter. **The referee only receives the initial complaint. The information gathered and the documents submitted during the investigatory and conciliation stage is not part of the record provided to the presiding referee. Any evidence expected to be introduced and considered at the public hearing must be relevant to the claims made in the complaint affidavit. Irrelevant, immaterial and redundant evidence will be excluded from the public hearing.** See the Notice of Contested Case Proceeding and Hearing Conference, dated March 8, 2012, issued in this matter for references to the statutes and regulations that govern these proceedings.

In the absence of the required explanation, the undersigned has reviewed the allegations in the Affidavit of Illegal Discriminatory Practice filed in this matter (Affidavit CHRO No. 1010252) in order to rule on the Second Motion. Affidavit CHRO No. 1010252 contains the following claims of alleged discrimination –

- paragraph 5 -- paid less than Ms.Christian Nicklus, a white, female counselor, although he was assigned and did more work.
- paragraph 10 -- denied the position that Ms. Nicklus vacated and that a less qualified female, Denise Hunt, was hired instead.
- paragraph 16 -- blamed for the low census because of his race, gender, and complaints he made about the unfair treatment of beneficiaries and employees.
- paragraph 17 -- not given the senior counselor position because “the respondent did not want an African-American male in that position.”

#### Census and Daily Sign-in Rosters

Complainant failed, as directed in the order dated January 11, 2012, to explain how the census rosters and daily sign in rosters – containing the names of all the probation officers, clients and other who entered the facility -- are relevant to his alleged claims. Furthermore, the undersigned, as explained in his earlier order, is unable to divine why that might be the case without the information required from the Complainant.

Therefore, his request for these documents is denied. Additionally, Complainant’s Request for Hearing on Second Motion to Compel, dated January 28, 2012, is denied.

#### Personnel Files

Complainant failed to explain why the personnel files of the numerous individual listed are relevant to his claims, as directed in the order dated January 11, 2012. As stated in the prior ruling, without this information, the undersigned is unable to determine whether Respondent should be required to produce the documents sought by the Complainant.

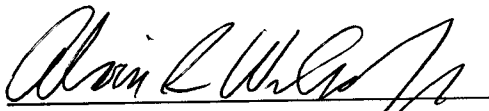
The Complainant’s motion to compel the production of personnel records is denied without prejudice. Additionally, Complainant’s Request for Hearing on Second Motion to Compel, dated January 28, 2012, is denied.

As with the previous order, if the Complainant elects to do so, he may correct any defects in his Second Motion with respect to the personnel records only, in accordance with the following instructions, and submit a revised motion. The deadline for submittal of a revised Motion to Compel is February 6, 2013.

As instructed in the order date January 11, 2013, the Complainant should:

1. Review the statutes, regulations, and orders that govern discovery in a contested case proceeding. Complainant should refer to the Notice of Contested Case Proceeding and Hearing Conference, dated March 8, 2012, issued in this matter for references to the pertinent statutes and regulations. The Complainant should also review as the Hearing Conference Summary and Order, dated April 11, 2012. (Note that for your guidance, I have attempted to summarize the pertinent requirements at the end of this document. See "Summary of Applicable Document Disclosure Law" section below.)
2. Review the production requests and objections that it filed with the opposing party (as well as the motions to compel that it filed with the Presiding Referee) for compliance with the requirements summarized below, especially the requirement that documents requested be relevant and material to the claims of discrimination made in the Complaint Affidavit, as amended, filed in this matter.
3. For documents that are relevant and material, attempt, once again, to engage in good faith efforts to resolve as many of the existing document production disputes.
4. For document production requests that remain unresolved and to be considered by the Referee at the status conference –
  - A. a party seeking to compel disclosure must prepare and file with the opposing party and the Presiding Referee, on or before February 6, 2013, its specific written reasons why the documents sought are material and or relevant to establishing or disproving the discrimination claims at dispute in this matter.

So ordered.



Alvin R. Wilson, Jr.  
Presiding Human Rights Referee

27 February 2013  
(date)

C:

Thaddeus Taylor - certified mail no. 7004 1160 0004 0258 3173 and email  
David L. Kent, Esq., via email  
Stephen P. Fogerty, Esq., via email

## Summary of Applicable Document Disclosure Law

Under Connecticut law, once a matter is either referred to the Office of Public Hearing (OPH) for a public hearing it becomes a contested case proceeding. Such proceedings are governed by (1) the state's Uniform Administrative Procedure Act (Conn. UAPA)--specifically Conn. Gen. Stat. § 4-176e, et seq., (2) Conn. Gen. Stat. 46a-84, et seq., Regulations of Conn. State Agencies 46a-54-78a, et seq. , and the orders issued by the Presiding Referee pursuant to powers granted under the law.

In a contested case proceeding, discovery is limited by law to the production of documents. Specifically, the Conn. UAPA states that each party is given the opportunity to inspect and copy relevant and material documents not in the possession of the party, except as otherwise provided by federal law or any other provision of the general statutes. See Conn. Gen. Stat. § 4-177c. (Parties are not entitled to interrogatories or depositions, nor are opposing parties obligated to respond to such a request.)

The parties must engage in good faith attempts to resolve the disputes over relevant and material documents to which the respective party is entitled under the statutes, regulations, and orders that govern this administrative hearing, and to which the opposing party has stated an objection, before this Referee will hear its motion to compel.

A good faith attempt by the party seeking documents it believes are relevant and material and to which an objection has been logged, requires that the party identify the documents still sought. The opposing party needs to know, specifically, which documents it has objected to are to be the subject of good faith attempts to resolve dispute.

Further evidence of a good faith attempt by the requesting party would be to ask only for documents to which it is entitled under law – those that are relevant and material to the legal violations alleged in the complaint. While the standards for discovery in an administrative hearing are relaxed, this minimum requirement must be satisfied.

In the event that good faith attempts fail to resolve some document requests, and a party files a motion to compel, that party must provide the Presiding Referee an explanation of why the documents sought are relevant and material to the specific facts and legal claims alleged in the complaint(s) filed or the motion will be denied.