

IN THE MATTER OF:

Complainant,

and

Respondent.

HUD NO(S): **05-19-4089-8**

ALS NO(S): **20-0390**

Tracey Fleming
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF: IDHR and EMORY BROOKS, Complainants, v. MOOSEHEART CHILD CITY AND SCHOOL, INC., Respondent.	Charge No.: 2019-CH-0764 HUD No.: 05-19-4089-8 ALS No.: 20-0390 Judge Azeema N. Akram
---	---

RECOMMENDED ORDER AND DECISION

This matter is fully resolved. However, the nature and procedural posture of the case requires a recommended order and decision to effect closure of the action, in part, under 56 Ill. Admin. Code § 5300.750(e). On September 26, 2022, this administrative court entered an order requiring Complainant Emory Brooks (“Complainant”) to file a motion for voluntary dismissal by a date certain, as the parties had settled this matter via two separate settlement agreements: one between Complainant and Respondent, Mooseheart Child City and School, Inc. (“Respondent”), and one between the Illinois Department of Human Rights (the “Department” or “IDHR”) and Respondent.

Subsequently, the Illinois Human Rights Commission (the “Commission”) approved the terms of a settlement agreement between the Department and Respondent, retaining “jurisdiction for purposes of enforcement of the Terms of Settlement and Agreement.” Comm’n Order (entered Nov. 9, 2022). Despite multiple requests by this administrative court to do so, Complainant has neglected to file a motion for voluntary dismissal to dispose of his claims on my docket, which would effectuate finality of those claims. Because I find that sufficient evidence exists to confirm that this dispute has been fully resolved, I am recommending that the Commission dismiss

Complainant as a party to this action for want of prosecution pursuant to 56 Ill. Admin. Code § 5300.750(e).

FINDINGS OF FACT

After reviewing the pleadings and the record file in this matter, I make the following findings of fact:

A. Initial Proceedings

On October 28, 2020, the Department filed a Complaint of Civil Rights Violation (“Complaint”) on Complainant’s behalf, alleging that Respondents failed to provide him with a reasonable accommodation for his disabilities in violation of Section 3-102.1(C)(2) of the Illinois Human Rights Act (“Act”), 775 ILCS 5/1-101 *et seq.* *See* Compl. Respondents deny that they have engaged in unlawful discrimination. *See* Respondent’s Verified Answer to the Complaint (filed Jan. 11, 2021).

The parties began exchanging discovery soon thereafter. After approximately two weeks, the administrative law judge (“ALJ”) previously assigned to this case scheduled a status hearing on discovery for June 2, 2021. *See* Order (entered May 6, 2021). However, no status hearing was conducted that day because the previously-assigned ALJ left the Commission that day. No proceedings took place before this administrative court for the next eight months.

B. The Parties Request that the Proceedings Recommence

On January 12, 2022, Complainant filed an *Unopposed Motion to Set Status Hearing*, seeking to put this matter back on track toward resolution in order to complete discovery and obtain a final hearing date. This matter was reassigned to me, and I entered an order granting the motion and scheduling a status hearing. *See* Orders (entered Jan. 27, 2022 and Feb. 25, 2022)

On March 7, 2022, this administrative court conducted a status hearing at which the Department and Respondent appeared through counsel. *See* Order (entered March 7, 2022). Complainant, who is represented by counsel, failed to appear. *Id.* The Department and Respondent stated that written discovery was complete, but that Complainant's counsel had relayed to them that he intended to request leave to depose certain witnesses. *Id.* Because Complainant was absent, I set a deadline by which to request depositions and scheduled the next status hearing. *Id.* The parties filed an *Agreed Motion for Leave to Take Depositions* on March 21, 2022, to depose Complainant and Respondent's Director of Human Resources. The motion was granted as it was made by agreement. *See* Order (entered March 23, 2022).

On May 16, 2022, this administrative court conducted a status hearing at which all parties appeared through counsel. *See* Order (entered May 16, 2022). The depositions were completed, and no outstanding discovery issues remained. *Id.* Accordingly, discovery was closed, and the matter was continued to allow the parties to conduct settlement negotiations. *Id.*

C. The Parties Settle

A status hearing on the settlement negotiations was conducted on June 27, 2022. All parties appeared through counsel, who represented to this court that they had reached a resolution by agreement in principle, which they were memorializing in writing. *See* Order (entered June 27, 2022). Complainant was directed to file a motion for voluntary dismissal as soon as the parties were legally exculpated from their contractual obligations pursuant to the settlement. *Id.* Another status hearing date was scheduled.

The Department and Respondent appeared before this administrative court on August 15, 2022. Complainant failed to appear. *See* Order (entered Aug. 15, 2022). The written settlement agreement was awaiting internal Department approval, and a separate agreement with

Complainant was still being drafted. *Id.* Accordingly, another status hearing was scheduled to ensure that the parties take all necessary steps to resolve this matter on my docket. *Id.*

On September 26, 2022, this administrative court conducted a status hearing at which all parties appeared through counsel. *See* Order (entered Sept. 26, 2022). The parties represented that the written settlement agreements were finalized and awaiting wet signatures. *Id.* The Department indicated that it would move for Commission approval of its agreement with Respondent. *Id.* Complainant was again directed to file a motion for voluntary dismissal, and warned that failure to do so “within 90 days of this order” would result “dismissal of this matter on my own motion on the basis that the parties have settled this matter, and Complainant has failed to take the necessary steps to dispose of it at the Commission.” *Id.* The parties were reminded that “failure to comply with the Commission’s Orders . . . may result in sanctions as permitted under the Illinois Human Rights Act and the Commission’s Procedural Rules (e.g., default or dismissal), and as justice may require.” *Id.*

D. The Commission Approves a Settlement Between the Department and Respondent

On October 18, 2022, the Department filed a Motion for Leave to File Terms of Settlement and Agreement, requesting, on behalf of itself and Respondent, that the motion be entered into the record and submitted for approval by a panel of the Commission pursuant to Section 8-105(A) of the Act. I granted the motion, which transferred the case file to the General Counsel’s Office for review by a panel of the Commission. In so doing, I noted that any Commission approval and corresponding jurisdiction retained would apply only to the Department and Respondent.

The Commission subsequently approved the Terms of Settlement and Agreement as to the Department and Respondent, retaining jurisdiction of the same “for purposes of enforcement of the Terms of Settlement and Agreement.” *See* Comm’n Order (entered Nov. 9, 2022).

E. Complainant Fails to File a Motion for Voluntary Dismissal as Ordered

In accordance with the 90-day deadline set forth in my previous order, Complainant's motion for voluntary dismissal was due on December 27, 2022. *See* Order (entered Sept. 26, 2022). However, she failed to file one by that date or thereafter. Accordingly, this recommended order and decision effects a dismissal of Complainant for want of prosecution based on his failure to comply with the orders of this administrative court.

CONCLUSIONS OF LAW

After reviewing the pleadings and the record file in this matter, I make the following conclusions of law:

1. This administrative court has jurisdiction over this matter and over the parties who have appeared in this case.
2. The procedural rules of the Commission expressly allow the parties to a case to reach a voluntarily settlement of their dispute at any time. *See* 56 Ill. Admin. Code § 5300.310.
3. The parties to this case reached a mutually acceptable settlement in principle at least as early as June 27, 2022.
4. The parties to this case memorialized their settlement in principle in a private settlement agreement at least as early as September 26, 2022. All conditions of performance under that private settlement agreement have been fulfilled.
5. The Illinois Human Rights Act authorizes an administrative law judge of this Commission to dismiss a case with prejudice where a complainant fails to prosecute his or her claims. *See* 775 ILCS 5/8A-102(I)(6). The procedural rules of this Commission further permit such action—either as a sanction or as a means of administratively closing a case. *See* 56 Ill. Admin. Code § 5300.750(e).

6. By failing to file a motion for voluntary dismissal as ordered, I find that Complainant has failed to diligently prosecute his case in accordance with 56 Ill. Admin. Code § 5300.750(e).

7. To effectuate closure of this action as to Complainant only, while maintaining the Commission's jurisdiction to enforce the settlement agreement between the Department Respondent pursuant to Section 8-105 of the Act, I recommend that Complainant be dismissed as a party as a sanction for failure to diligently prosecute his case under 56 Ill. Admin. Code § 5300.750(e).

ANALYSIS

"It is a fundamental principle governing practice before the Commission that it is the singular responsibility of complainants to diligently pursue the disposition of their cases once they are docketed with the Commission." *Neil v. Tribco Constr. Servs. LLC*, IHRC, ALS No. 08-0286 (June 16, 2011), citing *Johnson v. Valley Green Mgmt. Co.*, IHRC, ALS No. 11469 (July 25, 2002). Dismissal is warranted where there is a lack of due diligence in the prosecution of the lawsuit by complainant. *See, e.g., Daraban v. TLC Mgmt. Co., Inc. & Farrell*, IHRC, ALS No. 07-349 (May 12, 2008); *see also Schaefer v. Village of Mundelein*, IHRC, ALS No. 07-199 (Mar. 17, 2009). (dismissed for want of prosecution where complainant failed to comply with discovery orders).

Although courts generally prefer to resolve cases on their merits, a trial court may dismiss a case for want of prosecution due to the plaintiff's failure to prosecute the case with due diligence, "in order to manage the court's docket and avoid unnecessary burdens on the court and opposing parties." *Ill. Bone & Joint Inst. v. Kime*, 396 Ill. App. 3d 881, 883 (1st Dist. 2009). The determination of whether to dismiss for want of prosecution must be made on the particular facts of the case and rests within the trial court's discretion. *People v. Kruger*, 399 Ill. Dec. 113, 116,

45 N.E.3d 1103, 1106 (4th Dist. 2015), citing *Dep't of Revenue v. Steinkopf*, 160 Ill. App. 3d 1008, 1018, 513 N.E.2d 1016, 1022 (1987).

A complainant's failure to prosecute "can evidence itself either in an action lying dormant with no significant activity to move it or in a pattern of dilatory tactics." *Lyell Theatre Corp. v. Loews Corp.*, 682 F.2d 37, 42-43 (2d Cir. 1982) "The latter may consist, for example, of groundless motions, repeated requests for continuances or persistent late filings of court ordered papers." *Id.* A dismissal for lack of prosecution is appropriate when there is "a clear record of delay or contumacious behavior." *Penny Theater Corp. v. Plitt Theaters, Inc.*, 812 F.2d 337, 339 (7th Cir. 1987). Allowing courts to dismiss cases where the party who brought the case has failed to prosecute "serves not only to protect defendants but also to aid courts in keeping administrative control over their own dockets and to deter other litigants from engaging in similar dilatory behavior." *Zaddack v. A.B. Dick Co.*, 773 F.2d 147, 150 (7th Cir. 1985).

Here, Complainant's failure to file a motion for voluntary dismissal has resulted in this case remaining before the Commission beyond the point at which the parties reached a settlement (as represented by counsel for Complainant and Respondent). While perhaps reflective of the idea that Complainant's counsel viewed this dispute as fully resolved after receiving compensation, the reality is that Complainant still had an obligation to file paperwork on dismissal in the same manner as litigants who reach a settlement and wish to terminate their cases before the circuit courts. By failing to address this important step (after being ordered to do so twice by this administrative court), Complainant ran afoul of his continuing responsibility to diligently pursue his case—which necessarily includes any final efforts to conclude or administratively close proceedings in the wake of settlement. See *Rodriguez v. Nestle USA, Inc.*, IHRC, ALS No. 07-081, 2010 ILHUM Lexis 313, at *4 (Nov. 18, 2010).

Given that the “Commission will retain jurisdiction for purposes of enforcement of the Terms of Settlement and Agreement” between “the Illinois Department of Human Rights and Mooseheart Child City and School, Inc. only,” a full and final dismissal of this matter would contravene the Commission’s authority proscribed under 775 ILCS 5/8-105(B). Comm’n Order (entered Nov. 9, 2022). Therefore, to effectuate closure and finality of this matter as to Complainant’s claims only, I recommend that the Commission dismiss him as a party to this case as a sanction for failing to diligently prosecute his case in accordance with 56 Ill. Admin. Code § 5300.750(e).

RECOMMENDATION

Based on the foregoing, I recommend that the Illinois Human Rights Commission effect closure of this action, in part, by dismissing Emory Brooks as a party to this case for want of prosecution, pursuant to 56 Ill. Admin. Code § 5300.750(e).

HUMAN RIGHTS COMMISSION

BY:

**AZEEMA N. AKRAM
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: December 30, 2022

IDHR CHARGE NO.: 2019-CH-0764
HUD NO.: 05-19-4089-8
ALS NO.: 20-0390
Case Name: *IDHR & Emory Brooks v. Mooseheart Child City and School, Inc.*