STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
STACY BENJAMIN,	)	CHARGE NO.: **2019CR3280**
	)	
Complainant,	)	EEOC NO.: **440-2019-04836**
	)	
and	)	ALS NO.: **23-0171**
	)	
NORTHWESTERN UNIVERSITY,	)	
	)	
Respondent.	)	

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision and the Complainant's Exceptions filed thereto.[1]

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Pursuant to 775 ILCS 5/8A-104(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter.[2] The parties are hereby notified that the Chief Administrative Law Judge's Recommended Order and Decision, entered on December 14, 2023, has become the Order of the Commission.

2. This is a final and appealable Order.

STATE OF ILLINOIS	)	
	)	**Entered this 29th day of OCTOBER 2024.**
HUMAN RIGHTS COMMISSION	)	

Chair Selma D'Souza

Commissioner Jacqueline Y. Collins

Commissioner Janice M. Glenn

[1] The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.
[2] This Order is entered pursuant to a 3-0-0 vote by the Commissioners.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF: STACY BENJAMIN, Complainant, v. NORTHWESTERN UNIVERSITY, Respondent.	IDHR Charge No.: 2019-CR-3280 EEOC Charge No.: 440-2019-04836 ALS No.: 23-0171 Chief Administrative Law Judge Brian Weinthal

RECOMMENDED ORDER AND DECISION

On October 16, 2023, Respondent Northwestern University ("Respondent") filed a motion seeking to dismiss this case with prejudice for lack of subject matter jurisdiction. *See* Sec. 2/619.1 Mot. to Dismiss Complainant's Second Am. Verified Compl. ("Mot") (filed Oct. 16, 2023). Complainant Stacy Benjamin ("Complainant") filed an opposition to Respondent's motion to dismiss on November 6, 2023, *see* Complainant's Response to Respondent's Mot. to Dismiss Second Am. Compl. Instanter ("Resp.") (filed Nov. 6, 2023), after which Respondent filed a reply in support of its dispositive motion on November 20, 2023. *See* Reply in Support of Mot. to Dismiss Second Amended Verified Compl. ("Reply") (filed Nov. 20, 2023). Respondent's motion is thus fully briefed and ready for decision.

Because I find that this administrative court lacks subject matter jurisdiction over the civil rights violations asserted in the currently controlling pleading, Respondent's motion to dismiss this case is GRANTED, and I further recommend that the Illinois Human Rights Commission (the

"Commission") affirm the dismissal of this matter and the underlying charge of discrimination with prejudice pursuant to 56 Ill. Admin. Code § 5300.910.

PROCEDURAL HISTORY

This case has a lengthy procedural history that has resulted in the current version of the complaint containing allegations that differ from those that were originally asserted in Complainant's underlying charge. On June 6, 2019, Complainant filed a charge of discrimination that was first investigated by the Equal Employment Opportunity Commission (the "EEOC"). *See* Decl. of A. Wermuth in Supp. of Mot. to Dismiss Complainant's Second Am. Verified Compl. ("Wermuth Decl."), Ex. A (Oct. 16, 2023). In her charge, Complainant—who is a university professor—alleged that when she was initially hired by Respondent (a private university) in January of 2004, she was paid less than similarly-situated male colleagues and was "hired into a position that was wrongly classified." *Id*. This latter allegation was a reference to Complainant's title when she first began working for Respondent. Although Complainant aspired to the academic rank of "Clinical Professor" (a status she would later obtain in September of 2018), her underlying charge lamented that Complainant should have been placed into this position at the time she was initially hired in 2004, rather than into whatever professorial rank or role she had competed for when she first sought to work for Respondent. Complainant described this grievance as the "misclassification" of her starting position. *Id*.

I. Investigation and Requests for Review

On August 18, 2020, the EEOC advised that its investigation had not revealed evidence of a civil rights violation, and that Complainant now had the right to proceed to federal court to vindicate any potential causes of action available to her under Title VII of the Civil Rights Act of 1964. *See* Wermuth Decl., Ex. B. But rather than proceed to federal court, on August 28, 2020,

Complainant requested the Illinois Department of Human Rights (the "Department") to conduct its own investigation of her claims. *See* Wermuth Decl., Ex. D. On January 5, 2022, the Department announced that it was "not evident that Respondent subjected Complainant to sex-based unequal pay during the 180-day period preceding the filing of [her] charge," which in turn resulted in the Department reaching a finding of "lack of substantial evidence" on Complainant's state law claims under the Illinois Human Rights Act. *Id*.

Thereafter, on February 14, 2022, Complainant filed a timely request for review with the Commission. On June 28, 2022, a three-member panel of the Commission vacated the Department's initial finding, holding that the Department had improperly concluded that it could rely on the EEOC's evidence, rather than conducting its own investigation. *See* Wermuth Decl., Ex. E. The matter was thus returned to the Department for further investigation, which eventually concluded on September 20, 2022. On that date, the Department entered a new investigative finding that divided Complainant's claims into two counts: (a) unequal pay based on sex; and (b) "misclassification" based on sex. *See* Wermuth Decl., Ex. F. Complainant's equal pay claim was dismissed for lack of substantial evidence, whereas her "misclassification" claim was dismissed for lack of jurisdiction (as the evidence gathered by the Department indicated that Complainant had admitted to broaching her concerns of "misclassification" with Respondent as early as June of 2011). *See id*.

Complainant timely filed a second request for review on December 12, 2022. In response, on March 23, 2023, a three-member panel of the Commission affirmed the Department's dismissal of Complainant's equal pay claim for lack of substantial evidence. *See* Wermuth Decl., Ex. G. However, the Commission vacated the Department's finding on Complainant's "misclassification" claim, concluding that questions of fact existed regarding whether the alleged misclassification

occurred in 2004 or 2011, and whether Complainant first became aware of the alleged misclassification in 2011 or 2018. *See id*. The Commission therefore directed the Department to enter a finding of substantial evidence on Complainant's "misclassification" claim, which the Department eventually did on May 12, 2023 (after botching an initial notice).

II. Earlier Versions of the Complaint

At Complainant's request, the Department filed an initial complaint of civil rights violations on her behalf on June 29, 2023. *See* Compl. (filed June 29, 2023). This original version of the complaint was bare-boned, stating little more than that Complainant had been hired by Respondent in January of 2004 "into a position that was wrongly classified." *Id*. at 2. The only corresponding civil rights violation alleged in that pleading was the idea that Respondent "treated similarly situated male employees more favorably because it did not misclassify their positions." *Id*. at 3. No reference was made to any events occurring in 2011 or 2018, nor was there any explanation of how this administrative court could have jurisdiction over an alleged positional dispute that had occurred in 2004 (*i.e.*, nineteen years earlier).

Complainant subsequently retained counsel who requested leave to file an amended complaint on her behalf on July 24, 2023. *See* Complainant's Mot. to File Am. Compl. Instanter (filed July 24, 2023). That request was granted without objection, whereupon the amended complaint was accepted as the operative pleading in this matter on August 8, 2023. In her amended complaint, Complainant now alleged that after she was hired in 2004, Respondent "misclassified" her position "in or around 2011." Complainant's Am. Verified Compl. ¶ 3 (filed Aug. 4, 2023). Complainant further averred that she "did not discover this misclassification until 2018 and advised Respondent of this misclassification in 2018." *Id*. ¶ 4. The civil rights violation appearing in the amended complaint still mirrored the language contained in the original complaint that had

been filed by the Department, which asserted that Respondent "treated similarly situated male employees more favorably because it did not mis-classify their positions." *Id*. ¶ 7.

III. Respondent Files an Initial Motion to Dismiss

On August 21, 2023, Respondent filed an initial motion to dismiss this case, arguing that "misclassification" is not an available cause of action under the Illinois Human Rights Act. *See* Mot. to Dismiss Complainant's Am. Verified Compl. (filed Aug. 21, 2023). Following oral argument at the initial status hearing that was conducted in this matter on August 29, 2023, I agreed with Respondent's position and dismissed the amended complaint without prejudice. *See* Order (entered Aug. 29, 2023). In so ruling, I advised the parties that "misclassification" is a legal term of art in the field of employment law that typically refers either to the misidentification of employees as exempt or non-exempt, or to the misidentification of workers as independent contractors (vice true employees). *See id*. Under Illinois law, there is no available cause of action under the Human Rights Act for "misclassification" in the sense that an employee simply believes that she should occupy a higher title than the one she currently holds. Here, Complainant successfully competed for whatever open position Respondent had offered to her in 2004, so her only viable cause of action was to prove that a promotion or other advancement she applied for thereafter was somehow denied to her based on her membership in a protected class. *See id*.

My order dismissing Complainant's amended complaint gave Complainant twenty-eight days to file a second amended complaint that set forth a cognizable violation of the Human Rights Act. *See id*. In drafting this second amended pleading, Complainant was directed: (1) to avoid further use of the word "misclassification" to describe her claims; and (2) to ensure that any better or more fulsome description of what was being described as a "misclassification" claim was consistent with the allegations that had been made in the charge of discrimination that had been

filed with the EEOC and the Department on June 6, 2019. *See id*. With these instructions delivered, Complainant filed her second amended complaint on September 25, 2023. *See* Complainant's Second Am. Verified Compl. ("2d Am. Compl.") (filed Sept. 25, 2023). The second amended complaint is the currently-controlling pleading in this matter that Respondent seeks to dismiss.

CONTENTIONS OF THE PARTIES

In her second amended complaint, Complainant alleges that "[i]n or around 2011," Respondent "failed to assign or appoint Complainant to the appropriate rank and position of Clinical Professor." *Id*. ¶ 4. Although not immediately obvious from this language, the subtext of Complainant's allegation is that after initially serving in a subordinate rank with which she disagreed, Complainant applied for instatement to the position of Clinical Professor in 2011 and was thereafter denied this promotion by Respondent. The second amended complaint goes on to state that after Complainant was eventually appointed to the rank of Clinical Professor in 2018, she questioned Respondent regarding the delay in obtaining this position. *See id*. ¶ 7. Complainant asserts that in raising this concern, she learned that she had previously been given what was later determined to be "false information" regarding the reasons for which she was not elevated to this position sooner. *See id*. The nature of any such "false information" is not pled or identified.

Notwithstanding this lack of explanation regarding why the information provided to her was supposedly "false," *see id*. ¶ 8, Complainant alleges that Respondent appointed male faculty members to the rank of Clinical Professor despite the fact that such male comparators had "considerably less" experience than Complainant. *See id*. ¶ 11. Building off this allegation, Complainant contends that she is a victim of discrimination based on gender, as Respondent appointed similarly-situated male colleagues to the position of Clinical Professor earlier than

Complainant, who even after her eventual promotion was supposedly paid less than her male colleagues for the same work. *See id*. ¶ 12. In fact, following an agreement by Respondent to adjust Complainant's salary in May of 2019 in the wake of her promotion, Complainant still believed that she was being paid less than other male faculty members, *see id*., which is presumptively what led Complainant to file her underlying charge of equal pay discrimination on June 6, 2019.

I. Submissions Beyond the Second Amended Complaint

Respondent filed its current (second) motion to dismiss this case on October 16, 2023. Citing to previously favorable treatment of the Illinois Code of Civil Procedure by this administrative court, Respondent relies on 735 ILCS 5/2-619(1) to offer evidence outside the second amended complaint to show that subject matter jurisdiction over this case is lacking. Specifically, Respondent points to a letter written by Complainant on June 22, 2011. *See* Wermuth Decl., Ex. J. The letter was directed to Bruce Ankenman ("Ankenman"), Respondent's Director of Undergraduate Programs and Complainant's immediate supervisor. *See id*. In the letter, Complainant requested appointment to the rank of Clinical Professor, citing various accomplishments and achievements she had earned in her time working for Respondent. *See id*. In addition, Complainant noted that many of the responsibilities she was already fulfilling had traditionally been carried out by full-time faculty members, and that her efforts to improve these functions was resulting in greatly enhanced prestige for Respondent's engineering program (to which Complainant was attached as a staff member at that time). *See id*.

Yet more important than the foregoing accolades is the reference to the under-representation (and corresponding need for advancement) of women in engineering faculty roles

that appears in Complainant's letter. In seeking to be appointed as a Clinical Professor, Complainant wrote:

> Retaining women in engineering is an ongoing challenge, with the loss of women in this field referred to as the "leaking pipeline." Undergraduate women engineering students need to see women faculty in positions of authority, and the students need strong female engineer role models. Male faculty are regularly brought in from industry; to not also include women in this category is to miss an opportunity to address the leaking pipeline.

Id. Before and after raising the "leaking pipeline" as a concern, Complainant referred to a male comparator—David Gatchell ("Gatchell")—who had recently been hired by Respondent to work as a Clinical Professor. Identifying Gatchell's role as "almost identical to [hers]," Complainant argued to Ankenman that Gatchell's hire as a Clinical Professor "highlighted the need to make a change immediately" in reference to Complainant's title. *Id*. To eliminate any perceived disparity between herself and Gatchell, Complainant insisted that her official position and rank should be changed, and that "this change should go into effect before the beginning of the fall term to avoid confusion when David Gatchell begins his term." *Id*. In light of these statements, Respondent argues there could be no question that Complainant would have suspected that she was a potential victim of discrimination at the moment she was denied the position of Clinical Professor in 2011.

II. Additional Extended Submissions by Complainant

After reviewing Respondent's present motion to dismiss, this administrative court entered an order directing Complainant (in her opposition) to identify and discuss the "false information" referenced in the second amended complaint that made it impossible for Complainant to uncover the true reasons for which she was not promoted to the rank of Clinical Professor until 2018. *See* Order ¶ 2 (entered Oct. 18, 2023). To comply with this directive, Complainant submitted a declaration in opposition to Respondent's motion to dismiss that recounts the events surrounding Respondent's denial of her promotion to the position of Clinical Professor in 2011. *See* Decl. of

S. Benjamin ("Benjamin Decl.") (Nov. 1, 2023). According to Complainant, at some point in 2011, she asked Ankenman why she had not been awarded the title of Clinical Professor. *See id*. ¶ 2. In response, Ankenman supposedly told Complainant that Respondent's engineering school would not appoint Complainant to the rank of Clinical Professor unless: (1) she had a Ph.D.; (2) she had ten years of teaching experience; (3) she had a "world renown" reputation; or (4) she was running her own company. *Id*. After hearing this explanation, Complainant claims she had "no reason" to question it and assumed this was Respondent's "official appointment policy." *Id*. ¶ 3.

But almost seven years later, in 2018, Complainant claims that upon attending an event hosted by the Organization of Women Faculty, Complainant learned that Respondent's "official appointment policy" was different from what had been represented to her by Ankenman in 2011. *See id*. ¶ 4. Under the "actual" policy, the only requirements to become a Clinical Professor were: (1) ten years of relevant experience in the profession; and (2) three years of documented teaching experience. *Id*. Already meeting these requirements, Complainant presented these "newly learned facts" to officials in Respondent's engineering program, at which point she was elevated to the rank of Clinical Professor in 2018. *Id*. ¶ 5. Although it is unclear from Complainant's declaration whether Respondent's appointment policy was reduced to writing (either in 2011 or 2018), Complainant claims that the policy she discovered upon attending the Organization of Women Faculty event was the same policy that had been in place in 2011, but that it had not been accessible to her online or otherwise at the time (*i.e.*, in 2011). *See id*. ¶ 3. Because of this, Complainant maintains that she had "no evidence" to dispute the "false information" that Ankenman had supposedly given her in 2011 until September of 2018. *See id*. ¶ 4.

III. Respondent Offers Further Documents in Support of Its Position

In its reply brief, Respondent initially points out that whereas the second amended complaint asserts that Complainant did not question Ankenman regarding the denial of her promotion until 2018, *see* 2d Am. Compl. ¶ 7, Complainant's more recent declaration in opposition to Respondent's motion to dismiss makes the conflicting allegation that Complainant actually questioned Ankenman regarding her promotion in 2011 (vice 2018). *See* Benjamin Decl. ¶ 2. Because of the inconsistency between these two averments, Respondent argues that the allegations appearing in the second amended complaint should control, as Complainant should not be permitted to replead her case through a contradictory declaration. *See* Reply at 3. The second amended complaint should therefore be dismissed—insists Respondent—because it fails to allege that Complainant took any action to investigate or grieve the denial of her promotion until seven years after Respondent communicated its decision to Complainant in 2011. *See* Reply at 2-3.

Notwithstanding the foregoing textual argument in favor of dismissal, Respondent also attempts to clarify the confusion surrounding its "official appointment policy" by showing that while this policy was continuously memorialized, it was revised (to Complainant's advantage) between 2011 and 2018. According to Respondent, in 2011, the appointment qualifications for the position of Clinical Professor required Complainant to demonstrate that she had "exceptional professional experience," which Respondent interpreted (at least in 2011) to require one of the four criteria that Ankenman cited to Complainant as the bases upon which her promotion had been denied. *See* Decl. of R. Lueptow ("Lueptow Decl.") ¶ 3 (Nov. 17, 2023). But in 2016, a systematic reworking of Respondent's professorial rank structure resulted in the appointment criteria for Clinical Professor being reduced to require only "substantial professional experience," which

Respondent defined to include only ten years of professional experience and three years of documented teaching experience (which Complainant had in 2018). *See id*. ¶ 4.

Respondent argues that the 2016 diminution in the appointment criteria for the Clinical Professor position demonstrates that Complainant was not given any "false information" regarding the reasons for which her promotion was denied in 2011. That year (*i.e.*, in 2011), the qualifications for the rank of Clinical Professor in Respondent's engineering school were consistent with what was reflected in the more stringent policy that Ankenman cited to Complainant as the reason for which her promotion had been denied. *See id*., Ex. 1. Later, in 2018, when Complainant again applied for this role, she was evaluated not by the policy that had been in place in 2011, but by the more relaxed standards for advancement that applied after Respondent amended its appointment policy in 2016. *See id*., Ex. 2. Respondent thus decries any idea that Complainant was somehow given "false information" by Ankenman that precluded her from filing a charge of discrimination at the time she was denied her requested promotion by Respondent in 2011.

CONCLUSIONS OF LAW

I make the following conclusions of law based on the evidence submitted in this case and the pleadings before me:

1. This administrative court is empowered by the Illinois Human Rights Act to determine whether subject matter jurisdiction exists over the instant controversy.

2. On whatever date Respondent officially denied Complainant's promotion to the rank of Clinical Professor in 2011, Complainant had sufficient information to suspect that the denial of her promotion could have been the result of discrimination based on gender.

3. Under the version of the Illinois Human Rights Act that existed in 2011, Complainant had 180 days to file a charge of discrimination with the Department following the denial of her promotion. *See* 775 ILCS 5/7A-102(A)(1) (2011).

4. By failing to file a charge of discrimination within 180 days of the date on which her promotion was denied, Complainant forfeited her right to pursue a cause of action under the Human Rights Act, which in turn divested this administrative court of subject matter jurisdiction over any allegations of discrimination associated with Complainant's present claims.

5. Because there is no operative pleading before this administrative court that complies with the jurisdictional prerequisites set forth under 775 ILCS 5/7A-102(A)(1), this administrative court is without subject matter jurisdiction to adjudicate the civil rights violations appearing in the second amended complaint. As a result, this case and the underlying charge of discrimination must be dismissed with prejudice.

LEGAL STANDARD

Frequently labeled a "Creature of Statute," this administrative court enjoys only those powers that are conferred to it by the Illinois legislature under the Human Rights Act. *See In re Martinez*, ALS No. 19-0483, 2020 ILHUM LEXIS 163, at *2 (June 10, 2020). As such, unlike a court of general jurisdiction, this administrative court is only permitted to consider disputes and controversies that are placed before it upon the satisfaction of certain statutory requirements. *See id*. (citation omitted). Among these requirements is the need for subject matter jurisdiction, which is prescribed by the Human Rights Act, and which must be established by the party seeking to invoke the authority of this administrative court. *See In re Bobby P. Peak II v. Laborer's Local One*, ALS No. 19-0543, 2021 ILHUM LEXIS 176, at *4 (June 8, 2021).

Under the version of the Illinois Human Rights Act that existed in 2011, a complainant seeking to pursue a cause of action before this administrative court was required to file a charge of discrimination within 180 days of the "first instant" in which he or she received notice of an alleged Human Rights Act violation. *See In re Davis v. Lincoln Land Cmty. Coll.*, ALS No. 10-0583, 2018 ILHUM LEXIS 969, at *7 (Dec. 11, 2018) (citing *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 620 N.E.2d 1200 (1st Dist. 1993)). This time period was (and still is) jurisdictional, and cannot be equitably tolled. *See Robinson v. Illinois Human Rights Comm'n*, 201 Ill. App. 3d 722, 729, 559 N.E.2d 229 (1st Dist. 1990). Consequently, where this administrative court determines that a complainant has failed to file a charge within 180 days of the "first instant" in which he or she could have suspected that discrimination was at play, dismissal with prejudice is the only available option, as this administrative court does not have subject matter jurisdiction over any corresponding civil rights violations asserted in an untimely charge. *See In re Brooks v. Cook Cnty. Sheriff's Dep't*, ALS No. 10-0091, 2011 ILHUM LEXIS 85, at *9 (June 16, 2011).

DISCUSSION

Complainant's obligation to file an underlying charge of discrimination arose in 2011—at the "first instant" she became aware that Respondent was denying her promotion to the rank of Clinical Professor. When Complainant officially requested this promotion on June 22, 2011, she challenged the idea that Respondent had already elevated male faculty members into this role, arguing that the failure to advance women in the same manner would "miss an opportunity" to address concerns of gender parity (*i.e.*, the "leaking pipeline"). Complainant even went so far as to identify a male comparator who she claimed was similarly-situated. For these reasons, when her promotion was denied, Complainant immediately had cause to suspect that discrimination might be at work, which in turn obligated her to file a charge of discrimination within 180 days

under the version of the Human Rights Act that existed at the time (*i.e.*, in 2011). However, because Complainant failed to file a charge of discrimination until June 6, 2019, I find that her allegations of gender discrimination in reference to her promotion are untimely, coming *years* after her mandatory window to act had closed. As a result, I am without subject matter jurisdiction to adjudicate the civil rights violations asserted in the second amended complaint.

I. Respondent's Preliminary Arguments in Support of Dismissal

Before focusing on the question of subject matter jurisdiction, I must first address the two prefatory arguments made by Respondent in support of dismissal. These include: (1) Respondent's argument that the text of the second amended complainant requires dismissal; and (2) Respondent's argument that the information provided to Complainant by Ankenman was not "false" or "misleading." As explained below, I find that neither of these precursor arguments is sufficiently persuasive to warrant dismissal at the pleadings stage.

A. The Date of Complainant's Inquiry to Ankenman

Unlike the declaration submitted in support of Complainant's opposition brief, the second amended complaint avers that Complainant raised concerns regarding her promotion with Ankenman in 2018 (vice 2011). *Compare* Benjamin Decl. ¶ 2, *with* 2d Am. Compl. ¶ 7. Pointing to this discrepancy, Respondent argues that the second amended complaint should be dismissed on its face, as the pleading (as worded) confirms that Complainant failed to take any action in response to the denial of her promotion for almost seven years. *See* Reply at 2-3. But while Respondent is correct that the language of the second amended complaint refers only to a conversation with Ankenman in 2018 (when Complainant's promotion was awarded), a perfectly consistent reading of Complainant's more recent declaration might be that she also had an earlier conversation with Ankenman in 2011 (when her promotion was denied). I see no fatal

contradictions between these two verified statements if Complainant had frequent conversations with her supervisor over the years (which seems likely). As such, because I am required to give Complainant the benefit of every reasonable inference in deciding a motion to dismiss, I decline to dismiss this case on the basis of any perceived inconsistencies between the two statements made by Complainant (the former of which would almost certainly be subject to correction by amendment, if made in error).

B. Respondent's "Official Appointment Policy" for Promotions

Pointing to the memorialized policy that governed faculty promotions in 2011, Respondent claims that Ankenman did not provide Complainant with any "false" or "misleading" information in 2011, as his summary of the rationale for which Complainant failed to promote was entirely consistent with Respondent's written policy for promotions at that time. *See* Reply at 6-7. But there are two fundamental problems with this argument. First, the evidence offered by Respondent is contrary to the second amended complaint, which currently suggests that the criteria for promotion to the rank of Clinical Professor were the same in 2011 and 2018. *See* 2d Am. Compl. ¶ 7. While the evidence introduced by Respondent appears to discredit this allegation, the proper vehicle for challenging such facts is a motion for summary decision, not a motion to dismiss (the latter of which requires this administrative court to accept as true the allegations appearing in the second amended complaint).

The second problem with the evidence submitted by Respondent—even assuming that I was permitted to consider it—is that it fails to establish the factual predicate for which the information is offered. In 2011, Complainant claims she was told by Ankenman that she could not receive the title of Clinical Professor unless: (1) she had a Ph.D.; (2) she had ten years of teaching experience; (3) she had a "world renown" reputation; or (4) she was running her own

company. *See* Benjamin Decl. ¶ 2. Although Respondent points to its 2011 policy as "evidence" of these requirements, the writing cited by Respondent fails to identify any of these criteria as prerequisites for the position of Clinical Professor. *See* Lueptow Decl., Ex. 1. Rather, Respondent's affiant merely attests that in 2011, Respondent interpreted these milestones to be included in the "exceptional professional experience" that was required for promotion, which conflicts with Complainant's allegation that male faculty members were elevated to the rank of Clinical Professor without satisfying the threshold criteria that Ankenman claimed had been applied against Complainant. *See* 2d Am. Compl. ¶ 11. Accordingly, because the evidence tendered by Respondent is contested, I find it unavailing as a basis on which to justify the dismissal of the second amended complaint, at least in the context of a motion to dismiss.

II. Subject Matter Jurisdiction

Turning to the question of jurisdiction, the seminal inquiry in any Commission case involving jurisdiction is how to identify the earliest date on which the complainant was required to file a charge of discrimination against the respondent. In 2011, Section 7A-102(A)(1) of the Illinois Human Rights Act obligated Complainant to file a charge of discrimination within 180 days of the "first instant" in which she received "notice of the allegedly discriminatory conduct." *Cano*, 250 Ill. App. 3d at 138. To assess the exact time at which such "notice" is received, this administrative court has previously found that "if a potential complainant has enough information to suspect discrimination has occurred at the time of the discriminatory event, the filing period begins to run from the date of the event." *In re Stone v. Vill. of South Chicago Heights*, ALS No. 19-0063, 2023 ILHUM LEXIS 49, at *29 (Mar. 28, 2023) (citation omitted). Focusing on the subject of promotions in particular, I note that the Commission has also concluded that where a promotion is denied, the date on which the complainant receives notice of such denial is the date

on which the jurisdictional prerequisite to file a charge of discrimination begins to run. *See, e.g., In re Bizzle*, ALS No. 16-0187, 2019 ILHUM LEXIS 524, at *3 (Apr. 10, 2019).

Here, on whatever date in 2011 her promotion to the rank of Clinical Professor was officially denied, Complainant unquestionably had sufficient information to suspect that discrimination might have occurred. As partial justification for the promotion she requested on June 22, 2011, Complainant stressed to Ankenman the idea that women were under-represented (and needed to be advanced) within Respondent's engineering faculty. *See* Wermuth Decl., Ex. J. Referring to the disappearance of women from the engineering field as the "leaking pipeline," Complainant lobbied for promotion by arguing that undergraduate students needed to see women in positions of authority, and that female engineering students would benefit from "strong female engineer role models." *Id*. Complainant also flagged the fact that male faculty members were regularly brought in from industry and given the title to which she aspired. *See id*. Complainant claimed that to exclude women from this category was to "miss an opportunity to address the leaking pipeline." *Id*.

In addition, Complainant identified a male comparator—Gatchell—who apparently had been hired by Respondent to work as a Clinical Professor in 2011. *See id*. Arguing that Gatchell's role was "almost identical to [hers]," Complainant claimed that Gatchell's hire as a Clinical Professor "highlighted the need to make a change immediately" in reference to Complainant's rank. *Id*. To address any publicly perceived differences between herself and Gatchell, Complainant proposed that her official position and title should be changed, and that "this change should go into effect before the beginning of the fall term to avoid confusion when David Gatchell begins his term." *Id*. Given Complainant's obvious concerns that a similarly-situated male colleague had been offered a role for which she believed she was both deserving and eminently

qualified, I find there is little question or doubt that Complainant had ample information to suspect that discrimination could have been a factor in Respondent's decision to deny her promotion in 2011. Accordingly, the date in 2011 on which Complainant learned that Respondent was denying her promotion is date on which her 180-day obligation to file a charge began to run.

This finding is consistent with both Commission precedent and other cases that have examined the question of promotions in academia. For example, in *Lever v. Northwestern Univ.*, 979 F.2d 552 (7th Cir. 1992), the plaintiff (an "Assistant Professor") applied for tenure and a promotion to the rank of "Associate Professor" within Respondent's sociology department. After her tenure and promotion were both denied by the dean, the plaintiff appealed to the university provost to reverse the dean's decision. *See id*. at 553. When the provost proved unwilling to intervene, the plaintiff filed a charge of discrimination with the EEOC, claiming her tenure and promotion to the position of "Associate Professor" had been denied on the basis of her gender. *See id*.

At issue in *Lever* was the date on which the plaintiff's obligation to file her charge of discrimination began to run. Under Title VII, the plaintiff had 300 days "from the discriminatory act" to file a charge. If measured from the initial denial of her promotion by the dean, her charge of discrimination was untimely. *See id*. Alternatively, if the plaintiff's obligation to act was measured from the date on which the provost refused to overrule the dean, her charge was timely. *See id*. In resolving this dispute, the Seventh Circuit observed that "[t]ime starts to run with 'the *discriminatory act*, not the point at which the *consequences* of the act become painful.'" *Id*. (quoting *Chardon v. Fernandez*, 454 U.S. 6, 8, 70 L. Ed. 2d 6, 102 S. Ct. 28 (1981)) (emphases in original). Noting also that Congress had fixed the limitations period in Title VII to commence on

the date of the "alleged unlawful employment practice," 979 F.2d at 555-56 (quoting 42 U.S.C. § 2000e-5(c)), the federal appeals court concluded:

> If the Dean was holding Lever's sex against her, the unlawful practice occurred on May 5, 1980, when the Dean turned her down for promotion.

Id. at 556. The Seventh Circuit further underscored this holding by opining that where "a single discriminatory decision is taken, communicated, and later enforced . . . time starts with the initial decision." *Id*. (citing *Webb v. Indiana Nat'l Bank*, 931 F.2d 434, 437 (7th Cir. 1991)). The plaintiff's claim of gender discrimination in *Lever* was thus found to be untimely, as she failed to act within 300 days of the first date on which she became aware that her promotion had been denied.

I find the analysis in *Lever* to be persuasive in the instant matter (notwithstanding the fact that federal opinions are not binding on this administrative court). As in *Lever*, Complainant acquired an obligation to act on her suspicions of discrimination when she first became aware that Respondent was denying her promotion to rank of Clinical Professor—which occurred on whatever date in 2011 Respondent provided official notice of its decision to Complainant. Because Complainant's declaration and the second amended complaint both confirm that such decision-making was communicated to Complainant in 2011, *see* Benjamin Decl. ¶ 2; *see also* 2d Am. Compl. ¶ 4, the 180-day window for Complainant to file a charge of discrimination with the Department did not survive beyond the year 2012 (at the latest). Yet because Complainant did not file her underlying charge of discrimination until June 6, 2019, her allegations of discrimination were untimely, coming at least six-and-a-half years too late. I find, therefore, that under the Human Rights Act, I am without jurisdiction to hear or adjudicate Complainant's allegations of gender discrimination in reference to the denial of her promotion by Respondent in 2011.

III. Equitable Tolling

As indicated earlier, in an effort to justify her failure to pursue her claims within 180 days of the date on which her promotion was denied, Complainant alleges that Ankenman gave her "false information" in 2011 that made it impossible for Complainant to discern the true reasons for which she had not been awarded the title of Clinical Professor. *See* Resp. at 2. Known as "equitable tolling," the legal principle underpinning Complainant's argument applies in situations where "the defendant has actively misled the plaintiff, or . . . the plaintiff has been prevented from asserting his or her rights in some extraordinary way." *Am. Family Mut. Ins. Co. v. Plunkett*, 2014 IL App (1st) 131631, ¶ 32, 14 N.E.3d 676 (quoting *Clay v. Kuhl*, 189 Ill. 2d 603, 614, 727 N.E.2d 217 (2000)). Claiming that Respondent's "official appointment policy" was neither posted online nor otherwise available to her in 2011, Complainant argues that by offering an explanation for the denial of her promotion that she had "no reason to question," Ankenman effectively frustrated Complainant from pursuing remedies under Human Rights Act until she later discovered the wording of Respondent's "official appointment policy" in 2018. *See* Resp. at 2. I disagree.

As a threshold matter, I note that "Illinois has consistently held that time limitations upon bringing actions before administrative agencies are matters of jurisdiction which cannot be tolled." *Kiercul v. City of Chicago*, 2014 IL App (1st) 133706-U, ¶ 20 (quoting *Reilly v. Wyeth*, 377 Ill. App. 3d 20, 33-34, 876 N.E.2d 740 (1st Dist. 2007)). Regarding the Human Rights Act in particular, the appellate courts of this state have repeatedly explained that because the filing period prescribed under 775 ILCS 5/7A-102(A)(1) is jurisdictional, the principle of equitable tolling cannot be invoked as a defense to excuse the failure of a party to act within the statutory filing period. *See Robinson v. Human Rights Comm'n*, 201 Ill. App. 3d 722, 729, 559 N.E.2d 229 (1st Dist. 1990). As such, Illinois law precludes Complainant from arguing that the information given

to her by Ankenman in 2011 somehow exculpated her from filing a charge of discrimination with the Department of Human Rights within 180 days of learning that her promotion to the rank of Clinical Professor had been denied. *See id*.

And yet even if Illinois law recognized equitable tolling as a legally viable mechanism for extending jurisdictional time limits under the Human Rights Act, the facts of this case would not support the application of this doctrine to forgive the untimeliness of Complainant's allegations against Respondent. In 2011—with a comparator in mind and an earnest belief that her gender was under-represented among Respondent's engineering faculty—Complainant requested a promotion that was subsequently denied. Upon denial, Complainant questioned her supervisor regarding why she had not been awarded her desired title, at which point she was told that her promotion was rebuffed based on her failure to possess certain qualifications that were required for advancement under a policy maintained by Respondent. *See* Benjamin Decl. ¶ 2. However, rather than challenge the rationale upon which Respondent had supposedly based its decision, Complainant took no action, confessing that she had "no reason to question" the explanation provided by Ankenman at that time. *See id*. ¶ 3. This lack of action would operate to forestall Complainant's invocation of the doctrine of equitable tolling even where the assertion of this principle was not already proscribed in relation to Section 7A-102(A)(1) of the Human Rights Act.

As explained above, where a complainant has enough information to suspect that discrimination has occurred, he or she must take some action to redress that suspicion within the jurisdictional time period provided for under 775 ILCS 5/7A-102(A)(1). *See In re Jackson v. Koch Foods*, ALS No. 20-0236, 2023 ILHUM LEXIS 63, at *7 n. 3 (Apr. 14, 2023) (citation omitted). This is true regardless of the respondent's rationale for the personnel action to which the complainant objects. As this administrative court has previously observed: "The complainant

need not have all the information about the relevant events, nor direct confirmation that discrimination has taken place in order to file a charge." *In re Stone*, 2023 ILHUM LEXIS 49, at *29 (citation omitted). In *Lever*, the Seventh Circuit underscored this point even more emphatically, writing: "An employer need not proclaim its bias as a precondition to the start of the period of limitations." *Lever v. Northwestern Univ.*, 979 F.2d at 556. As such, the explanations or justifications offered by an employer—even if false or deceitful—do not prolong the available time for an employee to act where discrimination is intuited or perceived. On the contrary—where an employee suspects discrimination, he or she must file an underlying charge within the time provided for under the Human Rights Act, lest he or she risk losing the opportunity to pursue an available claim.

As I concluded above, Complainant had ample evidence to suspect that discrimination might have been a factor in Respondent's decision to deny her promotion in 2011. Immediately thereafter, Complainant questioned her supervisor regarding the reasons for which her promotion had been denied. But whether the answer provided by her supervisor was true, false, or somewhere in between, Complainant failed to take any action in response to the information she was given, such as demanding a copy of the policy under which her desired advancement had been refused. Instead, she appears to have accepted the rationale given to her by Ankenman, as she admits that she had "no reason to question" his feedback at that time. *See* Benjamin Decl. ¶ 3. This acquiescence to the situation bars Complainant from arguing that equitable tolling could salvage her untimely claim.

Even assuming—as I must—that the information Ankenman gave to Complainant was "false," this "false" information neither prevented Complainant from investigating the matter, nor hindered Complainant from filing a charge. Simply put, Respondent cannot be said to have done

anything in reference to Complainant other than refute that discrimination was a factor in the denial of her promotion—which in no way prevented Complainant from exercising her rights to challenge the justification for Respondent's decision. By her own admission, Complainant accepted Ankenman's rationale without further protest or inquiry, so any current argument for equitable tolling is thoroughly foreclosed. Indeed, if a complainant in a civil rights case could forestall action simply by attesting that he or she initially believed a lie told by a respondent, the jurisdictional time limit set forth under 775 ILCS 5/7A-102(A)(1) would be a nullity. For this reason, I find that even if Illinois law permitted the application of equitable tolling to claims under the Human Rights Act (which it does not), Complainant would still be estopped from asserting equitable tolling as a basis to preserve a cause of action that she waited more than 180 days to pursue in 2011.

RECOMMENDATION

In sum, because I find that this administrative court lacks subject matter jurisdiction over the civil rights violations asserted in the second amended complaint, Respondent's motion to dismiss this case is GRANTED, and I recommend that the Illinois Human Rights Commission affirm the dismissal of this matter and the underlying charge of discrimination with prejudice pursuant to 56 Ill. Admin. Code § 5300.910.

HUMAN RIGHTS COMMISSION

BY:

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BRIAN WEINTHAL
CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: December 14, 2023