

STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights &
Opportunities ex rel. Almiro Barros,
Complainant

CHRO No. 1140307

v.

Waterford Country School, Inc.
Respondent

May 20, 2014

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ARTICULATION OF DISMISSAL

I.
SUMMARY

On April 10, 2014, respondent requested that the above matter be dismissed based on Complainant's failures to comply with deadlines in the original and revised scheduling orders and for failure to appear at lawfully noticed conferences, which included the pre-hearing conferences. On Feb 19, 2013, this tribunal issued the first Hearing Conference Summary and Order setting forth all deadlines for the public hearing process, including settlement, production, and hearing conferences. The Commission on Human Rights and Opportunities (CHRO) deferred prosecution to the complainant and complainant failed to comply with production deadlines, did not appear at the pre-hearing conference, and did not contact the respondent or the OPH. In November of 2013, the complainant had yet to begin the process of finding witnesses and complying documents and exhibits thus missing several deadlines, despite this case being filed in March 2011. Complainant alleged he was in poor health and was not able to contact any witnesses, therefore; this tribunal extended the respective deadlines to December 19, 2013 in a revised scheduling order dated November 19, 2013. On

December 9, 2013 complainant requested another extension of the submission deadline. That request was denied and complainant submitted only his witness list on December 20, 2013 a day late.

On January 3, 2014 the respondent filed a Motion to Dismiss for failure to comply with this tribunal's two previously cited, scheduling orders. The January 3, 2014, Motion to Dismiss was denied, and complainant was given a further chance to comply. As of April 10, 2014, the complainant had yet to produce any exhibits, nor had he attempted to address the exhibit list issue with the respondent. A pre-hearing conference was scheduled to take place on April 10, 2014, per the revised, properly noticed, scheduling order. The complainant failed to appear for the pre-hearing conference, or inform anyone of his inability to attend the conference and could not be contacted by phone. On April 10, 2014, the respondent filed a motion to dismiss for failure to attend the pre-hearing conference and comply with scheduling orders, which was GRANTED on April 22, 2014.

On April 24, 2014 complainant sent correspondence to the Office of Public Hearings that contained impermissible ex-parte information regarding a settlement. Settlement information cannot be seen or considered by Presiding referees and was not considered by this tribunal.¹ The complainant had a prior settlement opportunity. The complainant did not file a motion to re-open the case or oppose the Motion to Dismiss.

¹ Regulations of State Agency § 46a-54-80a. Hearing conference: (a) The parties or their authorized representatives shall appear at the hearing conference on the date and at the time and place specified in the notice of hearing. The presiding officer shall establish dates for the hearing and other conferences, and shall address such additional matters as may aid in the disposition of the complaint, including but not limited to:

II.

LAW

The Regulations of Conn. State Agencies § 46a-54-88a, in relevant part, provides that:

(d) The presiding officer may, on his or her own or upon motion by a party, dismiss a complaint or a portion thereof if the complainant or the commission:

- (1) Fails to establish jurisdiction;
- (2) Fails to state a claim for which relief can be granted;
- (3) Fails to appear at a lawfully noticed conference or hearing without good cause; or
- (4) Fails to sustain his or her burden after presentation of the evidence.

(e) Upon the entry of an order of dismissal of the entire case, the office of public hearings shall notify the parties as provided in section 4-180(c) of the Connecticut General Statutes.

The Hearing Conference Summary and Order states:

Failure to Appear and/or Failure to Obey an Order

Absent a showing of good cause, failure to appear at any proceeding, including a settlement conference, prehearing conference, status conference or public hearing, may result in the imposition of sanctions. Sanctions may include the default of the absent party, the

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- (1) Delineation of the case, the respective positions of the parties and presentation of the issues at hearing;
 - (2) The necessity of amendments to the complaint or answer;
 - (3) The disclosure of documents in accordance with section 46a-54-89a of the Regulations of Connecticut State Agencies;
 - (4) Motions directed to the pleadings;
 - (5) The exchange of witness and exhibit lists;
 - (6) The exchange of copies of documents each party intends to or is likely to introduce at hearing; and
 - (7) Settlement of the complaint, provided the presiding officer shall not be present during settlement discussions.**
- (b) If at a hearing conference, or at any other time during the pendency of the contested case proceeding, it appears that a settlement may be reached, the presiding officer shall refer the parties to another human rights referee for the purpose of supervising settlement endeavors.**
- (c) Following the hearing conference, the presiding officer shall issue a notice of public hearing in accordance with the requirements of section 4-177(b) of the Connecticut General Statutes.
- (d) The presiding officer shall have the authority to implement the provisions of this section by appropriate order. (Emphasis added)

dismissal of the complaint, the exclusion of testimony, or the exclusion of documentary evidence.

III.

CONCLUSION

Mr. Barros failed to appear for scheduled conferences and has not complied with scheduling orders. Further, he did not contact the Office of Public Hearing prior to the pre-hearing conference. Based on the aforementioned failures to appear and non-compliance with scheduling orders, the respondent's Motion to Dismiss was **GRANTED**.

It is so ordered this 20th day of May 2014.


Michele C. Mount,
Presiding Human Rights Referee

cc.

Almiro Barros – via email and regular mail
Thomas J. Riley, Esq. – via email only
David Kent, Esq. – via email only