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| Commission on Human Rights and Opportunities, ex rel. Lorraine Stevens, Complainant | : | CHRO No. 0010328 |
| v. | | |
| The Urban League of Hartford, et al., Respondents | : | December 5, 2002 |



## RULING ON MOTION TO DISMISS

On October 2, 2002, the respondents filed a motion to dismiss several of the claims that constitute this action. Specifically, the respondents moved to dismiss all claims under General Statutes §46a-58(a), and claims against the individual respondents under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, and General Statutes §46a-60(a)(1) and (a)(8).

The complainant filed her objection to the motion to dismiss on October 23, 2002, and the commission filed its objection on October 31, 2002. Thereafter, at my suggestion, the complainant withdrew her claims against the individual respondents under Title VII and General Statutes §46a-60(a)(1) and (a)(8). This ruling addresses the claims under §46a-58(a).[1]

"A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." *Upson v. State*, 190 Conn. 622, 624 (1983). Although the respondents have entitled their pleading a "motion to dismiss," they do not assert that this tribunal lacks jurisdiction over the subject matter. Rather, they claim that the complainant has failed, for various reasons, to assert legally sufficient causes of action. Their motion to dismiss more closely resembles a motion to strike, and our courts have held that a motion to dismiss may, where appropriate, be

[1] The complainant emphatically stated in her November 21, 2002 pleading that she was not withdrawing any allegation based on General Statutes §46a-61(a)(4). In fact, the respondents had not moved to dismiss the (a)(4) claim and it remains pending against all respondents. (See *Kavy v. New Britain Board of Education*, 1999 WL 619587 *5-6 (Conn. Super.), wherein the Superior Court held that subsection (a)(4) claims may be sustained against an individual employee or supervisor.)

treated as a motion to strike. *McCutcheon & Burr, Inc. v. Berman*, 218 Conn. 512, 527 (1991); *Kavy v. New Britain Board of Education*, 1999 WL 619587 *3 (Conn. Super.). A motion to strike is the proper means of attacking a pleading that, on its face, is legally insufficient. *Capers v. Lee*, 239 Conn. 265, 282 (1996); *Kavy v. New Britain*, supra *2; *Commission on Human Rights and Opportunities ex rel. Brown v. Creative Mgmt.*, CHRO Nos. 9850062 et al., p. 4 (Ruling on Motion to Dismiss, November 16, 1999). In this matter, it is appropriate to treat the motion to dismiss as a motion to strike.

The respondents argue that the §46a-58(a) claim and the §46a-60 claim cannot coexist. The respondents rely predominantly upon *Commission on Human Rights and Opportunities v. Truelove and Maclean, Inc.*, 238 Conn. 337 (1996), for the proposition that "the specific narrowly tailored cause of action embodied in §46a-60 supersedes the general cause of action embodied in §46a-58" and, thus, "§46a-58(a) provides no basis for claims of discriminatory employment practices that fall within the scope of §46a-60." Id. at 346, 347.

While §46a-58(a) is more general than §46a-60, and thus may not apply to causes of action covered by the latter statute, its very breadth provides the commission with jurisdiction over discrimination claims outside of §46a-60, specifically those based on "deprivation of any rights, privileges or immunities, secured or protected by the constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, blindness or physical disability." In *Truelove*, the court concluded that §46a-58(a) did not apply to discriminatory employment practices encompassed by §46a-60. However, *Truelove* does not preclude the use of §46a-58(a) to reach violations that fall within the scope of other state or federal antidiscrimination law—such as, in this case, Title VII.

Indeed, the Connecticut Superior Court has stated that "General Statutes §46a-58(a) has expressly converted a violation of federal antidiscrimination laws into a violation of Connecticut antidiscrimination laws." *Trimachi v. Connecticut Workers Compensation Committee*, 2000 WL 872451 *7 (Conn. Super.); see also *Commission on Human Rights and Opportunities ex. rel. Scarfo v. Hamilton Sundstrand Corp.*, CHRO No. 9610577, pp. 4-5 (September 27, 2000). Unlike the present matter, *Truelove* involved no federal claims and the decision focused on what actions §46a-58(a) did <u>not</u> reach, without addressing the scope of what it did. Thus, *Truelove* does not govern this ruling.

In light of the foregoing, I conclude that §46a-58(a) allows this tribunal to adjudicate the Title VII claims against the respondent Urban League.[2] Accordingly, the motion to dismiss the §46a-58(a) claim against the Urban League, treated as a motion to strike, is denied.

David S. Knishkowy
Human Rights Referee

c: D. Schwartz
D. Minor
V. Caldwell-Gaines
A. Simonetti

[2] In light of established precedent, the complainant withdrew her Title VII claims against the individual respondents. See *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1317 (2nd Cir. 1995). Therefore, no §46a-58(a) claim remains against the individual respondents.