

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 : March 28, 2013

03-28-13P03:48 RCVD



Response to Complainant's Motion for Clarification of the
Denial of Complainant's Motion for Correction, dated March 18, 2013

Following a Pre-Hearing/Status Conference (Hearing Conference) held on March 8, 2012, attended by the Complainant (a self-represented litigant), Commission Counsel and Respondent Counsel, the undersigned issued an order, dated March 8, 2013, that, inter alia, denied the Complainant's "Motion for Correction Ruling", dated March 5, 2013, for the reasons explained during the Hearing Conference. The Complainant followed that order with his "Motion for Clarification of the Denial of Complainant's Motion for Correction", dated March 18, 2013.

For the following reasons, the Order issued after the Pre-Hearing/Status Conference, dated March 8, 2013, remains in full effect.

The authority and jurisdiction of a human rights referee is defined and limited by law. The undersigned may only to hear a complaint, i.e., the affidavit of illegal discrimination, transmitted to the Office of Public Hearings ("OPH") in accordance with the laws of the state of Connecticut. (See references to controlling statutes and regulations cited in the Notice of Contested Case Proceeding and Hearing Conference, dated March 8, 2012, ("Notice of Contested Case") and the Hearing Conference Summary and Order, dated April 11, 2012 ("HCSO").

Relevant to this instant motion are Conn. Gen. Stat. Sections 46a-83 and 46a-84ⁱ Subdivision (2) of subsection (c) of Conn. Gen. Stat. Sec. 46a-83 states, in relevant part:

(2) If the complaint is not resolved after the mandatory mediation conference, the complainant, the respondent or the commission may request early legal intervention. If a request for early legal intervention is made, the executive director or the executive director's designee shall determine within ninety days of the request whether (A) the complaint should be heard pursuant to section 46a-84, (B) the complaint should be processed pursuant to subsection (d) of this section, or (C) the complainant should be released from the jurisdiction of the

commission. In making such determination, the executive director or the executive director's designee may hold additional proceedings and may utilize commission staff. If the executive director or the executive director's designee determines that the complaint should be processed pursuant to subsection (d) of this section, the executive director or the executive director's designee may recommend that the investigator make a finding of no reasonable cause. If the executive director or the executive director's designee recommends that the investigator make a finding of no reasonable cause, the investigator shall make such a finding unless the investigator believes the executive director or the executive director's designee made a mistake of fact. If the investigator intends to make a finding of reasonable cause after the executive director or the executive director's designee recommends otherwise, the investigator shall consult with the executive director or the executive director's designee.

Also relevant to this Motion are the following subsections of Conn. Gen. Stat. Sec. 46a-84.

(a) If the investigator fails to eliminate a discriminatory practice complained of pursuant to subsection (a) ... of section 46a-82 within fifty days of a finding of reasonable cause, the investigator shall, within ten days, certify the complaint and the results of the investigation to the executive director of the commission and to the Attorney General.

(b) Upon certification of a complaint filed pursuant to subsection (a) or (b) of section 46a-82 ..., the Chief Human Rights Referee shall appoint, for a complaint filed pursuant to said subsection (a) ... a human rights referee... to act as a presiding officer to hear the complaint ... and shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of the complaint at a hearing before the presiding officer or hearing adjudicator at a time and place to be specified in the notice.... Such hearing shall be a de novo hearing on the merits of the complaint and not an appeal of the commission's processing of the complaint prior to its certification. ... Hearings shall proceed with reasonable dispatch and be concluded in accordance with the provisions of section 4-180.

(d) The case in support of the complaint shall be presented at the hearing by the Attorney General, who shall be counsel for the commission, or by a commission legal counsel as provided in section 46a-55, as the case may be. If the Attorney General or the commission legal counsel determines that a material mistake of law or fact has been made in the finding of reasonable cause on a complaint filed pursuant to subsection (a) or (b) of section 46a-82, the Attorney General or the commission legal counsel may withdraw the certification of the complaint and remand the file to the investigator for further action. The complainant may be represented by an attorney of the complainant's own choice. If the Attorney

General or the commission legal counsel, as the case may be, determines that the interests of the state will not be adversely affected, the complainant or the attorney for the complainant shall present all or part of the case in support of the complaint. No commissioner may participate in the deliberations of the presiding officer in the case.

(f) The respondent may file a written answer to the complaint under oath and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. If the respondent fails to file a written answer prior to the hearing within the time limits established by regulation adopted by the commission in accordance with chapter 54 or fails to appear at the hearing after notice in accordance with section 4-177, the presiding officer or hearing adjudicator may enter an order of default and order such relief as is necessary to eliminate the discriminatory practice and make the complainant whole. The commission or the complainant may petition the Superior Court for enforcement of any such order for relief pursuant to the provisions of section 46a-95.

(g) The presiding officer or hearing adjudicator conducting any hearing shall permit reasonable amendment to any complaint or answer and the testimony taken at the hearing shall be under oath and be transcribed at the request of any party.

The complaint at issue in this matter was sent to the Office of Public Hearings ("OPH") pursuant to section 46a-83 and is CHRO complaint number 1010252. Since the complaint was filed with the OPH on January 13, 2012, it has not been amended.

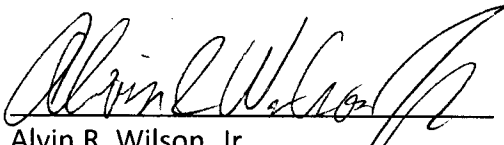
In light of these facts, as communicated at the March 8, 2013 Pre-Hearing/Status Conference, the undersigned is only authorized to and will entertain any arguments regarding violations of Connecticut Fair Employment Practice Act alleged in the affidavit of discriminatory practices sent to the OPH by the Commission in CHRO case number 1010252.

As stated in Conn. Gen. Stat. Section 46a-84, as well as in the Order dated March 8, 2013, the case before the OPH is a de novo matter. Contrary to the Complainant's interpretation, the hearing of the contested case as de novo is not optional. The law delineates the limits of a human rights referee's authority. The fact that the parties may have exchanged communications of one sort or another in no way expands the legal authority of this office.

Once again, when the Commission refers a case to the OPH, it sends only the affidavit of illegal discrimination either (1) a copy of the certification of the affidavit/complaint written by the Human Rights Representative, i.e., the investigator, who was assigned to the case or (2) a copy of the letter from the Commission's Legal Office to the parties that the case is being sent public hearing pursuant to its Early Legal Intervention process.

No other documents submitted during the investigation and conciliation process are sent to the OPH and are not a part of the OPH record. Any relevant and material evidence that the Complainant desires be considered by this tribunal must be introduced into the record at the public hearing.

Lastly, the Complainant is correct in his assessment that the Respondent has yet to file an answer that complies with the instruction on page 1 of the Notice of Contested Case. Instead, the Respondent filed with the OPH, on January 14, 2013, the copy of the Answer and Schedule A that was required to be filed during the investigative proceedings regarding the Complainant's initial affidavit of discriminatory practice in CHRO No. 1010252. If the Respondent had filed an Answer that complies with Regulation Section 46a-54-86a, the Schedule A would not have been attached.ⁱⁱⁱ


Alvin R. Wilson, Jr.
Presiding Human Rights Referee

28 March 2013
(date)

C:
Thaddeus Taylor – via email
David L. Kent, Esq., via email
Stephen P. Fogerty, Esq., via email

ⁱ The presiding referee, in recognition of Complainant's status as a self-represented litigant, at the Conference held on March 8, 2013, reminded the Complainant of his obligations to become familiar with and comply with the statutes, regulations, and orders that govern this proceeding. He was directed to review the Notice of Contested Case Proceeding and Hearing Conference, dated March 8, 2012. Furthermore, the undersigned emphasized that the presiding referee is an impartial decision maker and cannot act as an advocate for either side.

ⁱⁱ Additionally, the Regulations of Conn. State Agencies Section 46a-54-78a, et seq. -- Article III, contested case proceedings -- and the Conn. Uniform Administrative Procedures Act, Conn. Gen. Stat. Section 4-166, et seq. govern cases within the jurisdiction of the Office of Public Hearings.

ⁱⁱⁱ The Schedule A is a tool that is used by the Commission in its initial inquiry into the allegations during the investigative stage.