



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 12/13/01.

STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
LORI BECKER,	)	
	)	
Complainant,	)	
	)	
and	)	CHARGE NO: 2000SF0271
	)	EEOC NO: 21BA0395
EFFINGHAM CHIROPRACTIC &	)	ALS NO: S-11303
PHYSICAL THERAPY CENTER,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

On September 20, 2001 I conducted a settlement conference in this matter. During the conference the parties resolved the issues in the case. They were given a period of time until October 22, 2001 to file a motion for voluntary dismissal after the agreement had been reduced to writing and the terms of settlement were met.

On October 22, 2001 Complainant did not file a Motion for Voluntary Dismissal but instead filed a Motion to Compel Settlement or in the Alternative to Set Case for Hearing. On October 25, 2001, I conducted a telephone status conference to address Complainant's motion to compel settlement. I denied Complainant's motion for lack of jurisdiction because the Illinois Human Rights Act and its procedural rules do not vest enforcement powers in an administrative law judge. Complainant then requested a written enforceable order. Since I cannot provide the requested relief of enforcement and Complainant has not filed a motion for voluntary dismissal, I recommend this case be dismissed.

**Contentions of the Parties**

Complainant seeks relief in the form of either an order requiring Respondent to comply with the terms of settlement agreement, or for a public hearing on the merits of the case.

Respondent contends the agreement is valid and therefore enforcement of the settlement terms is strictly under the jurisdiction of the circuit court.

### **Findings of Fact**

The following findings of fact were derived from the record in this matter:

1. On October 27, 1999, Complainant Lori Becker filed a charge of discrimination with the Illinois Department of Human Rights.
2. On June 19, 2001 the Illinois Department of Human Rights filed a complaint on Complainant's behalf alleging she was discriminated against when she was sexually harassed by her supervisor in violation of section 2-102(D) of the Illinois Human Rights Act.
3. Respondent timely filed an Answer to the complaint on September 14, 2000 and the case was set for public hearing on September 20, 2001.
4. On September 13, 2001, seven days prior to the public hearing, the parties filed their joint prehearing memorandum and in it requested a settlement conference with an administrative law judge.
5. By request of the parties, on the morning set for public hearing, administrative law judge Kelli L. Gidcumb conducted a formal settlement conference with the parties and their counsel.
6. Complainant Lori Becker was represented at the conference by attorneys Scott Huber and Mervin Wolfe. Dr. Dal Pozzo appeared as a representative of Respondent Effingham Chiropractic & Physical Therapy Center. Respondent was represented by attorney John Longwell.
7. During the conference the parties came to a meeting of the minds and settled the case. The terms of the agreement were that Complainant would voluntarily dismiss this case and underlying charge in exchange for payment of \$7500 and a confidentiality agreement. (see, paragraph two, Complainant's Motion to Compel Settlement or in the Alternative to Set Case for Hearing.)
8. The parties were given until October 22, 2001 to reduce the terms to writing, effectuate settlement and file a motion to voluntarily dismiss the case.

9. On October 22, 2001 Complainant filed a Motion to Compel Settlement or in the Alternative to Set Case For Hearing instead of a Motion for Voluntary Dismissal. Among other requested relief in the motion, were the requests that the Commission enforce the oral settlement agreement entered into between the parties, that the confidentially term of the agreement be stricken, and that the case be immediately set for public hearing.

10. On October 25, 2001 I conducted a telephone conference to address Complainant's motion. After a discussion with the parties, I denied Complainant's Motion to Compel Settlement or in the Alternative to Set Case For Hearing.

### **Conclusions of Law**

1. The Commission has jurisdiction over the parties and the subject matter of this action.
2. If a valid settlement agreement is entered into by an employee and employer, an employee may waive her right to further prosecute a discrimination claim in return for money.
3. An oral agreement covering a discrimination claim is enforceable where there is a clear offer, acceptance and a meeting of the minds as to the terms of the agreement.
4. The Illinois Human Rights Commission lacks jurisdiction to enforce settlement agreements entered into between the parties, but may dismiss a case upon the existence of a settlement agreement.

### **Determination**

This matter should be dismissed with prejudice because the record establishes that the parties reached a settlement in which Complainant agreed to dismiss her Human Rights Act claim in exchange for a monetary sum.

### **Discussion**

This is not a case of first impression for the Commission. The Commission visited this issue in the case of *Marty Watkins and State of Illinois Department of Corrections* \_\_\_\_\_ Ill. HRC Rep. \_\_\_\_, Charge No. 1990CF1303 (June 2, 1999). Not unlike the parties in the instant case the parties in *Watkins* came to an oral settlement agreement at the conclusion of a mediated settlement conference with an administrative law judge. Similarly, the terms of the

agreement involved consideration in the form of a monetary payment in return for Complainant's voluntary dismissal of the case. Shortly after the settlement conference, and as agreed, Respondent reduced the agreement to writing and presented it to Complainant for his signature. Complainant refused to sign the agreement and moved the administrative law judge to withdraw his verbal agreement. Respondent then moved the administrative law judge to enforce the oral settlement agreement between the parties. *Watkins at pp. 2, 3.*

In resolving the dispute between the parties in *Watkins*, the Commission determined it did not have jurisdiction to enforce the settlement. Pursuant to the Commission's procedural rules that jurisdiction could only be vested in the Commission if the parties sought its approval of the settlement *prior to* entering into a settlement agreement. Since the Commission determined that parties did not vest jurisdiction in it for enforcement, then all the Commission had the authority to do was determine if the terms of the settlement prevented further prosecution of the case. *Id at 7.* The Commission held further prosecution of the claim was precluded in *Watkins* because the parties had entered into a valid oral contract for settlement. Therefore, the parties would have to seek enforcement in circuit court.

Likewise, in the case at bar it is undisputed that the parties had a meeting of the minds and entered into a valid oral contract to settle this dispute at the September 20, 2001 conference. First, I asked both parties and their respective counsel if they agreed to the terms of the settlement reached during the conference. Both parties and their counsel agreed that a settlement had been reached. Accordingly, I indicated to both parties that the terms of the settlement and its details would be reduced to writing by their attorney representatives. Both counsel agreed and discussed who would prepare the first draft of the agreement. I then informed counsel that the details of how to effectuate settlement would be left up to the parties but that a meeting of the minds was accomplished and the hearing date cancelled. I further directed the parties that any breakdown of settlement terms could not be enforced at the Commission, but would have to be addressed in the circuit court.

Second, Complainant even admits in her Motion to Compel that an agreement existed between the parties at the conclusion of the conference. She also sets out the terms of the agreement and the consideration given to create a binding contract. Specifically, dismissal of this case in exchange for \$7500 and a confidentiality agreement. By entering into that agreement she has waived her right for a public hearing on the merits of her claim.

Therefore, under the Commission precedent established in *Marty Watkins and State of Illinois Department of Corrections* \_\_\_Ill. HRC Rep. \_\_, Charge No. 1990CF1303 (June 2, 1999), neither the Commission nor I have the authority to enforce the agreement between the parties. That authority only vests in the Commission if the parties propose a written settlement for the Commission to consider and approve or reject. *See, 77 Ill Admin Code 5300.310 et seq.* However, even in that instance the only relief the Commission can give to a party is to request that the Illinois Attorney General seek enforcement of the claim in circuit court.

No evidence has been presented that the parties agreed that the Commission should approve settlement terms reached at the October settlement conference. Complainant may only seek enforcement of the oral settlement agreement on her own in the circuit court. Accordingly, for the reasons set forth above, Complainant is precluded from further prosecuting her case at the Commission and the case must be dismissed.

### **Recommendation**

Based on the above findings of fact and conclusions of law, I recommend that the Illinois Human Rights Commission dismiss with prejudice the complainant of Lori Becker and

Effingham Chiropractic and Physical Therapy Center, together with the underlying charge number 2000SF0271.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 1ST DAY OF NOVEMBER, 2001.