City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor
Chicago, IL 60610
(312) 744-4111 [Voice]
(312) 774-1081 [Facsimile] / (312) 744-1088 [TTY]

IN THE MATTER OF

Brenester Brown COMPLAINANT,	)	
AND	)	Case No. 02-E-146
TCF Bank RESPONDENTS.	)	Date: December 13, 2002

To: Brenester Brown
142 S. Austin
Oak Park, IL 60649

Julie Badel
Epstein Becker & Green, P.C.
150 N. Michigan Ave., Suite 420
Chicago, IL 60601

ORDER

Complainant filed a Complaint in the above-captioned matter on August 2, 2002, and an Amended Complaint on August 29, 2002. On September 3, 2002, before filing a Verified Response, Respondent filed a Motion to Dismiss, together with a memorandum and an affidavit in support of the motion. The Commission issued a Briefing Order setting the time within which Complainant might file a response. No response has been filed, and the issue is now ripe for decision.[1]

In her Amended Complaint filed August 29, 2002, Complainant alleged that Respondent had discriminated against her on the basis of her race and sex in violation of Chapter 2-160 of the Municipal Code of the City of Chicago by transferring her involuntarily in March 2002 from a TCF Bank branch in Chicago to Respondent's Melrose Park Branch, in anticipation of firing her, and by terminating her without cause in April 2002. She alleged that the termination was planned by and determined by Regional Manager Rodney Williams in Chicago, and that he transferred her as a prelude to her termination. Respondent moved to dismiss the Complaint for lack of jurisdiction over the claim, because the Complainant was not working in Chicago at the time of her discharge, and

[1]Although the references to the Complaint in the Motion indicate that Respondent was citing the original Complaint, rather than the Amended Complaint, Respondent did not seek to amend or amplify its Motion or the supporting memorandum after receiving the Amended Complaint. However, Respondent's contentions are equally applicable to the Amended Complaint.

because, according to the affidavit of Regional Manager Rodney Williams, the alleged decision-maker, the decision to discharge her was not made in Chicago.[2]

In ruling on a motion to dismiss, the Commission must take all complaint allegations, together with reasonable inferences drawn from them, as true. The Commission also has held that "a complaint should not be dismissed unless 'it appears beyond doubt that the [complainant] can prove no set of facts in support of his claim which would entitle him [or her] to relief.'" Milton v. Commercial Light, CCHR No. 01-E-154 (March15, 2002), quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957). See also Love v. Chicago Office of Emergency Comms., CCHR No. 01-E-46 (Oct. 16, 2001); Moriarty v. Chicago Fire Dept., CCHR No.00-E-130 (June 13, 2001); Parker v. American Airport Limousine Corp., CCHR No. 93-PA-36 (February 26, 1996); Yu v. Swiss Bank Corp., CCHR No. 93-E-235 (August 21, 1995).

The Commission has jurisdiction over a complaint of employment discrimination in violation of the Chicago Human Rights Ordinance only if the alleged violation occurred within the City of Chicago or if the Complainant is an employee who was engaged to work in the City of Chicago by the Respondent. The Commission has repeatedly held that, for the Commission to have subject matter jurisdiction, the violation must have occurred within the Chicago city limits. See Parker, supra, and cases cited therein at p. 3. As the Commission has explained, in Leahy v. Tcheupdjian and Liposuction & Cosmetic Surgery Institute, CCHR No. 95-E-21 (April 28, 1997):

> As an agency of a home rule municipality -- the City of Chicago -- the Commission does not have jurisdiction over cases where the alleged violation occurred outside the City of Chicago. Ill. Const. Art. 7, §§6(a); Commission Reg. 210.110; Crossley v. Illinois Central Railroad, CCHR No. 91-E-92 (Sep. 20, 1991) and cases cited therein. It is not enough that the respondent has an office, even its headquarters, in Chicago if the injury occurred elsewhere. Crossley, *supra* and see Parker v. American Airport Limousine Corp., CCHR No. 93-PA-36 (Feb. 21, 1996) (finding that having "contacts" with Chicago is not sufficient for jurisdiction when the incident occurred elsewhere). The Commission has often ruled that it will not address an alleged injury which occurred outside of Chicago. E.g., Williams v. Zeneca Specialty Inks, CCHR No. 95-E-169 (May 9, 1996).

To determine location, the Commission consistently rules that it looks to where the last event

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[2]The Commission has previously held that, in ruling on a motion to dismiss, the Commission does not consider supporting documentation except to the extent that it provides uncontested facts. Steen v. Episcopal Charities & Community Services, CCHR No. 94-E-96 (April 25, 1996) and Richardson v. Chicago Area Council of Boy Scouts of America, CCHR No. 92-E-80 (Aug. 8, 1994). Williams' assertion in his affidavit that his office in spring 2002 was in Joliet does not appear to be contested.

necessary to hold a respondent liable occurred. E.g., Crossley and Yu v. Swiss Bank Corp., CCHR No. 94-E-235 (Aug. 21, 1995). The Commission has found that it has jurisdiction over cases when the allegedly discriminatory decision was made in Chicago, even if the complainant worked elsewhere. E.g., Arellano v. Commonwealth Edison Co., CCHR No. 98-E-23 (June 16, 1998) and Yu v. Swiss Bank Corp., CCHR No. 94-E-235 (Aug. 21, 1995). The Commission has also found that it has jurisdiction over cases when the complainant worked in Chicago but the disputed decision was made outside of Chicago. In Banks v. Midwest Physician Group, CCHR No. 96-E-77 (Oct. 24, 2001), the complainant worked in Chicago but the decisions about her employment were made elsewhere. The Commission held, pp. 5-6:

> The Commission finds that it does have jurisdiction over this case. First, it notes that the regulation stating that an alleged violation must have occurred within Chicago (Reg. 210.110) does not define what "occurred within the City of Chicago" means. Thus, the Commission must construe that term. It is true, as stated above, that the Commission has rested rulings about where the alleged violation took place upon the location that the decision was made. These orders were issued, however, in cases such as Yu, *supra*, where the complainant was not working in Chicago and so the only possible nexus was where the decision-makers were located. That is not the situation here.
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> Clearly, an injury can be said to occur both where the decision is made as well as where it is felt. Complainant's job was to work in Chicago and there is no assertion that she actually worked elsewhere. As Complainant stated in this case, "Ms. Banks worked in Chicago and the conduct of which she complains, her involuntary termination, resulted from her having worked in the City." Request for Review, p. 4.
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> Moreover, several provisions of the Human Rights Ordinance suggest that this reading is proper. First, City Council admonished the Commission to read the Ordinance broadly: "The provisions of this chapter shall be liberally construed for the accomplishment of the purpose hereof." Chicago Muni. Code, §§2-160-110. Second, this "purpose" is "to assure that all persons within [the City of Chicago's] jurisdiction shall have equal access to public services and shall be protected in the enjoyment of civil rights, and to promote mutual understanding and respect among all who live and work within this City." Chicago Muni. Code, §§2-160-010 (emphasis added). Obviously, City Council intended the Human Rights Ordinance to protect those who work in Chicago. For the Commission to remove coverage from such individuals because the decision in question was made elsewhere would be contrary to this provision.
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> In short, unless there are unusual facts or circumstances, when either the complainant

worked in the City of Chicago or the decision in question was made in the City of Chicago, the Commission shall find that the injury occurred in the City of Chicago. Thus, it has jurisdiction over this matter.

Complainant has alleged two separate incidents of discrimination, the involuntary transfer and the discharge, which she asserts were part of a single plan to terminate her. It is undisputed that the Complainant was "engaged to work" at the North Kostner branch in Chicago at the time the transfer was initiated. Therefore with respect to the transfer, the alleged injury occurred in Chicago, even though the decision-maker worked elsewhere, and the Commission has jurisdiction over the allegations of discrimination with respect to the transfer. Accord, Arellano, supra, and Yu, supra.

The more difficult question is whether the Commission has jurisdiction to consider Complainant's discharge from the Melrose Park branch as a violation of the Ordinance. Complainant alleges Regional Manager Rodney Williams was responsible for her termination, but according to his affidavit, Williams' office was in Joliet in the spring of 2002. Williams Affidavit, ¶ 2. Thus, neither Complainant nor the accused decision-maker were working in Chicago at the time of her termination. Where an individual who does not work in Chicago is discharged by someone who also does not work in Chicago, the Commission has no jurisdiction to consider the alleged discrimination. Villa v. First National Bank of Chicago, Greco and Duhig, CCHR No. 96-E-205 (July 29, 1998).

However, Complainant alleges that she believes that Regional Manager Rodney Williams "planned to discharge [her] when he forcibly transferred [her] from North Kostner to Melrose Park." Amended Complaint, ¶ 11. In other words, she contends that the plan to terminate her was conceived while she was still a Chicago employee. This allegation distinguishes this case from Villa, supra.

This question arises at the very outset of the Commission's investigation. Respondent has not filed a Verified Response, nor has it provided any information other than the brief affidavit of Mr. Williams submitted in support of the Motion to Dismiss. If the final decision to terminate Complainant, the last event necessary to hold Respondent liable, did not occur until after Complainant became a Melrose Park employee, then the injury cannot be said to have occurred in Chicago (see Crossley, supra and Yu, supra) and there is no basis upon which the Commission can assert jurisdiction. On the other hand, if Complainant's termination was a *fait accompli* before she was transferred out of the Chicago branch, then the termination may well be a violation of the Ordinance. Thus, at this time, it does not appear beyond doubt that the Complainant can prove no set of facts in support of her claim which would entitle her to relief, and it would be premature to dismiss the Amended Complaint until the Commission has more thoroughly investigated her allegations.

Conclusion

The Commission has jurisdiction over this case because Complainant has alleged that she worked in the City of Chicago at the time of the involuntary transfer and at the time Respondent decided to terminate her employment, even those that decision was not implemented until after the transfer to Melrose Park. The allegations are sufficient to warrant further investigation. Therefore, the Commission DENIES Respondent's motion to dismiss. Respondent must file and serve its Verified Response and it response to the Commission's Request for Documents and Information on or before January 13, 2003.

PURSUANT TO REGULATION 250.120, A PARTY MAY OBTAIN REVIEW OF THIS ORDER ONLY AFTER THE COMMISSION HAS ISSUED AN ORDER DISMISSING THE COMPLAINT OTHER THAN AFTER AN ADMINISTRATIVE HEARING OR AS PART OF OBJECTIONS TO A HEARING OFFICER'S FIRST RECOMMENDED DECISION AFTER AN ADMINISTRATIVE HEARING.

By: Clarence N. Wood, Chairman

for: CHICAGO COMMISSION ON HUMAN RELATIONS