City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Maria Flores
Complainant,
v.
A Taste of Heaven and Dan McCauley
Respondents.

Case No.: 06-E-032

Date of Ruling: October 21, 2009
Date Mailed: November 9, 2009

TO:
Laurie Wardell, Esq.
Chicago Lawyers' Committee for Civil Rights
100 N. LaSalle St., Ste. 600
Chicago, IL 60602

Robert Habib
Attorney at Law
77 W. Washington St., Ste. 411
Chicago, IL 60602

Lawrence Cohen, Hearing Officer
Barlow, Kobata & Denis
525 W. Monroe, Suite 2360
Chicago, IL 60661

ORDER AND RULING ON REQUEST FOR REVIEW OF DISQUALIFICATION DECISION

YOU ARE HEREBY NOTIFIED that the Board of Commissioners of the Chicago Commission on Human Relations has DENIED Respondents' Request for Review of the hearing officer's decision not to disqualify himself from the case. The Board of Commissioners has reviewed all the relevant documents and, for the reasons set forth below, it affirms the hearing officer's Order, denies the Request for Review, and finds that the hearing officer should not be disqualified.

I. INTRODUCTION

This case comes before the Board of Commissioners based on Section 240.200 of the regulations of the Commission on Human Relations, regarding disqualification of a hearing officer. In their entirety, these regulations state:

> Reg. 240.210. Motions to Disqualify
>
> A party seeking to disqualify the hearing officer from hearing a case must file and serve a written motion as soon as the party learns of the claimed reason for disqualification. The motion shall set forth in detail why the moving party believes the hearing officer's impartiality might reasonably be questioned, including but not limited to those circumstances set forth in Illinois Supreme Court Rule 63(C). All other parties shall have 14 days from the filing of the motion to respond to it. The hearing officer may allow the moving party to file a reply and shall rule on the motion by mail.

If the motion is not filed within 21 days before the administrative hearing, the moving party may be ordered to pay monetary sanctions as set forth in Section 235.400 if the motion is found to be frivolous or if the grounds for the motion could have been discovered earlier.

Reg. 240.220. Interlocutory Review of Decision Not to Disqualify

A party that objects to a decision not to disqualify may file and serve a request for review no later than 14 days from the mailing of the decision. The request for review must state with specificity the reasons supporting reversal of the decision not to disqualify. Any other party may file and serve a response within 14 days of the filing of the request for review. The Board of Commissioners shall rule by mail.

Respondents filed their Motion to Disqualify Hearing Officer on September 17, 2009. This was only six days before the scheduled administrative hearing date of September 24, 2009. The hearing officer issued an order denying the motion on September 18, 2009. Respondents then filed their Request for Review on September 21, 2009. Complainant filed a response to the Request for Review on September 22, 2009. On September 23, 2009, the hearing officer issued an order canceling the administrative hearing and staying proceedings until the Board of Commissioners could rule on the Request for Review.

In their Motion to Disqualify, Respondents assert that the hearing officer, Lawrence Cohen, is prejudiced against them and their counsel "given his disregard of the Commission's own procedure, along with his absolute refusal to abide by the Supreme Court Rules or the Code of Civil Procedure." In support of this assertion, they specify that the hearing officer (1) has ruled in favor of Complainant generally; (2) has entered an Order of Default against Respondents not appearing at a pre-hearing conference without prior issuance of Notice of Potential Sanctions and an opportunity to respond; (3) has denied Respondents motion to vacate the default although "defaults are almost invariably vacated when filed within thirty (30) days as set forth in Section 2-1301"; (4) set a schedule for pre-hearing memorandums, a pre-hearing conference, and a hearing which "was in total violation of the Rules of this Commission" because "Reg. 240.130 provides that after the Pre-Hearing Memorandum is filed, the opposing party has fourteen (14) days to file objections"; (5) and denied Respondents' motion for a continuance of the administrative hearing set for September 24, 2009, despite the fact that Respondents' attorney would be in trial on another case on September 21 and 22, in disregard of Circuit Court rule 5-2 which provides that if the attorney is engaged in trial, the court must grant a continuance. Respondents conclude their motion by stating that "it is clear that the Hearing Officer, COHEN is extremely biased against respondents and their Counsel, and intends (for reasons which this movant thinks are suspicious) to conduct a kangaroo court for the benefit of complainant, and complainant's counsel." [sic.]

In denying the Motion to Disqualify, the hearing officer stated, "While Respondents may disagree with the ruling made by the Hearing Officer, those objections may be raised on appeal. The disagreements are not grounds for disqualification."

In their Request for Review of the denial of the Motion to Disqualify, Respondents state, "This is nonsense, Respondents and (Complainant) are entitled to a fair hearing as to merits, before an unbiased tribunal. The Hearing Officer did not deny that he was prejudiced, but simply stated respondent can appeal his rulings." Continuing, Respondents state, "The Hearing Officer, COHEN has blatantly ignored this Commission's own rules in his eager desire to punish the respondent. While undoubtedly the respondents can raise these issues, on Administrative Review before the Circuit Court, they would rather have a final hearing on the merits before the Tribunal."

II. STANDARD OF REVIEW

The Board of Commissioners carefully set forth its standards for disqualification of a hearing officer and the applicable precedents in *Matthews v. Hinckley & Schmitt*, CCHR No. 98-E-206 (Mar.15, 2000). The Commission has adopted the following standard from Illinois Supreme Court Rule 63(c) to use in evaluating disqualification issues:

> (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
>
> > (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.

The Commission determines whether a hearing officer's impartiality "might reasonably be questioned" where "an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt that justice would be done in the case." *Matthews, supra.* The Commission summarized the competing policy concerns surrounding disqualification as follows:

> The Commission "must carefully weigh the policy of promoting public confidence in the judiciary against the possibility that those questioning [the Administrative Hearing Officer's]...impartiality might be seeking to avoid the adverse consequences of [the Administrative Hearing Officer's] presiding over their case." *In re Drexel Burnham Lambert, Inc.,* 861 F.2d 1307, 1312 (2d Cir. 1988), *cert. denied*, 490 U.S. 1102 (1989). "A judge is as much obliged not to recuse himself when it is not called for as he is obliged to when it is." *Id.*

Finally, in *Matthews* the Commission noted as without question, "In a motion for disqualification, the burden is on the moving party."

The Commission has also held, "[I]t is axiomatic that a motion to recuse because of the appearance of partiality may not be based merely upon unfavorable judicial rulings regardless of the correctness of those rulings." *Chimpoulis/Richardson v. J & O Corp. et al.*, CCHR No. 97-E-123/127, n. 29 (Sept. 20, 2000); see also *Matthews, supra.,* discussing the presumption of "honesty and integrity" afforded adjudicators which can be overcome only by "a strong, direct interest in the outcome of a case..."), quoting *DelVecchio v. Illinois Dept. of Corrections*, 31 F.3d 1363, 1375 (7th Cir. 1994).

III. ANALYSIS

The Commission takes assertions of hearing officer bias seriously; however, it finds no support for such an accusation in this case. Respondents' arguments rest entirely on disagreement with the hearing officer's decisions on several pre-hearing issues. These arguments are unsupported by legal authority or evidence of actual impartiality, and thus are without merit. That Respondents or their counsel disagree with the hearing officer's decisions does not create a basis for disqualification. That is so even if there are multiple unfavorable decisions and even if such decisions may later be found erroneous.

This is not the time for Board of Commissioners review of decisions made by the hearing officer during the hearing process. Commission Regulation 240.610 provides Respondents an opportunity to request review of any interlocutory decision made by a hearing officer. However, such review may be requested only in conjunction with objections to the hearing officer's recommended ruling

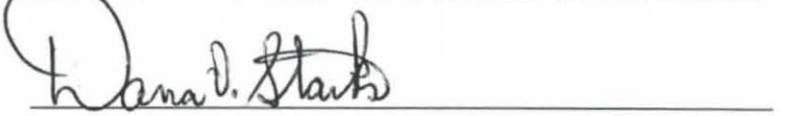
after the conclusion of the administrative hearing.[1] Respondents may still exercise this opportunity for review at the appropriate time. Then if the Board of Commissioners denies the request for review, under Reg. 250.150 the denial may be appealed to the Circuit Court of Cook County under applicable law after the Commission issues its final order concluding the administrative adjudication of the case.[2]

IV. CONCLUSION

For the foregoing reasons, the Board of Commissioners DENIES Respondent's Request for Review. Specifically, as the Hearing Officer determined, Respondent has utterly failed to carry its burden to show that disqualification is required in this case. Accordingly, Lawrence Cohen shall continue to serve as hearing officer in this case and the hearing process shall proceed from this point pursuant to his orders.[3]

Pursuant to Commission Regulations 100(15) and 250.150, parties seeking a review of this decision may file a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law; however, such a petition cannot be filed until after issuance of the Commission's final order concluding the adjudication of this case.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Dana V. Starks, Chair and Commissioner

---

[1] Reg. 240.610(b) states in pertinent part: "Each party shall have 28 days from the mailing of the recommended ruling to file and serve objections and any request for review of an interlocutory decision made during the hearing process....Requests for review of an interlocutory decision must comply with Reg. 250.130. Responses and replies shall be permitted only on leave of the hearing officer." This regulation is also referenced in Reg. 250.120 describing opportunities for review of Commission decisions other than dismissals.

[2] Nevertheless, the Board of Commissioners does not find the interlocutory decisions of the hearing officer in this case to be so "blatantly" erroneous as to point to a lack of impartiality toward Respondents or their counsel: (a) Reg. 235.120 specifies that notice of potential sanctions is not required when the notice or order with which the party failed to comply included a warning that the sanction could be imposed for noncompliance and when the order imposing the sanction includes notice of the opportunity to vacate or modify it. (b) The Commission is not governed by any "Section 2-1301" (apparently a procedural rule of the Illinois state courts) but by its own ordinances and regulations. This Commission does not follow a policy of routinely vacating defaults if a motion is filed within 30 days. Rather, vacating or modifying a procedural sanction is governed by Commission Regulation 235.150, which among other things requires a showing of good cause. This Commission has refused to vacate defaults on numerous occasions. (d) Reg. 240.130 contains no general right to object to a pre-hearing memorandum within 14 days from its filing; rather, Reg. 240.130(a)(5) allows objections *only* to any demand for appearance of a party. Complainant's prehearing memorandum, filed on September 18, 2009, does not contain any demand for appearance. Moreover, Reg. 240.307(b) authorizes a hearing officer to set and alter the hearing schedule by written order, including the "default" deadlines for pre-hearing memorandums and objections in the regulations. (d) Respondents' counsel was not scheduled to be on trial on September 24, 2009, the date set for the administrative hearing. He stated that he was scheduled for a two-day trial on September 21 and 22. The hearing officer had indeed scheduled a pre-hearing conference call for September 21 at 11:00 a.m., and in denying the continuance stated in his order that Respondent's counsel should obtain consent from opposing counsel to hold the conference call at another time and promptly advise the hearing officer, and/or should advise the hearing officer if someone else from his office would be handling the call or if the call should be made to a different telephone number. There is no indication that Respondent's counsel tried to utilize any of these options.

[3] The hearing officer will issue a written order rescheduling the administrative hearing.