

**DISTRICT OF COLUMBIA
COMMISSION ON HUMAN RIGHTS**



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COMPLAINANT

Complainant,

v.

**FRANKLIN & ROCKY PROPERTIES, LLC,
Respondent.**

Docket No.: 15-133-H (N)

FINAL ORDER

On February 5, 2020, Chief Administrative Law Judge Erika L. Pierson, serving as an independent hearing examiner, submitted to the Hearing Tribunal, former Chief Judge Simmons's Proposed Order Denying Complainant's Motion to Stay and Dismissing this Matter Without Prejudice (Proposed Decision and Order). No objections to the Proposed Decision and Order were filed. After reviewing Chief Judge Pierson's recommendation, the Proposed Decision and Order, and the official record in this case, the undersigned members of the Hearing Tribunal adopt in whole the Proposed Decision and Order submitted by the independent hearing examiner.

Accordingly, due to Complainant's current incarceration and inability to diligently pursue his claims in this case, Complainant's motion for a stay is **DENIED**. The undersigned hereby **ORDER** that this matter is **DISMISSED WITHOUT PREJUDICE**. **The parties' reconsideration and appeal rights are attached to this Final Order.**

SO ORDERED, this 4th day of March 2020:

/s/ Wynter Allen

Wynter Allen
Commissioner

/s/ Timothy Thomas

Timothy Thomas
Commissioner

/s/ Earl Fowlkes

Earl Fowlkes
Chair, Commission on Human Rights

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RECOMMENDATION TO DISMISS CASE WITHOUT PREJUDICE

I. Jurisdiction

This case is governed by the District of Columbia Human Rights Act of 1977, D.C. Code § 2-1401 *et seq.* (the Act); the procedural rules of the Commission on Human Rights, Chapter 4 of Title 4 of the District of Columbia Municipal Regulations (DCMR); and the District of Columbia Administrative Procedures Act (D.C. Code § 2-501 *et seq.*) (DCAPA).

On December 4, 2015, this case was certified to the Commission on Human Rights (Commission) for a public hearing. 4 DCMR 718. Pursuant to 4 DCMR 404 and 405, former Chief Administrative Law David Judge Simmons and subsequently Chief Administrative Law Judge Erika L. Pierson, served as hearing examiners for disposition of the case to make a recommendation to a tribunal of Commissioners for final disposition. The Commission rules provide that the Hearing Tribunal may order the dismissal of any certified complaint at any time,

upon the motion of a party or the recommendation of the hearing examiner, after a proposed decision and order has been sent to the parties. 4 DCMR 426.1 and 430.

In this case, the parties were sent a “Proposed Order Denying Complainant’s Motion to Stay and Dismissing this Matter Without Prejudice” (Proposed Decision and Order) on September 1, 2018, and were given 15 days to file objections. When the case was transferred to the undersigned judge, no objections were in the record and documents were missing. Therefore, On January 16, 2020, I contacted counsel for both parties to request copies of the missing documents and to determine if either party had filed objections. The missing documents were provided and neither party filed objections to the Proposed Decision and Order.

II. Summary

On December 23, 2014, Complainant [REDACTED] filed a complaint with the D.C. Office of Human Rights (OHR) alleging that Respondent Franklin & Rocky Properties, LLC (FRP) failed to reasonably accommodate his disability and discriminated against Complainant based on his disability and race. In a Letter of Determination issued on October 20, 2015, OHR found probable cause to believe that Respondent had failed to accommodate Complainant’s disability and had discriminated against Complainant based on his disability by taking away his reasonable accommodation of overnight parking. However, OHR found no probable cause that Respondent discriminated against Complainant based on race. The case was certified to the Commission on December 9, 2015, and assigned to former Chief Judge David C. Simmons. Further procedural history can be found in the September 1, 2018, Proposed Decision and Order.

Complainant has not been actively prosecuting the case. Specifically, Complainant failed to respond to Respondent’s discovery requests and request for production of export reports. On

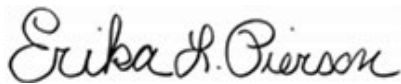
May 26, 2017, Respondent filed a motion to compel discovery which also did not result in compliance with discovery. Following a show cause hearing, Judge Simmons granted Respondent's motion for sanctions prohibiting Complainant from seeking discovery from Respondent.

On August 10, 2017, Complainant, a nurse practitioner, was convicted by a jury on 44 federal charges, which included two counts of money laundering, distributing oxycodone outside the scope of medical practice, and distributing substances without legal medical purposes. Complainant has been incarcerated since 2017. Complainant conceded that each charge carries a maximum sentence of 20 years. A recent review of the District Court's Docket in Complainant's case reflects that he remains incarcerated but has not yet been sentenced due to post-conviction motions pending. As such, Complainant will be unavailable to pursue this case for the foreseeable future. The Commission lacks the authority to order Complainant's presence at a Commission hearing and lacks the secure facilities to hold any such hearing.

Judge Simmons further denied Complainant's motion for a stay in light of the balancing factors set forth by the D.C. Court of Appeals in *Barry v. Washington Post Co.*, 529 A.2d 319, 320-21 (D.C. 1987). Judge Simmons correctly concluded that if this case is dismissed without prejudice, Complainant would not suffer irreparable harm; Respondent would be harmed by granting an extensive stay; and it is not clear that Complainant is likely to prevail on the merits. In addition, as Judge Simmons stated in the Proposed Decision and Order, Complainant had a corresponding breach of lease case in D.C. Superior Court wherein the judge granted Respondent summary judgment on the issue of whether Respondent was required to provide Complainant with

parking. On January 24, 2020, the D.C. Court of Appeals affirmed the Superior Court's granting of summary judgment in favor of Respondent.¹

Because this case is being dismissed without prejudice, Complainant's due process rights are protected because Complainant can re-open his case when he is able to fully pursue his claims. Thus, the undersigned judge recommends that the Commission dismiss this case without prejudice consistent with Judge Simmons' September 1, 2018, Proposed Decision and Order, which is attached to the recommendation. Also attached to this recommendation is a proposed Dismissal Order.



Erika L. Pierson
Chief Administrative Law Judge

February 5, 2020

¹ This finding however does not necessarily mean that Respondent cannot prevail on a claim of discrimination. The Superior Court case determined only that under Respondent's commercial lease, a parking spot was to be provided only if a space was available, and Respondent failed to establish that a space was available. It does not however, address whether a space had been provided as a reasonable accommodation and then taken away for discriminatory reasons.