

Comm'n on Human Rights v. Rozario

OATH Index No. 1273/15, mem. dec. (Mar. 31, 2015)

In discrimination case, Commission on Human Rights moved to find respondent in default for failure to answer the complaint. Administrative law judge granted motion and found respondent in default due to his failure to answer.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
COMMISSION ON HUMAN RIGHTS
Petitioner
- against -
SEBASTIAN ROZARIO
Respondent

MEMORANDUM DECISION

TYNIA D. RICHARD, *Administrative Law Judge*

Petitioner, the New York City Commission on Human Rights (“Commission”), initiated this action against respondent, Sebastian Rozario, under section 8-109(c) of the New York City Administrative Code (“Human Rights Law”). By a verified complaint, the Commission charges respondent with discriminating based on gender by circulating an employment advertisement for a “waitress” on Cragislist.org, in violation of section 8-107(1)(d) of the Human Rights Law and Title VII of the Civil Rights Act of 1964 (Pet. Ex. A). The Commission duly served the complaint on respondent by first class mail on September 26, 2014. To date, respondent has failed to file an answer.

This matter is scheduled for trial on April 13, 2015. On February 26, 2015, the Commission filed the instant motion for default and other relief. The motion, which was submitted along with a supporting affirmation by Commission attorney Vaughn Brown (hereinafter Brown Affidavit), seeks an order declaring the allegations in the verified complaint be deemed true and that respondent is in default and precluded from participating in any further proceedings due to his failure to timely file an answer or an affidavit asserting his reasons for failing to answer. Respondent has submitted no reply to this motion.

For the reasons set forth below, the motion is granted.

ANALYSIS

Under the Human Rights Law and Commission rules, a respondent must file a verified answer within 30 days of service of the complaint. Admin. Code § 8-111(a) (Lexis 2014) (“Within thirty days after a copy of the complaint is served upon the respondent by the commission, the respondent shall file a written, verified answer thereto with the commission”); 47 RCNY § 1-14(a) (Lexis 2014) (same). Under OATH’s rules of practice, if the Commission’s Notice of Referral to OATH alleges that a respondent has failed to answer, the respondent shall be declared in default and precluded from participating in the proceeding. 48 RCNY § 2-27(a) (Lexis 2014).

The Brown Affidavit summarizes the Commission’s communications with respondent. The Commission originally served respondent with the complaint by first class mail on September 26, 2014 (Pet. Ex. A), and respondent failed to file an answer within 30 days (Brown Aff. ¶ 2). Although the complaint did not notify respondent that he must file an answer, the Commission subsequently informed respondent of the requirement by letter dated November 3, 2014 (Pet. Ex. B). The letter states, “you are required to submit [sic] Verified Answer to the Complaint to the Commission **within 30 days thereof**. That period expired on October 26, 2014. As of this date, the Commission has not received a Verified Answer” (Pet. Ex. B) (emphasis in original). The letter further states that the failure to answer could result in the admission of the allegations made in the complaint, a finding of probable cause, and referral of the matter to OATH. Finally, the letter extended respondent’s time to submit a verified answer to December 3, 2014 (Pet. Ex. B).

According to the Brown Affidavit, on December 10, 2014, a Commission employee spoke to respondent who acknowledged receiving the complaint; he refused to engage in settlement discussions and hung up the phone (Brown Aff. ¶ 6). A Commission employee left a voice message with respondent explaining that if the matter was not resolved it would be referred to OATH (Brown Aff. ¶ 6). That same day, the Commission served respondent by first class mail with a Notice of Referral of the matter to OATH (Pet. Ex. C). The notice states that respondent failed to comply with section 1-14 of the Commission’s rules (Pet. Ex. C: Notice at 2).

On December 11, 2014, the Commission served respondent by first class mail with a Notice of Conference which notified respondent that a settlement conference was scheduled to be held at OATH on February 13, 2015 (Pet. Ex. D). All of the documents mailed to respondent

were sent to the same address as the complaint, and none of the documents were returned as undeliverable (Brown Aff. ¶ 9). Respondent failed to appear at the OATH conference.

Respondent has failed to submit an answer in accordance with section 1-14(a) of the Commission's rules and section 8-111(a) of the Human Rights Law, despite being afforded an extension of time to do so. As such, the allegations in the complaint are deemed admitted. Admin. Code § 8-111(c) (Lexis 2014) ("Any allegation in the complaint not specifically denied or explained shall be deemed admitted and shall be so found by the commission unless good cause to the contrary is shown."); 47 RCNY § 1-14(b) (Lexis 2014).

Respondent further failed to submit an affidavit demonstrating "good cause" or offering any explanation for his failure to submit an answer in accordance with section 2-27(a) of OATH's rules. I therefore find respondent in default and that he is precluded from participating in the hearing scheduled for April 13, 2015. *See Comm'n on Human Rights ex rel. Garriques v. South Queens Medical Group, PLLC*, OATH Index No. 995/15, mem. dec. (Feb. 2, 2015) (respondents found in default for failure to submit an answer, after being notified of their obligation to do so); *Comm'n on Human Rights v. Crazy Asylum, LLC.*, OATH Index Nos. 2262/13, 2263/13, & 2264/13, mem. dec. (Oct. 1, 2013) (ALJ found respondents in default pursuant to section 2-27 due to their failure to show "good cause" for the two-year delay in filing an answer).

Respondent may file a motion to open the default, as set forth in section 2-27(b) of OATH's rules, no later than April 10, 2015. Such a motion must show "good cause" for the failure to submit an answer and to oppose this motion for default judgment as well as a meritorious defense to the allegations in the complaint. *See Crazy Asylum*, OATH 2262/13 at 4-5.

Tynia D. Richard
Administrative Law Judge

March 31, 2015

APPEARANCES:

VAUGHN BROWN, ESQ.
Attorney for Petitioner

No appearance by or for Respondent