

***Comm'n on Human Rights ex rel. Chacon v.
Assistance By Improv, Inc.***

OATH Index No. 1763/15, mem. dec. (Apr. 29, 2015)

In discrimination case, Commission on Human Rights moved to find respondents in default for failure to submit answer to complaint despite being notified several times of their obligation to do so. Administrative law judge granted motion and found respondents in default due to their failure to file an answer.

**NEW YORK CITY OFFICE OF
ADMINISTRATIVE TRIALS AND HEARINGS**

In the Matter of
**COMMISSION ON HUMAN RIGHTS EX REL.
FREDDY CHACON**
Petitioner
- against -
**ASSISTANCE BY IMPROV, INC.,
JANE DOE, AND JOHN DOE**
Respondents

MEMORANDUM DECISION

JOHN B. SPOONER, *Administrative Law Judge*

Petitioner, the New York City Commission on Human Rights (“Commission”), brought this action against respondents, Assistance By Improv (ABI), Jane Doe, and John Doe, under Section 8-109(c) of the New York City Administrative Code. By a verified complaint dated July 30, 2014, the Commission charged respondents with violating section 8-107 of the New York City Administrative Code, by discriminating against complainant Freddy Chacon, an applicant for housing, by referring to him as a “spic.” To date, there has been no answer filed by respondents.

A conference was scheduled before this tribunal on April 7, 2015, at which only petitioner’s attorney appeared and respondents failed to appear. On April 17, 2015, the Commission filed the instant motion. The motion, accompanied by an affirmation from the Commission attorney, seeks an order that respondents be declared in default due to their failure to file an answer, that the allegations in the verified complaint be deemed true, and that

respondents be precluded from answering the complaint and from participating in any further proceedings.

For the reasons provided below, I find that the Commission's motion to declare respondents in default should be granted, but that respondents should be afforded an opportunity to file a motion to vacate the default by establishing "good cause" as provided in the applicable rule.

ANALYSIS

In the instant case, respondents were served by first class mail with the original complaint on August 5, 2014, at both the Law Offices of Brian J. Robinson and at ABI's offices on East Tremont Avenue in the Bronx, New York. Pursuant to section 1-14(a) of the Commission's rules, respondents were required to file a verified answer within 30 days, 47 RCNY § 1-14 (Lexis 2014), or by September 5, 2014. No answer was filed.

The communications between the Commission and respondents from January 2014 to date are summarized by counsel for the Commission in his affirmation accompanying the motion. The affirmation indicates that Commission staff spoke by telephone on September 12, 2014, with Mr. Wright, who identified himself as ABI's CEO. Mr. Wright confirmed that ABI's mailing address was East Tremont Avenue, but stated that attorney Robinson no longer represented ABI and that ABI currently had no attorney. On September 12, 2014, the Commission staff sent by e-mail and fax a letter with the complaint to Mr. Wright requiring that ABI submit a verified answer no later than October 12, 2014, or the case would be submitted to OATH for a trial.

On October 23, 2014, when no answer had been filed, Commission staff called Mr. Wright who stated that the answer would be filed that day. On October 30, 2014, when the answer had still not been filed, Mr. Graves, an attorney, requested an extension to file the answer until December 5, 2014. When on December 12 no answer had been received, Commission staff spoke with Mr. Graves who now told them that he no longer represented respondents.

On December 23, 2014, Commission staff sent by e-mail and fax a letter to Mr. Wright stating that unless an answer was filed by December 30, the matter would be submitted to OATH for trial. On December 29, Mr. Wright sent an e-mail stating that ABI's new address was on Southern Boulevard, but not otherwise addressing the issues raised in the complaint.

On December 30, 2014, Commission staff sent by e-mail and fax a letter to Mr. Wright stating that unless an answer was filed by January 30, 2015, the matter would be submitted to OATH for trial.

On February 11, 2015, Commission staff filed a notice of referral of the case to OATH for trial, with a copy sent to respondents. The copy sent to the Southern Boulevard address was returned as undeliverable.

On March 10, 2015, the notice of the OATH conference was mailed to respondents at all addresses which could be found, except the Southern Boulevard address, and also to Mr. Wright and to Mr. Graves. On April 2, Commission staff called Mr. Wright to remind him about the April 7 conference but there was no answer and no ability to leave a message. As noted above, respondents failed to appear for the April 7 conference at OATH.

Despite being told multiple times over the course of approximately six months of the necessity of filing an answer, respondents have failed to do so. Section 2-27(a) of OATH's Rules of Practice provides that the failure of a respondent in a Commission on Human Rights case to file an answer may result in default and preclusion from participation in a hearing:

Entry of and Relief from Default.

(a) If the notice of referral to OATH alleges that a respondent has not complied with the requirements of § 1-14 of the Commission's rules (47 RCNY § 1-14), the respondent shall serve and file an affidavit asserting that the respondent has complied with those requirements, or asserting reasons constituting good cause for its failure to comply with those requirements. Such affidavit shall be served and filed at or before the first conference in the case, or, if no conference is held, before commencement of the hearing. If the respondent fails to serve and file such an affidavit within the time allowed by this paragraph, the Administrative Law Judge shall declare the respondent to be in default and shall preclude the respondent from further participation in the adjudication. If the respondent timely serves and files such an affidavit, the Administrative Law Judge shall decide the questions presented, and shall either declare the respondent to be in default and preclude the respondent from further participation in the adjudication, or shall deny the default in full or upon stated terms and conditions which may include such limitations on the respondent's participation in the adjudication as the Administrative Law Judge deems to be equitable.

I agree with the Commission that respondents here must be found in default pursuant to section 2-27(a) because they failed to submit an answer for six months, even after being

repeatedly reminded and admonished for not doing so by Commission staff. They also failed to offer any explanation for failing to submit an answer.

The appropriateness of finding respondents in default is supported by several recent decisions of this tribunal. *Comm'n on Human Rights v. Evelina Beauty Salon*, OATH Index No. 900/15, mem. dec. (Dec. 29, 2014); *Comm'n on Human Rights v. Crazy Asylum, LLC.*, OATH Index Nos. 2262/13, 2263/13, & 2264/13, mem. dec. (Oct. 1, 2013). Cf. *Comm'n on Human Rights ex rel. Hidalgo v. Ditmas Park Rehabilitation and Care Ctr., LLC*, OATH Index Nos. 2415/13, 2416/13, & 2417/13, mem. dec. (Sept. 25, 2013) (respondents permitted to file late answer where they established "substantial compliance" with the filing requirement).

I therefore find that respondents are in default for their failure to submit an answer to the complaint and that they should be precluded from participating in the hearing scheduled for **9:30 a.m. on May 27, 2015, at OATH** . If they choose, respondents may submit, no later than May 6, 2015, a request to open the default and permit an answer to be filed, as provided in section 2-27(b). Such a request should include an explanation of "good cause," or a good reason, for the failure to submit an answer. The request to open the default should also include a defense to the allegations in the complaint. Examples of possible defenses would be that the allegations in the complaint are untrue or that the allegedly discriminatory statements were not made by an ABI employee.

John B. Spooner
Administrative Law Judge

April 29, 2015

APPEARANCES:

VAUGHN BROWN, ESQ.
Attorney for Petitioner

No Appearance by or for Respondents