

Comm'n on Human Rights v. Evelina Beauty Salon

OATH Index No. 900/15, mem. dec. (Dec. 29, 2014)

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

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
COMMISSION ON HUMAN RIGHTS
Petitioner
- against -
EVELINA BEAUTY SALON
Respondent

MEMORANDUM DECISION

JOHN B. SPOONER, *Administrative Law Judge*

Petitioner, the New York City Commission on Human Rights (“Commission”), brought this action against respondent, Evelina Beauty Salon, under Section 8-109(c) of the New York City Administrative Code. By a verified complaint dated May 13, 2013, the Commission charged respondent with violating Section 8-107 of the New York City Administrative Code, by posting an advertisement on Craigslist.org seeking a “female hairstylist” for employment and by scheduling an interview with a female tester and declining to schedule an interview with a male tester. On June 4, 2014, the Commission served an amended complaint correcting the spelling of respondent’s name from “Eveline” to “Evelina.” To date, there has been no answer filed by respondent to either complaint.

The case was conferenced before this tribunal on December 5, 2014, at which respondent’s owner, Mr. Sargsyan appeared. There was no settlement and the case was scheduled for a trial on January 14, 2015. On December 14, 2014, the Commission filed the instant motion. The motion, accompanied by an affirmation from the Commission attorney, seeks an order that respondent be declared in default due to its failure to file an answer, that the

allegations in the verified complaint be deemed true, and that respondent 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 respondent in default should be granted, but that respondent 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, respondent was served by first class mail with the original complaint on May 13, 2013. Pursuant to section 1-14(a) of the Commission's rules, respondent was required to file a verified answer within 30 days, 47 RCNY § 1-14 (Lexis 2013), or by June 13, 2013. No answer was filed. Respondent was then served with an amended complaint on June 4, 2014, and this complaint has not been answered.

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, although the original complaint did not indicate that an answer was required, repeated subsequent notifications were given to respondent of its obligation to answer. On January 9, 2014, Commission staff placed a telephone call to respondent, and informed the person who answered that no answer to the complaint had been provided. On January 10, 2014, the Commission sent respondent a letter (Pet. Ex. F) again stating that no answer had been submitted and that this failure could result in a finding of default. On February 26, 2014, a staff attorney e-mailed respondent at a Gmail account, attaching a copy of the complaint, and again notified respondent that the answer was past due and that a failure to submit an answer would result in the case being sent out for trial (Pet. Ex. G). A reply from the Gmail account recipient confirmed that the e-mail had been received. The Commission attorney sent a second e-mail (Pet. Ex. H) to respondent on March 24, 2014, repeating the contents of the previous e-mail and encouraging respondent to contact him by e-mail or by phone. On June 4, 2014, in a letter (Pet. Ex. I) accompanying the amended complaint, the Commission attorney again notified respondent that the "failure to submit an answer can result in preclusion of a defense at trial and a default judgment" of up to \$10,000.

Following respondent's failure to submit an answer or to reply to any of the e-mails or letters, on August 1, 2014, the Commission transferred the case to this tribunal for hearing. The Commission served respondents with a notice of referral (Pet. Ex. J) to this tribunal on August 1, 2014, indicating that respondents had failed to submit an answer as required by 47 RCNY § 1-14. On December 5, 2014, the parties appeared at this tribunal for a conference. Counsel for the Commission stated to respondent and to the conference judge that, due to its failure to answer, respondent should be precluded from serving an answer and from offering any defense to the allegations in the complaint.

Despite being told multiple times over the course of approximately a year of the necessity of filing an answer, respondent has 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 respondent here must be found in default pursuant to section 2-27(a) because it failed to submit an answer for 19 months, even after being repeatedly reminded and admonished for not doing so by Commission staff. It also failed to offer any explanation for failing to submit an answer.

The appropriateness of finding respondent in default is supported by a recent decision of this tribunal. In *Comm'n on Human Rights v. Crazy Asylum, LLC.*, OATH Index Nos. 2262/13,

2263/13 & 2264/13, mem. dec. (Oct. 1, 2013), a restaurant which placed a Craigslist advertisement for “waitresses” was found in default for failing to file an answer to the complaint for some two years. *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 respondent is in default for its failure to submit an answer to the complaints and that it should be precluded from participating in the hearing scheduled for January 14, 2015. If it chooses, respondent may submit, no later than January 7, 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 placing of the advertisement was done without lawful authority.

John B. Spooner
Administrative Law Judge

December 29, 2014

APPEARANCES:

SCOTT CLISE, ESQ.
Attorney for Petitioner

No Appearance by or for Respondent