

***Comm'n on Human Rights ex rel. Garriques v. South Queens
Medical Group, PLLC***

OATH Index No. 995/15, mem. dec. (Feb. 2, 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. MARIE GARRIQUES**

Petitioner

- against -

**SOUTH QUEENS MEDICAL GROUP, PLLC,
PARK HEALTH CENTER,
and DR. JAMIL ABRAHAM**

Respondents

MEMORANDUM DECISION

JOHN B. SPOONER, *Administrative Law Judge*

Petitioner, the New York City Commission on Human Rights (“Commission”), brought this action on behalf of complainant Marie Garrizqaues against respondents, South Queens Medical Group, PLLC, Park Health Center, and Dr. Jamil Abraham under Section 8-107(1)(a) of the New York City Administrative Code, Title VII of the United States Civil Rights Act of 1964, and the United States Age Discrimination Act. By a verified complaint dated April 17, 2014, the Commission charged respondents with failing to halt or respond to complainant’s protests about the insulting and harassing behavior of another doctor, who denigrated the complainant based upon her age, gender, and race. To date, there has been no answer filed by respondents to the complaint.

A conference was scheduled before this tribunal on January 5, 2015, at which none of the respondents appeared. The case was scheduled for a trial on March 24, 2015. On January 14, 2015, the Commission served and 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 admitted, and that respondents be precluded from participating in any further proceedings. To date respondents have failed to submit any reply to this motion.

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 April 18, 2014. 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 2013), or by May 18, 2014. No answer was filed.

The communications between the Commission and respondents from May 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 respondents of their obligation to answer. On June 18, 2014, Commission staff mailed respondent Abraham a letter (Browne Affirmation, Ex. B), enclosing the complaint and asking that a verified answer be filed no later than June 30, 2014. The letter also explained that a failure to submit an answer could result in a default judgment. On August 14, 2014, Commission staff placed a telephone call to respondent Abraham, who stated that he had received the complaint but thought it had been withdrawn. The Commission staff member told respondent Abraham that the complaint had not been withdrawn and asked that an answer be submitted by September 2, 2014. Later on August 14, the Commission staff member mailed respondent Abraham a letter (Browne Affirmation, Ex. C) indicating that this was the Commission's sixth and final attempt to obtain an answer and that the answer should be filed by September 2, 2014.

Before referring the case to this tribunal, on October 8, 2014, Commission staff left respondent Abraham a voice message asking for mutually agreeable conference dates. He did not reply to this message. On October 31, 2014, Commission staff mailed respondents a notice

of referral (Browne Affirmation, Ex. D) stating that they had failed to comply with the Commission rules. On November 5, 2014, Commission staff mailed to respondents a notice of conference (Browne Affirmation, Ex. E) for January 9, 2015, at which respondents failed to appear.

Despite being told multiple times 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 nine months, even after being repeatedly reminded by Commission staff and served with a motion for a default. They have also failed to offer any explanation for failing to submit an answer.

The appropriateness of finding respondents in default is supported by past decisions 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 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 March 24, 2015. If they so choose, respondents may submit, no later than February 23, 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.

John B. Spooner
Administrative Law Judge

February 2, 2015

APPEARANCES:

VAUGHN BROWNE, ESQ.
Attorney for Petitioner

No Appearance by or for Respondents