

COOK COUNTY COMMISSION ON HUMAN RIGHTS
69 West Washington Street, Suite 3040
Chicago, Illinois 60602

Joanne NUGENT, Complainant)	
)	
)	Case No. 2015PA003
v.)	
)	
JEWEL FOOD STORES, INC., Respondent)	Entered: April 14, 2015
)	

ORDER

On February 23, 2015, Complainant Joanne Nugent (“Nugent”) filed the above-captioned complaint with the Cook County Commission on Human Rights (“Commission”), alleging that she was unlawfully denied access to a public accommodation owned, leased or otherwise controlled by Respondent Jewel Food Stores, Inc. (“Jewel”). Nugent alleged that Jewel violated the Cook County Human Rights Ordinance (“Human Rights Ordinance”) when, on September 1, 2014, it refused to serve Nugent because she was accompanied by a service dog, going so far as to call the police in an attempt to have her (and her dog) removed from the premises. *See* Compl. ¶ I(3)-(9). The Commission has yet to begin in its investigation in earnest, but on March 20, 2015, Jewel moved to defer the Commission’s investigation in favor of a parallel investigation by the Illinois Department of Human Rights (“IDHR”) that Nugent initiated on or before November 21, 2014. Nugent opposes Jewel’s motion to defer and hopes to proceed before both agencies simultaneously.

The Human Rights Ordinance offers persons doing business or residing in Cook County a host of protections against unlawful discrimination in the areas of employment, housing, public accommodations, credit transactions and access to County services, programs and contracts. *See* Cook County Code of Ordinances (“County Code”), §§ 42-35–42-40. In enforcing the County’s anti-discrimination laws, this Commission has concurrent jurisdiction over allegations of unlawful discrimination with IDHR (which investigates alleged discrimination for violations of state laws) and the U.S. Equal Employment Opportunity Commission (“EEOC”) (which investigates alleged discrimination violations of federal laws).

In recognition of the potential for duplicative work created by such overlapping jurisdictions, the Commission’s Procedural Rules allow for the Commission to defer its investigation in favor or an investigation or adjudication by either of these entities. Specifically:

The Commission on its own initiative may defer investigation of a timely filed Complaint when the same Complaint, or a substantially similar Complaint, has been filed by the Complainant with another similar administrative agency. In addition, any party may file a motion, in accordance with Section 420.170 herein,

requesting that the Commission defer investigation into a timely filed Complaint pending resolution of the same Complaint, or a substantially similar Complaint, which has been filed by the Complainant with another similar administrative agency. The following is a non-exhaustive list of factors which the Commission may consider in determining whether to exercise its discretion to defer an investigation:

- (A) Conservation of administrative resources;
- (B) Complainant's right to a timely investigation;
- (C) Minimization of Respondent's burden;
- (D) Procedural or investigative status of charges/complaints filed with the administrative agency as evidenced by one or more of the following: completion of document exchange, witness interviews, response to questionnaires, and the holding of fact-finding conferences; and
- (E) Administrative agency backlog.

CCHR Pro. R. 440.105.

Here, Nugent filed substantially the same complaint against Jewel with IDHR three months prior to filing the complaint pending before the Commission. In her IDHR complaint, Nugent alleges denial of the full and equal enjoyment of a public accommodation on the basis two disabilities: diabetes and depression.¹ IDHR Compl. ¶¶ I.A, II.A. With respect to both charges, Nugent alleges that:

On September 1, 2014, I entered Respondent's facility and was told that my service dog was not allowed. I showed Respondent's [sic] the documents I received from the Attorney General's office, yet I was told to leave and threatened that if I did not leave I could never shop there again.

Id. at ¶¶ I.B.5, II.B.5.

The factors set out in Procedural Rule 440.105 favor deferral. Allowing IDHR to complete its investigation would certainly conserve this Commission's administrative resources. Further, Jewel's motion to defer alleges that deferral would minimize its burden of providing the same responses, interviews, evidence, *etc.* to two different human rights commissions on the same set of allegations. Finally, although the Commission has made great progress in the last 18

¹ Nugent has not alleged that she suffers from depression in her complaint pending before the Commission.

months to reduce the size of its backlog, the average time for complaints to reach disposition remains over 529 days.²

The Commission typically defers its investigations in exactly these conditions. *See, e.g., Ikpeama v. Cermak Health Services of Cook County*, 2013E004 (CCHRC May 9, 2014); *Walters v. Allied Barton*, 2013E015 (CCHRC Apr. 21, 2014); *Wickman v. Wellness Healthcare Partners*, 2014E005 (CCHRC May 5, 2014). When “the Commission defers its investigation of a Complaint in favor of the investigation or adjudication of the same Complaint, or a substantially similar Complaint, with another similar administrative agency . . . the factual findings and conclusions of law of that other similar administrative agency shall be binding on the parties to the Complaint pending before the Commission unless the Commission orders otherwise.” CCHR Pro. R. 440.105.

Against this, Nugent asserts a number of arguments that are simply irrelevant to the analysis at hand.³ The only argument that is potentially related to the analysis set out in Procedural Rule 440.105 is Nugent’s assertion that she has a right to have both the Commission and IDHR investigate her claim.

This is incorrect. The intent of Procedural Rule 440.105 is that this Commission focus on cases that it is uniquely positioned to remedy. Each case filed with any antidiscrimination government agency takes more hours of work by investigators, attorneys, administrative law judges and commissioners to bring to a final resolution than are available at any given moment on the agency’s crowded docket. In order to achieve the maximum impact across the board, the Commission deploys its limited resources, in the first instance, where IDHR and the EEOC cannot.

² Neither party has provided the Commission with dispositive evidence of the status of this matter at IDHR. However, given that the Commission has not yet even analyzed a response to the complaint, this factor is unlikely to favor deferral. Even if IDHR has also taken no action with respect to the complaint (despite its three-month head start), the two agencies are equally far along towards attaining a resolution of this matter.

³ First, Nugent asserts that the Commission should deny the motion to defer because Jewel violated the Americans with Disabilities Act and the civil and criminal laws of Illinois. This Commission, however, is not an agency with general jurisdiction. It exists only to remedy violations of the Cook County Human Rights Ordinance. Federal and state statutes are beyond its purview and to the extent that the complainant is seeking enforcement of those laws, that is an argument in favor of deferral by this Commission.

Second, Nugent asserts that Jewel is not remorseful about what allegedly happened. Again, the Commission’s decision on whether to defer its investigation is based on the five factors set out in Procedural Rule 440.105 – not a general inquiry into whether the respondent is nice or not. The Commission will not use duplicative investigations as a way to “punish” respondents who have not yet been found to have violated any laws.

Third and fourth, Nugent asserts that Jewel called the police on her on September 1, 2014, and that she suffers from low glucose. These do not appear to be arguments in favor of deferral so much as restatements of the allegations in her complaint.

In a similar vein, Nugent offers to have the Attorney General’s Office call the Commission and says that the County Board President deserves to know what kinds of businesses are in Cook County. The Commission welcomes communications from related government agencies, but its decisions are necessarily independent.

Finally, Nugent asserts that her treatment on September 1, 2014 was the result of her refusal to accept a gift card. This assertion, if true, would actually undermine her claim of unlawful discrimination on the basis of her disability by offering a non-discriminatory explanation for the respondent’s actions.

To give an example that is close to home for the complainant, this is not Nugent's only pending matter on the Commission's docket. *See Nugent v. Jewel Osco, Inc.*, 2015PA002 (CCHRC Filed Feb. 23, 2015). Between that case and the case that is the subject of this order, it certainly makes more sense for the Commission to work on resolving the complaint that no other government agency is working to resolve.

For the foregoing reasons, the Commission hereby grants Jewel's motion to defer this matter in favor of IDHR matter 2015CP0938. Either party may petition the Commission to re-open this matter after the completion of the parallel investigation or related adjudication, but pending such a petition, the Commission orders that complaint 2015PA003 pending before this Commission be DISMISSED pursuant to a DEFERRAL.

April 14, 2015

By delegation:

A handwritten signature in black ink, appearing to read 'Ranjit Hakim', with a horizontal line extending to the right.

Ranjit Hakim
Executive Director of the Cook County
Commission on Human Rights