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

Dean SCAROS, Complainant	)	
	)	Case No. 2013E003
v.	)	
	)	Entered: February 24, 2015
PAY-EASE, LLC, Respondent	)	
	)	

ORDER DENYING REQUEST FOR RECONSIDERATION

After investigating its jurisdiction over his claim, the Cook County Commission on Human Rights ("Commission") dismissed a complaint filed by Dean Scaros ("Scaros") for lack of jurisdiction on March 19, 2014. Scaros had filed this complaint with the Commission on January 31, 2013, against his former employer, Respondent Pay-Ease, LLC ("Pay-Ease"), alleging age discrimination for a number of adverse employment actions taken against him and culminating in his termination. At the time that Scaros filed his complaint, Pay-Ease was located in Northbrook, Illinois.

The Commission's investigation found, however, that at the time of Scaros' employment, Pay-Ease and the unlawful conduct that Scaros had alleged in his complaint were located in the City of Chicago. *Scaros v. Pay-Ease, LLC*, 2013E003, *1-2 (CCHRC Mar. 19, 2014) ("Dismissal Op."). Specifically, Scaros told Commission investigators that the Pay-Ease office from which he worked from 2006 until his termination on August 6, 2012 was located at 101 W. Grand Avenue, Suite 400, Chicago, Illinois. *Id.* at *2 (citing Scaros Interview (Mar. 13, 2014)). And Pay-Ease's agent, Al Giudice ("Guidice"), confirmed that Pay-Ease relocated to Northbrook only after Scaros was fired. *Id.* (citing Giudice Interview (Mar. 11, 2014)). The Commission dismissed Scaros' complaint after concluding that its jurisdiction is established at the time of the alleged violation of the Human Rights Ordinance. *Id.*

In bringing this request for reconsideration on April 18, 2014, Scaros argues that the Commission erred because its jurisdiction is not fixed by the location of the parties at any particular point in time. Request for Reconsideration ("Req."), p. 3. Further, Scaros asserts that he alleged the continuation of unlawful conduct by Pay-Ease after Pay-Ease relocated from Chicago to Northbrook. *Id.* Finally, Scaros asserts that it is inequitable for the Commission to dismiss for lack of jurisdiction because Scaros does not believe that he can file a complaint with the Chicago Commission on Human Relations. *Id.* at p. 4. Pay-Ease filed a response to Scaros' motion for reconsideration on May 21, 2014. On January 8, 2015, Scaros moved to strike that response as untimely.

After considering the arguments presented, the Commission now grants Scaros' motion to strike but denies Scaros' request for reconsideration and reaffirms its order of dismissal in this matter.

DISCUSSION

1. Pay-Ease's Response to Scaros' Request for Reconsideration Is Untimely

In his motion to strike, Scaros correctly notes that parties responding to a request for reconsideration must do so within 21 days of service.[1] CCHR Pro. R. 480.100(A). Scaros mailed a copy of his motion to Pay-Ease on April 18, 2014, and the Commission presumes that service was completed three business days later on April 23, 2014. *Id.* at § 120.110. This means that Pay-Ease's response brief, filed on May 21, 2014, was not timely.

Notably, according to the signature block of the Pay-Ease representative on Pay-Ease's response brief, Pay-Ease is no longer receiving service at the Northbrook address where Scaros served his request for reconsideration. Mis-service might excuse a late responsive filing, but it does not appear that Pay-Ease ever updated Scaros of its new location. As such, the Commission will not excuse Pay-Ease's failure to meet the appropriate filing deadline.

Striking Pay-Ease's brief, however, does not require that the Commission grant Scaros' request for reconsideration where, as here, the arguments that Scaros raises on reconsideration are otherwise unpersuasive.

2. The Commission's Jurisdiction Is Not Fixed And Moves with the Parties

Scaros' jurisdictional argument on reconsideration is unclear. The Human Rights Ordinance states that:

> If a municipal ordinance *regulates conduct*, which is prohibited under this article and provides remedies, this article *shall not apply within that municipal jurisdiction* with respect to such conduct.

Cook County Code of Ordinances ("County Code"), § 42-33(b) (emphasis supplied). As noted in the Dismissal Opinion, the Chicago Commission on Human Relations regulates conduct and provides remedies with respect age-related employment discrimination that occurs within the City of Chicago. Notwithstanding the general remedial purposes of the law and appeals to justice, by its own specific terms, the County's Human Rights Ordinance does not apply to age discrimination in the City of Chicago.

Nevertheless, Scaros cites a provision of the Commission's procedural rules that states that undocumented residents may file complaints with the Commission "'if the alleged violation [of the Human Rights Ordinance] occurred *in whole or in part in the County*.'" Req., p. 2 (citing CCHR Pro. R. 410) (emphasis in the Request)). The Commission has no reason to believe from either the pleadings or its jurisdictional investigation into this matter that Scaros is unable to

[1] Parties may, of course, make a request to extend any filing deadlines for good cause. CCHR Pro. R. 490.180(A).

lawfully work in the United States. Further, while the Commission has the authority to promulgate rules, those rules must not be inconsistent with the Human Rights Ordinance itself. CCHR Pro. R. 220.110 ("These rules shall constitute the policy and practice of the Commission and shall govern activities of the Commission, provided that such rules are consistent with the Ordinance."). As such, the instruction in the Human Rights Ordinance that the Commission will cede jurisdiction when unlawful conduct occurs in a municipality that has its own equally protective human rights agency trumps the expansive language of section 410 of the procedural rules.

Perhaps recognizing that section 42-33(b) of the Human Rights Ordinance controls the issue before the Commission, Scaros observes that "there is no language stating that Defendant's location at the time of the filing of the Complaint is irrelevant for determining where jurisdiction lies." Req., pp. 2-3. This may be true, but it is not a persuasive argument for reconsideration. Scaros has failed to direct the Commission's attention to any language stating that the location of the respondent at the time of filing *is relevant* for determining where jurisdiction lies.

It is just as well that Scaros did not because the Commission's precedent clearly establishes that the location of the respondent at the time the complaint is filed is irrelevant. For example, in *Lindberg v. Chicago Transit Authority*, the Commission rejected a motion to dismiss for lack of jurisdiction even though the *Lindberg* respondent was located within the City of Chicago. 1994E063, *1 (CCHRC July 27, 1995). Instead, in determining whether jurisdiction lay with it or the Chicago Commission on Human Relations, this Commission looked at where the alleged violation of the Human Rights Ordinance occurred. *Id.* at *2. The Commission opined that it had jurisdiction because the *Lindberg* complainant worked for the Chicago Transit Authority outside of the City of the Chicago in an office in Rosemont, Illinois. *Id.* Where the *Lindberg* complainant was alleging discriminatory discharge in violation of the Human Rights Ordinance, the unlawful conduct was experienced within Cook County, outside of the City of Chicago.

If Scaros is advocating for the position that the Commission's jurisdiction (or lack thereof) changes with the location of the respondent (rather than being fixed by the location of the alleged violation of the Human Rights Ordinance), the Commission, as the agency charged with interpreting and enforcing the Human Rights Ordinance, simply cannot agree. While the Commission recognizes that it may be advantageous for Scaros to advocate for that position in his case, it is completely untenable for the Commission to apply that rule generally across its docket. Were Scaros correct, then any respondent could escape the jurisdiction of the Commission during the course of an investigation or even on the eve of an adverse ruling by relocating from suburban Cook County to the City of Chicago. By interpreting the Human Rights Ordinance as fixing jurisdiction at a point in time, the Commission avoids allowing parties to flit in and out of its jurisdiction at will.

3. <u>Pay-Ease's Unlawful Conduct Continued After It Relocated to Northbrook</u>

In the alternative Scaros may agree that the location of the violation sets the Commission's jurisdiction but, on reconsideration, is only contending that Pay-Ease's alleged violation of the Human Rights Ordinance continued after it relocated out of the jurisdiction of

the Chicago Commission on Human Relations. *See* Req., p. 3 ("[T]he Order contains no citation to either the Ordinance or the Procedural Rules to support the pronouncement that the time of the violation is fixed *to one point in time*.") (emphasis supplied). This argument is unsupported.

A central premise of the Commission's original dismissal order in this matter is that all of Pay-Ease's allegedly unlawful conduct occurred outside of its jurisdiction in the City of Chicago during the course of Scaros' employment there. But Scaros argues on reconsideration that "[b]ased on the allegations of the Complaint, it is clear that, at the very least, part of the violations alleged occurred after Complainant's termination, when Respondent was located with the County's jurisdiction." *Id.* Scaros directs the Commission's attention to Paragraph 9(c) of his complaint, which states:

> I was subjected to adverse treatment, including but not limited to: disruption of my business activities, *false accusations of wrongdoing*, *humiliation*, *disparagement of my reputation*, termination, and being physically removed from my position with Pay-Ease.

Id. (citing Compl., ¶ 9(c) (emphasis supplied in the Request)).

There is nothing in this passage or elsewhere in the complaint to suggest that even under the most liberal construction of this pleading, Scaros alleged any unlawful conduct by Pay-Ease as occurring after the date of Scaros' termination. Paragraph 9(c) is written entirely in the past tense. *See id.* ("was subjected . . ."). And each highlighted allegation in 9(c) corresponds to an earlier allegation in the complaint for an event that occurred prior to Pay-Ease's relocation to Northbrook.

For instance, in Paragraph 4, Scaros describes an interaction with the grandson of one of Pay-Ease's owners in which "he falsely accused me of 'stealing' from and 'scamming' his grandfather." Compl., ¶ 4. Similarly, Scaros explains how Pay-Ease humiliated him and disparaged his reputation in Paragraph 3 of the complaint, where Scaros alleges this grandson and another man "began criticizing my performance in front of my staff." *Id.* at ¶ 3; *see also id.* at ¶ 5 ("In that email, I also expressed my dismay at the hostile and accusatory tone he took with me in front of staff."). According to the complaint, each interaction occurred on July 23, 2012, *id.*, and according to the Commission's investigation, all occurred within the City of Chicago. Scaros Interview (Mar. 13, 2014); Giudice Interview (Mar. 11, 2014). The face of Scaros' complaint states that August 6, 2012 – a date on which he was "terminat[ed], and . . . physically removed from . . . [his] position with Pay-Ease" and a date on which there is no dispute that both Scaros and Pay-Ease and all actions either could have taken to confer jurisdiction in this Commission were still in Chicago – is the "date discrimination or harassment took place," and Scaros gives absolutely no indication in the complaint that any violation of the Human Rights Ordinance occurred after the date that Pay-Ease relocated to Northbrook.

The Commission does not need to conduct an investigation into the truth or falsity of each of these allegations to determine whether it has jurisdiction because the only allegations that Scaros has included in his complaint relate to conduct that occurred outside of the Commission's

jurisdiction. Further, Scaros' reliance on *Perez v. Lake Park Construction, Inc.*, 2004E063 (Aug. 1, 2006), is entirely misplaced. *See* Req., pp. 3-4. The Commission did not arrive at its original dismissal opinion in response to a motion to dismiss by Pay-Ease, but rather the Commission conducted an investigation relative to its jurisdiction in this matter and is issuing an order on the basis of that limited investigation.

4. <u>The Commission Cannot Dismiss Scaros' Complaint for Lack of Jurisdiction Because It May Be Too Late to File in the Correct Jurisdiction</u>

Scaros asserts that "the Commission must exercise jurisdiction over the Complaint because, due to the Commission's significant delay in reviewing the issue of jurisdiction, Complainant has been deprived of his right to file a timely complaint with the City of Chicago Commission on Human Relations." Req., p. 4. The Commission is sympathetic to Scaros' appeal to the equities of his circumstances.[2] But, where it is without jurisdiction, the Commission is also without the power to grant Scaros any relief, equitable or otherwise. The Commission cannot choose to waive its own lack of jurisdiction. *See, e.g., Currie v. Lao*, 148 Ill.2d 151, 157 (1992); *People ex rel. Compagnie Nationale Air France v. Giliberto*, 74 Ill. 2d 90, 105 (1978).

CONCLUSION

For the foregoing reasons, the Commission DENIES Complainants' REQUEST FOR RECONSIDERATION of its Dismissal of Complaint No. 2013E003 for Lack of Jurisdiction. In accordance with CCHR Pro. R. 480.115, Complainants may seek administrative review of this decision by petitioning the Chancery Division of the Circuit Court of Cook County for a writ of certiorari.

February 24, 2015

By delegation:

Ranjit Hakim
Executive Director of the Cook Commission on Human Rights

[2] This sympathy is limited. Pay-Ease raised its jurisdictional argument to the Commission and Scaros at its first opportunity to do so – its March 1, 2013 verified response to Scaros' complaint. Verified Resp., p. 6. There is no evidence that Scaros took any action at that time to preserve his rights with respect to the Chicago Commission on Human Relations in the event that (as it did) the Commission's investigation substantiated Pay-Ease's position. Of course, whether there was any action that Scaros could have taken at that time that would have effectively preserved his rights has nothing to do with the length of time it took the Commission to actually complete its investigation of Pay-Ease's defense. Instead, Scaros' options on March 1, 2013 were entirely set by the fact that he waited 178 days after he was terminated on August 6, 2012 before filing a complaint with this or any other human rights agency.