

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

Abdul MOHAMMED, Complainant)	
)	
)	Case No. 2015E015
v.)	
)	
UBER TECHNOLOGIES, INC., Respondent)	Entered: March 16, 2016
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)	

ORDER DENYING MOTION FOR DISMISSAL AND DEFERRAL

On November 18, 2015, Complainant Abdul Mohammed (“Mohammed”), a former UberX driver, filed the above-captioned complaint with the Cook County Commission on Human Rights (“Commission”) against Respondent Uber Technologies, Inc. (Respondent”). Mohammed alleges that he filed a complaint against Respondent with the Illinois Human Rights Department (“IDHR”) on June 3, 2015. Compl. ¶ I.B. Mohammed further alleges that shortly thereafter, Respondent terminated Mohammed’s access to its services as both a driver and a customer. *Id.* at ¶¶ I.E-F. The Cook County Human Rights Ordinance (“Human Rights Ordinance”) prohibits retaliation for engaging in protected activity to oppose unlawful discrimination, including by filing a case with IDHR. *See* Cook County Code of Ordinances (“County Code”), § 42-41; *Nugent v. Jewel Osco, Inc.*, 2015PA002, *11-12 (CCHRC Nov. 9, 2015) (applying the good faith requirement to non-agency complaints).

On January 15, 2016, Respondent moved for the partial dismissal of Mohammed’s retaliation claim and for deferral of the Commission’s investigation. Mohammed opposes Respondent’s motion. The Commission now denies Respondent’s motion, but in doing so cautions Mohammed that further personal attacks against counsel for Respondent will result in the dismissal of his pending claim.

A. Respondent’s Motion for Partial Dismissal

Respondent notes that Mohammed filed a nearly identical retaliation claim against it with IDHR on June 16, 2015. Resp. Mot., p. 2. In that complaint, Mohammed alleged that Respondent terminated him as a driver the day before, in retaliation for filing another discrimination complaint with IDHR three-and-a-half weeks earlier. *Id.* at Exh. B (IDHR Compl. No. 2015CF3351). IDHR dismissed Mohammed’s driver retaliation complaint on September 29, 2015, after concluding that the state agency lacked jurisdiction over the dispute because Mohammed was an independent contractor of Respondent, rather than an employee. *Id.* at Exh. E (Notice of Dismissal, Compl. No. 2015CF3351, and Investig. Rep., p. 4). Respondent argues that the Commission should also dismiss Mohammed’s pending complaint because

Mohammed is precluded from re-litigating the question of his employment status by the September 2015 IDHR decision. *Id.* at 2.

Mohammed correctly notes that IDHR’s dismissal for lack of jurisdiction does not have any preclusive effect in subsequent litigation between the same parties. *See* Cp. Mot., p. 1. The application of *res judicata*, collateral estoppel and issue preclusion all typically require a final adjudication on the merits. *See Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 335 (1996); *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 77; *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, 2014 IL App (1st) 130302, ¶ 53. A dismissal for lack of jurisdiction is not an adjudication on the merits. *See Nowak v. St. Rita High School*, 197 Ill. 2d 381, 392 (2001); *Lehman v. Continental Health Care, Ltd.*, 240 Ill. App. 3d 795, 802 (1st Dist. 1992) (“Once a court expresses the view that it lacks jurisdiction, the court no longer has the power to rule on any other matter, and any additional finding on the merits carries no *res judicata* or collateral estoppel effect.”); Ill. S. Ct. R. 273.

More importantly, Mohammed’s retaliation claim under the County’s Human Rights Ordinance is not dependent on him being, or having ever been, an employee of Respondent. The Human Rights Ordinance states, in relevant part, that “[n]o *person* shall retaliate against any person because that person in good faith has opposed that which the person reasonably believed to be unlawful discrimination[.]”¹ County Code, § 42-41 (emphasis supplied). Respondent’s status as an “employer” under the ordinance is potentially irrelevant to the pending claim. Even if the Commission’s investigation finds that Mohammed was an independent contractor, as Respondent asserts, this case would still require a hearing on the merits if there was substantial evidence that (1) Mohammed sought to exercise a right protected by the Human Rights Ordinance (*e.g.*, filed a complaint against Respondent with IDHR in good faith that he had been the victim of discrimination); (2) Mohammed suffered adverse treatment that is reasonably likely to deter him or others from engaging in protected activity (*e.g.*, disconnection from or denial of access to the Uber app as a driver or a passenger); and (3) there is a causal connection between the protected activity and the adverse treatment. *See Nugent*, 2015PA002, *10-11.

IDHR’s September 29, 2015 determination against Mohammed’s case pending there does not require the dismissal of his similar complaint pending before the Commission.

B. Respondent’s Motion for Deferral of Investigation

In addition, Respondent notes that Mohammed still has a retaliation claim pending at IDHR based on Respondent’s alleged denial of service to Mohammed as a customer on June 16, 2015. Resp. Mot, p. 3. This complaint appears to have been filed several months prior to the complaint pending at the Commission. *Id.* at Exh. C (IDHR Compl. No. 2016CF0441). And Respondent requests that the Commission defer its investigation in favor of the one already under way at the state agency. *Id.* at 3.

¹ The Human Rights Ordinance defines the term “person” to broadly include corporate entities. *See* County Code, § 42-31.

The Commission's rules permit it to defer investigation of a complaint "when the same Complaint, or a substantially similar Complaint, has been filed by the Complainant with another similar administrative agency." CCHR Pro. R. 440.105. Mohammed does not contend that IDHR Complaint No. 2016CF0441 is substantially different from his complaint pending at the Commission, *see* Cp. Mot., and so the Commission will consider whether to exercise its discretion to defer investigation of this matter.

As Respondent notes, deferring to IDHR's pending investigation would conserve the Commission's administrative resources and would minimize the burden to Respondent of responding to potentially duplicative requests in parallel investigations. Resp. Mot., p. 3 (citing CCHR Pro. R. 440.105(A), (C)). That said, the Commission can minimize this burden to Respondent by coordinating investigation requests with IDHR and requesting information that would be minimally burdensome to Respondent to re-produce in the same form already produced to the state investigators where appropriate. Further, based on Respondent's representation, IDHR does not appear to be dramatically further along in its investigation than the Commission. *See* CCHR Pro. R. 440.105(D). Nor is the Commission laboring under the sizeable backlog that hampered timely investigations in recent years. *See, e.g., Austin v. Cook County*, 2011E022 (Mar. 20, 2014) (deferring to a parallel IDHR investigation because of a significant backlog of cases at the Commission); *see also* CCHR Pro. R. 440105(C), (E).

On balance, the Commission is not inclined to defer this pending investigation in favor of the parallel proceeding at IDHR. The Commission, nonetheless, reserves the right to reconsider this decision at a later date on the motion of a party or its own initiative.

C. Complainant's Abusive Communication with Respondent's Counsel

As an agency charged with ensuring that those who live and work in Cook County are able to do so free from discrimination and harassment, the Commission takes a dim view of the sexist opening sentence of Mohammed's response to Respondent's Motion for Partial Dismissal and For Deferral of Investigation, which personally attacks one of Respondent's attorneys. *See* Cp. Mot., p. 1. Not only are personal attacks against non-parties unpersuasive to this Commission, but gendered insults directed to a female attorney appearing in a matter before the Commission is particularly detrimental to the Commission's mission of creating discrimination- and harassment-free workplaces here in Cook County. *See, e.g., American Bar Association, "First Chairs at Trial: More Women Need Seats at the Table" *14-15 (2015)*, online at http://www.americanbar.org/content/dam/aba/marketing/women/first_chairs2015.authcheckdam.pdf (visited Mar. 16, 2016). Parties that engage in such tactics during litigation have found themselves to be the subject of monetary sanctions in federal court. *See, e.g., Claypole v. County of Monterey*, No. 14-CV-2730, Order Granting Mot. For Sanctions and to Compel Discovery, *7-10 (N.D. Cal. Jan. 12, 2016).

The Commission had hoped that the inappropriate comments in Mohammed's response to Respondent's motion represented an isolated moment of discourtesy by a *pro se* litigant, and that the parties would otherwise be able to conduct themselves with the expected decorum throughout the remainder of the Commission's investigation and adjudication process. But Mohammed compounded his error on March 15, 2015, by blind carbon copying Commission

investigators on several emails to counsel for Respondent in which he called them idiots, liars, scourges to society, shameless creatures and compared them to Adolf Hitler, Saddam Hussein and Muammar Gaddafi. If Mohammed believes that this level of discourtesy and personal animosity towards counsel for Respondent is justified by his alleged mistreatment by their client (or the use of the phrase “abusive litigant” to describe his strategy of filing numerous complaints against the same party with several different agencies and courts), he is incorrect.

The Commission provides a professional government forum for investigating and adjudicating serious claims of discrimination and harassment. That important work must be done in a careful, thoughtful and orderly manner and requires the respectful participation of Commission staff, witnesses, parties and their legal representative. Litigants who wish to use this forum for schoolyard name calling will lose the privilege of access to this Commission and its services. The Commission disfavors sanctioning litigants and resolution of matters on its docket in any other manner than on the merits, but scarce government resources will not be expended in favor of those who do not cooperate in the agency’s investigative and adjudicative processes in civil, respectful and courteous manner.

Mohammed represents that he has filed a complaint against counsel for Respondent with the Attorney Registration and Disciplinary Commission (“ARDC”). The Commission is confident that ARDC will thoroughly investigate Mohammed’s claims and make its final determination as to their merits publicly available. Until then, further *ad hominem* attacks against non-parties in this proceeding will result in dismissal of the above-captioned complaint.

CONCLUSION

For the foregoing reasons, Respondent’s Motion for Partial Dismissal and For Deferral of Investigation is DENIED. Counsel for Respondent is ordered to report to the Commission any communication inconsistent with this order.

March 16, 2016

By delegation:



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