

STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 11 ESE 207

Complainant

v.

DECISION ON MOTION
TO DISMISS

Respondents

INTRODUCTION

On February 10, 2011, _____ (hereafter referred to as the complainant) filed a charge of discrimination with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission) against _____ (hereafter referred to as the respondent). The complainant alleged that the respondent had discriminated against her with respect to terms and conditions of employment, including harassment, suspension and termination of employment because of her sex and in retaliation for opposing unlawful employment practices, in violation of the Fair Employment Practices Act (hereafter referred to as the FEPA), R.I.G.L. Section 28-5-7.

The respondent filed a Motion to Dismiss on May 9, 2011. The complainant filed an objection on May 26, 2011.

BACKGROUND

The respondent moves to dismiss arguing that the complainant had waived any claims against it when she accepted a severance payment and released the respondent of all claims arising out of her employment. The complainant objects, arguing that she did not sign a release at the time she received the severance pay and that when she signed her original contract, she did not waive her right to be treated fairly.

DISCUSSION

When ruling on a motion to dismiss a charge, the Commission considers all allegations in the light most favorable to the complainant. *See, e.g. DiMase v. Fleet Nat'l Bank*, 723 A.2d 765 (R.I. 1999).

THE RIGHT TO FILE A CHARGE WITH THE COMMISSION CANNOT BE WAIVED

In establishing its standards for evaluating discrimination cases, the Commission utilizes the decisions of the Rhode Island Supreme Court, the Commission's prior decisions and decisions of the federal courts interpreting federal civil rights laws. The Rhode Island Supreme Court has utilized federal cases interpreting federal civil rights laws as a guideline for interpreting the FEPA. "In construing these provisions, we have previously stated that this Court will look for guidance to decisions of the federal courts construing Title VII of the Civil Rights Act of 1964. *See Newport Shipyard, Inc.*, 484 A.2d at 897-98." [Center for Behavioral Health, Rhode Island, Inc. v. Barros](#), 710 A.2d 680, 685 (R.I. 1998).

A waiver of the right to file a charge of discrimination is void as against public policy. R.I.G.L. Section 28-5-3 provides as follows:

It is declared to be the public policy of this state to foster the employment of all individuals in this state in accordance with their fullest capacities, regardless of their race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or country of ancestral origin, and to safeguard their right to obtain and hold employment without such discrimination.

R.I.G.L. Section 28-5-4 provides that: "This chapter shall be deemed an exercise of the police power of the state for the protection of the public welfare, prosperity, health, and peace of the people of the state." The above-cited Rhode Island public policy considerations mirror the public policy considerations that have been held to prevent the waiver of the right to file a discrimination charge on the federal level. In [E.E.O.C. v. Cosmair, Inc., L'Oreal Hair Care Div.](#), 821 F.2d 1085, 1090 (5th Cir. 1987), the Court of Appeals held that a waiver of the right to file a charge with the Equal Employment Opportunity Commission (EEOC) was void as against public policy because it would thwart the public interest in the elimination of discrimination. *See also E.E.O.C. v. Frank's Nursery & Crafts, Inc.*, 177 F.3d 448, 456 (6th Cir. 1999) (citing [Cosmair](#) with approval); [E.E.O.C. v. Nuclotron Corp.](#), 563 F. Supp.2d 592, 597 (D. Md. 2008) (a waiver of the right to file a charge of discrimination with the EEOC is unenforceable); 45A AmJur2d Job Discrimination Section 220 (an employee may not waive the right to file a charge with EEOC) and EEOC Enforcement Guidance on Non-waivable Employee Rights under Equal Employment Opportunity Commission (EEOC) Enforced Statutes,

EEOC Notice 915.002, Part III (April 10, 1997) (the right of an individual to file a charge of discrimination with the EEOC is non-waivable).

It is the Commission's statutory responsibility to determine whether discrimination occurred. See R.I.G.L. Sections 28-5-3, 28-5-13, 28-5-16 and 28-5-17. *See also Berthiaume v. School Committee of City of Woonsocket*, 121 R.I. 243, 397 A.2d 889 (R.I. 1979), in which the Court held that the right of substitute school teachers to the minimum salary required by the statute mandating a salary schedule was not waivable, stating that: "It is generally recognized that when a statute creates a private right for the public good, the donee of that private right lacks the power either to waive that right or to nullify it by private contract." 121 R.I. at 250, 397 A.2d at 894. The respondent cites no cases that provide that the right to file a charge with the Commission can be waived. The right to file a charge with the Commission cannot be waived as that would be against public policy.

The Commission has made no finding as to whether the contract bars the complainant from obtaining damages if discrimination is found. That finding requires a final determination on questions of fact. *See, e.g., Guglielmi v. Rhode Island Hospital Trust Finance*, 573 A.2d 687 (R.I. 1990), in which the determination of the validity of a waiver required the analysis of several factual issues and the Older Workers Benefit Protection Act (OWBPA, 29 U.S.C. § 626(f)), which provides that the person asserting the validity of a waiver has the burden to prove that the factual circumstances meet the OWBPA standards. It appears that the complainant did not sign a release at the time that she received the severance payment. The respondent bases its Motion to Dismiss on the contract of employment that the complainant signed at the commencement of her employment with the respondent in 2008, prior to the alleged acts of discrimination. The Commission notes that such prospective waivers have been found to be invalid. *See* 29 U.S.C. Section 626 (f)(1)(C) and *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51, 94 S. Ct. 1011, 1021 (U.S. 1974). In any case, the determination on the factual issues relating to the instant waiver is better addressed at a later stage of the Commission process or in court, if the matter should proceed in court.

ORDER

The respondent's Motion to Dismiss is denied.

Entered this [26th] day of [August], 2011.

_____/S/_____

[Alberto Aponte Cardona, Esq.]
Preliminary Investigating Commissioner