

1/30/12

STATE OF RHODE ISLAND  
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 12 EPD 073

EEOC No. 16J-2011-00394

Complainant

DECISION ON MOTION  
TO DISMISS A PARTY

Respondents

INTRODUCTION

On September 28, 2011, [redacted] (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 [redacted] *alias* [redacted] (hereafter referred to as the respondents). The charge alleged that the respondents discriminated against the complainant with respect to denial of reasonable accommodation and in terms and conditions of employment and termination because of her disability and ancestral origin in violation of the Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island (FEPA) and the Civil Rights of People with Disabilities Act, Title 42, Chapter 87 of the General Laws of Rhode Island (PDA). [redacted] (hereafter the Residence) filed a Motion to Dismiss and a Memorandum in Support on November 23, 2011. The Residence seeks that it be dismissed as a party on the grounds that it is not the complainant's employer.<sup>1</sup> On January 10, 2012, the complainant filed an objection.

DISCUSSION

THE STANDARDS FOR ASSESSING A MOTION TO DISMISS

In determining a motion to dismiss, the Commission will view the complainant's allegations in a light most favorable to the complainant. *See, e.g., DiMase v. Fleet Nat'l Bank*, 723 A.2d 765, 768 (R.I. 1999).

In determining a motion to dismiss based on failure to state a claim, the Commission's role is a limited one. *See Hyatt v. Vill. House Convalescent Home, Inc.*, 880 A.2d 821 (R.I. 2005). In *Hyatt*, the Court determined that dismissal should be granted only when it is clear:

<sup>1</sup> The attorney who filed the Residence's Motion does not purport to represent [redacted] *alias*. However, the Motion states that [redacted] has not been properly identified or served and that the Residence's arguments on the Motion to Dismiss would apply to him.

"that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim." Hendrick, 755 A.2d at 793 (quoting Bruno v. Criterion Holdings, Inc., 736 A.2d 99, 99 (R.I. 1999) and Folan v. State, 723 A.2d 287, 289 (R.I. 1999)); see also Ellis v. Rhode Island Public Transit Authority, 586 A.2d 1055, 1057 (R.I. 1991).

[Footnotes omitted.]

880 A.2d at 825.

#### THE ALLEGATIONS OF THE CHARGE AGAINST THE RESIDENCE ARE SUFFICIENT TO JUSTIFY INVESTIGATION

The charge alleges that the respondents discriminated against the complainant in employment because of her disability and ancestral origin with respect to terms and conditions of employment, including denial of reasonable accommodation, and termination. The charge alleges, among other things, that the respondents imposed an illegal "English only" rule on the complainant, telling her that she could not speak Spanish, even on her break. In her objection, the complainant gives further detail on this allegation, stating that \_\_\_\_\_, *alias*, was an employee of the Residence and that he had imposed the "English only" rule. She also alleges that \_\_\_\_\_, *alias*, controlled her while she was at work. Thus, the charge alleges that the Residence (and \_\_\_\_\_, *alias*) were involved in employment actions which the complainant argues are discriminatory.

The Residence contends that \_\_\_\_\_ was the actual employer of the complainant. The Residence cites case law on the factors to determine whether an entity is an employer and provides evidence in support of its contention that it is not the complainant's employer.

The definition of "employer" contained within Section 28-5-6(7)(i) of the FEPA is as follows: "Employer" includes the state and all political subdivisions of the state and any person in this state employing four (4) or more individuals, and **any person acting in the interest of an employer directly or indirectly.** [Emphasis added.]

R.I.G.L. Section 28-5-7(6) provides in relevant part that it is an unlawful employment practice:

For any person, **whether or not an employer, employment agency, labor organization, or employee**, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to be an unlawful employment practice, or to obstruct or prevent any person from complying with the provisions of this chapter or any order issued pursuant to this chapter, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful employment practice .... [Emphasis added.]

The PDA contains even broader language, providing that any person or entity doing business in the state of Rhode Island is a proper respondent under the PDA. See R.I.G.L. Section 42-87-2.

Court cases interpreting state laws with language similar to R.I.G.L. Section 28-5-7(6) have held non-employers liable for discrimination. *See, e.g., Sgrignoli v. Schneider Training Academy, Inc.*, 2009 WL 1069163 (M.D.Pa. 2009) (where the prospective direct employer decided not to hire the plaintiff based on guidelines as interpreted by the parent company, the plaintiff could proceed with the claim that the parent company aided and abetted disability discrimination under state law); *Edwards v. New Opportunities, Inc.*, 2007 WL 947996 (D. Conn. 2007) (complaint for ancestral origin discrimination under Connecticut law would not be dismissed against an individual defendant who was employed by a company other than the complainant's employer as the plaintiff alleged that the individual defendant aided, abetted and incited ancestral origin discrimination against the plaintiff); *Cronin v. Hall Street Cold Storage Warehouses, Inc.*, 1997 WL 720753 (E.D.N.Y. 1997) (summary judgment denied in plaintiff's age discrimination complaint against an individual who was considering buying the plaintiff's employer because the plaintiff submitted sufficient evidence that the individual aided, abetted and incited age discrimination); *Colorado Civil Rights Com'n v. Travelers Ins. Co.*, 759 P.2d 1358 (Colo. 1988) (state commission's finding of discrimination against an insurance company which provided a discriminatory insurance policy to the plaintiff's employer upheld as the insurance company aided and abetted the employer's discrimination).

The plain language of the FEPA and relevant case law make clear that R.I.G.L. Section 28-5-7(6) prohibits non-employers from aiding, abetting or inciting unlawful employment practices. The plain language of the FEPA defines an employer to include any person acting in the interest of an employer. The PDA covers anyone doing business in Rhode Island whether they are employers or not.

The Residence will not be dismissed as a respondent because the charge, interpreted favorably to the complainant, alleges that the Residence violated the FEPA and the PDA. The Commission cannot at this point determine whether or not the Residence was the complainant's employer. Even if the Residence was not the complainant's employer, the Commission cannot at this point determine whether the Residence had a role in the alleged discriminatory actions and/or the policies that are alleged to be discriminatory. The Commission emphasizes that it is not finding at this point that the Residence has discriminated; it is simply finding that investigation of the allegations can proceed. At the end of the investigation, the Commission will determine whether or not there is probable cause to believe the allegations of the charge with respect to the Residence.

### CONCLUSION

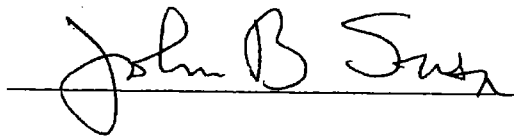
The Commission has assessed the allegations of the charge, in light of the standards for motions to dismiss, and finds that the allegations are sufficient to proceed with investigation. At the conclusion of the investigation, the Commission will determine whether or not there is probable

cause to believe the allegations of the charge with respect to the Residence.<sup>2</sup>

**ORDER**

The Residence's motion to dismiss it as a party is denied.

Entered this 30 day of January, 2012.

A handwritten signature in black ink, appearing to read "John B. Suss", is written over a horizontal line.

Preliminary Investigating Commissioner

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<sup>2</sup> To the extent that the Residence's Motion is an argument that the charge be dismissed against ... , *alias*, the Commission also denies the Motion with respect to him.