

2/12/12

STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 12 ESE 101

Complainant

v.

DECISION ON MOTION
TO DISMISS

Respondents

INTRODUCTION

On October 31, 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 _____

_____ *alias* (hereafter referred to as the Respondents).

The Complainant alleged that the Respondents had discriminated against her with respect to terms and conditions of employment and termination of employment because of her sex, in violation of the Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island (hereafter referred to as the FEPA).

The Respondents filed a Motion to Dismiss the charge on January 23, 2012. The Complainant filed an objection on June 6, 2012. The Respondents filed a reply to the Complainant's Objection on June 21, 2012.

BACKGROUND

The Respondents move to dismiss the charge, arguing that the Complainant had waived any claims against them when she accepted a check for \$200 and released the Respondents from all claims arising out of her employment. The Complainant objects, arguing among other things, that the Respondents misled her as to the terms of the release, that she had a different understanding than the Respondents as to the reason for the check and that the Respondents gave her insufficient time to review the release before signing it.

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 U.S. 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. Nucletron 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).

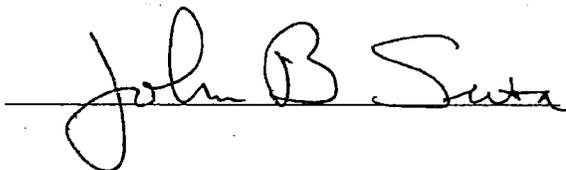
It is the Commission's statutory responsibility to determine whether discrimination occurred. See R.I.G.L. Sections 28-5-3, 28-5-13, 28-5-16 and 28-5-17. See also Berthiaume v. School Committee of the City of Woonsocket, 121 R.I. 243, 397 A.2d 889 (R.I. 1979), in which the Court held that the right of 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 Respondents cite 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, Takian v. Rafaelian, ___ A.3d ___, 2012 WL 2550475 (R.I. June 29, 2012) (case remanded for jury determination of factual issues related to the validity of a release; the trial court erred in making factual determinations on a motion for summary judgment when the business experience of the defendants and the question as to whether the release had been obtained by misrepresentation were contested 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. The determination on the factual issues relating to the instant release is better addressed at a later stage of the Commission proceedings or in court, if the matter should proceed in court.

ORDER

The Respondents' Motion to Dismiss is denied.

Entered this 12th day of July, 2012.



Preliminary Investigating Commissioner