

STATE OF RHODE ISLAND  
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 18 ESE 212

EEOC No. 16J-2018-00129

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Complainant

v.

DECISION ON MOTIONS  
TO DISMISS

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Respondents

INTRODUCTION

On February 15, 2018, \_\_\_\_\_ (“Complainant”) filed a charge of discrimination with the Rhode Island Commission for Human Rights (“Commission”) against \_\_\_\_\_ (“Respondents”). The charge alleged that the Respondents subjected the Complainant to a discriminatory work environment and discriminatory treatment because of her sex. The Complainant alleged employment discrimination in violation of the Rhode Island Fair Employment Practices Act (Title 28, Chapter 5 of the General Laws of Rhode Island) (“FEPA”).

On March 21, 2018, Respondent \_\_\_\_\_ filed a Motion to Dismiss and a Memorandum in Support arguing that the Respondent was not properly named and that the Commission lacked jurisdiction over the charge. On April 2, 2018, Respondent \_\_\_\_\_ filed a Motion to Dismiss and a Memorandum in Support also arguing that the Commission had no jurisdiction over the charge. In addition, Respondent \_\_\_\_\_ argued that the Complainant’s allegations did not state the claim of sexual harassment. The Complainant did not file an objection.

STANDARD OF REVIEW

In ruling on 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). “We thus are confined to the four corners of the complaint and must assume all allegations are true, resolving any doubts in [complainant’s] favor.” *DiLibero v. Mortg. Electronic Registration Sys., Inc.*, 108 A.3d 1013, 1015 (R.I. 2015) (citing *Narragansett Electric Co. v. Minardi*, 21 A.3d 274, 278 (R.I. 2011)). “A motion to dismiss may be granted only ‘if it appears beyond a reasonable doubt that a [complainant] would not be entitled to relief under any conceivable set of facts [.]’” *Id.* (internal quotations omitted).

### DISCUSSION

The main argument of both Respondents is that they employ fewer than four employees and thus they are not "employers" as defined under the FEPA. The FEPA defines "employer" in relevant part 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...." R.I. Gen. Laws § 28-5-6(8)(i). The issue of how many individuals a respondent employs, if any, is a question of fact and therefore is an issue that should be investigated, rather than decided upon the instant Motions. The question of whether Respondent's alleged conduct, if it occurred, was motivated in whole or in part by the Complainant's sex is also a question of fact. The Commission process is distinguishable from the judicial process in that the Commission has the authority to initiate a preliminary investigation when a charge is filed and to seek evidence in addition to that provided by the parties. *See* R.I. Gen. Laws §§ 28-5-17 and 28-5-13(7). During investigation, the Commission will consider all of the arguments raised by the Respondents in their Motions to Dismiss. The Commission will administratively close the charge if the evidence gathered establishes that it lacks jurisdiction.

### ORDER

The Respondents' Motions to Dismiss the charge prior to investigation are hereby denied.

Entered this 14<sup>th</sup> day of September, 2018.

Cynthia M. Hiatt

Cynthia M. Hiatt  
Preliminary Investigating Commissioner