

STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 17 ERA 320

EEOC NO. 16J-2017-00226

In the matter of

Danya M. McLaughlin
Complainant

against

DECISION AND ORDER

R.I. Billiard Club, Inc. and
Anthony Costanzo, alias
Respondents

INTRODUCTION

On June 19, 2017, Danya M. McLaughlin (hereafter referred to as the Complainant) filed a charge against R.I. Billiard Bar and Bistro with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission). On July 13, 2018, the Complainant amended her charge to name R.I. Billiard Club, Inc. and Anthony Costanzo, alias (hereafter collectively referred to as the Respondents) as the alleged discriminatory actors. The amended charge alleged that the Respondents subjected the Complainant to discriminatory terms and conditions of employment and termination because of her race and color, in violation of the Rhode Island Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island (hereafter referred to as the FEPA). This charge was investigated. On July 13, 2018, Preliminary Investigating Commissioner John B. Susa assessed the information gathered by a staff investigator and ruled that there was probable cause to believe that the Respondents violated the FEPA as alleged. On March 1, 2019, a Complaint and Notice of Hearing issued. The Complaint alleged that the Respondents subjected the Complainant to discriminatory terms and conditions of employment and termination because of her race and color. On May 6, 2019, the Commission received the Respondents' Answer to the Complaint.

A hearing on the Complaint was held on September 10, 2019 before Commissioner Cynthia M. Hiatt. The hearing commenced at 9:20 A.M. The Complainant was not present, and the hearing proceeded in her absence. The Respondents presented evidence at the hearing. The hearing recessed at 9:33 A.M. and the respondents left the Commission's office. The Complainant arrived at the Commission at 9:38 A.M. and the hearing resumed at 9:39 A.M. Commissioner Hiatt informed the Complainant that she would be given the opportunity to submit a letter to the Commission explaining why she was not present for the start of the hearing and to provide a justification for her tardiness. Commissioner Hiatt informed the Complainant, further, that the Commission would review her letter and decide whether her justification was sufficient to reopen the hearing. The Complainant was told she would have two weeks to submit the letter. The Commission did not

receive such a letter from the Complainant.

JURISDICTION

At the time in question, R.I. Billiard Club, Inc. was a business that employed four or more employees within the state of Rhode Island and thus it was an employer as defined in R.I. Gen. Laws § 28-5-6(8)(i) and is subject to the jurisdiction of the Commission.

At the time in question, Anthony Costanzo, alias (hereafter referred to as Mr. Costanzo), was an owner of the R.I. Billiard Club, Inc. and is subject to the jurisdiction of the Commission.

FINDINGS OF FACT

1. The Complainant received notice of the scheduled hearing date. The Complaint and Notice of Hearing were sent to the Complainant by regular and certified mail. The Notice of Hearing listed the start time of the hearing as 9:00 A.M. The certified mail sent to the Complainant was returned unclaimed. The regular mail sent to the Complainant was not returned. The Complainant arrived at the Commission on the day of the hearing but was late.
2. The Complainant did not appear at the commencement of the hearing on September 10, 2019. Hearing Transcript, September 10, 2019 (Trans.) 3:15-18. The hearing recessed at 9:33 A.M. and the respondents left the Commission's office. Trans. 10:24. The hearing was resumed after the Complainant arrived and the Complainant was informed that the hearing had proceeded in her absence. Trans. 11:1-16. The Complainant was told that she would be given the opportunity to submit a letter to the Commission explaining why she was not present at the start of the hearing and to provide a justification for her tardiness. Trans. 11:17-24. The Complainant was told, further, that the Commission would review her letter and decide whether her justification was sufficient to reopen the hearing. Trans. 11:24, 12:1-3, 18-20. The Complainant was told she would have two weeks to submit the letter and that if the Commission did not receive such a letter, or if the Complainant's justification was not reason enough to reopen the hearing, the Commission would proceed with the evidence on the record. Trans. 12:3-16, 21-24, 13:1-4.
3. The Commission did not receive a letter from the Complainant justifying her failure to be present for the start of the hearing.
4. At the time the Complainant was hired, she was told that, due to the length of her hair, she would be required to keep it in a bun. Trans. 6:22-24, 7:1.
5. On the second or third day of the Complainant's employment, her hair was not kept in a bun. Trans. 7:1-7; Exhibit (Ex.) A.
6. At some point during her employment, the Complainant's hair was not kept in a bun and she was told by Mr. Costanzo that it would need to be kept in a bun for health code reasons.

The Complainant then told Mr. Costanzo he was a racist, used bad language and stormed out of the building. Trans. 7:13-16; Ex. B; Ex. C; Ex. D.

CONCLUSIONS OF LAW

The Complainant has failed to prosecute her case and it was not proved by a preponderance of the evidence that the Respondents discriminated against the Complainant as alleged in the Complaint.

DISCUSSION

The Complainant did not appear at the start of the hearing scheduled for September 10, 2019 and failed to prosecute her case. The Complainant failed to justify her absence and thus the Commission decides the case based on the record before it. The evidence does not establish by a preponderance of the evidence that the Respondents discriminated against the Complainant as alleged in the Complaint.

ORDER

Having reviewed the evidence presented on September 10, 2019, the Commission, with the authority granted it under R.I. Gen. Laws § 28-5-25, finds that the Complainant has failed to prove the allegations of the Complaint and hereby dismisses the Complaint

Entered this 2nd day of JANUARY, 2020.

Cynthia M. Hiatt
Cynthia M. Hiatt
Hearing Officer

I have read the record and concur in the judgment.

Rochelle Bates Lee
Rochelle Bates Lee
Commissioner

Angelyne E. Cooper
Angelyne E. Cooper
Commissioner