

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

May 31, 2013

A meeting of the Commission for Human Rights was held on Friday, May 31, 2013 in the agency conference room. Present at the meeting were Commissioners John B. Susa, Chair, Iraida Williams, Nancy Kolman Ventrone, Rochelle Bates Lee and Alberto Aponte Cardona. Commissioners Alton W. Wiley, Jr., and Camille Vella-Wilkinson were not present. The meeting commenced at 9:35 a.m.

Michael D. Evora, Executive Director had reviewed and approved the minutes of the Commission meeting held on March 29, 2013. The Commissioners reviewed the minutes and reported no amendments. The motion was made by Commissioner Williams to accept the minutes. The motion was seconded by Commissioner Ventrone and carried.

Status Report of Michael D. Evora, Executive Director Reported by Cynthia Hiatt, Legal Counsel

A written report was handed out. All new information is in bold print.

Case Production Report – Attached

Aged Case Report – No aged cases to report.

Outreach Report – attached

STATUS REPORT – COMMISSIONERS

STATUS REPORT: Commissioner re-appointments still have not been made as of yet.

OUTREACH: No report at this time.

Commissioner Meeting -2- May 31, 2013

CAMERAS IN HEARINGS

The Commissioners discussed the Commission's policy on Cameras in the hearing room during administrative hearings. Commissioner Ventrone moved that the Commission follow the Rhode Island Court Rules on Media Access. The motion was seconded by Commissioner Williams and carried unanimously. The Commissioners directed the staff to research court/agency rules and policies on taping/recording

at Commission proceedings by individuals who are not members of the media.

Commissioner Lee entered the meeting at this time.

STATUS REPORT – LEGAL COUNSEL by Cynthia Hiatt and Francis Gaschen

LITIGATION: Report Attached. Discussion of pending litigation in which the Commission has a role.

Commissioner Aponte Cardona entered the meeting at this time.

LEGISLATION: Commissioners and staff discussed pending legislation.

Legal Counsel gave thanks to Commissioner Vella-Wilkinson, Michael Evora and Frank Gaschen for their efforts and hard work on the Equal Marriage Bill.

REGULATIONS: Status of pending regulations discussed.

HEARING SCHEDULE: Discussed

DECISIONS: Commissioners Susa, Lee and Williams discussed Gulley v.

National Wholesale Liquidators. They found that the Complainant proved that

the Respondent discriminated against her because of her sex and retaliated against

her for opposing unlawful employment practices. They found that the

Complainant did not prove that the Respondent discriminated against her for

filing a previous charge of discrimination. They determined that she should be

awarded back pay and compensatory damages. A written decision will issue.

Commissioner Meeting -3- May 31, 2013

Commissioners Susa, Lee and Aponte Cardona discussed the question of an

award of attorney's fees and additional damages in the case of Korsak v. Frigault.

They decided to award attorney's fees and additional damages. A written decision will issue.

Commissioners Susa, Aponte Cardona and Ventrone began discussion of a decision in Yangambi v. Providence School Board. They decided to continue the discussion at a special meeting on June 19, 2013 at 2 p.m.

The meeting adjourned at 11:12 a.m. The next regular meeting will be on Friday, June 21, 2013 at 9:30 a.m.

Respectfully Submitted,

**Cynthia M. Hiatt
Legal Counsel**

Notes taken by B. Ross

**EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
31 May 2013**

I. BUDGET

S = State/General Revenue; F = Federal (EEOC/HUD); T = Total

FY 2013 (Enacted)	FY 2013 (Rev. Req.)	FY 2013 (Supp.)	FY 2014 (Unconstr.)	FY 2014 (Constr.)	FY 2014 (Recomm.)
S 1,137,768	1,137,768	1,133,129	1,192,069	1,121,778	1,150,785
F 325,992	306,689	306,688	258,638	301,405	308,638
T 1,463,760	1,444,457	1,439,817	1,450,707	1,423,183	1,459,423

The Commission's FY 13 (Revised) and FY 14 (Proposed) Budgets were submitted to the Governor on September 25. The submission included a Budget Impact Statement detailing the consequences to be realized should the seven percent general revenue decrease requested of all state agencies be implemented for the Commission [see Constrained Budget above]. On November 2, I met with representatives of the Budget Office to discuss the Office's pending

recommendation to the Governor. On January 22, a bill was introduced which included the above supplemental budget for FY 13 and recommended budget for FY 14. The bill included authorization for the Commission's full 14.5 FTEs for FY 14.

On February 27, I attended the Senate Finance Committee's hearing on the Commission's FY13 and FY14 budgets. On March 13, I attended the hearing on the Commission's FY13 and FY14 budgets before the General Government Subcommittee of House Finance. Both Committees seemed to respond favorably to the Governor's budget recommendation.

II. FEDERAL CONTRACTS

EEOC – For federal FY 2012 (beginning October 1, 2011), according to EEOC Project Director Marlene Toribio, we closed 237 co-filed cases.

Our contract with EEOC for FY 2012 was for 235 cases. For federal FY 2013 (beginning October 1, 2012), we have closed 115 co-filed cases. Our contract with EEOC for FY13, received on May 13, is for 199 cases. EEOC Headquarters has explained that all FEPA contracts were unilaterally reduced by 16% this year. Two factors are cited for this reduction: 1) EEOC's FY13 budget started at 91%; 2) the federal sequestration caused another 7% reduction in EEOC funding. We must close an additional 84 cases by September 30 to meet the contract.

HUD – For FY 12, according to HUD Project Director Angela Lovegrove, we took in 40 new housing charges, 37 of which were co-filed with HUD. Within this same time period, we processed 45 housing charges, 43 of which were co-filed with HUD. For FY13 (beginning July 1, 2012), we have taken in 43 new housing charges, all of which are co-filed with HUD. Within this same time period, we have processed 37 cases, 35 of which were co-filed with HUD.

III. PERSONNEL

No new information.

IV. OUTREACH – Refer to attached report.

V. GENERAL STATUS

●Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.

●Case Closures – Refer to attached report.

We ended FY 2012 slightly behind the prior fiscal year's case processing rate. In FY 2011, we processed 422 cases; in FY 2012, we processed 411 cases (approx. 3.5% decrease). For FY13 (as of April 30, 2013), we have processed 315 cases (compare to 323 cases in this same time period in FY12).

●Aged Cases – There are no aged cases in the Commission’s inventory for federal fiscal year 2013 (beginning October 1, 2012).

●Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 1998. We ended FY 11 with 323 cases in inventory, and FY 12 with 255 cases. As of 5/15/13, we had a total of 267 cases in inventory; 17 of these cases were pending assignment. These 17 cases were assigned on May 17.

●Performance Management Initiative – On February 1, I met with the Governor’s Performance Management Team to discuss the Commission’s agreed-upon performance goals. The Team noted that the Commission is one of the only state agencies that consistently complies with the Performance Management Directive in a complete/timely manner. These meetings will occur quarterly. The next scheduled meeting is for June 14, 2013.

●HUD Fair Housing Month Event – HUD, the Commission and the Anti-Defamation League of New England cosponsored a Fair Housing Month event at the Touro Synagogue and Colony House in Newport on April 10, 2013. The event, from 1:00 to 4:00 p.m., featured keynotes and a panel presentation. HUD provided special/additional funds to the Commission to facilitate the planning of this event.

Respectfully submitted,

Michael D. Évora
Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: May 31, 2013

Recent developments are in bold.

Babbitt v. Crescent Park Manor, et al.

The Commission intervened as a party plaintiff in this case. Awaiting a trial date from court.

Bagnall v. RICHR and WLWC et al.

The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. On April 22, 2008, the complainant's attorney filed his brief. The Commission's Brief was filed on August 27, 2008. The Commission received the respondent's brief on December 5, 2008. In November 2010, the complainant filed a stipulation to assign the appeal for a written decision by the Superior Court. The appeal was assigned to Justice Netti Vogel.

Benitez v. Pyramid Case Company, Reynar Vazquez, Mario Meletz,

Blanca Cruz and the R.I. Commission for Human Rights

In December 2012, the Commission issued a Decision that found that the Complainant did not prove that the Respondents discriminated against her with respect to ancestral origin discrimination or retaliation. The Complainant's attorney appealed. The Commission filed the administrative record in February 2013. The parties have been stipulating to dates for filing memoranda. The Complainant's attorney requested new stipulations on the dates and Respondents' attorney and the Commission have agreed. The Complainant's attorney plans to request another new stipulation on dates for filing, so the due dates for the memoranda are currently unknown.

BHDDH (MHRH) v. RICHR and the Estate of Dr. John Satti

BHDDH appealed the Commission decision that BHDDH retaliated against Dr. Satti and discriminated against him on the basis of his age. BHDDH filed its Brief on August 7, 2008. On October 21, 2008, the Commission filed the administrative record. On January 14, 2009, the Commission filed its brief. The complainant's brief was filed on April 19, 2012. On June 20, 2012, the appeal was assigned to Judge Daniel Proccaccini.

Bucci v. Hurd Buick Pontiac GMC Truck LLC et al

In this case, the Superior Court granted summary judgment to the employer even though the employer had given inconsistent reasons for the employee's termination and there was evidence that impaired the employer's credibility. The briefs for the Plaintiff (and the

Commission) were due January 31, 2013. The Plaintiff requested an extension. The Commission moved to file an amicus brief and conditionally filed the amicus brief on January 31, 2013. On March 4, 2013, the Plaintiff filed her Brief and Appendix. On March 19, 2013, the Commission moved to file an amended amicus brief and conditionally filed the amended brief. The Commission moved to file an amended brief so that the Commission's discussion of the evidence in the Brief could contain references to the Plaintiff's Appendix which contained the critical materials submitted to the Superior Court. The Motion to file an Amended Brief was granted. The Defendants' brief will be due June 14, 2013.

K_____ v. N_____

A complainant at the Commission also had pending Workers' Compensation cases. The respondent's attorney on the Workers' Compensation cases subpoenaed documents from the Commission file. The Commission objected. The respondent's attorney on the Workers' Compensation case moved to compel production. The Commission objected on the grounds of law enforcement privilege – that documents from a pending investigation can be determined to be privileged if production would interfere with the investigation. Counsel for the Commission and the attorney for the respondent on the Workers' Compensation case agreed that certain documents would be produced and others would not, but disagreed as to whether the complainant's statements needed to be produced. On March 27, 2013, Workers' Compensation Judge Janette Bertness

ruled that the Commission must produce the complainant's statements, holding that their production would not impede the Commission investigation. The documents were produced.

Medeiros v. R & D Roofing and Roger Pratas

The Commission found for the Complainant in this case. He filed a Petition to Enforce the Commission Order. Respondent Pratas appeared and Judge Carnes continued the matter until 11-13-12 to allow Mr. Pratas to obtain legal counsel. Mr. Pratas has told the Complainant's attorney that he has no assets.

RICHR (Grimes) v. Graul, et al.

A complaint alleging familial discrimination was filed in Kent County Superior Court.

RICHR (Lovegrove) v. Escolastico

A Rhode Island judgment was obtained and sent to a Florida lawyer for collection. Counsel is waiting for Ms. Lovegrove to forward funds to the Florida counsel to begin Supplementary Proceedings against Mr. Escolastico.

RICHR (Martin) v. Cardinale, et al.

A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act was filed against Norman Cardinale, et al.

RICHR (Martin) v. Cardinale, et al.

A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act was filed against defendants. An offer of \$2500 was made to the plaintiff to settle all of the claims.

RICHR (Morin) v. Teofilo Silva, et al.

A complaint for enforcement was filed on 3-24-05. Service of the complaint will be made once respondent can be located.

RICHR (Oliveira) v. Furniture Warehouse, et al.

A Petition to Enforce was filed in December 2012. Service has been made on most of the defendants. Collection efforts continuing.

RICHR (Pellerano) v. Kuznetsov

A complaint was filed to enforce the May, 2012 Decision of the Commission. The petition for enforcement was granted. Collection efforts continuing.

RICHR (Wright) v. New Canonchet Cliffs, et al.

A complaint alleging failure to give a reasonable accommodation regarding a support animal was filed in Washington County Superior Court. Case settled, pending approval of respondents' board.

RICHR v. McElroy

This case was filed in the Providence County Superior Court to

enforce a negotiated settlement. Collection efforts continuing.

RICHR (Zeigler) v. Laura Sitrin, Finance Dir. of Newport

The case is resolved. The Commission will annually monitor City training. Training was completed for 2013.

T.G.I. Fridays (Carlson Restaurants) v. Selvidio and Évora

Payment of a settlement was made to the complainant. The respondent has represented that it has complied with the training and posting parts of the Decision and will be sending the Commission confirmation on the training. Waiting for confirmation of training.

Weeks v. 735 Putnam Pike

A Superior Court judge ruled that the plaintiff in this discrimination case must proceed in arbitration rather than in Superior Court. The Judge based her decision on the fact that the complainant was a member of a union which had a collective bargaining agreement with the employer. While the U.S. Supreme Court has held that a plaintiff is limited to arbitration if a collective bargaining agreement specifically provides that statutory discrimination claims must be arbitrated, the collective bargaining agreement in this case did not specifically require that statutory discrimination cases be subject to arbitration. The Superior Court's decision appears to contradict U.S. Supreme Court precedent. The plaintiff has appealed the case to the R.I. Supreme Court. The parties have filed their 12A memos. If the case proceeds to full argument, the Commission may want to file an

amicus brief.