

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SOUNDARA RAJAN,

COMPLAINANT,

V.

DOCKET NO. EC-170-74

WV COLLEGE OF GRADUATE  
STUDIES, ET AL.

RESPONDENTS.

ORDER

On the 18<sup>th</sup> day of July, 1985, the Commission reviewed Hearing Examiner James Gerl's Findings of Fact and Conclusions of law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order.

The Commission hereby ORDERS that this case be dismissed and that the Complainant take naught.

By this Order, a copy of which to be sent by certified mail, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 18<sup>th</sup> day of July, 1985.

RESPECTFULLY SUBMITTED,

  
\_\_\_\_\_  
RUSSELL VAN CLEVE  
CHAIRPERSON, WV HUMAN RIGHTS  
COMMISSION

STATE OF WEST VIRGINIA  
HUMAN RIGHTS COMMISSION

**RECEIVED**

JUN 28 1985

W.V. HUMAN RIGHTS COMM.  
*[Signature]*

SOUNDARA RAJAN,

COMPLAINANT,

V.

DOCKET NO. EC-170-74

WV COLLEGE OF GRADUATE STUDIES, et al

RESPONDENTS.

PROPOSED ORDER AND DECISION

A hearing was convened for this matter on June 17, 1985 in Charleston, WV. The complaint was filed on June 10, 1974. A Status Conference was held on January 9, 1985.

At hearing, counsel for respondent moved to dismiss for failure to state a cause of action and for failure to proceed. Although the portion of the Motion based upon failure to state a cause of action was expressly denied, the portion of the Motion based upon failure to proceed was granted at hearing, and such ruling is incorporated by reference herein.

FINDINGS OF FACT

1. On December 13, 1984, the Human Rights Commission received a letter from complainant stating that he would return to the United States in June, 1985 unless the Commission would pay his air fare before then.

2. Because complainant was out of the country, the Hearing Examiner set an unusually distant hearing date of June 17-19, 1985 at the Status Conference convened on January 9, 1985.

3. On January 16, 1985, counsel for the Human Rights Commission sent complainant a letter notifying him of the hearing date and various deadlines established at the Status Conference and instructing complainant to contact the Commission or the Hearing Examiner no later than February 4, 1985 to state whether he intended to participate and when he would return to the United States.

4. The next communication from complainant to the Commission was a letter received on June 10, 1985 which requested that the hearing be postponed until September, 1986.

5. All other efforts by counsel for the Commission to contact complainant and his relatives in the United States were unsuccessful.

6. Complainant failed to appear at the duly scheduled hearing convened on June 17, 1985. At no time did complainant contact the Hearing Examiner to request that he be excused from

attending the hearing.

7. In 1979, this matter was set for hearing but had to be continued because complainant had left the country approximately one week before hearing.

#### CONCLUSION OF LAW

1. Complainant has failed to diligently prosecute his complaint and said complaint should be dismissed.

#### DISCUSSION

Complainant has failed to diligently prosecute his complaint. Firstly, he failed to appear at the duly scheduled hearing for this matter. Complainant never attempted to contact the Hearing Examiner to request that he be excused from attending the hearing. Complainant's only explanation for his failure to appear was his vague statement in his letter received by the Commission only one week before hearing regarding certain unspecified family problems. Such unexcused failure to appear warrants dismissal. Emergency Rules Pertaining to Practice and Procedure Before the West Virginia Human Rights Commission, Rules 7.06(a)(3), 7.06(a)(1).

Secondly, counsel for the Human Rights Commission has made a diligent effort to communicate with complainant, but complainant failed to respond to counsel's February 4, 1985 deadline. Indeed, complainant did not contact counsel until

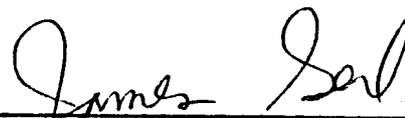
one week before hearing and at that time asked for a 15 month continuance without specifying the reason that might justify such an extraordinarily lengthy continuance. Such failure to cooperate with counsel also warrants dismissal. Emergency Rules Pertaining to Practice and Procedure Before the West Virginia Human Rights Commission, Rule 3.10(b)(3).

Because of complainant's absence from the country at the Status Conference convened on January 9, 1985 and because of complainant's assertion that he would not return to the United States until June, the date selected for hearing was not until June, 1985. Despite this accomodation, complainant chose not to attend the hearing. Moreover, this was not the first time that complainant was absent from the country for a hearing. A similar problem arose in 1979. It is clear from the pattern of complainant's conduct that he has not diligently prosecuted his complaint. A complainant has a duty, once he files a complaint, to exercise diligence in bringing that complaint to resolution. Failure to do so is inexcusable.

Because complainant has failed to appear at a duly scheduled hearing, because complainant has failed to cooperate with counsel for the Commission, and because complainant has not exercised due diligence in prosecuting his complaint, justice requires that his complaint be dismissed.

PROPOSED ORDER

In view of the foregoing, the Hearing Examiner hereby recommends that the Commission dismiss the complaint in this matter, with prejudice.



---

James Gerl  
Hearing Examiner

ENTERED: \_\_\_\_\_

6/27/85

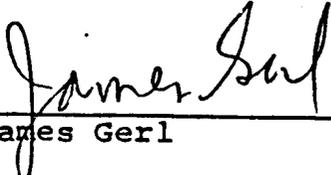
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served  
the foregoing **PROPOSED ORDER AND DECISION**  
by placing true and correct copies thereof in the United States  
Mail, postage prepaid, addressed to the following:

John Richardson  
Human Rights Commission  
1036 Quarrier Street  
Charleston, WV 25301

Ann V. Gordon  
Assistant A. G.  
950 Kanawha Blvd.  
Charleston, WV 25301

on this 27th day of June, 1985.

  
\_\_\_\_\_  
James Gerl