

Respondent, Bethesda Dance Studio, through its reported owner, W.P. Hendricken, Inc., and its attorneys, notified this office that W.P. Hendricken, Inc. had filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Maryland (Case No. 05-26178). The Hearing Examiner was served with notice of the Bankruptcy filing the same day, as was the Complainant's counsel. Based on the "automatic stay" provision of 11 U.S.C. §362, which was referenced in the notice of bankruptcy filing, the Hearing Examiner removed the case from the calendar and issued an order on July 21, 2005, staying the matter (Exhibit 34). The matter remained stayed on OZAH's docket since then because neither side informed this office that the Bankruptcy Court's stay had been lifted.

Two attorneys, Mark R. Millstein, Esquire, and David M. Silbiger, Esquire, have entered appearances on behalf of Complainant in this case. On October 9, 2013, the Hearing Examiner sent a letter (Exhibit 47) to attorneys Millstein and Hammerschmidt seeking an update on the status of the Bankruptcy proceedings involving the Respondent in the above-captioned matter. No response was received from counsel, but Mr. Hendricken responded directly with a letter dated October 31, 2013 (Exhibit 48), indicating that, on March 30, 2010, the Bankruptcy Court entered a final decree closing the W.P. Hendricken, Inc. (Bethesda Dance Studio) Chapter 7 case. He also attached a copy of the Bankruptcy court's Final Decree (Exhibit 48(a)) and stated, ". . . As a result of the chapter 7 filing, W.P. Hendricken, Inc. (Bethesda Dance Studio) ceased to exist and its assets have been fully administered."

In spite of the apparent closing of the bankruptcy case in March of 2010 (*i.e.*, more than three years ago), neither of Complainant's attorneys notified this office of that fact, nor indicated a desire by Complainant to reactivate the Human Rights complaint.

The fact that the Complainant had not notified this office of the completion of the Bankruptcy case for more than three years after its final decree was issued caused the Hearing

Examiner to issue an Order on November 19, 2013, directing the Complainant to show cause, in a writing filed no later than December 19, 2013, why the Hearing Examiner should not issue a report to the Case Review Board of the Human Rights Commission recommending that the above-captioned case be dismissed for failure to prosecute. Exhibit 49. Copies of that order were forwarded to Complainant, at her last known address, as well as to both of her attorneys of record, Mark R. Millstein, Esquire and David M. Silbiger, Esquire. Additional copies were forwarded to William P. Hendricken, as well as to his former bankruptcy attorney, James R. Hammerschmidt, Esquire, and to the Office of Human Rights.

Despite the December 19, 2013 deadline listed in the November 19, 2013 Show Cause Order, no response has been received from the Complainant or her attorneys as of the date of this Report (January 9, 2014). This case cannot remain idle on OZAH's docket forever, and Complainant was obliged to pursue her case with due diligence. Based on this record, the Hearing Examiner finds and concludes that the Complainant has chosen not to pursue this claim or has failed to diligently prosecute it. Given these circumstances, a formal hearing cannot be fairly conducted. Therefore, the Hearing Examiner accepts all previously filed documents into the administrative record and hereby closes the record.

The inherent authority of courts to manage their dockets and to prevent cases from remaining unresolved indefinitely has been recognized both on the state and federal levels. *See, e.g., Zdravkovich v. Siegert*, 151 Md. App. 295, 824 A.2d 1051 (2003) and *Link v. Wabash R.R. Co.*, 370 U.S. 626, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962).

The Human Rights Act provides, in Montgomery County Code Sec. 27-7(h):

(h) Hearings. The hearing must be conducted by the Commission case review board or a hearing examiner according to Sections 2A-1 to 2A-11 [i.e., in accordance with the Montgomery County Administrative Procedures Act (MCAPA)], this Chapter, and Commission rules.

The Human Rights Commission Rules of Procedure, COMCOR 27.02.01.05.3, echo the

Act's reference to the MCAPA:

5.3 A hearing before the hearing examiner or before the designated Case Review Board must be conducted according to Sections 2A-1 to 2A-11 of the Code, the statute and these Regulations.

Section 2A-8(j) of the Montgomery County Administrative Procedures Act (MCAPA) provides:

(j) Sanctions. The hearing authority may impose sanctions against parties and witnesses for failure to abide by the provisions of this article, or for unexcused delays or obstructions to the pre-hearing and hearing process. Such sanctions may include suspension or continuance of scheduled hearings, dismissals of actions, denial of admission of documents and exhibits and admission of matters as adverse to a defaulting party. [Emphasis added.]

The MCAPA, as applied through the Human Rights Act and the Commission's Rules of Procedure, gives the Commission's Case Review Board the same authority as the courts to dismiss claims for unexcused delays and obstructions of the hearing process. Under the MCAPA, a failure to prosecute resulting in delays of the pre-hearing or hearing process is clearly a basis for final dismissal of the complaint.

Based on this record, the Hearing Examiner hereby recommends that the Case Review Board dismiss the above-captioned case.

Dated: January 9, 2014

Respectfully submitted,



Martin L. Grossman
Director/Hearing Examiner
Office of Zoning and Administrative Hearings

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