

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

<p>Rufus Garwo 6705 Schroeder Rd #14 Madison WI 53711</p> <p style="text-align:center">Complainant</p> <p style="text-align:center">vs.</p> <p>Gardner Bakery Company 3401 E Washington Madison WI 53704</p> <p style="text-align:center">Respondent</p>	<p>COMMISSION'S DECISION AND FINAL ORDER</p> <p>Case No. 19992041</p>
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BACKGROUND

On March 9, 1999, the Complainant, Rufus Garwo, filed a complaint of discrimination with the Madison Equal Opportunities Commission (Commission). The complaint charged that the Respondent, Gardner Baking Company, discriminated against him on the basis of his national origin/ancestry (African) in the terms and conditions of his employment and his termination from employment. The Respondent denies the allegations of the complaint.

Subsequent to an investigation of the allegations of the complaint, a Commission Investigator/Conciliator issued an Initial Determination concluding that there was no probable cause to believe that the Respondent had discriminated against the Complainant. The Initial Determination was mailed to the Complainant's address as noted in the Commission's file. It was signed for on June 10, 1999, by someone apparently staying at the Complainant's house. The Complainant alleges that he did not actually receive the Initial Determination until well after the period for appealing a finding of no probable cause.

On September 3, 1999, the Complainant petitioned the Commission to permit him to appeal the Initial Determination's finding of no probable cause despite his failure to appeal within the time permitted by the Rules of the Commission. After allowing time for the parties to submit written argument in support of their respective positions, the Commission met on February 10, 2000, to consider the Complainant's petition. Participating in the Commission's deliberations were Commissioners Boyd, Fieber, Hicks Morrison, Rudd, Sentmanat, Tomlinson, Verriden, Zarate and Zipperer.

DECISION

The Commission concludes that the Complainant has presented no compelling reason for the Commission to set aside the time period for appeal of an Initial Determination's finding of no probable cause. The record demonstrates that the Initial Determination was mailed to the address provided by the Complainant. Once placed in the mail and received at the address provided by the Complainant, the Commission is not responsible for how the Complainant arranges for actual receipt of his mail. See Velazquez-Aguilu v. Abercrombie and Fitch, Madison Equal Opportunities Commission Case No. 3398 (Comm'n Dec. 7/20/99, Ex. Dec. 3/30/99) and cases cited therein.

The Commission met its duty by mailing the Initial Determination to the address provided by the Complainant. It was up to the Complainant to make sure that he received the mail once it arrived at his residence. The outcome would be different if there was no evidence that the Initial Determination had actually been received at the address provided by the Complainant. However, it is clear that the Initial Determination was received.

ORDER

The Complainant's petition to reopen is denied.

Joining in the Commission's decision are Commissioners Boyd, Fieber, Hicks, Morrison, Rudd, Sentmanat, Tomlinson, Verriden, Zarate and Zipperer. No Commissioner opposed the Commission's decision and no Commissioner abstained from it.

Signed and dated this 3rd day of March, 2000.

EQUAL OPPORTUNITIES COMMISSION

Bert G. Zipperer
President