

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

Andrew Obriecht
1420 1/2 Sheridan Drive
Madison WI 53704

Complainant

vs.

Farmers Insurance
258 Corporate Drive Suite #205
Madison WI 53714

Respondent

**HEARING EXAMINER'S
DECISION AND ORDER ON
RESPONDENT'S MOTION TO DISMISS
FOR LACK OF JURISDICTION**

CASE NO. 20172036

BACKGROUND

On February 3, 2017, the Complainant, Andrew M. Obriecht, filed a complaint of discrimination with the City of Madison Department of Civil Rights Equal Opportunities Division. The complaint charged that Farmer's Insurance discriminated against the Complainant on the basis of his conviction record when it failed or refused to process his application to become an Insurance Agent for the Respondent. The complaint designated Todd Huebler as the individual who had discriminated against him.

On February 23, 2017, the Respondent by Todd Huebler filed a Motion to Dismiss along with his answers to the Investigator/Conciliator's initial set of questions. As grounds for the Motion to Dismiss, the Respondent contended that the position for which the Complainant was applying was a position that would have made him an independent contractor and not an employee. If the Complainant were an independent contractor, the Department would not have jurisdiction over his complaint.

The complaint was transferred to the Hearing Examiner for a determination of the Department's jurisdiction. On March 3, 2017, the Hearing Examiner issued an Order setting forth a schedule for determining whether the Department had jurisdiction over the complaint or not. The order provided dates for the Complainant to submit a request to conduct discovery by March 24, 2017. As both of the parties were unrepresented, the Hearing Examiner believed that the record might need supplementation through the discovery process.

Subsequent to the opportunity to indicate the need to conduct discovery, the parties were to submit briefs in support of their respective position ending on May 15, 2017. When the Hearing Examiner had not heard from either party pursuant to his Scheduling Order, on June 19, 2017, he wrote to the parties asking if they wanted or needed a new Briefing Schedule or wished the complaint to be sent back to investigation because neither party had submitted anything.

On July 27, 2017, Eileen Cahill entered an appearance on behalf of the Respondent and filed a Motion to Dismiss along with supporting brief and documentation. Cahill asked that Huebler's earlier Motion be quashed as he did not have authority to act on behalf of the named Respondent.

On August 4, 2017, the Hearing Examiner set the time for the Complainant to respond to the Respondent's motion and argument for August 18, 2017. At no time during this process did the Complainant submit any brief or documentary evidence in support of the Department's jurisdiction. On August 29, 2017, Cahill wrote the Hearing Examiner requesting dismissal of the complaint.

DECISION

The question of whether an independent contractor is subject to the various civil rights laws in this country is relatively well settled. Agencies such as the Department can only regulate the employment relationship, not the agency relationship established by independent contract. The Respondent submitted several cases in support of this position especially with respect to the position of Insurance Agent.

The Hearing Examiner notes that a recent case decided in the Northern District for Ohio takes a position counter to the position espoused by the Respondent. Currently that case is on expedited review to the Court of Appeals. This developing issue could have a substantial impact on the positions of the parties.

However, the Hearing Examiner notes that once this matter was transferred to the Hearing Examiner, the Complainant has failed to respond to any of the Hearing Examiner's briefing schedules, or any other set by the Hearing Examiner for submission of information. If the complaint process is to run smoothly and permit the Investigator/Conciliators and the Hearing Examiner to perform their duties fully and fairly, both parties must take some action to respond to the correspondence sent to them. A failure to respond or to submit requested materials is grounds for dismissal of one's complaint or entry of a finding of Probable Cause or discrimination. See Rules of the Equal Opportunities Commission 3.411 and 3.413.

In this matter, after a somewhat rocky start, the Respondent has been forthcoming with responses to the Hearing Examiner's requests for position statements and briefs. The Complainant has not been responsive in any way.

Given the lack of response by the Complainant, the Hearing Examiner finds it necessary to dismiss the Complainant's failure to submit requested information or to cooperate with processing of this complaint.

While the Hearing Examiner could specifically address the arguments made by the Respondent in its July 27, 2017 submission, the Hearing Examiner feels that dismissal for a lack of communication on the part of the Complainant is more appropriate and will save the Department's administrative resources and will leave open to more complete argument the question of whether Insurance Agents are employees and subject to the provisions of the Equal Opportunities Ordinance or are independent contractors and are not subject to the requirements of the Ordinance.

ORDER

The complaint is dismissed without prejudice.

Signed and dated this 5th day of October, 2017.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III
Hearing Examiner