

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

NINA SCHMIDT,)	
Charging Party)	Cause Nos. 0011009564
)	0011009567
vs.)	ORDER REVERSING AND
)	DISMISSING FINAL AGENCY
)	DECISION
ELVIN LOU COOK and ROBERT)	
COOK, d/b/a TRIPLE CROWN MOTOR)	
INN,)	
Respondents.)	

The above-captioned matter came before the Montana Human Rights Commission (Commission) on September 19, 2002. The Commission considered Respondent's appeal from the Final Agency Decision. Oral argument was requested. Appearing before the Commission were Thomas Welsch, attorney for Respondent Robert Cook, and Randy Tarum, attorney for Charging Party.

After a contested case hearing on the matter, the Human Rights Bureau issued a Final Agency Decision. The hearing officer found and concluded that Respondents had illegally discriminated against Charging Party on the basis of sex.

After review and consideration of the entire record, the Commission reverses the Final Agency Decision and dismisses the complaints filed in this matter.

The Commission has at all times the jurisdiction to determine the jurisdiction of the Commission over any particular contested case. *24.9.1705, ARM*. It is unlawful discriminatory practice for an employer to discriminate when interviewing or hiring an individual based upon his or her membership in a protected class. *49-2-303, MCA; 24.9.604, ARM*. However, it is the determination of the Commission that record does not support the Human Rights Bureau's conclusion that the alleged harassment occurred in an employment context. The Commission reviews legal conclusions of the agency for correctness. *Steer, Inc. v. Department of Revenue,, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990)*. Since the alleged discrimination did not occur in an employment context, the Commission determines that Final Agency Decision Conclusion of Law, No. 1 is incorrect, the Department of Labor and Industry did not have jurisdiction. The matter has appropriately proceeded in the criminal forum.

Further, the Commission determines that substantial credible evidence does not support a finding of discrimination on the basis of sex. The Commission determines that the parties operated *in pari delicto*. Charging Party was aware of the nature of the employment prior to the interviewing with Respondent. Additionally, the “quid pro quo” exchange did not occur during a genuine employment interview. The third and final meeting with Respondent Elvin Cook was set up to obtain information for a criminal matter that was being pursued against Respondents.

A party may appeal from this order by filing a petition for judicial review with the district court no later than 30 days from the service of this order. *2-4-701, et seq, MCA*. The parties are advised that charging party has 90 days after the receipt of this order to file a civil action in district court. *49-2-509(5), MCA*. If charging party fails to file a civil action within that 90 day period, charging party’s claims under the Montana Human Rights Act, as stated in the above-captioned complaint, will be barred. *Id.*

IT IS HEREBY ORDERED, that the Human Rights Bureau lacked jurisdiction to investigate and hear this complaint. Accordingly, the Final Agency Decision of the Human Rights Commission is reversed. The Commission dismisses Charging Party’s complaints in Cause Nos. 0011009564 and 0011009567.

Dated this _____ day of September 2002

Mr. Gary Hindoién, Chair
Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersign employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on September ____, 2002.

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