BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0121015350:

DENNIS PIILOLA,	)	Case No. 596-2013
	)	
Charging Party,	)	**ORDER GRANTING AND**
	)	**DENYING REMAINING**
vs.	)	**PRE-HEARING MOTIONS**
	)	**AND DISMISSING; NOTICE**
GLACIER BANK,	)	**OF APPEAL RIGHTS**
	)	
Respondent.	)	

* * * * * * * * * * *

On February 3, 2012, Dennis Piilola filed a complaint with the Department's Human Rights Bureau (HRB), alleging financial and credit transaction discrimination because of creed or religion by Glacier Bank (the Bank) when on October 26, 2011, it refused to allow him to open a bank account in its establishment in Butte, Montana, because he failed or refused to provide a Social Security number because his religious beliefs (Christian) precluded him from having a Social Security number. Piilola filed an amended complaint on May 16, 2012, adding the allegations that the Bank falsely considered him a new customer trying to open a new account in October 2011, when he in fact had been a customer of the Bank before, until it wrongfully closed his account in 2009.

On October 19, 2012, the Human Rights Bureau closed conciliation on Piilola's case and submitted a request to the Hearings Bureau to certify the case for hearing, which the Hearings Bureau received on October 22, 2012. On October 23, 2012, the Hearings Bureau issued its Notice of Hearing regarding the above case. Counsel for the Bank filed an acknowledgment of service of the notice upon the Bank with the Hearings Bureau on October 29, 2012. Piilola filed an acknowledgment that he had been served with the notice on November 1, 2012, and has represented himself throughout these proceedings.

On November 1, 2012, the Hearing Officer issued a scheduling order, setting deadlines for (a) discovery and expert witness disclosures; (b) filing of prehearing motions and (c) filing of final exhibit and witness lists, subpoena requests, contentions, requests for relief, proposed uncontested facts, identification of discovery to be used at hearing and for exchanging copies of hearing exhibits. The

order also set the date and time for a final telephonic prehearing conference, and set the hearing for January 22 and 23, 2013, in Butte Montana.

Thereafter, an unusual amount of motion pleading resulted, the pertinent portions of which follow, with only limited references as necessary to motions already decided, together with the rulings on those motions not previously decided.

Reschedulings of the Hearing

On November 13, 2012, the Bank filed a number of documents – (i) a notice of service of its first discovery requests to Piilola (on November 9, 2012); (ii) its appearance and preliminary statement, and (iii) an unopposed motion to move the hearing dates to January 29-30, 2013. On November 14, 2012, the Hearing Officer conferred with the parties by telephone and issued a rescheduling order to which both parties had agreed. The rescheduling order moved the hearing from its original two days in January 2013 to February 14 and 15, 2013, still in Butte, Montana, and moved the final telephonic prehearing conference and all of the prehearing deadlines accordingly.

On February 1, 2013, the Hearing Officer confirmed the telephonic final prehearing conference, as rescheduled. Three motions were still not completely briefed (the three motions addressed in this order). Rather than deferring ruling upon the motions, the Hearing Officer decided to reschedule the hearing, because the motions, once decided, could substantially impact the scope of evidence at the hearing or obviate the need for the hearing altogether. The telephonic final prehearing conference was reset for February 22, 2013, and the hearing was reset for March 4 and 5, 2013.

Piilola's Motion to Waive the Statute of Limitations and Apply the "Continuing Violations" Doctrine Is Denied, in its Entirety.

On January 11, 2013, Piilola filed and served a motion to waive the statute of limitations and apply the "continuing violations" doctrine, with a brief in support and his accompanying affidavit. Piilola asked that the Hearing Officer rule that defenses of untimely filing of claims regarding events in 2009 would be unsuccessful if raised because Piilola did not discover until November 29, 2011 that requiring him to provide a Social Security number to open or to maintain a bank account at the Bank constituted illegal religious discrimination against him. In short form, Piilola asked to amend his complaint to include the 2009 closure of a bank account as part of his claim because he did not discover he had that claim until November 2011.

The Bank responded, on January 28, 2013, that under the facts of record and applicable law, (1) the complaint was untimely on any 2009 claims and (2) Piilola

had no "continuing violations" claims. Piilola replied, on February 12, 2013, that he was entitled to extension of the statute of limitations until "discovery" of his claim and that he did too have a "continuing violations" claim.

(1) Any Claims Piilola Had Because the Bank Closed an Account in 2009 Because He Refused to Provide a Social Security Number Are Time-Barred

A discrimination claim cognizable under the Montana Human Rights Act (other than housing claims and claims for which an employer's grievance procedure is utilized) must be filed with HRB within 180 days of the date of the last act of alleged unlawful discrimination. Mont. Code Ann. §49-2-501(4)(a) [in effect with no changes since 2007]. The time to file begins to run when the complainant discovers or, in the exercise of due diligence, should have discovered the facts constituting the claim. Mont. Code Ann. §27-2-102(3).

Around the beginning of November 2009, after the Bank had specifically asked Piilola for a Social Security number to keep an existing account open with Piilola as the primary account holder, he told the Bank that he had religious beliefs that precluded from participating in a government numbering and insurance system. Told again that the Bank needed a Social Security number or it would need to close his account, he responded that the Bank had to decide whether the Patriot Act or state and federal laws about discrimination were more important. The Bank then notified him that it was closing his account on November 3, 2009.

In *Hash v. U. S. West Comm. Serv.* (1994), 268 Mont. 326, 886 P.2d 442, the claimant was notified by her employer on June 19, 1991, that her job position was being combined with another position and, therefore, that her job would be eliminated. She applied for another U.S. West position but was not offered any other job. Her position was eliminated on January 31, 1992, as planned, 226 days after her notification that her job would be eliminated. Thereafter she first filed an internal complaint of discrimination in accord with her now former employer's grievance policy. When that proceeding concluded, she filed an administrative discrimination complaint with the State on June 5, 1992, alleging that she lost her job because of illegal discrimination. The district court granted summary judgment to U.S. West that the administrative complaint was time-barred. The Montana Supreme Court affirmed.

> If there was a discriminatory act in this case, it occurred when U.S. West notified Hash of its decision to eliminate her position. It was at that time that Hash discovered the alleged discriminatory practice. Hash's hopes and beliefs [that U.S. West might hire in another job for which she had applied] cannot

> contradict the fact that she discovered the alleged discriminatory act(s) on June 19, 1991. In this case, Hash did not support her position that her cause of action did not accrue on June 19, 1991. We hold that the District Court did not err in concluding that the alleged discriminatory practice was discovered and accrued on June 19, 1991 when Hash was advised that her position would be eliminated.

Hash ***at*** 329-30, 886 P.2d ***at*** 444.

Piilola asserts that it was only on November 29, 2011, that he "discovered that, beyond any doubt," the Bank had illegally discriminated against him in 2009. That is not the standard.

Beyond any cavil, Piilola discovered the actual facts constituting any 2009 discrimination claims he might have against the Bank when it closed the account at issue. He had actual, personal, direct knowledge of the facts right then, when it happened. He knew right then that the account on which he was seeking to become the primary account holder had been closed because he refused to provide a Social Security number. He had told the Bank that he had religious objections to participating in the Social Security numbering system. They had closed the account anyway. Any claims arising from those facts were time barred long days after the Bank closed that account in 2009, long before Piilola filed his 2012 discrimination complaint.

(2) The 2009 Account Closure Is Not a Violation for Which Piilola Can Seek Relief in the Current Proceeding under a "Continuing Violation" Theory

As the Bank correctly pointed out, the "continuing violation" theory has been abandoned by both Montana and the federal courts. *Benjamin v. Anderson*, ¶¶43-47, 2005 MT 123, 327 Mont. 173, 112 P.3d 1039, ***citing*** *N. R. P. Corp. v. Morgan*, 536 U.S. 101, 122 S.Ct. 2061, 153 L.Ed.2d 106:

> Darinda and Anderson [the defendants] correctly note that the [U.S.] Supreme Court overruled the "continuing" or "serial" violation theory. In doing so, the Court explained, "Discrete acts, such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify," and that a complainant may only file a charge to cover "discrete acts" that occurred within the actionable time period. *Morgan*, 536 U.S. ***at*** 114, 122 S. Ct. ***at*** 2061, 153 L. Ed.2d ***at*** 122. However, the Court went on to explain, "A hostile work environment claim is composed of a series of separate acts that collectively constitute one 'unlawful

employment practice.'" *Morgan*, 536 U.S. ***at*** 117, 122 S. Ct. ***at*** 2074, 153 L. Ed.2d ***at*** 124 (quoting 42 U.S.C. § 2000e-5(e)(1)). The court stated,

> It does not matter, for purposes of the statute, that some of the component acts of the hostile work environment fall outside the statutory time period. Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability.

Morgan, 536 U.S. ***at*** 117, 122 S. Ct. ***at*** 2074, 153 L. Ed.2d ***at*** 124. Nor, the court explained, does it matter if some time elapses between the earlier and latter occurrences, "so long as each act is part of the whole," even if the employee knows that on a specific, earlier day an actionable claim occurred. *Morgan*, 536 U.S. ***at*** 118, 122 S.Ct. ***at*** 2075, 153 L.Ed.2d ***at*** 125.

Applying *Morgan* here, we examine whether the sexual assault was considered by the Hearing Examiner to be the sole act of discrimination, or whether the claim is more properly characterized as a hostile work environment claim. As Darinda and Anderson point out, the Hearing Examiner concluded, "A sufficiently intrusive unwelcome single incident of sexual harassment can create a hostile work environment." ***See*** *Richardson v. New York State Dept. of Corr. Serv.* (2d Cir. 1999), 180 F.3d 426, 437; *Lockard v. Pizza Hut, Inc.* (10th Cir. 1998), 162 F.3d 1062, 1072; *DiCenso v. Cisneros* (7th Cir. 1996), 96 F.3d 1004, 1008. However, and significantly, the Hearing Examiner went on to conclude that Anderson's conduct after the 1998 Christmas party achieved the "extreme degree of offensiveness" necessary to establish a hostile work environment, and that Darinda illegally discriminated against Benjamin by relying upon and supporting Anderson and failing to investigate or rectify the situation from December 1998 through March 29,1999.

Notably, the Hearing Examiner found that from the 1998 Christmas party until Benjamin's termination, "Anderson engaged in a continuous course of conduct aimed at exploiting Benjamin,

> sexually harassing her and preventing her from taking any effective action to render him accountable for his conduct. . . ." Additionally, the Hearing Examiner found that Anderson, Darinda, and Michael "engaged in a continuous course of conduct aimed at avoiding any investigation or action regarding Anderson's conduct toward Benjamin, and thereby permitted him to continue to harass her." The Hearing Examiner further noted that, although Anderson did not have another opportunity to engage in similar behavior with Benjamin as he had after the Christmas party, he continued to seek surreptitious, unwelcome sexual contact with Benjamin within the work environment, and that this was a "continuing problem" until Benjamin's termination.
>
> Applying the rationale of Morgan, we conclude that the Hearing Examiner did not err in characterizing Benjamin's claim as one arising out of a series of violations as opposed to one isolated and discrete act. As the U.S. Supreme Court explained in *Morgan*, 536 U.S. ***at*** 118, 122 S. Ct. ***at*** 2075, 153 L.Ed.2d ***at*** 125, the entirety of a hostile work environment claim is actionable even though an employee may reasonably have realized that he or she had an actionable claim at an earlier date, so long as the hostile work environment continued to a point in time that lies within the statutory time limits for filing a claim.
>
> Because the hostile work environment continued to a point in time within the 180-day statute of limitations, the District Court did not err in concluding that Benjamin's claim was timely filed.

In contrast, Piilola was notified in late October 2009 and by a confirmation letter dated November 3, 2009, that his account was being closed. Two years later, in 2011, he asked the Bank to open a bank account for him and when he refused to provide a Social Security number, the Bank declined to open the account that same day. Unlike the *Benjamin* hostile work environment claim, the closure of the account in 2009 and the refusal to open an account in 2012 discrete acts, separated by 2 years of no transactions between the parties. Each of those acts stands alone, exactly like a termination, a failure to promote, a refusal to hire.

In the event that a hearing were to be held, Piilola might be able to establish that the prior closure of an account because Piilola refused to provide a Social Security number would be relevant to the issues at hand regarding refusal to open an

account in 2011. If so, evidence of that prior refusal might still be admissible, as pattern or practice evidence pertinent to affirmative relief, for one example. That issue is not appropriately reached in this ruling, depending as it does upon the concrete circumstances developed in the record at the time of the proffer of the evidence.

The motion is denied in its entirety.

Piilola's Motion to Bar the Bank from Arguing and Offering Evidence That Piilola Ever Had or Used a Social Security Number Is Denied, in its Entirety.

On January 14, 2013, Piilola filed and served a motion and brief regarding "his" Social Security number, which essentially asks that the Hearing Officer bar the Bank from arguing and offering evidence that Piilola ever had or used a Social Security number. From the contents of these filings, Piilola admits that he was issued a Social Security number when he was a child (upon his mother's request), that he used his Social Security number at least a few times over a number of years, and that he then experienced what he characterizes as a "profound, deep-seated (and much needed) spiritual awakening." After this awakening, he reports that he came to believe that use of a Social Security number was inconsistent with his faith and that it was "voluntary" in the secular world, and he began to resist using it, although he did provide it to complete a real estate closing some years later. He now declares that "I HAVE NO SOCIAL SECURITY NUMBER."

Clearly, there is a Social Security number assigned to him, even though he disclaims it and, at least in the instances involved in this case, has refused to use it to his detriment. Facts are facts, no matter how a party may feel about them. Piilola can certainly argue that his prior use of his Social Security number does not mean that he must use it now. He can argue that denying him a checking account for his refusal to use it now is religious discrimination.

Whatever he may argue about his Social Security number, whether he actually has a Social Security number assigned to him appears to be relevant to this case. Any evidence that might be useful to the Hearing Officer in finding facts that matter in deciding this case is relevant, and that includes evidence bearing upon witness credibility. Rule 401, Montana Rules of Evidence ["M.R.E."]. Evidence about Piilola's Social Security number could bear upon his credibility, if he made demonstrably false statements about it. Relevant evidence is admissible unless its probative value is substantially outweighed by danger of unfair prejudice or confusion of the issues, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. Rule 402, M.R.E. The Hearing Officer does

not see how any of those factors substantially outweigh the probative value of evidence about Piilola's Social Security number.

Piilola can argue that what he meant to say, in those statements, and what he is saying now, is that his faith requires him to disavow the number, that it was foisted upon him unawares, that his circumstances were dire when he used the number, that his spiritual awakening has brought him a new clarity about the necessity to eschew using the number ever again, etc. What he cannot do is prevent the Bank from presenting the evidence it has gathered to prove that he does have a Social Security number assigned to him, that he has known about that number and has used that number, and that in the past he has made statements denying the existence of that number.

What effect all of this battle about words may have upon his credibility is an issue that can only arise at a hearing. His motion regarding his Social Security number is denied.

The Bank's Motion for Summary Judgment

On January 14, 2013, the Bank filed and served a motion for summary judgment, with a supporting brief, multiple affidavits, a photocopy of a deposition transcript and copies of multiple exhibits. The essence of the motion involves two assertions: (1) Acts of the Bank more than 180 days before filing of the complaint are time-barred and (2) All acts of the Bank which are not time barred (whenever they may have occurred) requiring Piilola to provide a Social Security number to open or to keep open any account at the Bank were and are required under federal banking law and are not discriminatory.

On January 28, 2013, Piilola filed and served his response to this motion. Portions of that response, which quoted the Final Investigative Report of the HRB investigator and then argued from the asserted truth of the quotation, are improper. HRB investigative conclusions about discrimination are inadmissible hearsay under Rule 803(8)(iv) M.R.E., and inadmissible opinions about ultimate issues of fact rather than opinions or inferences based upon scientific, technical or other specialized knowledge admissible under Article VII, M.R.E. *Mahan v. Farmers Union CENEX* (1989), 235 Mont. 410, 768 P.2d 850, 858-59 ***and*** *Crockett v. City of Billings* (1988), 234 Mont. 87; 761 P.2d 813, 820. Those arguments are disregarded.

On February 13, 2013, the Bank filed and served its reply brief in support of the motion, and the motion was deemed submitted.

In deciding this summary judgment motion, the Hearing Officer has not considered any challenges to either the sincerity of Piilola's beliefs, or the validity of

his characterization of those beliefs as religious. Assuming for the sake of analysis that his beliefs about not using a Social Security number are both sincere and religious, the question for summary judgment is whether there are any genuine issues of material fact about whether the Bank could accommodate his refusal to use his Social Security number by finding a way to open an account without that number, without the Bank suffering unreasonable hardship.

With regard to all claims of illegal religious discrimination in 2009, for the reasons stated in denying Piilola's "Motion to Waive the Statute of Limitations and Apply the 'Continuing Violations' Doctrine" (set forth above), the Bank's motion is granted, since those claims are all time-barred.

With regard to Piilola's claims of illegal religious discrimination in 2011, Piilola has not challenged any of the Bank's pertinent facts, which on this record are established for purposes of this motion.

1. Facts Regarding the 2011 religious discrimination claims

Failing to comply with the Patriot Act and the Bank Secrecy Act would subject the Bank to monetary penalties and regulatory sanctions. This would constitute a substantial hardship for the Bank.

The cost for the Bank to try to get exemptions for customers who refuse to provide social security numbers when seeking to open bank accounts would be more than de minimis. It would involve a written request. Preparing and submitting that written request would require compliance with anti-money laundering laws and regulations, because the Bank must submit different types of reports to federal and state agencies charged with overseeing and preventing money-laundering, terrorism and tax evasion. To seek an exemption from the Patriot Act would require the Bank to retain attorneys to conduct legal research on different laws and regulations, with estimated costs of $2,500-$10,000 per request. The Bank would have to restructure procedures, not only attempt to obtain an exemption under the Patriot Act, but also to ensure that any such request would not in turn subject the Bank to violations or sanctions by other banking regulatory bodies. That estimated cost would be tens of thousands of dollars of the Bank employees' time and expense, additional legal fees and various other costs.

Also, the amount of money going in and out of a bank account might trigger the Bank to have to file required currency transaction reports. Those reports must have a U.S. citizen's social security number set forth on the report. If the Bank did not have that customer's Social Security number, the report could not be filed and would be rejected if it was filed. That would subject the Bank to possible fines and penalties from banking regulatory authorities.

On October 18, 2012, the Bank sent a letter to the Federal Deposit Insurance Corporation (FDIC), the primary federal entity to whom the Bank reports under the Patriot Act, asking whether the FDIC would grant an exemption to Piilola from the Patriot Act requirement of the Bank obtaining his Social Security number. Before sending its October 18, 2012 letter, the Bank retained counsel to research and advise it concerning potential issues that may arise between the various financial laws and regulations to which the Bank is subject. The Bank employees were also involved in that process. This process required the Bank to divert its employees from their regular responsibilities.

From the evidence of the Bank's practices and procedures, it is clear that the Bank already knew what the answer would be, but still sent the letter, to obtain confirmation. On November 14, 2012, the FDIC responded that no exemption from the Patriot Act requirement of the Bank obtaining Piilola's Social Security number would be granted.

The Bank's attorneys' fees for the October 18, 2012 submittal to the FDIC exceeded $5,000 and internal costs were in excess of several thousand dollars of employee time. There are numerous federal and state laws regulating the Bank and its financial and regulatory reporting requirements. Those laws and regulations routinely change. Therefore, each time a potential individual customer wanted to open a bank account, there would need to be research and the Bank employee time and involvement to evaluate for potential fines and regulatory sanctions, and letter of the same genre as the October 18, 2012 letter would be necessary.

2. Summary Judgment Burdens

Pursuant to Mont. Code §49-2-505(3)(a), the department holds contested case hearings in accord with applicable portions of the Montana Rules of Civil Procedure. ***See also*** Mont. Code Ann. §49-2-204(2). In the scheduling order in this case, the department adopted the Montana Rules of Civil Procedure and Montana Rules of Evidence for all of the prehearing procedures and the hearing in this case. Under the Rules, the party moving for summary judgment has the initial burden of establishing both the absence of genuine issue of material fact and the entitlement to judgment as matter of law, and if that burden is met, the opponent must then present evidence to show a genuine issue of material fact. *Bowen v. McDonald* (1996), 276 Mont. 193, 915 P.2d 201, 204; Rule 56(c), Mont. R. Civ. P.

Showing a genuine issue of material fact requires more than mere denial or speculation, but requires "facts sufficient to raise a genuine issue." *Cecil v. Cardinal Drilling Co.* (1990), 244 Mont. 405, 797 P.2d 232, 235, ***quoting*** *Gamble Robinson Co. v. Carousel Properties* (1984), 212 Mont. 305, 688 P.2d 283, 287; ***accord***, *S.M. v. R.B.*

(1993), 261 Mont. 522, 862 P.2d 1166, 1168. The burden of proof of the opponent, once the movant has met its initial burden, is well-stated in *Abraham v. Nelson*, ¶26, 2002 MT 94, 309 Mont. 366, 46 P.3d 628:

> Once a movant for summary judgment satisfies the burden that no material question of fact exists, the non-moving party cannot merely point to lack of evidence as the factor creating a material question. . . . [A] a suspicion, regardless of how particularized, is insufficient to sustain an action or to defeat a motion for summary judgment. Unsupported conclusory or speculative statements do not raise a genuine issue of material fact. *Gentry [v. Douglas Hereford Ranch, Inc.,]* ¶32 [1998 MT 182, 290 Mont. 126, 962 P.2d 1205] (***citing*** *Gates v. Life of Mont. Ins. Co.* (1982), 196 Mont. 178, 182, 638 P.2d 1063, 1066).

On the first page of Piilola's brief, he recites a statutory definition of "public accommodation" as "a place that caters or offers its services, goods or facilities to the general public, subject only to the conditions and limitations established by law." Mont. Code Ann. §49-2-101(20)(a) (emphasis supplied by Piilola). Of more importance here is Mont. Code Ann. §49-2-306(1), providing that it is "an unlawful discriminatory practice for a financial institution . . . to permit an official or employee . . . to discriminate against [in this case, Piilola] because of religion . . . unless based on reasonable grounds" (emphasis added). Piilola's discrimination claims arise under Mont. Code Ann. §49-2-306(1), which is the law that establishes the conditions and limitations upon a financial institution when it is asked to open an account for a prospective customer. A financial institution cannot refuse to open an account because of the individual prospective customer's religion unless the refusal is based on reasonable grounds. A financial institution has reasonable grounds to refuse to open an account because the individual prospective customer's religion prevents him from providing a Social Security number if the financial institution is required by law to obtain a social security number from an individual prospective customer. A financial institution's reasonable grounds are not lost because the institution failed to engage in an interactive exploration with the individual prospective customer about ways to get around the requirement, if the institution already knew that any possible ways to get around the requirement involved substantial expense and exposure.

Piilola's civil right to be free of religious discrimination is limited to instances in which the alleged discrimination is not based on reasonable grounds. This issue of reasonableness can be found in a number of cases, including a few cases specifically involving adverse action because an individual refused to provide a Social Security number (whether on religious grounds or not). The wording may vary, but the basic

concept remains the same. Some cases approach religious discrimination in terms of an accommodation of the religious beliefs of the individual and ask whether the accommodation is reasonable or, on the other hand, imposes an undue hardship upon the party asking for the accommodation. Whether framed in terms of reasonability or in terms of undue hardship, the cases involve a balancing of the right to religious freedom on the part of the complaining party against the burden upon the other party.

A bank requiring Social Security numbers from U.S. citizens but not from foreign nationals, for credit card account applications, was not illegally discriminating in violation of California law, because 31 C.F.R. 103.121(b)(2)(i)(4)(I) required Social Security numbers from citizens but 31 C.F.R. 103.121(b)(2)(i)(4)(ii) did not require Social Security numbers from foreign nationals for such account applications. *Howe v. Bank of America*, 179 Cal.App.4th 1443, 1453-54 (2009). Thus, even though a U.S. citizen who (for any reason), could not or would not produce a Social Security number, was less privileged than a foreign national who could use some other kind of identification to qualify for the account, the bank was protected from claims of discrimination because it was required to follow the regulation.

A California employer who did not hire a job applicant who had refused to provide his social security number for religious reasons was not required to incur the potential liabilities of violating federal law, *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 830-31 (9th Cir. 1999) (requiring defendant to violate federal law by not obtaining social security number constitutes undue hardship).

A Minnesota employer was not required to go through the "expense and trouble incident to applying for" a waiver of the Social Security number requirement for a job applicant, because "it imposes a hardship that is more than de minimis." *Seaworth v. Pearson*, 203 F.3d 1056, 1057-58 (8th Cir., 2000). *Seaworth* (same pages) cited a Michigan federal district court ruling that the waiver provision does not exist to benefit an employee whose failure to provide a Social Security number is the cause of the employer facing a penalty, and therefore the employer is not required to take steps to accommodate that employee. *E.E.O.C. v. Allendale Nursing Center*, 996 F. Supp. 712, 717 (W.D. Mich. 1998). *Seaworth*, ***at*** 1058, also cited a United States Supreme Court ruling that an employer who would suffer a "more than de minimis" financial burden to restructure and put the applicant to work as an independent contractor rather than an employee was not required to make that accommodation. *Ansonia Bd. Of Educ. v. Philbrook*, 479 U.S. 60, 67, 93 L. Ed. 2d 305, 107 S. Ct. 367 (1986); ***see also***, *Trans World Airlines v. Hardison*, 432 U.S. 63, 84, 97 S. Ct. 2264, 53 L. Ed. 2d 113 (1977).

The Bank also cited *Big Sky Colony, Inc. v. MT D.L.I.*, ¶40, 2012 MT 320, 368 Mont. 66, 291 P.3d 1231, where the Montana Supreme Court held that it was not religious discrimination to require Hutterite colony members to participate in a state-ordered workers' compensation program. Although the facts are far-removed from the present case, the holding is illuminating, quoting *United States v. Lee*, 455 U.S. 252, 260, 102 S. Ct. 1051, 71 L. Ed. 2d 127 (1982), regarding a free exercise challenge to mandatory participation of an Amish employer in the Social Security system:

> [W]hen "followers of a particular [religious] sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that [commercial] activity." Lee, 455 U.S. at 260.

If the Bank, in 2011, did refuse to open a bank account for Piilola because of his religion, it is entitled to summary judgment if its refusal was on reasonable grounds. The Bank had reasonable grounds to refuse to open an account for Piilola because he refused to provide his Social Security number. The Bank has established that it was required by law to obtain a Social Security number from an individual prospective customer. The Bank has established that it already knew that any possible ways to get around the requirement involved substantial expense and exposure and probably would not work. In other words, the Bank established both that it could not legally accommodate Piilola and that any accommodation theoretically possible was likely impossible and would involve substantial hardship to the Bank. Since there was no possible reasonable accommodation, the Bank had no obligation to engage in some sham interactive process with Piilola before denying him the account.

Finally, the Bank would have taken exactly the same action if Piilola had refused to provide a Social Security number for some non-religious reason. Even if Piilola were to prove, at hearing, that his beliefs about not using a Social Security number are both sincere and religious, the Bank has established that it would have taken the same action if his refusal to provide the number was for non-religious reasons, still avoiding any liability to Piilola. *Laudert v. Richland County Sheriff's Department*, 2000 MT 218, 301 Mont. 114, 7 P.3d 386. In this case, with Piilola's failure to show any genuine issue of material fact, the Bank is entitled to summary judgment on the entirety of the 2011 charges, which means the entire complaint and amended complaint should be dismissed.

The complaint and amended complaint are dismissed with prejudice. The rights of the parties timely to seek review are set forth in the following Notice of Issuance of Administrative Decision.

DATED this 19th day of February, 2013.

/s/ TERRY SPEAR
Terry Spear, Hearing Officer

* * * * * * * * * * *

NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Dennis Piilola, Charging Party; and Dale R. Cockrell, attorney for Glacier Bank, Respondent:

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. **Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court.** Mont. Code Ann. § 49-2-505(3)©

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

Human Rights Commission
c/o Marieke Beck
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505 (4), precludes extending the appeal time for post decision motions seeking relief from the Hearings Bureau, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).