

BEFORE THE MONTANA DEPARTMENT  
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0071012084:

STACY NICHOLSON,	)	Case No. 1208-2007
	)	
Charging Party,	)	
	)	<b>ORDER DISMISSING</b>
vs.	)	<b>COMPLAINT OF ILLEGAL</b>
	)	<b>DISCRIMINATION</b>
STARLITE MOTEL,	)	
	)	
Respondent.	)	

\* \* \* \* \*

On August 16, 2006, charging party Stacy Nicholson filed a Charge of Discrimination with the Montana Department of Labor's Human Rights Bureau alleging that respondent Starlite Motel discriminated against her in employment on the basis of sex (pregnant female). On January 31, 2007, the Hearings Bureau issued a Notice of Hearing which the Cascade County Sheriff's Office served upon Nicholson on February 16, 2007. In that Notice of Hearing, it states, on page 2:

EACH PARTY MUST FILE A WRITTEN APPEARANCE AND PRELIMINARY PREHEARING STATEMENT IN THIS MATTER WITHIN TWENTY (20) DAYS OF THE DATE OF SERVICE. Your appearance and preliminary prehearing statement must state the name, address, and telephone number of your attorney or indicate that you have no attorney. You must also identify your contentions of fact and law, witnesses, exhibits, relief sought, admitted facts, and prehearing motions. Failure to file an appearance and preliminary prehearing statement may result in dismissal of the charging party's complaint or default of the respondent. An appearance and preliminary prehearing statement form is attached for your convenience.

On February 23, 2007, the hearing examiner assigned to this case issued a "Order Setting Contested Case Hearing Date and Prehearing Schedule," which was served by mail upon the parties at the addresses set forth in the Certificate of Mailing therein. In that order it states, on page 2, Paragraph 5:

The parties must comply with this prehearing schedule. This order does not alter or extend the deadline set in the Notice of Hearing for filing an Appearance and Preliminary Pre-Hearing Statement.

Nicholson's Appearance and Preliminary Pre-Hearing Statement was due on March 8, 2007, 70 days ago. Nicholson has filed nothing with the Hearings Bureau. Nicholson is in default for failure timely to file her Appearance and Preliminary Pre-Hearing Statement.

On April 25, 2007, the hearing examiner assigned to this case issued his "Order of Intent to Dismiss," in which he stated (original emphasis):

**In accord with the Notice of Hearing, the hearing examiner now gives notice of his intent to dismiss this case unless the Hearings Bureau receives, by close of business on May 8, 2007, a written statement from Nicholson showing good cause for her failure timely to file her Appearance and Preliminary Pre-Hearing Statement, or a motion by the Human Rights Bureau to intervene in this matter and seek affirmative relief.**

On May 16, 2007, at 4:00 p.m. local time, Helena, Montana, the undersigned hearing examiner, due to the absence of the hearing examiner assigned to this case and at the direction of the Bureau Chief, assumed jurisdiction over this matter and attempted to convene the telephone argument on the order to dismiss, above.

Stacy Nicholson's number was answered by an automated voice mail system. The hearing examiner left a message regarding the case, the order and the purpose for the call, indicating that he would call again in 15 minutes and proceed at that time in the absence of Nicholson if she did not answer. The hearing examiner then called the respondent, through its manager, Jean Matthews Davenport and advised of the 15 minute delay.

At 4:15 p.m., local time, Helena, Montana, on May 16, 2007, the hearing examiner again called Nicholson and again her number was answered by an automated voice mail system. The hearing examiner left another message, called respondent, and advised respondent's manager, Davenport, that this matter would be dismissed.

Nicholson's repeated failures to conform her conduct to the orders of the department, and her failure and refusal to show good cause for her failures, justifies

the conclusion that dismissal is the appropriate sanction for her failures. In substance, Nicholson has abandoned her claim and has failed to pursue her exclusive remedy, under the Montana Human Rights Act, for illegal discrimination. Therefore, the complaint and charges of the charging party are dismissed because of her failure to exhaust her administrative remedies.

DATED: May 17, 2007.



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Terry Spear, Hearing Examiner  
Hearings Bureau, Montana Department of Labor and Industry

Notice of Right to Object

Mont. Code Ann. § 49-2-509(4) provides that a department decision to dismiss a Human Rights Act complaint is final unless a party dissatisfied with the decision seeks Commission review by filing objections (an original and 6 copies) within 14 days of service of the decision upon the party. **FILE ANY SUCH OBJECTIONS TO THIS DECISION BY MAY 30, 2007, WITH:** Human Rights Commission, c/o Katherine Kountz, Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, and with all other parties of record. Likewise, file all submissions after your objections with the Human Rights Commission, care of Katherine Kountz at the indicated address. **DO NOT FILE YOUR OBJECTIONS OR SUBSEQUENT SUBMISSIONS** with the hearing examiner.

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CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by depositing them in the U.S. Mail, postage prepaid, and addressed as follows:

STACY NICHOLSON  
#6 6TH STREET SOUTH #402  
GREAT FALLS MT 59401

JEAN MATTHEWS-DAVENPORT, OWNER  
STARLITE MOTEL  
1521 1ST AVE NW  
GREAT FALLS MT 59404

DATED this 17<sup>th</sup> day of May, 2007.

Sandra Prebil

cc by intradepartmental mail: Marieke Beck, Katherine Kountz