

2011 IL App (1st) 101626-U
No. 1-10-1626

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

SIXTH DIVISION
JULY 29, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANTHONY F. MAROSCIA,)	Petition for Direct
)	Review of an Order
Petitioner-Appellant,)	of the Chief Legal
)	Counsel of the
)	Illinois Department
)	of Human Rights.
)	
v.)	
)	
MICHAEL I. LIEBERMAN, Chief Legal)	
Counsel Designee of the Illinois)	
Department of Human Rights; ILLINOIS)	No. 2005 CH 3333
DEPARTMENT OF HUMAN RIGHTS; BARBARA)	
CAMPBELL; RITA JELIONIS; BERNICE PRICE;)	
PAMELA LAWRENCE; and 6300 NORTH)	
SHERIDAN CONDOMINIUM ASSOCIATION,)	
)	
Respondents-Appellees.)	

JUSTICE ROBERT E. GORDON delivered the judgment of the court.

Presiding Justice Garcia and Justice Cahill concurred in the judgment.

O R D E R

HELD: Where petitioner refused to comply with the Department's reasonable request for an interview, the Chief Legal Counsel did not abuse his discretion in sustaining the Department's dismissal of petitioner's discrimination charge.

¶ 1 *Pro se* petitioner Anthony Maroscia appeals from the May 10, 2010, order of the Chief Legal Counsel (CLC) of the Illinois Department of Human Rights (Department) sustaining the decision of the Department to dismiss the charge of housing discrimination. On appeal, petitioner expresses dissatisfaction with the process and the dismissal of his charge. We affirm.

¶ 2 The May 2010 order on appeal is the third dismissal of petitioner's charges, which originated in 2005, against his condominium association (6300 North Sheridan Condominium Association) and individuals on the condominium association board (Barbara Campbell, Rita Jelionis, Bernice Price and Pamela Lawrence). This third dismissal follows three attempts by the Department to clarify and investigate petitioner's allegations.

¶ 3 On April 29, 2005, petitioner filed an unperfected charge of discrimination with the Department, in which he alleged that respondents had subjected him to housing discrimination based on his sex (male), national origin (United States of America), and disabilities (asthma, high blood pressure, hernia and arthritis) in violation of sections 3-102(b) and 3-102.1(b) of the Illinois Human Rights Act (Act) (775 ILCS 5/1-101 *et seq.*

(West 2004)). The department dismissed the case on October 4, 2005. According to the Department's notice of dismissal, Daniel Padilla, the investigator assigned to petitioner's case, and his supervisor, Kimberly Trueblood, made several attempts to contact petitioner via letter and telephone to clarify his claims and perfect his charge. These letters are not included in the record on appeal. On September 29, 2005, the Department received a letter from petitioner, which included a signed copy of the charge along with two pages of "amendments." The Department classified this as another letter, found petitioner failed to perfect his charge, and dismissed his claim for failure to proceed.

¶ 4 Petitioner filed a timely request for review by the CLC. On February 14, 2006, CLC Michael I. Lieberman vacated the Department's order of dismissal and remanded petitioner's charge for further investigation by the Department.

¶ 5 On March 9, 2006, Padilla sent petitioner a letter explaining that to begin an investigation petitioner needed to return a signed charge and requested that petitioner meet with him to draft a charge for petitioner to sign. Padilla informed petitioner that if he did not contact Padilla within 10 days, his charge would be dismissed. On March 14, 2006, the Department received a letter from petitioner which said he would not meet with Padilla because the charge he filed on September 29, 2005,

adequately covered his allegations. Trueblood wrote to petitioner on March 17, 2006, enclosing a copy of the most recent draft charge for him to sign.

¶ 6 On March 27, 2006, petitioner sent another copy of his September 29, 2005 filing, and the Department began its investigation.¹ On March 28, 2008, the Department dismissed petitioner's charge for lack of jurisdiction and lack of substantial evidence.

¶ 7 Petitioner filed a timely request for review of the second dismissal. On September 8, 2008, CLC Raymundo R. Luna vacated the Department's second dismissal and remanded the case for further investigation. In his order, Luna directed the Department to interview petitioner to clarify his allegations, draft an amended charge "in *prima facie* case format," and give petitioner an opportunity to sign the amended charge. Luna also provided specific points which needed to be clarified, stating:

"[T]he Department must interview
Complainant to determine: 1) whether
Complainant is alleging that
[Respondents] *** discriminated against

¹The investigation report states that the charge was perfected on September 29, 2005. However the only charge stamped September 29, 2005, in the record on appeal includes attachments stamped March 27, 2006, indicating petitioner did not perfect his charge until that date. However, when he perfected his charge is not material to this order.

Complainant in their individual capacities or in their capacities as board members; 2) the dates and circumstances of each alleged incident of discrimination; 3) what, if any, action each Respondent took to participate in each alleged incident of discrimination; 4) what Complainant means when he states in his charge that "it is a matter of record" that Respondents were aware of his asthma; and 5) whether Complainant is alleging that Respondents harassed him because of his physical disabilities, or both."

¶ 8 On October 15, 2008, the manager of the Department's Fair Housing Division, Marian Honel, sent petitioner a letter telling him that he had been scheduled for an interview with Padilla on November 13, 2008, and explained that he could reschedule the interview if necessary. In response to petitioner's accusations of lying and incompetence during the investigation, Honel stated that the Department "conducted its investigation *** in accordance with standard procedures" and she was "not aware of any of the wrongdoing" he alleged. She also explained that petitioner's request that the investigative team

be replaced would not be fulfilled and Padilla would not be replaced as investigator, and recommended that any future interaction should be by mail or in person with Padilla's supervisor or designee present. On November 12, 2008, petitioner responded that he would only communicate with the director of the Department, and "for the umpteenth time" he would not meet with Padilla, Trueblood, or Honel. Petitioner did not show up for or reschedule the interview on November 13. The Department wrote to petitioner and told him if he did not agree to be interviewed, his charge would be dismissed for failure to proceed. Petitioner replied that he would not meet with Padilla's "group" and that he did not need to submit to an interview because he had provided ample documentary evidence, but that he would be "definitely willing" to meet with "other qualified agency representatives."

¶ 9 On February 17, 2009, the Department dismissed petitioner's charge for the third time for failure to "adequately respond to reasonable requests by the Department." Petitioner filed a timely request for review in which he argued that he did not fail to comply with the CLC's order because it did not require him to meet with specific staff, he had already provided all necessary information, and he was willing to comply "under the *proper* circumstances."

¶ 10 On May 10, 2010, CLC Lieberman sustained the Department's third dismissal of petitioner's charge because he

found that petitioner had failed to show good cause for his failure to cooperate with the Department. Petitioner timely filed this petition for review of the CLC's decision in this court.

¶ 11 On appeal, petitioner primarily contends that the dismissal of his charge was in error because he provided adequate information for the Department to proceed on his charge and he therefore did not need to be interviewed by the Department.

¶ 12 Initially, the CLC asserts that petitioner's brief should be stricken for failing to comply with the requirements of Supreme Court Rule 341(h) (eff. July 1, 2008). While we agree with the observed deficiencies, we decline to strike the brief. Petitioner's *pro se* status does not relieve him of the burden of complying with the supreme court rules governing appellate procedures. *Dombrowski v. City of Chicago*, 363 Ill. App. 3d 420, 425 (2005). However, because we are able to discern the legal issues from the record and the respondents' brief, we decline to dismiss the appeal. See *Twardowski v. Holiday Hospitality Franchising*, 321 Ill. App. 3d 509, 511 (2001) (the court may entertain an appeal as long as it understands the issues plaintiff intends to raise and where it has "the benefit of a cogent brief of the other party").

¶ 13 The decision of a CLC to sustain the dismissal of a charge of discrimination will be upheld unless it is "arbitrary,

capricious, or an abuse of discretion." *Gusciara v. Lustig*, 346 Ill. App. 3d 1012, 1017 (2004). A decision is not arbitrary or capricious unless it " 'contravenes the legislature's intent, fails to consider a crucial aspect of the problem, or offers an impossible explanation contrary to agency expertise.' " *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 917 (2010) (quoting *Allen v. Lieberman*, 359 Ill. App. 3d 1170, 1177 (2005)). An abuse of discretion will be found if the decision is clearly illogical or is reached without using conscientious judgment. *Deen v. Lustig*, 337 Ill. App. 3d 294, 302 (2003). The reviewing court may not reweigh the evidence presented or substitute its judgment for that of the Chief Legal Counsel. *Owens*, 403 Ill. App. 3d at 917.

¶ 14 Section 2520.430 of the Illinois Administrative Code provides that a complainant who files a charge under the Act "must cooperate with the Department, *** and be available for interviews and conferences upon reasonable notice or request by the Department." 56 Ill. Admin. Code 2520.430(c), amended at 18 Ill. Reg. 16829 (eff. Nov. 4, 1994). Additionally, the Department is authorized to dismiss a charge for a "failure to proceed" where the complainant fails to make himself available or refuses to cooperate with the Department. 56 Ill. Admin. Code 2520.430(c), amended at 18 Ill. Reg. 16829 (eff. Nov. 4, 1994);

56 Ill. Admin. Code 2520.560(b), amended at 20 Ill. Reg. 6291 (eff. April 18, 1996).

¶ 15 Here, the record shows that the Department's request was reasonable. In his September 8, 2008, order, the CLC directed the Department to interview petitioner to help clarify his charge, listing specific points that needed to be clarified. Accordingly, the Department scheduled an interview. Petitioner had notice of the interview and notice that his case would be dismissed if he did not cooperate. Nonetheless, petitioner deliberately refused to make himself available, viewing the interview as unnecessary and refusing to meet with Padilla. Under these circumstances, we find the CLC did not abuse his discretion in sustaining the Department's dismissal for failure to proceed. See *Chicago Transit Authority v. Department of Human Rights*, 169 Ill. App. 3d 749, 754-55 (1988) (the order of default entered against the respondents was affirmed because they deliberately refused to produce witnesses with knowledge of the events in question for the Department's fact-finding conference); *cf. Denny's, Inc. v. Department of Human Rights*, 363 Ill. App. 3d 1, 12-13 (2005) (where the respondents' witnesses were unable to find the fact-finding conference location, their failure to participate was not deliberate and the order of default entered against respondents was reversed).

¶ 16 Petitioner makes several sweeping allegations of the corruption and incompetence of the Department and specifically of Padilla, Trueblood, and Honel. He claims that he would have agreed to an interview with another agent of the Department and therefore he did not refuse to comply with the Department's request. However, petitioner's criticisms and disapproval of the Department, its personnel, and its investigation are not supported in the record where, in fact, petitioner was afforded numerous opportunities to clarify his concerns and complaints for the purpose of conducting an investigation on his behalf. Accordingly, petitioner has not overcome the presumption that administrative proceedings are conducted by representatives who act with honesty and conscientiousness. See, e.g., *SMRJ, Inc. v. Russell*, 378 Ill. App. 3d 563, 571 (2007). Having refused to make himself available to the Department's reasonable request, it was within the Department's authority to dismiss his charge, and the CLC did not abuse his discretion in sustaining the dismissal.

¶ 17 Accordingly, we affirm the decision of the Chief Legal Counsel of the Illinois Department of Human Rights.

¶ 18 Affirmed.