SECOND DIVISION
August 28, 2012

No. 1-11-3125
2012 IL App (1st) 113125-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TASTE OF HEAVEN and DAN MCCAULEY,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County
	)	
v.	)	11 CH 06655
	)	
THE CITY OF CHICAGO COMMISSION ON HUMAN RELATIONS and MARIA FLORES,	)	Honorable
	)	James Rhodes,
	)	Judge Presiding.
Defendants-Appellees.	)	

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Quinn and Justice Cunningham concurred with the judgment.

ORDER

Held: Plaintiffs were not denied due process during administrative hearings where default judgment had been properly entered against plaintiffs under applicable administrative regulations.

¶1 Plaintiffs Taste of Heaven and Dan McCauley seek review of an administrative ruling by defendant City of Chicago Commission on Human Relations. The Commission entered a default judgment against plaintiffs and, after a hearing on damages, awarded defendant Maria Flores over $100,000 in damages and attorney fees. Plaintiffs contend that they were denied due process because the default judgment was improper and the hearing officer was biased against them. We confirm the Commission's order.

¶2 The Commission is a municipal administrative agency that is charged with the investigation and adjudication of complaints brought under the Chicago Human Rights Ordinance (Chicago Municipal Code ch. 2-160 (as amended through March 14, 2012)), and the Chicago Fair Housing Ordinance (Chicago Municipal Code ch. 5-8 (as amended through March 14, 2012)). See generally Chi. Mun. Code ch. 2-120 art. XIV (as amended through March 14, 2012). Among other things, the Commission hears complaints about employment discrimination.

¶3 A brief summary of how the Commission operates is helpful for understanding this case. The Commission's enabling ordinance grants it the power to create regulations and rules to govern its investigations and proceedings (see Chicago Municipal Code § 2-120-510(p) (amended Mar. 14, 2012)), which the Commission has comprehensively done. See generally Chicago Commission on Human Relations (CCHR) Regulations (eff. July 1, 2008). The process that the Commission has set up is very similar to an ordinary civil lawsuit with some additions. The process can be divided into three distinct phases: pleadings, investigation, and adjudication. The pleading phase begins when the Commission receives a complaint, which is then screened for compliance with the pleading regulations. See CCHR sect. 210.120 (eff. July 1, 2008). The Commission serves a copy of the complaint on the respondent, who then must respond to the allegations in writing. See CCHR sect 210.200 (eff. July 1, 2008). The respondent may also move to dismiss the complaint. See CCHR Reg. 210.330 (eff. July 1, 2008).

¶4 The process then moves into the investigation phase, in which the Commission examines the allegations in the complaint and the response in order to determine whether there is "substantial evidence" that the respondent violated one of the ordinances. See CCHR sect.

220.100 (eff. July 1, 2012). The Commission may conduct interviews, review physical and documentary evidence, and issue subpoenas.

¶5 If the Commission determines that there is substantial evidence of an ordinance violation, the process moves to the formal adjudication phase. At this point, the Commission usually appoints a hearing officer to take evidence and testimony, although that is not always necessary. See CCHR Reg. 220.330(a) (eff. July 1, 2008). The hearing unfolds much like a civil trial, complete with limited discovery, motions, briefing, direct and cross-examination of witnesses, and a transcribed record. See generally CCHR sect. 240.300 (eff. July 1, 2008). After the hearing, the hearing officer makes recommendations on liability and relief to the Commission, which has the final authority to adjudicate the matter. See generally CCHR sect. 240.600 (eff. July 1, 2008). Appeal of any final order entered by the Commission is by a common-law writ of *certiorari* to the circuit court. See CCHR Reg. 250.150 (eff. July 1, 2008).

¶6 Maria Flores, a long-time employee of Taste of Heaven, filed an employment discrimination claim with the Commission against Taste of Heaven and its owner, Dan McCauley, after she was fired from her job.[1] After investigating Flores' claim, the Commission found substantial evidence of an ordinance violation. Prior to setting the case for adjudication, however, the Commission scheduled several settlement conferences with a mediator in an attempt to resolve the matter. Such settlement conferences are encouraged but not required under the Commission's regulations (see CCHR Reg. 230.100 (eff. July 1, 2008)), yet once they are scheduled the parties must attend or face sanctions (See CCHR. Reg. 230.110 (eff. July 1, 2008)).

[1] During the administrative proceedings before the Commission, Flores was the complaining party and McCauley and Taste of Heaven were the defendants. In the administrative review process in the circuit court, however, their roles are procedurally reversed because McCauley and Taste of Heaven were the parties who sought administrative review. See 735 ILCS 5/3-103, 3-107 (West 2010). We refer to the parties as they appeared before the circuit court. See Ill. S. Ct. R. 341(f) (eff. July 1, 2008).

¶7 After having to reschedule two previous conferences due to scheduling conflicts, the Commission scheduled a settlement conference for December 4, 2008. At 4:30 p.m. on the day before the conference was to be held, plaintiffs filed an emergency motion with the Commission to reschedule the conference. The motion claimed that McCauley (who had settlement authority on behalf of Taste of Heaven) had an unexpected work emergency and would therefore be unable to attend the conference. Because the motion was filed so late in the day, however, the Commission's staff did not receive it until the next morning, half an hour before the conference was set to begin. Plaintiffs' counsel appeared at the conference but Flores and her counsel did not, and the conference did not occur as scheduled.

¶8 The Commission, having wasted a substantial amount of its staff's time preparing for the settlement conference and having also had to pay the mediator for his time, issued a formal Notice of Potential Sanctions to both parties. See CCHR Reg. 235.120 (eff. July 1, 2008). In her response, defendant's attorney averred that she did not learn of plaintiffs' motion to continue the settlement conference until 4:45 p.m. the day before the conference, when she received a voicemail from plaintiffs' attorney informing her that he "had continued the settlement conference" because of McCauley's unavailability. Based on this representation, defendant's attorney believed that the Commission had granted the motion.

¶9 Not only was this incorrect, but it also turned out that plaintiffs' attorney had made another, much more serious misrepresentation to the Commission itself. In his own response to the Commission's notice, plaintiffs' attorney admitted that the real reason that McCauley had been unable to attend was that plaintiffs' attorney had failed to inform him of the conference until two days before it was scheduled to occur, and by that time McCauley was unable to find someone to cover for him at work so that he could attend. Plaintiffs' attorney blamed the error

on his own heavy caseload. Based on these misrepresentations, the Commission issued a written order fining plaintiff's attorney $250 as a sanction for the failed settlement conference. See CCHR Reg. 235.440 (eff. July 1, 2008) (allowing the imposition of monetary sanctions on attorneys).

¶ 10 The Commission also decided that, rather than rescheduling the settlement conference for the fourth time, setting the case for adjudication would be more efficient. The Commission issued an order appointing a hearing officer and setting a date for the required prehearing conference. Attendance at the conference is mandatory and failure to attend can result in sanctions, up to and including entry of a default judgment on liability. See CCHR Regs. 235.310(d), 240.120 (eff. July 1, 2008). When the scheduled date for the prehearing conference arrived, however, neither McCauley nor his attorney appeared, and no explanation was given for their absence. The hearing officer therefore entered an order of default. Pursuant to the Commission's regulations, the default meant that plaintiffs were "deemed to have admitted the allegations of the complaint and to have waived any defenses to the allegations" and, although an administrative hearing would still occur, the hearing would be held "only to allow the complainant [*i.e.*, Flores] to establish a *prima facie* case and to establish the nature and amount of relief to be awarded." CCHR Reg. 235.320 (eff. July 1, 2008). Although plaintiffs could still present evidence on damages, they would be barred from contesting liability. See *id.*

¶ 11 Also pursuant to the Commission's regulations, the hearing officer notified plaintiffs that they could have the order vacated, provided that they could show good cause for their failure to attend the prehearing conference. See CCHR Reg. 235.150 (eff. July 1, 2008). Plaintiffs' attorney moved to vacate the default, but only on behalf of Taste of Heaven. (We will return to this point later.) Plaintiffs' attorney conceded that he had received notice of the hearing, but his

sole excuse for missing the hearing was that he "failed to docket and record the hearing date" in his calendar.

¶ 12 The hearing officer denied Taste of Heaven's motion to vacate, finding that counsel's failure to properly record the hearing date in his calendar did not constitute good cause. The hearing officer also noted that the default against McCauley stood unchallenged because he had not filed a timely motion to vacate the default. The hearing officer then entered a scheduling order setting the date for the administrative hearing on Flores' *prima facie* case and damages.

¶ 13 Before the hearing could be held, however, plaintiffs' counsel moved to disqualify the hearing officer, contending that he was biased against plaintiffs because of his alleged failure to follow the Commission's regulations by, among other things, entering the default without notice and then refusing to vacate it. The hearing officer denied the motion. Plaintiffs then filed a request for review with the Commission, which confirmed the hearing officer's decision in a lengthy written order.

¶ 14 The administrative hearing finally commenced in March 2010, almost four years after Flores filed her complaint. Plaintiffs' counsel participated in the hearing "under protest" and argued that the hearing officer's allegedly illegal rulings on the default denied plaintiffs due process. Neither McCauley nor any other witnesses for plaintiff appeared at the hearing. Flores testified at the hearing in order to establish her *prima facie* case and damages, and although plaintiffs' counsel was allowed to object to evidence and to cross-examine Flores on damages issues, he was not allowed to contest liability. Plaintiffs' counsel was given the opportunity to present witnesses on damages but did not do so. Throughout the hearing, plaintiffs' counsel complained that the hearing officer's pretrial and evidentiary rulings impinged on plaintiffs' right to be heard.

¶ 15 After hearing the evidence on damages and receiving posttrial briefs from the parties, the hearing officer recommended that the Commission award Flores $6,750 in back pay, $20,000 for emotional distress, and $25,000 in punitive damages, as well as impose a fine of $250 on each of the plaintiffs. The Commission accepted the hearing officer's findings of fact and recommended relief. Plaintiffs again contended that they had been denied due process and that the hearing officer had made numerous evidentiary errors during the hearing, but the Commission rejected each of plaintiffs' contentions. Pursuant to the Commission's regulations, Flores' attorneys filed a petition for attorney fees, which plaintiffs did not contest in any way, and the Commission awarded Flores' attorneys close to $70,000 in fees.

¶ 16 Pursuant to the Commission's regulations, plaintiffs sought administrative review of the Commission's final order via a petition for a writ of *certiorari* in the circuit court. The circuit court confirmed the Commission's final order, finding that plaintiffs' due process rights were not violated and that there was sufficient evidence presented during the hearing to support the Commission's order. Plaintiffs now appeal.

¶ 17 On a petition for administrative review, we review the decision of the administrative agency directly rather than the decision of the circuit court. See *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). There is a three-part standard of review in the context of administrative decisions, and "[t]he applicable standard of review depends upon whether the question presented is one of fact, one of law, or a mixed question of fact and law." (Internal quotation marks omitted.) *Cinkus v. Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008).

> "An administrative agency's findings and conclusions on questions of fact are deemed *prima facie* true and correct. In examining an administrative agency's

> factual findings, a reviewing court does not weigh the evidence or substitute its judgment for that of the agency. Instead, a reviewing court is limited to ascertaining whether such findings of fact are against the manifest weight of the evidence. An administrative agency's factual determinations are against the manifest weight of the evidence if the opposite conclusion is clearly evident. [Citations.] In contrast, an agency's decision on a question of law is not binding on a reviewing court. For example, an agency's interpretation of the meaning of the language of a statute constitutes a pure question of law. Thus, the court's review is independent and not deferential." *Id.*

There are also mixed questions of fact and law, which are "questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated." (Internal quotation marks omitted.) *Id.* at 211. For these questions, we will reverse only if the administrative agency's decision is clearly erroneous, which occurs when we are left with the "definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Id.*

¶ 18 Plaintiffs overarching contention is that they were denied due process during the administrative proceedings because they did not get a full and fair hearing. Plaintiffs contend that they were unfairly barred from presenting witnesses that would have challenged Flores' story, that the hearing officer was biased against them, and that the default order should never have been entered or, even if it was properly entered, that it should have been vacated. At the heart of all these contentions is the default order that barred plaintiffs from contesting liability, so we focus our analysis on the propriety of that order.

¶ 19 Plaintiffs' primary contention is that the hearing officer's decision to enter the default order was contrary to the Commission's regulations. Whether the hearing officer applied the appropriate regulations when he issued the order of default presents a question of law, so we review this issue *de novo*. Generally, the Commission is required to provide a party notice of a potential sanction and the opportunity to respond before entering the sanction. See CCHR Reg. 235.120(a) (eff. July 1, 2008). Notice is not always required, however. Regulation 235.120(b) states in pertinent part:

> "The Commission (or hearing officer if applicable) may issue an order imposing a procedural sanction without further notice in the following circumstances, provided that the order includes notice of the opportunity to move to vacate or modify the sanction or to submit a request for review, as applicable:
>
> (1) When the notice or order with which the party failed to comply included a warning that the sanction could be imposed for noncompliance." CCHR Reg. 235.120(b) (eff. July 1, 2008).

¶ 20 In this case, the order at issue was the Commission's Order Appointing Hearing Officer and Commencing Hearing Process, which specified the time, date, and location for the prehearing conference that plaintiffs failed to attend. Critically, the order also contains the following warning:

> "Failure to comply with orders and regulations can result in substantial penalties pursuant to Subpart 235 of the Commission's regulations [*i.e.*, the regulations pertaining to sanctions], including dismissal of the complaint, *an order of default against respondent*, fines, and costs including attorney fees." (Emphasis added.)

Moreover, when plaintiffs failed to appear at the prehearing conference and the hearing officer issued an order of default, the order cited the above provision from the scheduling order and also contained this language:

> "Respondents [*i.e.*, plaintiffs] may move to vacate or modify this order pursuant to Commission Regulation 235.150. *The motion must establish good cause for the noncompliance which formed the basis for the sanction/s imposed.* The motion must be filed and served no later than 28 days from the date of mailing of this order. The motion does not stay the proceedings in the case or the payment of any monetary sanction unless so ordered by the hearing officer. Unless good cause is shown, failure to file a proper and timely motion to vacate or modify shall constitute waiver of all possible challenges to this order." (Emphasis added.)

¶21 Based on these orders, there is no reason to believe that the hearing officer failed to comply with the Commission's regulations regarding default orders. Plaintiffs were warned in the scheduling order that their failure to appear could result in a default judgment on liability, and the hearing officers' default order informed plaintiffs of what they would need to do in order to contest the order. Together, these two documents followed the Commission's sanctions regulations to the letter, so the default order was properly entered.

¶22 Plaintiffs alternatively contend that the hearing officer was wrong to deny the motion to vacate the default, arguing that the hearing officer's decision failed to follow the applicable law. This is also a question of law that we review *de novo* because it raises the question of which legal rule should be applied in this situation.

¶23 There are several problems with plaintiffs' argument. First, the motion to vacate was filed on behalf of Taste of Heaven only. We do not know why McCauley did not join in the motion to vacate, but the consequences of his failure to do so were clearly spelled out in the hearing officer's Order of Default and are reiterated in Regulation 235.150(a): "Unless good cause is shown, failure to file a proper and timely motion to vacate or modify shall constitute waiver of all possible challenges to the sanctions." CCHR Reg. 235.150(a) (eff. July 1, 2008). Both the hearing officer and the Commission noted this failure in their respective orders, but rather than attempting to show good cause for the omission, plaintiffs have simply ignored the fact that McCauley did not join the motion to vacate. There was accordingly no reason for the hearing officer to vacate the default against McCauley because McCauley did not ask him to do so.

¶24 Taste of Heaven did file a timely motion to vacate, but its argument is also flawed. Taste of Heaven's sole argument is that the default should have been set aside because "the overriding consideration is whether substantial justice is being done, and whether under the circumstances, compelling the other party to proceed to trial on the merits would be reasonable." This is an accurate statement of the law, but the problem is that this is the legal standard for vacating a default under section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2010)). See *In re Haley D.*, 2011 IL 110886, ¶ 57. This case was brought before the Commission and was under its jurisdiction, so the rules and standards that apply are those of the Commission, not the circuit court. See *Celotex Corp. v. Pollution Control Bd.*, 94 Ill. 2d 107 (1983) ("Rules and regulations validly promulgated by an administrative agency have the force and effect of law.").

¶25 Unlike in a proceeding before the circuit court, where the question of whether a default should be vacated is a question of substantial justice, a valid default in an administrative hearing before the Commission can only be vacated for good cause. Regulation 235.150(b) states that "[a] motion to vacate or modify a sanction must establish good cause for the noncompliance which formed the basis for the sanction and/or good cause for any requested modification." CCHR Reg. 235.150(b) (eff. July 1, 2008). In this case, the only reason that Taste of Heaven gave for its failure to appear was that its attorney had failed to properly calendar the hearing, which the hearing officer found did not constitute good cause. Yet Taste of Heaven does not challenge the hearing officer's finding on this point,[2] arguing only that the default order does not do substantial justice between the parties. This is an irrelevant consideration under the Commission's regulations. Even if we were to assume for the sake of argument that Taste of Heaven's motion demonstrated that substantial justice was not served by enforcing the default, the motion still fails because it does not advance a proper ground for setting aside a default in this context.

¶26 So the default order was properly entered and the motion to vacate was properly denied. Plaintiffs remaining arguments are that they were denied due process because (1) they did not get a full and fair hearing and (2) the hearing officer was biased, and that (3) the hearing officer made improper evidentiary rulings at the administrative hearing.

¶27 Due process in an administrative hearing normally requires an opportunity to be heard. See *Segal v. Department of Financial & Professional Regulation*, 404 Ill. App. 3d 998, 1002 (2010). Due process is not violated, however, "where the negligence or intentional conduct of a party results in the dismissal of its claim or the entry of a default judgment against the party."

[2] Taste of Heaven does not argue that the hearing officer was wrong to find that the calendaring mistake by Taste of Heaven's attorney does not constitute good cause for setting aside the default. That argument is therefore forfeit and we need not consider it. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

Metz v. Illinois State Labor Relations Board, 231 Ill. App. 3d 1079, 1093 (1992). In this case, it is indisputable that the default was the direct result of plaintiffs' own failure to attend the prehearing conference. This failure was in turn caused by the inexplicable failure of plaintiffs' attorney to calendar the conference. Although it is true that plaintiffs were not allowed to present a case on liability, this was a direct and foreseeable result of their own default, which plaintiffs were expressly warned could happen if they failed to attend the conference. Precluding plaintiffs from contesting liability at the hearing therefore did not violate due process.

¶28 Due process also requires a fair and impartial tribunal (see *Anderson v. McHenry Township*, 289 Ill. App. 3d 830, 832 (1997)), and plaintiffs contend that their right to due process was violated because the hearing officer was biased. The only evidence of bias that plaintiffs offer, however, is that the hearing officer entered the default judgment against them and declined to vacate it, precluded plaintiffs from cross-examining Flores on issues pertaining to liability, and made unfavorable evidentiary rulings at the hearing. But adverse rulings are not a sufficient basis for a claim of bias. See *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Instead, a party claiming bias "must present evidence of prejudicial trial conduct and evidence of a judge's personal bias." *Id.* There is no such evidence here, and plaintiffs do not attempt to offer any. Instead, they rely only on the hearing officer's rulings during the course of the administrative proceedings as well as a disingenuous interpretation of statements that he made during the hearing.

¶29 Plaintiffs misleadingly contend in their brief that when "asked whether, by Plaintiff's Counsel, if he was interested in the truth, the Hearing Officer would not answer." A review of the hearing transcript puts this into context. Rather than limit his cross-examination of Flores to the issue of damages, plaintiffs' counsel continually attempted to inject the defaulted issue of

liability into the proceedings but was overruled repeatedly by the hearing officer. For example, the following exchange occurred after the hearing officer sustained an objection by Flores' counsel:

> "[Hearing officer]: That's not part of this case today. Go to damages, please.
>
> [Plaintiff's counsel]: I understand Your Honor is not interested in the truth.
>
> [Hearing officer]: Please. Put on cross-examination.
>
> [Plaintiff's counsel]: I understand Your Honor has no concern whatever for the truth.
>
> [Hearing officer]: I have no concern for liability.
>
> [Defense counsel]: The truth should be an issue.
>
> [Hearing officer]: Liability has been established."

As can be seen from this exchange, there is no indication of any personal bias on the part of the hearing officer. Rather, it is evident throughout the record that plaintiffs' counsel consistently refused to recognize the effect of the default judgment on the scope of the hearing. We see nothing in the record that would indicate that the hearing officer was not fair and impartial, and plaintiffs have not offered any evidence to the contrary.

¶30 The final issue that plaintiffs raise is the hearing officer's evidentiary rulings. This presents a mixed issue of law and fact because it requires the application of legal rules to specific facts, so we review the Commission's decision on this issue only to determine whether it was clearly erroneous. Plaintiffs primarily take issue with the hearing officer's rulings on several hearsay objections, and they also complain that the hearing officer made and sustained his own

objections to some of plaintiffs' counsel's questions. But the problem with plaintiffs' argument is that even if we assume for the purpose of argument that certain evidence might be inadmissible under the standard rules of evidence in the circuit court, this does not necessarily mean that the same evidence is also inadmissible in administrative proceedings before the Commission. Under the Commission's regulations the ordinary rules of evidence do not apply. See CCHR Reg. 240.314 (eff. July 1, 2008) ("The admissibility of all evidence shall be subject to the ruling of the hearing officer, who shall not be bound by the strict rules of evidence applicable in courts of law or equity."). Moreover, the hearing officer's rulings were, as the Commission noted in its final order, "a predictable effect of the Order of Default." Plaintiffs' default meant that they were prohibited from delving into issues related to liability, so any rulings by the hearing officer that limited cross-examination on this subject were proper. Even if we were to assume that the hearsay rulings were erroneous, such an error could not have had any effect on the result of the proceeding because the statements at issue related only to liability, which was already established. We therefore cannot say that the Commission's rulings on the evidentiary issues were clearly erroneous.

¶31 Confirmed.