



### III. Discussion

The Executive Director lists two reasons for dismissing this case. First, she asserts that she has only recently learned that AWP has been dissolved, and it is not clear whether the Commission may order injunctive relief against a manager of a dissolved corporation.<sup>5</sup> Second, she states

it has become apparent during the course of prehearing preparation that Mr. Kurka is unlikely to employ others in Alaska again. The Executive Director has determined, therefore that pursuing this case against Mr. Kurka for the sole purpose of obtaining training for him as an improbable potential employer would not represent the best uses of Commission resources.<sup>[6]</sup>

Mr. Kurka has objected to the requested dismissal because there has been no retraction of the allegations made in this proceeding, no apology issued, and no opportunity for him to clear his reputation.<sup>7</sup>

Lyla Propps filed the complaint in this matter pursuant to AS 18.80.100(a) which alleged discriminatory practices. After investigation, but before filing an accusation, the Executive Director had the discretion to dismiss the complaint for a variety of reasons, including:

(3) relief is precluded by the absence of the person alleged to have engaged in the discriminatory practice; [and]

\* \* \*

(5) a hearing will not represent the best use of commission resources[.<sup>8</sup>]

The accusation in this case was against AWP, which is a dissolved corporation. Arguably, the Executive Director could have dismissed the complaint because a dissolved corporation is “absent” and relief against it is precluded. In addition, the Executive Director could have dismissed the complaint based on her discretionary determination that a hearing would not be a good use of resources.

Once an accusation has been filed and referred for a hearing, however, the Executive Director has no authority to dismiss a case. Only the Commission may take final action on a matter that has been referred for a hearing. The Commission may find that the person charged in

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* This information was not available on the Department of Commerce, Community and Economic Development website until after the accusation was issued. Affidavit of Stephen Koteff.

<sup>5</sup> Motion for Dismissal, page 2.

<sup>6</sup> Motion for Dismissal, page 2 – 3 (internal citations omitted).

<sup>7</sup> Motion to Deny Complainant’s Motion to Dismiss.

<sup>8</sup> AS A8.80.112(b).

the accusation did engage in a discriminatory practice. If that occurs, the Commission must order the person to refrain from engaging in the practice, and may order other appropriate relief.<sup>9</sup> In the alternative, the Commission may find that the person charged did not engage in a discriminatory practice. In that event, the Commission issues an order dismissing the complaint.<sup>10</sup>

Nothing in AS 18.80 explicitly gives the Commission the authority to dismiss a case simply because effective relief is precluded by the absence of the person alleged to have engaged in the discriminatory practice, or because a hearing is not a wise use of the Commission's resources. The Commission is, however, responsible for implementing the legislative goal of preventing discrimination.<sup>11</sup> The Commission can reasonably conclude that moving forward with a hearing where any relief it might order would be futile does not further the goals of AS 18.80 because it diverts resources from other matters. In that situation, the Commission may dismiss a complaint even though there is no finding that the discriminatory practice did not occur.

That the Commission has the authority to dismiss a complaint for these reasons is supported by the unreasonable result that could occur if this authority is not inferred. If the Commission could not dismiss this case, the hearing would be held as scheduled, but there would be no requirement for the Executive Director to actually present evidence. Because the Executive Director has the burden of proof,<sup>12</sup> her failure to present evidence would result in a finding that the complainant should be dismissed.

It is true that dismissal at this stage will deprive Mr. Kurka of the opportunity to clear his name. But this is not significantly different from other cases where complaints are dismissed even though there is no finding in favor of the respondent. This occurs where the Commission simply finds that the Executive Director has not met its burden of proof.<sup>13</sup> In those cases, the Commission has issued an order dismissing the complaint even though there is no finding that the discriminatory practice did not occur; there is only a finding that the Executive Director has not proven that it did occur.

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<sup>9</sup> AS 18.80.130(a).

<sup>10</sup> AS 18.80.130(c).

<sup>11</sup> See AS 18.80.200(b) (expressing state policy).

<sup>12</sup> 6 AAC 30.440(a).

<sup>13</sup> See *Lavine v. SCSL, Inc*, OAH No. 11-0105-HRC (ASCHR 2012); *Phillips v. Tew's Excavation, Inc.*, OAH No. 09-0372-HRC (ASCHR 2011).

In this case, going forward with a hearing is not a wise use of the Commission's resources. The subject of the complaint, AWP, is no longer in business. Because it is no longer in business, AWP has no managers, officers, directors, or employees. Thus, even if injunctive relief were ordered, there is no one left to comply with a Commission order. To the extent it might have been engaged in discriminatory practices, those actions have stopped because all of AWP's actions stopped when it ceased to exist. Assuming that Mr. Kurka, a former manager, could be required to obtain training, the Executive Director's determination that he is unlikely to be an employer himself in the future is reasonable and supports the conclusion that the Commission's resources are better devoted to other matters.

#### **IV. Conclusion**

Holding a hearing in this matter is not in the best interests of the Commission as it would not be a wise use of Commission resources. Accordingly, IT IS HEREBY ORDERED that the complaint in this matter is DISMISSED.

DATED this 31<sup>st</sup> day of December, 2013.

*Signed* \_\_\_\_\_  
Jeffrey A. Friedman  
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]

1 **BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS**

2 **Received**

3 **JUL 08 2013**

4 State of Alaska  
5 Office of Administrative Hearings

3 PAULA M. HALEY, EXECUTIVE )  
4 DIRECTOR, ALASKA STATE )  
5 COMMISSION FOR HUMAN RIGHTS )  
6 *ex rel.* Lyla PROPPS, )

6 Complainant, )

7 v. )

ASCHR No. J-10-037/057

OAH No. 12-0263-HRC

9 ALASKAN WOOD PRODUCTS, )  
10 LLC, )

11 Respondent. )

12 **FINAL ORDER**

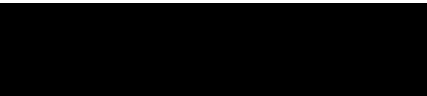
13  
14 In accordance with AS 18.80.130 and 6 AAC 30.480, the Hearing  
15 Commissioners, having reviewed the administrative record, are in agreement with  
16 and adopt the Recommended Decision of Administrative Law Judge Jeffrey A.  
17 Friedman that the motion to dismiss this complaint should be granted. In  
18 particular, the Hearing Commissioners note the finding by Judge Friedman that the  
19 subject of the complaint, Alaskan Wood Products, is no longer in business and  
20 thus has no managers, officers, directors or employees who could be ordered to  
21 comply with any Commission order that could be issued if the matter went to  
22 hearing and the executive director was able to meet her burden of proof.  
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24 Accordingly, for all of the reasons set forth in Judge Friedman's Recommended  
25 Decision, the complaint of Lyla Propps v. Alaskan Wood Products is dismissed.  
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Judicial review is available to the parties pursuant to AS 18.80.135 and AS 44.62.560-570. An appeal must be filed with the superior court within 30 days from the date this Final Order is mailed or otherwise distributed to the parties.

IT IS SO ORDERED.


DATED: July 3, 2013

  
Christa Bruce, Commissioner

DATED: July 3, 2013

  
Grace Merkes, Commissioner

DATED: July 3, 2013

  
Lester C. Lunceford, Commissioner

CERTIFICATE OF SERVICE

This is to certify that on July 8, 2013, a copy of the foregoing was mailed by first-class mail U.S. mail, postage prepaid, to:

Stephen Koteff, Human Rights Advocate  
Alaska State Commission for Human Rights  
800 A Street, Suite 204  
Anchorage, AK 99501 (hand-delivered)

Alaskan Wood Products  
c/o Walter Kurka



and:

Jeffrey Friedman, Administrative Law Judge  
SOA Office of Administrative Hearings  
550 W. 7<sup>th</sup> Avenue, Suite 1600  
Anchorage, AK 99501



Margaret Taylor, Commission Secretary