

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States
Department of Housing and Urban
Development, on behalf of
Valerie Williams, Valdon Williams
and Karen Rouse,

Charging Party,

v.

Jose Millan
Leonor Millan
Rudolph Millan,

Respondents.

HUDALJ 09-92-1503-1
Dated: July 19, 1994

Maria L. Mandolini, Esq.
For the Respondents

Jo Ann Riggs, Esq.
R. Faye Austin, Esq.
For the Charging Party

Before: William C. Cregar
Administrative Law Judge

INITIAL DETERMINATION AND ORDER

This matter arose as a result of a complaint of discrimination based upon familial status in violation of the Fair Housing Act as amended, 42 U.S.C. § 3601, *et seq.* ("Fair Housing Act" or "Act") and 24 C.F.R. Parts 100, 103, and 104. Based upon a complaint filed with the Department of Housing and Urban Development ("the Charging Party" or "HUD") by Complainants Valerie Williams, Valdon Williams, and Karen Rouse, HUD's Regional Counsel issued a Determination of Reasonable Cause and Charge of Discrimination on September 27, 1993. The Act requires that a hearing before an administrative law judge shall commence "no later than 120 days following the issuance of the charge, unless it is impracticable to do so." 42 U.S.C. § 3612 (g).

On December 14, 1993, I granted the parties' joint motion to continue the hearing

until May 10, 1994, well after the statutory 120 day limit due to the continuing unavailability of two of the Respondents. In the Order I stated that I would grant no further extensions, barring exceptional circumstances. On April 29, 1994, I granted a second extension of the hearing date until June 7, 1994, because, on May 10th, Respondent Rudolph Millan was required by his employer to be out of the country. Notwithstanding these two extensions of the hearing date, neither of the parties appeared at the June 7, 1994, hearing. I closed the record and stated at that time that I would issue an Initial Determination and Order based on the record before me.

Subsequent to the hearing, the Charging Party filed a Motion for Reconsideration of my Order closing the Record. Both parties' attorneys have submitted explanations for their nonappearance at the hearing. On June 21, 1994, counsel for the Charging Party filed an undated letter that she had received informing her that Complainants had "completely" and "unequivocally" withdrawn their complaint. On June 29, 1994, the Charging Party moved to dismiss the Charge based upon Complainants' withdrawal of the complaint. Respondents do not oppose the Motion except to the extent that, if granted, they would be precluded from seeking attorney fees and costs. I have opened the record to permit consideration of these filings.

The sole allegation set forth in the Charge of Discrimination is that, in violation of 42 U.S.C. § 3604 (c), Respondent Rudolph Millan stated to Complainants that his father, Jose Millan, was "uncomfortable" and "concerned" about having a teenager in the unit. Respondents deny that Rudolph Millan made the statement.

The post-hearing submissions of the parties establish that the Charging Party's attorneys made an unwarranted assumption that I would grant yet another continuance, and acting upon that assumption, prevented this hearing from occurring at the prescribed date and time. I grant the Charging Party's motion, and hereby dismiss the complaint with prejudice. In order to prevent a similar recurrence of this regrettable situation in future cases, I am issuing a written decision setting forth the operative events.

Statement of Facts

Respondents' attorney, Ms. Mandolini, informed the Charging Party's attorney, Ms. Riggs, and me during the April 29, 1994, prehearing conference call that she had a superior court trial scheduled to commence on May 31, 1994, which was expected to last through June 3, 1994. Accordingly, I reserved a block of time for the hearing, and the staff of the Office of Administrative Law Judges located a courtroom facility at the Oakland-Alameda Municipal Court,¹ made a hotel reservation, and purchased airline tickets for the hearing commencing on June 7, 1994. On Friday, June 3, 1994, at about 5:00 p.m., Pacific Daylight Time ("P.D.T.") (8:00 p.m. Eastern Daylight Time ("E.D.T."))

¹A hearing site in San Francisco is extremely difficult to obtain. The Oakland-Alameda Municipal Court makes its facilities available if a sitting judge happens to be on vacation.

Ms. Mandolini called Ms. Riggs telling her that she expected the superior court trial to last through the scheduled date of the hearing and that she had unsuccessfully requested a recess. She also told Ms. Riggs that the superior court trial judge would be willing to explain the circumstances to me and she asked how I could be contacted. At 5:30 p.m. P.D.T. Ms. Riggs told Ms. Mandolini that she could contact me either by facsimile machine or telephone. Ms. Mandolini stated that she would arrange a conference call between the superior court judge and me on the following Monday at 12:30 p.m. P.D.T. to obtain a continuance of one of the cases. With supervisory approval, Ms. Riggs excused two of the complainants, Valerie Williams and Karen Rouse, who happened to have been in her office at that time.² At about 5:45 P.D.T. (8:45 E.D.T.) Ms. Riggs called my home to tell me that Respondents' attorney had a conflict and that the scheduled hearing could not take place. At 6:00p.m. P.D.T. Ms. Riggs called the remaining Complainant, Valdon Williams, told him not to fly to Oakland the next day, and cancelled his airline tickets.

I was not home when Ms. Riggs phoned me. My teenage daughter listened to Ms. Riggs' message and wrote down Ms. Riggs' home phone number. I arrived at my home 15 minutes after Ms. Riggs had called and immediately attempted to contact her but reached a non-working number. Next, I called Chief Judge Heifetz to determine if he had heard anything about an effort to cancel the hearing. He had not. I told Judge Heifetz that, based on what my daughter had told me, that I saw no reason to grant a continuance because there had been no motion, and no explanation why Respondents had waited this long. I received no further communications from Ms. Riggs or anyone else regarding this matter over the June 4-5 weekend. Prior to leaving on my July 6, 1994, flight, I called my office from the airport to ascertain if any messages had been left on our office answering machine. There were none.

Ms. Mandolini spoke to my secretary, Ms. Harris, on June 6th at 6:00a.m. P.D.T. (9:00a.m. E.D.T.) and learned that I had left for Oakland. Ms. Harris told her that I was not granting a continuance, and that she should make every effort to postpone her other trial. Sometime that morning, Ms. Mandolini explained her situation to the superior court judge and obtained a continuance. At approximately 1:00p.m. P.D.T. Ms. Mandolini informed Ms. Riggs of her call to Ms. Harris, that she had obtained a continuance, and was prepared to proceed on the following day. Ms. Riggs told her that because she had sent Valdon Williams home, she would not attend the hearing.

²In a June 14, 1994, affidavit Ms. Riggs states: "After receiving the telephone call from Ms. Mandolini, I conferred with Assistant General Counsel Beverly G. Agee and Supervising Attorney Faye Austin about our options. I then explained to the two Complainants who were in my office that Respondents' counsel had an unavoidable conflict on the hearing date, and I allowed Complainants to leave."

Ms. Mandolini suggested that she go forward without him. After discussing the matter with her supervisor(s), Ms. Riggs told Ms. Mandolini that she could not go forward without Valdon Williams,³ that neither she nor anyone else would prosecute the case on June 7th, and that she would inform me of this decision. Ms. Mandolini informed the superior court judge of the government attorneys' decision. He told her to proceed with the superior court trial as scheduled. At approximately 4:30p.m. P.D.T. Ms. Mandolini informed Ms. Riggs, that the superior court trial was proceeding. Ms. Riggs stated that she would send a facsimile letter to my hotel, if she could not reach me before 5:00p.m. P.D.T.

Upon checking into my hotel on June 6th, I called my office. Ms. Harris, told me about Ms. Mandolini's call and her request that I talk to the superior court trial judge. Because I was already in Oakland, and did not yet know that the Charging Party's witnesses had been released, I told Ms. Harris that, if possible, she was to notify all parties that she had talked to me and that I was not granting a continuance. I then left the hotel. Subsequently, Ms. Riggs attempted to reach me. At about 6:00p.m. P.D.T. she sent a facsimile message to my hotel informing me that, because of Ms. Mandolini's conflict, she had excused the Charging Party's witnesses. Although I returned to the hotel shortly after 6:00 p.m. P.D.T., I did not learn of either Ms. Riggs' phone call or facsimile message until the following morning. At 7:15a.m. P.D.T. I called Ms. Riggs' office. Because she had not yet arrived, I told the person who answered to inform her that I had not granted a continuance. Ms. Riggs called me at the Oakland-Alameda County Court house at 9:30a.m. P.D.T. to inform me that she had received my 7:15a.m. message and to request a continuance for the following week. I denied her request, and informed her that there did not appear to be good cause for Respondents' belated request for a continuance,⁴ but that the Charging Party did not have my permission or authority unilaterally to release its witnesses. I informed her that I was closing the record, and that I would issue a decision within 60 days, which the Charging Party could appeal if deemed appropriate.

Discussion

Attorneys for the Charging Party lack authority to grant continuances. This authority resides exclusively with the administrative law judge. 24 C. F.R. § 104.110 (f). Any other result would at the very least: 1) lead to chaos in the scheduling of cases, 2) result in additional expense and wasted time making travel and courtroom arrangements,

³Valdon Williams resides in San Diego, approximately a one hour flight from San Francisco.

⁴I subsequently received Ms. Mandolini's explanation for waiting until Friday afternoon to inform me of her conflict. Because the superior court case did not begin on Tuesday, May 31, 1994, as previously scheduled, she was on telephone standby. If a case is not called in the superior court by Wednesday, it is normal for the case to be put over to the following week. However, her case was called on Thursday afternoon, recessed at 3:00p.m., and resumed on Friday morning. The instant situation could have been avoided had she called this office on Friday morning before the superior court trial commenced on that day.

3) be unfair to litigants awaiting hearings in other cases, including other complainants, and 4) result in noncompliance with statutory case processing deadlines.

Upon learning of Respondents' attorney's conflict, the proper course of action for the Charging Party's attorneys would have been to leave the onus of obtaining a delay on Respondents. Had Ms. Mandolini not been successful in contacting me and not appeared at the hearing, the Charging Party then would have been in a position to move for judgment based upon Respondents' failure to appear. Rather, the Charging Party's attorneys, assuming that I would grant the delay, 1) unilaterally released all of their witnesses; 2) made only one attempt to contact me over the entire weekend; 3) after learning of the continuance of the superior court trial, informed Respondents' attorney that no government attorney would appear at the hearing; and 4) failed to appear at the hearing.

CONCLUSION AND ORDER

By unilaterally releasing its witnesses and, after learning that Respondents' attorney had obtained a superior court continuance, informing that attorney that the Charging Party would not appear at the hearing, the Charging Party's attorneys prevented this hearing from taking place at the scheduled time and place.

The Charging Party's Motion to Dismiss the above captioned case is *granted* and this case is hereby *dismissed* with prejudice.

/s/

WILLIAM C. CREGAR
Administrative Law Judge