

GOVERNOR'S OFFICE

PHRC CASE NO. 201503891

PHRC CASE NO. 201503892

and

RECOMMENDATION OF MOTIONS EXAMINER

RECOMMENDED

Generally, the Respondents make several arguments. First, the Respondents submit that the PHRC matters should be closed because the Complainants filed a federal claim that, in effect, alleged the same claims as the allegations made in the PHRC filings. Next, the Respondents generally contend that the Complainants' Complaints fail to state claims with the requisite particularity. Next, the Respondents assert that the Complainants lack standing to bring the present PHRC claims. Also, the Respondents submit that the relationship between the Complainants and the Respondents do not invoke the PHRC's jurisdiction. The Respondents argue that the

Pennsylvania State Athletic Commission is not a public accommodation. Finally, the Respondents argue that the Complainants' Complaints were not timely filed.

With respect to the Respondents' assertion that the Complainants filed a federal claim that asserted the same allegations as are made in the PHRC Complaints, the Respondents observe that the parties stipulated to a series of facts that resulted in the dismissal of the federal claims. The federal court dismissal was with prejudice.

The Respondents next argument raises an issue that contributes to the present recommendation to dismiss the Complainants' PHRC claims. The Respondents correctly observe that the Complainants' PHRC Complaints contain nothing more than general statements and discrimination claims. The Complaints contain no dates of alleged acts and no details that are required by the "particularity" requirement of Section 9(a) of the PHRA. Fundamentally, Section 9(a) of the PHRA requires that a written complaint "set forth the particulars..." of the discrimination alleged. Here, the initial response to the Respondents' Motion by the PHRC Philadelphia regional office was to request that the Complainants be given additional time to file amended Complaints to cure the defects of having failed to state claims with particularity. The request for additional time was granted allowing the Complainants 30 days to file amended complaints. However, the allotted time has expired and, to date, the Complainants have not filed Amended Complaints that state their claims with sufficient particularity.

As drafted, the present Complaints simply generally allege that the Complainants are promoters of boxing, mixed martial arts, kickboxing and Muay tai combat sports events. Respondent Pennsylvania State Athletic Commission allegedly oversees such events by sanctioning, authorizing and monitoring them. Respondent Sirb is the Executive Director of the Pennsylvania State Athletic Commission. The Complaints do allege that the Complainants are of Puerto Rican descent and the Respondent Sirb is white. The Complaints generally declare that the Respondents take actions that exclude the Complainants from promoting events in Pennsylvania. The

Complainants declare that the Respondents have intentionally discredited the Complainants, found false reasons to deny the Complainants promotion opportunities, damaged the Complainants reputations and evidenced hostility towards Hispanic fighters. The Complaints make no effort to either assign time frames to any of the general allegations or specify how the alleged general actions happen. Conversely, the Respondents contend that the Complainants have not been denied the opportunity to promote events. The Respondents submit that the Complainants have promoted Muay Thai events on September 13, 2013, November 23, 2013 and on April 17, 2015. Additionally, the Respondents submit that the Complainants promoted boxing events on January 10, 2014, March 14, 2014 and May 30, 2014. Importantly, the Respondents submit that the Complainants have not applied to promote any additional events.

Here, despite having been given a specific opportunity to do so, the Complainants failure to specify with sufficient particularity their allegations is fatal to their claims. For this reason alone, the Complainants Complaints should be dismissed.

The Respondents argument that the Respondent is not a public accommodation is summarily rejected.


Lastly, the Respondents argue that the Complainants' Complaint were not timely filed. The Respondents submit that the last event the Complainants filed to promote was in April 2015, however the present Complaints were not filed until May 4, 2016, more than a year later. Of course to be timely, a PHRC Complaint must normally be filed within 180 days of an alleged act of harm. Here, the Complainants have failed to state alleged dates of alleged discriminatory actions. Once again, the Complainants were afforded an opportunity to amend their Complaints to clarify their claims, however, the Complainants failed to do so. Without dates in the Complaints, a determination of whether the Complaints were timely filed cannot be made.

This leaves the fact that the present Complaints fail to state claims with the

particularity the PHRA requires. For this reason, the Complainants' Complaints should be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: _____


Carl H. Summerson
Motions Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

HUMBERTO PEREZ,
Complainant

PHRC CASE NO. 201503891

RICHARD CARABALLO,
Complainant

PHRC CASE NO. 201503892

v.

THE PENNSYLVANIA STATE
ATHLETIC COMMISSION
and
GREG SIRB,
Respondents

ORDER

AND NOW, this 28th day of August, 2017, upon
consideration of the Recommendation of the Motions Examiner in the above captioned
case, it is hereby,

ORDERED

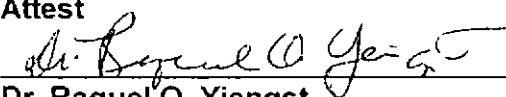
that the aforementioned Recommendation be and is hereby approved by the full
Pennsylvania Human Relations Commission. Accordingly, since the Complainants'
Complaints fails to state claims with sufficient particularity, these cases are dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 

M. Joel Bolstein, Esquire
Acting Chairman

Attest


Dr. Raquel O. Yiengst
Vice Chairperson



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June 1, 2017

Carl Summerson
Permanent Hearing Examiner
PA Human Relations Commission
333 Market Street, 8th Floor
Harrisburg, PA 17126-0333

via email only: csummerson@pa.gov

Re: Humberto Perez v. The Pennsylvania State Athletic Commission, PHRC
Case No. 201503891;
Richard Caraballo v. The Pennsylvania State Athletic Commission, PHRC
Case No. 201503892

Dear Mr. Summerson:

The Commission is in receipt of the Motions to Dismiss filed by Respondent in the above-referenced matters. Respondent asserts in their Motions to Dismiss that the Complaints should be dismissed because Complainants failed to file their Complaints within 180 days of the date of the last act of harm. Respondent further asserts in their Motion to Dismiss that Complainants failed to specify in their Complaints the specific dates on which the alleged acts of harm occurred.

The Commission agrees that Complainants failed to provide specific dates in their Complaints regarding the alleged acts of harm they suffered. However, the applicable regulations provide that complaints "may be amended at any time prior to approval of a hearing on the merits." 16 Pa. Code § 42.35(a). The regulations further explain that complaints "may be amended to cure technical defects or omissions, to clarify or amplify allegations made therein, or to add material allegations which are related to or grow out of the subject matter of the original complaint." 16 Pa. Code § 42.35(b). At this time, the Commission respectfully requests that Complainants be provided with thirty (30) days to amend their Complaints to cure the technical defects identified by Respondent and to clarify the allegations made in their Complaints.

Thank you for your consideration in this matter.

Respectfully,

/s/ Lisa M. Knight

Lisa M. Knight
Assistant Chief Counsel
(215) 965-7702

cc: Reginald Allen, Esquire (via email only: reginald.allen@comcast.net)
Jason McMurry, Esquire (via email only: jmcmurry@pa.gov)