

October 20, 2014

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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ORDER OF DISMISSAL

SUBJECT: Office of Civil Rights File No. **KCPA 14-02-01**

DANIILA VIRGIL

Discrimination in Places of Public Accommodation Appeal

Charging Party: **Danila Virgil**
1922 Ninth Avenue #309
Seattle, WA 98101
Telephone: (206) 623-1442

King County: King County Office of Civil Rights and Open Government
represented by **Peggy Pahl**
King County Courthouse
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Danila Virgil filed a complaint with the King County's Office of Civil Rights (OCR), alleging that the King County Department of Transportation's Metro Transit Division (Metro) discriminated against him, depriving him of a public accommodation (bus service) on the basis of race and national origin.¹ OCR investigated Mr. Virgil's claim and found no discrimination. Mr. Virgil sought OCR's reconsideration; OCR again found no discrimination. Mr. Virgil appealed. OCR transmitted that appeal to the Hearing Examiner's Office to begin the hearing process.

¹ OCR asserts that Mr. Virgil's claim was limited to discrimination on the basis of race, not national origin. This dispute is immaterial to our analysis.

Examiners have only the authority granted us by ordinance. *HJS Dev., Inc. v. Pierce Co.*, 148 Wn.2d 451, 471, 61 P.3d 1141 (2003). And we have an independent, mandatory duty to dismiss an appeal if we lack jurisdiction, regardless of whether any party challenges our power to hear a case. KCC 20.24.095. In our pre-hearing order, we noted our apparent lack of jurisdiction and that we would tackle the issue at our pre-hearing conference. At the conference we heard argument. Having considered the matter, we conclude that we have no authority to review the merits of Mr. Virgil’s case; dismissal is our only option. We now trace the code language that commands this outcome.

After a “charging party” (here, Mr. Virgil) files a complaint with OCR, OCR investigates and issues findings on whether there is reasonable cause for believing that the “respondent” (here, Metro) committed an act of discrimination in a place of public accommodation. KCC 12.22.050.G. Where OCR finds such reasonable cause, OCR is instructed to try to reach a settlement that eliminates the discriminatory practice and obtains remedies. KCC 12.22.060.A. If the parties cannot reach an agreement, under KCC 12.22.060.B OCR enters an order finding discrimination and ordering appropriate remedies. At that point, “Any respondent or charging party, after an order of the office of civil rights is made in accordance with K.C.C. 12.22.060.B, may request an appeal hearing before the hearing examiner.” KCC 12.22.070.A.1.

That code language only opens the door to examiner involvement “after an order of the office of civil rights is made in accordance with K.C.C. 12.22.060.B.” And K.C.C. 12.22.060.B is entirely devoted to the scenario where OCR *finds* discrimination. Here, OCR found Metro had *not* discriminated against Mr. Virgil, and reaffirmed this finding after Mr. Virgil moved OCR to reconsider. Thus, OCR has not issued a KCC 12.22.060.B order finding discrimination.

The code instructing an examiner what to do after holding a hearing confirms that the examiner can only act where OCR first makes a finding of discrimination. The examiner is limited to either affirming or modifying “the order previously issued if the examiner finds that a violation occurred” or reversing “the order if the hearing examiner finds that a violation did not occur.” KCC 12.22.070.E. There is nothing contemplating the examiner having the authority to act in the scenario here – OCR finding no violation, the charging party believing OCR should have found a violation, and the charging party requesting the examiner reverse OCR and find a violation.

Mr. Virgil vigorously asserts that OCR was dead wrong not to find discrimination. Whether Mr. Virgil is correct or not would be the ultimate question for hearing, were the examiner empowered to hold a hearing to answer that question. But, as noted above, examiners only have room to act where the code says we do. And we have no room here.

Instead, the path of administrative review begins and ends with KCC 12.22.050.H. Where OCR finds no discrimination, the charging party may request OCR reconsideration, and OCR shall respond in writing. *Id.* Where OCR responds in the negative, as it did here, there is no further administrative refer. Rather, a party (such as Mr. Virgil) aggrieved by OCR’s finding of no violation may commence a civil action in superior court, as set forth in KCC 12.22.085. There is no appeal to the examiner.

We understand that our dismissal will be particularly disappointing to Mr. Virgil and that he may interpret our dismissal as commenting negatively on the veracity of his claims. But we are not making any comment, one way or the other, on whether Metro actually discriminated against him or on whether OCR was correct in finding no discrimination. Our dismissal simply means that we have no authority to weigh in on the matter. We do not get to be the decider.

Accordingly, Mr. Virgil's appeal is DISMISSED.

DATED October 20, 2014.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

The Examiner's dismissal order shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days.

DS/gao

October 20, 2014

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CERTIFICATE OF SERVICE

SUBJECT: Office of Civil Rights File No. **KCPA 14-02-01**

DANILA VIRGIL

Discrimination in Places of Public Accommodation Appeal

I, Ginger Ohrmundt, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER OF DISMISSAL** to those listed on the attached page as follows:

- ☒ EMAILED to all County staff listed as parties of record/interested persons and primary parties with e-mail addresses on record.
- ☒ caused to be placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties of record/interested persons at the addresses indicated on the list attached to the original Certificate of Service.
- ☒ caused to be placed with the United States Postal Service, with sufficient postage, as CERTIFIED MAIL with a return receipt requested in an envelope addressed to the primary parties.

DATED October 20, 2014.



Ginger A. Ohrmundt
Legislative Secretary II

All Parties of Record

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