

CONNECTICUT GENERAL ASSEMBLY PUBLIC HEARING

DATE : Monday March 21, 2011

TIME : 10.00 .a.m. Session Starts. Registration: 8.30 to 9.30.

NUMBER : 74

ISSUE #1

1. Good morning Senators. My name is Michele Milton and this is my husband, Clive, we are here today to get justice for all the injustice I have suffered because of the negligence of the CHRO and the Claims Commissioner. This legislature enacted laws which absolve both the CHRO Hearing Referee and the Claims Commissioner from having to follow Connecticut General Statutes, the Connecticut Practice Book and the Connecticut Code of Evidence. Which basically allows them to make up their own rules depending on what mood they are in, but the claimants have to follow those rules exactly or risk losing their case. These are just a couple of things that you have to fix otherwise it is the victims of discrimination who will become victims a second and third time, as I did, and will be the ones to suffer most and not the deep pocketed employers who use and abuse their employees and manipulate the State's judicial system to their own ends.

2. My primary reason for appearing here today was to request permission to sue the state for the appalling legal errors made by the CHRO attorney who represented me and the CHRO Hearing Referee in my claim for age, gender and wage discrimination. On January 11, 2010 I filed a request with the Claims Commissioner for Permission to sue the State and its agency the CHRO. The Claims Commissioner should have been aware, and informed me immediately, that permission by the Claims Commissioner to sue the state is not required in an administrative hearing procedure, which a CHRO claim of discrimination is, pursuant to CGSA §4-142 (3), CGSA §46a-60 and CGSA §46a-94a(a) and (d). The defining Appellate Court case is *Lyon v. Jones*, supra, 104 Conn. App. 554, (SC 19096) and the Supreme Court ruling in *Lyon v. Jones* 2008 SC 18096, stated in reference to the defendants' claim that the case should be dismissed and ruled that the :

"... interpretation is unsupportable, as it ignores § 4-142 (3), which specifically exempts from the jurisdiction of the claims commissioner "claims for which an administrative hearing procedure otherwise is established by law" Section 46a-82 (a) provides just such an alternative administrative procedure: *"Any person claiming to be aggrieved by an alleged discriminatory practice . . . may, by himself . . . or by [his] attorney, make, sign and file with the commission a complaint in writing under oath"* Thus, it is apparent that claims over which the commission has statutory jurisdiction are, by the express terms of §4-142 (3), excluded from the purview of the claims commissioner

The parties to this appeal, including the attorney general's office as appellee, agree with this conclusion. Indeed, this is the long-standing position of the office of the claims commissioner itself. See *Bonner v. State, Office of the Claims Commissioner, Claim No. 12020 (April 23, 1996)* ("The claimant has an administrative procedure available to address her claims and can appeal an unfavorable decision from [the commission] to the courts. The claim is therefore excluded under [General Statutes] " 4-142 [2] and [3] and the claims commissioner lacks subject matter jurisdiction."); *DiMaggio v. State, Office of the Claims Commissioner, File No. 16090 (October 25, 1996)* ("The claimant's allegations here are the same as those for which she seeks relief from [the commission] and are claims for which a civil [action] is authorized by law and an administrative procedure is otherwise established by law. [Section " §4-142 [2] and [3]. The commissioner lacks subject matter jurisdiction and the claim is dismissed.

See also *In re Andoh, Office of the Claims Commissioner, Claim No. 20929 (July 3, 2007)* (same); *Caldwell-Gaines v. State, Office of the Claims Commissioner, File No. 18345 (March 2, 2001)* (same). The commission also filed an *amicus curiae* brief in this case urging the same result.

On the basis of the foregoing, we conclude that claims properly brought before the commission are outside the cognizance of the claims commissioner."

3. Even though my request to sue the state was unnecessary the Claims Commissioner should have held Hearing "as soon as

practicable" pursuant to CGSA Sec. 4-151. No Hearing was ever scheduled and no explanation given as to why not.

4. The Attorney General failed to respond to the Claims Commissioner within 90 days of my Request for Permission to sue the State was filed. The Claims Commissioner had to forward the Request to sue to the State upon receipt from the Plaintiffs, which either he failed to do or the AG sat on it for 5 months.
5. The Attorney General failed to file a response to my Request to sue the State by April 11, 2010. Because the AG failed to respond timely does that mean he waived all rights to deny Permission to sue the State, even based on Sovereign Immunity?
6. On May 27, 2010 the Attorney General finally responded to my Request for Permission to sue the State. The AG claimed that the State had Sovereign Immunity and my claim was barred by statute. CGSA 4-142 says he was wrong.
7. On June 7, 2010 the Attorney General filed a Motion to Dismiss on Behalf of the Respondent State of Connecticut and CHRO. That Motion was not ruled on by Claims Commissioner until December

13, 2010, some 11 months after I filed the request which is a completely absurd amount of time to have to wait.

8. We filed a law suit against the State in Danbury Superior Court on October 15, 2010 because I was aggrieved by the CHRO Hearing Officer's decision pursuant to CGSA 46a-94a "Appeal to Superior Court from order of presiding officer." The Attorney General filed a Motion to Dismiss for lack of subject matter jurisdiction, which is still pending. Obviously the AG does not know about CGSA Sec. 4-142(3) and the Supreme Court ruling in Lyon v. Jones. We recently filed a Request for Leave to Amend the Complaint together with the Amended Complaint, as required by CT. Practice Book rules, based on CGSA §4-142 (3) because the Danbury Superior Court does have subject matter jurisdiction.
9. Denial for Permission to sue the State by the Claims Commissioner was received around December 17, 2010. Which is clearly redundant as permission is not a requirement pursuant to CGSA §4-142 (3).
10. The fact that neither the Claims Commissioner nor the Attorney General's office appears to know about CGSA §4-142 (3) or the

Supreme Court ruling raises serious questions and concern for the victims of discrimination and the entire CHRO charter. If they did or do know about it and tried to get around the law by deceiving us. That would be legal malpractice without a doubt. Therefore, we are legally entitled to pursue our claim in Danbury Superior Court against the State whether the legislature agrees with us or not.

ISSUE #2

1. The CHRO failed to follow CT General Statutes in conducting my claim of discrimination and the initial investigation. The investigation and determination as to reasonable cause or no reasonable cause finding had to be completed in 190 days, but it took them 1½ years.
2. CHRO did not know how to serve a subpoena across state lines, even though it had the authority to issue subpoenas. It took over a year to discover that they could not do so. Clearly an absurd waste time by the CHRO.
3. The Attorney General's office also did not know how to serve a subpoena across state lines or even if they were permitted to do so. The AG sat on my separate Wage Loss claim against the same

company for over four years always waiting to see what happened with the CHRO discrimination claim, even though they always maintained that the two cases were distinct from one another. Even after repeated contact with the AG himself over the years nothing was ever done to move the case forward. In fact the AG did not see the case through to trial as they decided to be a part of the settlement negotiations as Pulte insisted on the two claims being combined which could not be done legally. The AG capitulated with total disregard for my legal rights or the merits of the case. Again an example of big business running roughshod over the State of Connecticut and the victim becoming a victim for the second time at the hands of the government agencies, the very people set mandated by statute to protect the rights of the public. What a joke!

4. The CHRO ruled on a Reasonable Cause Finding that discrimination had occurred, but this took 3 yrs more before it was certified to the CHRO legal department.
5. The CHRO legal department had to conduct a de novo investigation into the exactly the same issues as the first investigator, who was also a State licensed lawyer. This is redundant. They came

- to same legal conclusions and agreed to proceed to the Public Hearing.
6. Following the two independent investigations by the CHRO a Public Hearing was eventually scheduled close to five years after I was wrongfully terminated. This is clearly absurd, unworkable and manifestly unjust.
 7. The Public Hearing was chaired by one person, the Chief Hearing Officer. I suggest strongly that it should be chaired by three people: one from each party and should be attorneys and a third person, a member of the public who has no party affiliations and is not a lawyer This would be much fairer.
 8. The Hearing Officer should not be allowed to make up his own rules, because at the moment he is not bound to follow any statute, Practice Book Rules or Code of Evidence which is absurd as the victim must adhere to those rules.
 9. The same applies to the Claims Commissioner. He is not obligated to follow any statute or rules of procedure or rules of court. However, the victim of discrimination must follow all those rules.

10. The CHRO attorney in my case failed to include the violation of the Unequal Pay Act in his brief which the Hearing Officer mentioned and nothing was done to rectify it as the Hearing Officer said that everyone had waived their Rights by not including it. The CHRO attorney was definitely negligent in that respect.

11. The Hearing officer's final ruling and decision in my case was completely arbitrary and capricious as he accepted 3rd party hearsay evidence over my verified documental proof. Again this is clearly ridiculous and needs to be changed. In my case the evidence against Pulte Homes showed without a shadow of doubt that I had been discriminated against. It was also clear from the testimony of Pulte's hired witnesses and employees that they were guilty of discrimination.

12. The Hearing officer decided that age discrimination had not occurred regardless of the fact that I had been replaced by a 20 year old unlicensed female within a week of being terminated. I was also fired in front of a co-worker which is illegal which the company should have known about. I was not allowed to have my own witness present as permitted by law, another violation of my

constitutional rights. The list of discriminatory action is long, but the CHRO Hearing Officer chose to ignore the CHRO attorney investigations, which they would not have pursued if they were not 100% convinced that I had been discriminated against. So why would the CHRO Hearing Officer come to the completely opposite conclusion?

13. However, the CHRO hearing officer did find that I had been subject to unequal pay, as my male co-worker was paid more. Disturbingly he ruled that discrimination had not occurred which means he did not understand the law. The Unequal Pay Act defines very clearly that unequal pay is discrimination, plain and simple. So he was either ignorant of the law, incompetent, acted arbitrarily or capriciously or simply under political pressure in order to keep his job. Either way I was discriminated against once again and lost in the face of over whelming evidence against Pulte. So the CHRO should be responsible for my financial loss based on their arbitrary or capricious actions.

14. The Hearing Officer, at the conclusion of my Public Hearing announced that due to the State's budget cuts he may not have his job by the following Monday to write his decision. If that was to

be the case then the transcript would be given to a DMV officer to rule on. That is absolutely absurd and should never happen because it would be an injustice to have another person who is not qualified or certified to adjudicate a public hearing in a discrimination case based solely on the transcripts.

Therefore, I believe that the CHRO Hearing Officer may have been under political pressure from the Governor to accept Putle's witnesses false and misleading evidence and testimony in order to keep employers from leaving the state and reducing a large tax – based revenue stream. So there may have been a serious breach of fiduciary duty by the CHRO Hearing Officer which is, once again, legal malpractice. In fact the governing statute says that the Chief Hearing Officer is to designate a hearing referee for a public hearing, it does not say that he is entitled to conduct those hearings himself.

15. Following the Public Hearing the CHRO attorney failed completely to notify or advise me of my rights to file an appeal, which they refused to do, which prevented me from filing a Motion for Reconsideration on time. The CHRO Chief Hearing Officer ruled that he would not reconsider his decision or reopen the case. Based on incorrect information from the CHRO Attorney who represented me

I filed a Request to sue the State with the Claims Commissioner, which, based on the fact that my claim was one of administrative hearing procedure was outside his purview and jurisdiction. Again this was and is legal malpractice, negligence or incompetence. Either way my claim against the State is just and permitted as a matter of law.

16. I must point out that my first investigator at the CHRO filed a discrimination claim herself against the CHRO and lo and behold her public hearing was scheduled within two months of filing. Such preferential treatment. If you check you will find that the very agency that is to protect victims of discrimination has had more than its fair share of discrimination complaints filed against it. This is shocking and something must be done about it. If the CHRO is discriminating against its own employees how can we, the private sector employees, be certain that the agency is working in our best interests and not complicit with the employers to keep jobs in the State? That same investigators' supervisor sat on my claim for close to a year without certifying it to the legal department because the investigator had taken medical leave and there was no one else to review and make a reasonable cause finding for certification for a public hearing. Budget cuts and hiring restraints caused undue

stress, emotion distress and severe financial hardship to me and my husband.

17. There are many serious issues which need to be fixed at the CHRO and with the Claims Commissioner, and unless you have walked in our shoes you will never fully understand the fundamental problems which face the general public every day. We can help you remedy most of the problems which we have encountered throughout the past five long years. The system needs to be revamped to ensure transparency, create effective rules, control timely rulings and action, prevent unnecessary duplication of work, develop clear understanding of all the applicable laws by rewriting those which are full of legal jargon and confusing, ensure sufficient investigational and support staff, prevention of political pressure on those entrusted with our protection, create a three person Public Hearing Committee which should adhere to current statutes, rules of evidence and practice book rules if the process is to be built on legal foundations, the Claims Commissioner and CHRO Hearing Officers should not be exempt from following the statutes etc., and ensure that delays are not only minimal, but properly explained to the claimants, and rectified as soon as practicable and possibly assign an Ombudsman to deal with complaints taking too long or

for any other reason that the claimant is not getting the support needed to get justice in a timely manner. Of course there is much more and my husband and I would be pleased to assist the legislature in revising the CHRO rules and any statutes which may be confusing even to the Attorney General, for a consultation fee of course, which in the long run will save the state millions of dollars by not wasting valuable resources and duplication of efforts. If the CHRO cannot follow the current statutes with regard to investigating complaints then that must be fixed in order to clear the backlog. Hire more people and support the Connecticut labor force which is the backbone and lifeblood of the states tax based revenue stream and prevent unscrupulous employers from taking advantage of them by manipulating the law, the legal process and exerting political pressure.

18. The fact that the legislature allows this public hearing only once a year is also absurd. I have had to wait close to 15 months to get here because I was not told about this opportunity by the CHRO, the Claims Commissioner or anyone else. Because I missed the opportunity to testify here last year, by four days, I have had to wait another year. Why don't you hold these hearings more frequently throughout the year? Perhaps every four months to give people the

chance to get justice in a timely manner. Instead of being bombarded once a year with dozens of requests you could spread it out and give more time and credit to claimants. Also 3 minutes to make an opening statement of the facts is clearly unfair, unjust, absurd and unworkable. How can you fully understand the merits of a claim in a mere three minutes? It's impossible.

19. My husband was told by the administrators of this hearing that if I was further aggrieved by your decision I could wait another year and re-apply here. That is not the case. Statutes say that once this the legislature makes its decision no further claim can be made again. So even this body does not appear to know the law either. How can such incorrect information be given by your support staff?

20. The Chief Human Rights Referee conducted my Public Hearing which is not permitted by CGSA §46a-57(3)(c) which states that " (c) *"On or after October 1, 1998, the executive director shall designate one human rights referee to serve as Chief Human Rights Referee for a term of one year. The Chief Human Rights Referee, in consultation with the executive director, shall supervise and assign the human rights referees to conduct settlement negotiations and hearings on complaints, including complaints for which a trial on the*

merits has not commenced prior to October 1, 1998, on a rotating basis. The commission, in consultation with the executive director and Chief Human Rights Referee, shall adopt regulations and rules of practice, in accordance with chapter 54, to ensure consistent procedures governing contested case proceedings." There is no mention that he is allowed to conduct Public Hearings only that he was to designate and supervise a Hearing Referee for each case. So how was Mr. Fitzgerald even allowed by the CHRO Executive Director to conduct my Public Hearing? It looks like the Statutes that have been passed by the legislature are just suggestions and not mandatory to adhere to them, but we, the claimants have to follow the law to the letter or we suffer the consequences.

21. The judge at New Britain who presided over the settlement hearing with Pulte Homes, which the CHRO had a legal representative present coerced my husband and I to settle with Pulte as he said we could not possibly win if we went to trial. The judge also forced my husband, at the insistence of Pulte's counsel, to sign all the release documents even though he was not a party to my claim. How on earth can that be just or even legally permitted? The CHRO was not a party to the settlement agreement and we had no opportunity to consult with an attorney. The Assistant Attorney

General, who was present, was also not a party to the separate settlement hearing as he was representing me in my Wage Loss claim which was separate and distinctly different to my discrimination claim. So where was the justice? How was I protected by the CHRO or the AG? I wasn't protected at all and every one sided with Pulte even though my claims were legitimate and had legal foundation and merit. Big business against the ordinary person who relied on the government agencies to protect my legal rights. Ha! What a joke and a farce the entire situation became. The judge also commented that I could never ever hope to get awarded the front pay, back pay, lost wages or get reinstated, which I was supposed to get according to the applicable statutes as I was to "be made whole." Again what a total farce. Even the CHRO executive director weighed in and said that my claim was only worth \$10,000 at the very most. Did he give his opinion to Mr. Fitzgerald the Chief Hearing Referee who conducted my public hearing? If he did then that too could be legal malpractice. Who knows what went on behind closed doors? All I know is that I lost out on a significant amount of money and because the CHRO fouled up on so many fronts they should be held accountable otherwise what is the point of any of this? Asking the State if I can sue the State is also absurd. We live in a democracy not a sovereignty, so

claiming protection by Sovereign Immunity is manifestly unjust. The State should be held accountable for its actions or inactions and its employees or agents. It is totally ridiculous to have to go through these hoops to seek justice so the State can simply say " so sorry, you can't sue us without our permission and we are not giving it." Tough luck. Why would the State or the Claims Commissioner ever consent to be sued? Never! Where is the justice in Connecticut which I am told exists to protect workers, especially women and other minorities? I have a legitimate legal claim against the state as the State employees themselves cannot be held accountable for their arbitrary or capricious actions they do in the course of their employment. So the only option is to sue the company, which in my case is the State.

22. I would like to conclude my testimony by saying that my entire experience with the CHRO and the Attorney General's office has been an unmitigated disaster and the emotional stress inflicted on both my husband and I has been outrageous. All we have gotten are empty lies, untruths, negligent legal advice and information and condescending apologies about budget cuts and other worn out clichés. The CHRO has no teeth in the legal world especially when you consider that the final ruling against me, which included a pitiful

award for unequal pay, was not even considered discrimination by the CHRO Hearing Referee which is completely absurd. Pulte simply refused to pay it because they wanted my wage loss claim included in any settlement and they strong-armed the AG's attorney and the Judge Levine in Superior Court at New Britain, who conducted the settlement hearing, into giving in to Pulte's demands even though they were unlawful. Who the hell do they think are coming into this State and breaking both State and Federal employment discrimination laws? They constantly snubbed their nose at this legislature's Statutes and the AG and CHRO took it on the chin as they could not do anything about it. The EEOC is even more useless as they simply rubber stamp the CHRO decision even when it is cataclysmic error of justice. So the word is out there that out-of-state companies can get away with blue murder in Connecticut as they will never be held accountable for their illegal practices. Is that the message you want to send to employers? Because this legislature has allowed this to happen the State must be held accountable and the only way you will learn is if it hits your budget pocket book. So much money is wasted on duplicating work, as in the CHRO doing two investigations, by attorneys, into the same set of facts. It is high time the legislature took notice of the colossal amount of money and time wasted and fix all the inequities

in the law and fulfill your charter to protect the citizens from any kind of discrimination and exploitation by unscrupulous employers.

Thank you.