City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor
Chicago, IL 60610
(312) 744-4111 [Voice] / (312) 744-1088 [TDD]

IN THE MATTER OF)
)
Florence Kay Stokfisz)
COMPLAINANT,) Case No. 97-E-105
AND)
)
Spring Air Mattress Co. et al.) Date of Order: February 11, 1999
RESPONDENT.)

To: Florence Kay Stokfisz
8803 Clearview Dr.
Orland Park, Ill. 60462

Jeffrey London & Henry Pietrkowski
Sachnoff & Weaver
30 S. Wacker Dr., Ste. 2900
Chicago, Ill. 60606

O R D E R

THE CHICAGO COMMISSION ON HUMAN RELATIONS HEREBY ORDERS:

See Attached

PURSUANT TO REGULATION 250.120, A PARTY MAY OBTAIN REVIEW OF THIS ORDER ONLY AFTER THE COMMISSION HAS ISSUED AN ORDER DISMISSING THE COMPLAINT OTHER THAN AFTER AN ADMINISTRATIVE HEARING OR AS PART OF OBJECTIONS TO A HEARING OFFICER'S FIRST RECOMMENDED DECISION AFTER AN ADMINISTRATIVE HEARING.

By: Clarence N. Wood
Chair/Commissioner

for: CHICAGO COMMISSION ON HUMAN RELATIONS

Date Mailed: February 11, 1999

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W.J.

Stokfisz v. Spring Air Mattress Co. et al., CCHR No. 97-E-105
Order of February 11, 1999

ORDER

I. Allegations and Arguments of Complaints and Motions to Dismiss

On April 22, 1997, Florence Kay Stokfisz ("Complainant") filed the first of her complaints against Spring Air Mattress Company, Warren Littrell, Mark Alters, William Louis, Eric Spitzer and Marshall Brainin (referred to collectively as "Respondents" or "Spring Air") in which she claimed that she had been subjected to sexual harassment and sex discrimination in violation of the Chicago Human Rights Ordinance ("CHRO"). Stokfisz subsequently filed two separate amendments to that original complaint, both of which stated that it was an amendment to, not a replacement for the prior complaint and complaints. In response to the complaints, Respondents filed motions to dismiss; they are the subject of this order. Because the factual allegations vary between and among the complaints, each complaint and its corresponding response will be discussed in detail.

A. Original Complaint

In her initial complaint ("Complaint"), filed on April 22, 1997, Stokfisz states that she had been employed by Spring Air Company since 1982, and remained in their employ at the time of that Complaint. Complaint, ¶1. As the only female Sales Representative for 14 years, Complainant claims that she was a professional and good employee. Complaint, ¶2.

Stokfisz asserts that Spring Air employees Marshall Brainin, Account Executive, Warren Littrell, Sales Representative, Mark Alters, Sales Manager, Bill Louis, President, and Eric Spitzer, CEO, sexually harassed her from September of 1982 until July of 1996. Complaint, ¶3. Although Stokfisz does not list specific comments or dates of incidents, she claims that she was the "target of lewd and disgusting behavior consisting of sexually offensive remarks and sexual suggestions and requests," and that she "had to suffer extremely lewd and disgusting remarks regarding the female anatomy and it's [sic] functions." Complaint, ¶¶3-4. She further states that she was forced to tolerate comments about her "breasts and ass," in addition to sexually offensive jokes told by male co-workers at lunch. Complaint, ¶¶3 & 5. Complainant also claims that she was demeaned by her male co-workers who referred to their "state of 'arousal'" whenever they entered her office. Complaint, ¶4. Stokfisz does not specify who made the comments or when they were made.

Complainant claims that she was subjected to a hostile and offensive work environment also because of management's encouragement to bring "raunchy grab bag gifts" to a company Christmas party. Complaint, ¶6. Moreover, management themselves brought sexual toys and sexual paraphernalia to the party, to which neither spouses nor significant others were invited. Complaint, ¶6.

Furthermore, Stokfisz argues that she was treated differently from her male counterparts because of the less favorable job tasks and accounts she was assigned. Complaint, ¶7. She

complains that her pay was reduced by three-quarters in February 1997, while the pay of her male counterparts was not. Moreover, she states that she is held to a different standard than her male counterparts. Complaint, ¶¶7-8. Stokfisz cites a fellow female Sales Representative, Susan Jett, who also allegedly suffered sexual harassment and pay reduction which forced Jett to quit. Complaint, ¶8. Last, Complainant claims that her refusal to participate in and reciprocate sexual behavior resulted in her not being considered a team player. Complaint, ¶8.

B. Motion to Dismiss

On June 13, 1997, Spring Air replied to these allegations with a motion to dismiss and a corresponding Memorandum in Support of Respondents' Motion to Dismiss ("Memorandum"). In their motion and Memorandum, Respondents state that the Commission lacks jurisdiction over the Complaint because Complainant failed to file it within 180 days of the alleged ordinance violation. Motion to Dismiss, ¶2. Respondents argue that more than 180 days passed between the alleged last incident of harassment (July, 1996) and the filing date (April 22, 1997). Memorandum, p. 2. Hence, Respondents assert, the Complaint should be dismissed.

Furthermore, Respondents state that Complainant's claim in paragraph 8 (concerning her pay cut and not being considered a team player) should be dismissed because, they assert, it raises a retaliation claim which the CHRO does not cover. Motion to Dismiss, ¶3. In its Memorandum, Spring Air notes that the CHRO does prohibit retaliation, but only against "an individual [who] in good faith has made a charge, testified, assisted or participated in an investigation, proceeding or hearing under this chapter. CHRO §2-160-100." Memorandum, p. 3. Respondents state that the CHRO covers retaliation against employees who actually file a complaint at the Commission, but does not protect those who simply file an internal grievance. Spring Air alleges that Stokfisz claims retaliation for having complained to management (not to the Commission) about the alleged harassment. Spring Air contends, therefore, that this type of retaliation is not covered by the CHRO. Respondents' Memorandum, p. 3.

Respondents also argue that the claim concerning Susan Jett should be dismissed because it is not a valid claim of Stokfisz. Motion to Dismiss, ¶4. Spring Air states that Complainant cannot recover for alleged injuries that did not happen to her. Memorandum, p. 3. Lastly, Spring Air asserts that, to the extent that Complainant seeks redress for alleged conduct that occurred prior to the adoption of the CHRO, such claims should be dismissed. Motion to Dismiss, ¶5. Respondents' Memorandum cites Hruban v. William Wrigley, Jr. Co., CCHR No. 91-E-63 (April 20, 1994), in which the Commission found that it could not retroactively apply the current Chicago Human Rights Ordinance to acts which occurred prior to May 6, 1990, the effective date of the Ordinance. Memorandum, p. 4.

The Commission ordered Complainant to file a response to Respondents' motion to dismiss. Instead of filing a response, Complainant chose to amend her original Complaint.

C. First Amended Complaint

Complainant's first amended complaint ("First Amended Complaint"), filed on June 26, 1997, explicitly states that it is an amendment to, and not a replacement for, the original complaint filed on April 22, 1997. Many of the paragraphs contained in the First Amended Complaint were identical to those in the original complaint; however, the First Amended Complaint altered some essential points. First, Complainant claimed that Brainin, Littrell, Alters, Louis and Spitzer harassed her from September of 1982 through June 18, 1997, rather than through July of 1996, as she claimed in the original complaint. First Amended Complaint, ¶3. Additionally, Stokfisz gives a date to an allegation made in her original complaint: she alleges that the sexually offensive jokes told at lunch occurred in or about June or July 1996. First Amended Complaint, ¶5.

Furthermore, Complainant contends that she has been subjected to retaliation since filing her original Complaint on April 22, 1997. The first instance of retaliation she lists concerns a paycheck discrepancy. First Amended Complaint, ¶9a. Stokfisz claims that her paycheck was short by $200 on June 17, 1997. When she asked the President, William Louis, about the discrepancy, he said she was sarcastic and called her a "know-it-all." First Amended Complaint, ¶9a. Louis further stated that Stokfisz did not have to stay at the job if she did not want to, and claimed that she was trying to ruin himself, Spitzer, Littrell and Alters with "this stupid lawsuit." First Amended Complaint, ¶9a. If she was so unhappy, Louis said, she should just leave the company. Complainant claims that his tone was nasty and demeaning. First Amended Complaint, ¶9a. Stokfisz alleges that Louis would correct her check only if she could show that the record was wrong; so, she was forced to submit all of her Call Reports to receive the money owed to her. She further claims that, prior to her filing a complaint with the Commission, such a pay discrepancy would have been corrected informally and prior to the issuing of checks. First Amended Complaint, ¶9a.

Complainant also identifies another incident she deems retaliatory. She claims that she approached Anita Kane, an Executive Secretary, on June 18, 1997, to request sales support. Kane responded that she had been instructed by Louis and Spitzer that support staff was not to assist Stokfisz, even though that support was available to other employees and to Stokfisz before she filed her Complaint. First Amended Complaint, ¶9b. After this encounter with Kane, Complainant contacted the national sales office on May 13, 1997, to secure support, but David Bauman, Account Executive, told her he was unable to provide assistance. First Amended Complaint, ¶9b.

D. Second Amended Complaint

Stokfisz filed a second amended complaint ("Second Amended Complaint") on July 31, 1997, which also explicitly states that it is an addition to, and not a replacement for, the original Complaint filed April 22, 1997 and the First Amended Complaint filed June 26, 1997. In her Second Amended Complaint, Stokfisz claims that on or about July 18, 1997, she received a letter from William Louis, the President of Spring Air, which stated that "there is no

position" for Complainant. Stokfisz believed this letter was tantamount to her termination, which she alleges is both retaliatory and part of a pattern of sex discrimination. Second Amended Complaint, ¶1. Stokfisz states that Louis wrote that Stokfisz "was terminated from [her] position because of GECC's suspension of payment of open invoices and Spring Air's suspension of shipments to Montgomery Wards." Second Amended Complaint, ¶2. Complainant states that she was left without an account to service. Second Amended Complaint, ¶2.

Stokfisz proceeds to make comparisons between herself and her male counterparts. She alleges that she had serviced the Sears account from its inception for five years until the account was taken from her and assigned to Mark Alters, who was without an account to service at that time. Second Amended Complaint, ¶3a. While Stokfisz later regained the right to service the account when Alters resigned, she claims that the account was again taken from her and reassigned to Warren Littrell when he lost the Wickes account. Second Amended Complaint, ¶3a. Stokfisz also asserts that she originally serviced the Wickes account, but that account was also reassigned to Littrell. Second Amended Complaint, ¶3b.

In addition to her claims of disparate treatment with respect to the assignment of accounts, Stokfisz also alleges that, although Respondents informed her that there was no work for her, a new male sales representative was hired 45 days prior to her termination. Second Amended Complaint, ¶4. Furthermore, Complainant contends that she was not assigned any of the account work of the two account representatives who had left the company within the prior year. Second Amended Complaint, ¶4.

Stokfisz alleges retaliation for having filed a complaint at the Commission on April 22, 1997. She claims that, since then, she was harassed and held to different terms and conditions than her male counterparts. Second Amended Complaint, ¶5. Complainant cites examples of such differing standards, including her exclusion from sales meetings, her lack of developmental assistance or sales support from management, and a higher level of detail required in her call reports than that expected of Littrell and Alters. Second Amended Complaint, ¶¶5a, b & c. Finally, Complainant repeats her contentions about the alleged discrimination against Susan Jett. Second Amended Complaint, ¶6.

E. Second Motion to Dismiss & Supplement to the Motion to Dismiss

In response to the Second Amended Complaint, Respondents filed a Motion to Dismiss Complaint ("Second Motion"). Respondents set forth the arguments made in their first Motion to Dismiss, and further assert that Complainant failed to file a response to that motion. Second Motion, ¶¶2-3. The Commission subsequently provided additional time for Respondents to supplement their first motion to address any issues with respect to the amended complaint and its relation to the original complaint.

Respondents submitted a Supplement to Respondents' Motion to Dismiss ("Supplement") in which they preserve each argument made in their motions to dismiss, and make additional points regarding Complainant's amended complaint.

First, Respondents argue that the inconsistency in Stokfisz' complaints with respect to the dates of the alleged harassment (changing the end date from July, 1996 to June, 1997) is "merely [an] attempt to improperly circumvent the jurisdictional limitations imposed by that [original] complaint." Supplement, p. 2. Because Complainant swears under penalty of perjury that the contents of the Complaint are true, they assert, she should not be entitled to change the dates of the alleged harassment to cure the original jurisdictional defect. Supplement, p. 2.

Respondents further contend that, even if Complainant can revisit the factual bases of her complaint, the Commission still has no jurisdiction over sexual harassment that allegedly occurred more than 180 days prior to the date of the Complaint. Supplement, p. 2. Accordingly, Respondents assert, the Commission should dismiss First Amended Complaint paragraphs 5 and 6 because they are untimely, as well as its paragraphs 3 and 4 and part of paragraph 7 because of their failure to apprise Respondents of the date, place and facts of the incidents. Supplement, pp. 2-3. Last, Respondents assert that inasmuch as Complainant's complaints address retaliation for acts prior to the filing of her original Complaint, such claims are not covered by the CHRO and should be dismissed. Supplement, p. 3.

F. Third Motion to Dismiss

After Complainant filed her Second Amended Complaint, Respondents filed a Motion to Dismiss Portions of the Second Amended Complaint ("Third Motion"), which essentially reiterates previous arguments of the Respondents. Respondents assert that Complainant's claim of retaliation in her original complaint is untenable, since the ordinance only prohibits retaliation based on the filing of a complaint. Third Motion, ¶1. Any retaliation based on Complainant's internal complaints about the "sexually hostile atmosphere," therefore, would not be prohibited by the CHRO. Respondents also again argue that incidents occurring more than 180 days before the filing of the complaint are time barred. Third Motion, ¶1. Finally, Respondents renew their assertion that Complainant cannot recover damages based on any of the alleged experiences of her co-worker, Susan Jett. Third Motion, ¶2.

II. Legal Standards

A. Motion to Dismiss

In ruling on a motion to dismiss, the Commission must take all of the complaints' allegations, together with reasonable inferences drawn from them, as true. E.g., Tibo v. Thermaline, CCHR No. 91-E-29 (June 1, 1992), citing Powe v. City of Chicago, 664 F.2d 639, 642 (7th Cir. 1981) and Melko v. Dioinisio, 219 Ill. App. 3d 1048, 580 N.E.2d 586, 591 (2d Dist. 1991). Further, a complaint should not be dismissed unless "it appears beyond doubt that the [complainant] can prove no set of facts in support of his [or her] claim which would entitle him [or her] to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957), cited in, e.g., Harris v. Chicago Board of Education, CCHR No. 98-E-95 (Dec. 22, 1998).

B. Sufficiency of Complaint

A complaint filed at the Commission need only "substantially apprise" the respondent of the alleged violation. E.g., Workman v. First National Bank of Chicago, CCHR No. 95-E-106 (Jan. 4, 1996) and Ingram v. Rosenberg & Liebentritt, et al., CCHR No. 93-E-141 (Mar. 29, 1995). A complaint need not set out detailed facts or the supporting evidence. Ingram, *supra*. Further, complaints are to be construed liberally to ensure that the policies of the Chicago Human Rights Ordinance are not frustrated. Chicago Muni. Code, §2-160-110; see Babrocky v. Jewel Food Co. & Retail Meatcutters Union, Local 320, 773 F.2d 857, 864 (7th Cir. 1985); Jenkins v. Blue Cross Mutual Hospital Insurance, Inc., 538 F.2d 164, 167 (7th Cir. 1976) (en banc), cert. denied, 429 U.S. 986, 97 S.Ct. 506, 50 L.Ed.2d 598 (1976); and e.g., Brown v. Chicago Dept. of Aviation, CCHR No. 90-E-82 (June 17, 1992) and Chilton v. The Cedar Hotel & Inn-Town Hotel, CCHR No. 97-H-203 (Feb. 20, 1998). The Commission has also held that complaints are often filed by individuals who are not represented by counsel, such as Stokfisz, and so special care must be taken not to apply pleading requirements too formally. See Brown v. Chicago Dept. of Aviation, CCHR No. 90-E-82 (June 17, 1992), citing Babrocky, 773 F.2d at 864; see also Naguib v. Illinois Dept. of Professional Regulation, 986 F. Supp. 1082, 1091 (N.D.Ill. 1997), and cases cited therein.

It is with those standards in mind that the Commission evaluates Stokfisz' original and amended complaints.

III. Analysis[1]

A. Effect of Differing Allegations in Two Complaints on Timeliness of Harassment Claim

The CHRO requires that complaints be filed within 180 days of the date of the alleged violation. Chicago Muni. Code §2-120-510(e); see, e.g., Volino v. WTTW, CCHR No. 94-E-203 (Feb. 7, 1996) and Perdue v. Winchester/Hood Co-op, CCHR No. 94-H-152 (Dec. 7, 1995). As described above, in her original Complaint, Stokfisz claims that the harassment of her continued through July, 1996. Complaint, ¶3. If true, that is more than 180 days before she filed her Complaint. In her First Amended Complaint, in contrast, she claimed that the harassment continued into June of 1997, First Amended Complaint, ¶3, and so is timely.

Respondents assert that Complainant changed the endpoint of the harassment merely to make the allegation timely. Next, they claim that, because Complainant swore under penalty of perjury to the allegations in her original complaint, she cannot later contradict those dates. Respondents charge that Complainant is not entitled to revisit the factual bases of her complaint. Supplement, pp. 1-2.

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[1] As shown above, Respondents submitted several separate filings seeking to dismiss one or more complaints and they renew many of their arguments in more than one document. This order will address each of Respondents' contentions only once.

The Commission first turns to the language of the complaints themselves. Here, Complainant specifically states that her amended complaints are not substitutes for the prior complaint/s, but are amendments to them. Therefore, the general rule that ". . . an amended pleading supersedes the prior pleading" (Michael v. First Chicago Corp., 139 Ill. App. 3d 374, 379, 487 N.E.2d 403, 406 (2d Dist. 1985), citing Foxcraft Townhome Owners Assoc. v. Hoffman Rosner Corp., 96 Ill.2d 150, 153-54, 449 N.E.2d 125 (1983)) does not apply here. The language of her complaints suggests that the differing allegations about dates exist side-by-side.

Illinois courts have held that, "where the original pleading is verified, it remains part of the record and any admissions contained in the original verified pleading which are not the product of mistake or inadvertence are binding judicial admissions (Beverly Bank v. Coleman Air Transport (1985), 134 Ill. App. 3d 699, 703, 481 N.E.2d 54; Robins v. Lasky (1984), 123 Ill. App. 3d 194, 198-99, 462 N.E.2d 774) . . . ." Michael, *supra*, 139 Ill. App. 3d at 379. If this rule applies, the "admission" in the original Complaint that the harassment ended in July of 1996 would be binding, if it is not due to "mistake or inadvertence." However, applying this rule requires the Commission to determine whether or not Complainant referred to July, 1996 due to "mistake or inadvertence." Such a matter of intent cannot be resolved on a motion to dismiss and so the Commission must deny the motion for that reason alone.

Respondents cite Charter Bank and Trust of Illinois v. Edwards Hines Lumber Co., 233 Ill. App. 3d 574, 599 N.E.2d 458 (2d Dist. 1992) to support their assertion that Stokfisz is not entitled to revisit the factual basis of her complaint. That decision does state, "Once a party has made a sworn statement of fact, as in a verified pleading, he cannot contradict such a factual allegation." Charter Bank, 233 Ill. App. 3d at 578, 599 N.E.2d at 461. However, it was a statement in a counterclaim (apparently filed separately from the answer -- Charter Bank, 233 Ill. App. 3d at 576, 599 N.E.2d at 460), not in another verified pleading, which the court prevented from contradicting the sworn statement of fact. Here, the two disputing time-frames are set forth in two verified pleadings.

More apposite is Office Electronics, Inc. v. McSweeney, 72 Ill. App. 3d 456, 390 N.E.2d 953 (2d Dist. 1979), which concerns differing allegations in two verified pleadings. There, the parties' dispute concerned a non-compete clause in a contract between them. In his original pleading, McSweeney contended that the parties' 1973 contract was in full force at the relevant time. In his amended pleading, he contended instead that both parties had rescinded the 1973 agreement and orally entered into another one in 1977. The court held, "Where, as here, there is no showing that the elements of estoppel are present, including reliance upon the actions of the persons sought to be estopped, even clear and definite admissions of fact in a superseded pleading are not conclusive but remain as evidence subject to explanation and contradiction." Office Electronics, 72 Ill. App. 3d at 461, 390 N.E.2d at 957 (citations omitted). This again means that Stokfisz' original allegation that the harassment ceased in July of 1996 is not binding, but remains before the Commission subject to "explanation and contradiction."

The Commission's regulations also support allowing the First Amended Complaint allegation to remain. Regulation 210.150(a) states that a complaint, "or any part thereof, may be amended as a matter of right to cure technical defects or omissions at any time." In addition, for cases like this one, in which the Commission has not yet determined whether or not there is substantial evidence of discrimination, a complainant may amend his or her complaint concerning new allegations or claims, as follows:

> A Complaint, or any part thereof, may be amended by the Complainant as a matter of right before a determination of whether or not there is substantial evidence to clarify of amplify allegations made therein, or to set forth additional facts or allegations related to the matter of the original Complaint, at any time prior to the determination of whether or not there is substantial evidence and such amendment shall relate back to the original filing date. The Complainant may also amend his or her Complaint to add new allegations if the occurrence which forms the basis of the alleged Violation occurred within 180 days of the filing of the Amended Complaint . . . .

Regulation 210.150(b).

The Commission finds that Stokfisz' change in the date that alleged harassment ended is not a wholesale addition of a new claim, such as that disallowed in Barnes v. Ameritech, CCHR No. 96-E-70 (August 1, 1997). The Commission is mindful that the change in date in this case is important precisely because it may effect the timeliness of the complaint. Nevertheless, the Commission believes that the change, in this case, constitutes a clarification or amplification of the original Complaint or a setting forth of additional facts or allegations related to the original Complaint. It shall not, then, dismiss the allegation that the harassment ended in June of 1997.

In sum, both of Stokfisz' statements about date the harassment concluded shall remain before the Commission. That discrepancy will be treated as an issue of fact to be investigated and, if the case reaches the hearing stage, to be considered as part of the record. As it investigates this case, the Commission shall try to determine when the harassment ceased. If the Commission is able to conclusively determine that the harassment ended more than 180 days before Stokfisz filed her complaint (and if it finds that continuing violation theory does not make it timely, see Part III.B below), the Commission shall find the harassment claim to be untimely.

B. Continuing Violation

Respondents further claim that, even if Complainant could amend her complaint to make her harassment claim timely, the Commission should still dismiss paragraphs 5 and 6 of the First Amended Complaint, which describe conduct that occurred more than 180 days before the filing of even the original complaint. These paragraphs refer to the sexually offensive jokes at

lunch in June or July, 1996 and at the office 1995 Christmas party which included "raunchy grab bags."[2]

These incidents are more than 180 days before Stokfisz filed even her original Complaint. However, the Commission finds that it may consider those instances of alleged harassment as part of a "continuing violation." There is no dispute as to the date of Stokfisz' pay cut and its timeliness. The issue, then, is whether the otherwise non-timely incidents of alleged harassment may be considered part of a continuing violation. As explained below, the Commission holds that, for purposes of deciding this motion to dismiss, it cannot dismiss those incidents.

Continuing violation theory allows otherwise untimely incidents to be considered timely because they are part of a series of related events, at least one of which occurred within the limitations period. Thompson v. Ross & Hardies, CCHR No. 94-E-88 (Oct. 27, 1994), citing Selan v. Kiley, 969 F.2d 560, 564 (7th Cir. 1992); see also Young v. Will County Dept. of Public Aid, 882 F.2d 290, 292 (7th Cir. 1989), and Stewart v. CPC International, Inc., 679 F.2d 117, 121 (7th Cir. 1982). In order to determine whether a continuing violation has occurred, the Seventh Circuit formulated a three-part test, which the Commission has adopted. Leahy v. Tcheupdjian and Liposuction & Cosmetic Surgery Institute, CCHR No. 95-E-21 (April 28, 1997), citing Thompson, *supra*; see also Stewart, *supra.* The Commission must evaluate three aspects of the relation between the timely claim and the otherwise untimely claims: the subject matter, the frequency and the permanence. Taking Stokfisz' factual allegations and their reasonable inferences as true, the otherwise untimely incidents, together with the timely incidents, constitute a continuing violation.

First, the Commission must find the allegations involved the same subject matter, or the same type of discrimination. Clearly, Stokfisz satisfies this element: all of her allegations relate to sexual harassment and the ramifications from it. Second, the Commission must find the acts were recurring in nature, rather than isolated or discrete. Here, Complainant claims that the harassment was "ongoing" from her hire through either July, 1996 or June, 1997. She lists several examples of that conduct, including "embarrassing remarks about [her] anatomy," which she describes as "ongoing" and demeaning and disgusting comments concerning male co-workers' "sexual arousal." Original and First Amended Complaints, ¶¶3 & 4.[3] She also discussed "sexually offensive jokes" at lunch with her co-workers and the raunchy 1995 Christmas party. Original and First Amended Complaints, ¶5 & 6. The "ongoing" incidents are sufficiently frequent to satisfy this prong of the test for purposes of a motion to dismiss.

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[2] Stokfisz had addressed these events in her original complaint, but did not then include dates for them.

[3] Where details of the original complaint differ from those of the First Amended Complaint (such as by adding names of the individuals making the comments), the Commission here refers only to facts common to both complaints.

Last, the Commission must find that the discrimination consisted of a pattern or series of acts over a period of time which finally alerted the employee that her rights were being violated. See Leahy, *supra.* It appears that no events prior to the reduction in Stokfisz' pay constitutes a significant enough change that "should [have] trigger[ed] [Stokfisz'] awareness of the need to assert -- or else lose -- [her] rights." Leahy, citing Selan v. Kiley, 969 F.2d at 567.

Accordingly, taking her allegations and their inferences as true, the Commission finds that Stokfisz has stated a claim for continuing violation and so her allegations about events which occurred more than 180 days before her original claim cannot be dismissed as untimely. The Commission shall look into these claims as part of its investigation.

C. Claims Occurring Before Enactment of Current CHRO

Respondents assert that the Commission cannot proceed with Stokfisz' claims concerning incidents which occurred before the effective date of the Chicago Human Rights Ordinance, May 6, 1990. Motion to Dismiss, ¶ 5. They correctly cite Hruban v. William Wrigley, Jr. Co., CCHR No. 91-E-63 (April 20, 1994), as support for this contention. In Hruban, the Commission held the CHRO does not apply retroactively to conduct which took place prior to its effective date, citing Cartwright v. Civil Service Commission, 80 Ill. App. 3d 787 (1st Dist. 1980).

Stokfisz does not provide any specific allegations of harassment before May 6, 1990. Instead, she states that she was harassed beginning when she was hired (in September 1982). Original and First Amended Complaints, ¶3. The Commission finds Stokfisz cannot recover for any harassment occurring prior to May 6, 1990. The Commission, however, may look to events before May 6, 1990 as background or evidence about her claims.

D. Sufficiency of Harassment Allegations

Respondents claim that, with respect to paragraphs 3, 4 and 7 of the First Amended Complaint, Stokfisz "failed to apprise Respondents of the 'date, place and facts' of any incidents of sexual harassment occurring within the jurisdictional time period. . . ." Supplement, pp. 2 & 3. Those paragraphs include statements such as, "On an ongoing basis, I was the target of lewd and disgusting behavior by the Respondents named above, consisting of sexually offensive remarks, sexual suggestions and requests for sexual favors." First Amended Complaint, ¶3. However, as stated in Part II.B above, complaints at the Commission need only "substantially apprise" the respondent of the alleged violation, see e.g. Workman v. First National Bank of Chicago, CCHR No. 95-E-106 (Jan. 4, 1996), and Ingram v. Rosenberg & Liebentritt, et al., CCHR No. 93-E-141 (Mar. 29, 1995), and need not set out detailed facts or the supporting evidence. Harris v. Buddy Products, CCHR No. 96-E-117 (April 14, 1998), citing Ingram. Stokfisz' claims of harassment meet this notice standard. She has described the general nature of the remarks, identified who made them, and stated that they were "ongoing." This supplies sufficient facts about the alleged harassment to "substantially apprise" Respondents of Complainant's claims.

E. Claims Concerning Harassment of Another Employee

Stokfisz claims that another employee, Susan Jett, was harassed and then forced to quit because of a dramatic reduction in pay. Original and First Amended Complaint, ¶8 and Second Amended Complaint, ¶6.[4] The Commission agrees that a complainant cannot recover for harassment that may have happened to someone else (and which is not claimed to have affected the complainant's own work environment). See Thompson v. Ross & Hardies, CCHR No. 94-E-88 (Oct. 27, 1994). Stokfisz, then, may not rely on her allegations about Jett as an independent basis for recovery. It appears that Stokfisz' allegations about Ms. Jett are more for purposes of background to reinforce her own claim -- an alleged example of someone treated in the same harassing and discriminatory way which Stokfisz claims she was treated. Therefore, the Commission shall not dismiss those allegations and may investigate the treatment of Ms. Jett to the extent that it may be relevant to Stokfisz' claims about Respondents' treatment of her.

F. Retaliation -- Original Complaint

In their motions to dismiss, Respondents contend that Complainant has not stated a cognizable claim for retaliation with respect to conduct which occurred before she filed the original Complaint. Motion to Dismiss, ¶3. The sentences which Respondents claim constitute retaliation claims are in paragraph 8, to wit: "Because of my refusal to participate [in] and reciprocate sexual behavior, I am not considered a 'team player.' . . . My pay was cut by 3/4 in February of 1997, as a method of intimidation to get me to quit. I am not a 'team player' since I refused to participate in the sexually harassing and hostile environment." Complaint, ¶8 (allegations concerning Ms. Jett are omitted).

Respondents accurately assert that Complainant could not allege retaliation in her original Complaint because the CHRO only recognizes retaliation which occurred in response to the making, assisting or participating in a complaint filed under the CHRO. The CHRO states, "No person shall retaliate against any individual because that individual in good faith has made a charge, testified, assisted or participated in an investigation, proceeding or hearing under this chapter." Chic. Muni. Code, §2-160-100; see Harris v. Buddy Products, CCHR No. 96-E-117 (Apr. 14, 1998) (the CHRO's prohibition of retaliation covers only people who participated in proceedings at the Commission, not those who opposed discrimination elsewhere, including on the job).

However, in this case, Stokfisz did not check the box for "retaliation" on the front of her complaint and she never uses the term "retaliation" in her original complaint. She refers to the case as one involving sex. For the reasons set forth below, he Commission finds that she has stated a claim for *quid pro quo* sexual harassment, not prohibited retaliation. The CHRO, like

[4] Respondents do not challenge the remainder of these paragraphs which concerns the reduction in Stokfisz' pay.

other definitions of sexual harassment, states that sexual harassment includes when the "submission to or rejection of such [sexual] conduct by an individual is used as the basis for any employment decision affecting the individual . . . ." CHRO, §2-160-020(I)(2).

The Commission addressed the same issue and similar facts in Harris v. Buddy Products, *supra*. There, Ms. Harris did not check the box for "retaliation" on the front of her complaint and never used the term "retaliation" in her complaint. Ms. Harris asserted that, after she rebuffed sexual advances of the head of the company, she was isolated, not spoken to and ultimately fired. The respondent in Harris contended that her allegations about the actions taken after Harris allegedly rejected the sexual advances constituted a claim for retaliation not covered by the CHRO.

The Commission rejected that argument and held that a respondent's negative conduct taken after a complainant refuses to be involved with sexual behavior may constitute a claim for *quid pro quo* sexual harassment. The Commission held that "actions taken after an employee rejects advances need not themselves be sexual." Harris, *supra,* citing Bryson v. Chicago State University, 96 F.3d 912 (7th Cir. 1996). The Commission noted that what motivated the non-sexual conduct (whether it was the rejection of the sexual conduct) is a question of fact not suitable for resolution in a motion to dismiss.

In sum, if the complainant alleges that the negative employment action was taken due to the employee's failure to submit to or due to her rejection of the sexual conduct, that states a claim for *quid pro quo* sexual harassment. Therefore, Stokfisz' claim that she was not considered a team player and the inference that her pay was cut because she refused to participate in the sexual conduct states a claim for *quid pro quo* sexual harassment, and so is not dismissed.

Finally, the Commission notes that Respondents do not argue that Complainant's later claims of retaliation for filing her original Complaint are outside the coverage of the CHRO. They do, of course, contest the merits of those claims.

IV. CONCLUSION

The Commission GRANTS Respondents' Motions to Dismiss as follows: neither Complainant's allegations about incidents which occurred before May 6, 1990 nor allegations about how Respondents treated Ms. Jett may be bases for Stokfisz' recovery. Both sets of allegations, however, may be used as background or evidence concerning her own claims for relief.

The Commission otherwise DENIES Respondents' Motions to Dismiss in all other respects. Respondents are ordered to file their Verified Response and their Response to the Commission's Request for Documents and Information with respect to the claims to which they did not already respond on or before March 12, 1999.