

**EQUAL OPPORTUNITIES COMMISSION  
CITY OF MADISON  
210 MARTIN LUTHER KING, JR. BOULEVARD  
MADISON, WISCONSIN**

<p>Greg Converse 518 W. Main St., Apt. 29 Madison, WI 53703</p> <p style="text-align:center">Complainant</p> <p style="text-align:center">vs.</p> <p>Mansion Hill Inn 424 N. Pinckney St. Madison, WI 53703</p> <p style="text-align:center">Respondent</p>	<p>HEARING EXAMINER'S DECISION AND ORDER ON RESPONDENTS' MOTION TO DISMISS</p> <p>Case No. 22813</p>
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### **BACKGROUND**

On October 21, 1997, the Complainant, Greg Converse, filed a complaint with the Madison Equal Opportunities Commission. The complaint alleged that the Respondent, Mansion Hill Inn, terminated his employment on the basis of his sexual orientation in violation of the Madison Equal Opportunities Ordinance Section (7)(a) (Sec. 3.23(7)(a) Mad Gen Ord.). Shortly after filing the complaint, the Complainant amended his complaint to add Randall P. Alexander as a Respondent.

On October 30, 1997, the Respondent, Mansion Hill Inn, filed a motion to dismiss the complaint for lack of jurisdiction. The Respondent, Randall P. Alexander, shortly joined in that motion. The basis of the motion to dismiss is the contention that all relevant circumstances relating to this complaint occurred more than 300 days prior to the filing of the complaint. Section 3.23(9)(c)1. of the ordinance provides that a complaint of employment discrimination must be filed within 300 days of the last act of discrimination.

On November 13, 1997, the Hearing Examiner issued an Order for Briefs with respect to the motion to dismiss. The Respondents both filed written argument in support of their positions. The Complainant filed no argument in support of his complaint.

### **DECISION**

The Respondent, Mansion Hill Inn, has requested, in addition to its motion to dismiss, to dismiss the complaint because the Complainant failed to submit a brief or written argument in support of his complaint. While this approach to handling a matter such as this has some appeal for the Hearing Examiner, it is not an appropriate method for resolving this dispute. This is especially true since the Complainant is unrepresented and the Respondents are both so capably represented. The Hearing Examiner will review the record and make an independent evaluation of the Commission's jurisdiction. This review is rendered somewhat speculative and cursory since the only document submitted by the Complainant is the original complaint and the amended complaint filed on October 29, 1997.

The complaint indicates that the Complainant was terminated from his position as an Innkeeper on December 21, 1996. The complaint further alleges that on December 29, 1996, the Complainant received a telephone call from Jana Wojtal, his supervisor, at the Mansion Hill Inn questioning him about a discount that she believed he had given to an apparently lesbian couple who were in the process of checking in. The Complainant denied that he knew the couple in question or had given them a discount. The Complainant alleges that Wojtal called him a liar and assumed that there had to have been an affiliation between the couple and the Complainant because of the Complainant's sexual orientation.

The Respondents correctly point out that the date upon which the Complainant was terminated, December 21, 1996 was in excess of the 300 day limit set forth in Sec. 3.23(9)(c)1. The Respondents also point out that the Complainant was no longer an employee of the Respondents on December 29, 1996, when he allegedly received the telephone call from Wojtal.

The 300 day limit set forth in Sec. 3.23(9)(c)1. of the ordinance establishes a firm limit that can only be exceeded in very limited circumstances. Ennis v. Local 965 IBEW, MEOC Case No. 22118 and Ennis v. WP&L, MEOC Case No. 22119 (Ex. Dec. on Jur. 02/03/95, Ex. Dec. 03/17/95), Krebs v. Don Miller Pontiac Subaru, Inc., MEOC Case No. 22127 (Ex. Dec. on Jur. 03/29/96, Ex. Dec. on Jur. 03/16/95). On this record, the Hearing Examiner is unable to conclude that either of these special circumstances apply to this complaint.

The first circumstance which can require the breach of the 300 day limit is where the facts alleged by the Complainant represent either a pattern or practice of discrimination or a continuing violation of the ordinance. Krebs, supra. In order for the doctrine of continuing violation or pattern or practice to apply, there must be at least one viable claim of discrimination that is part of the pattern or practice that actually falls within the limitation period. In this case, the termination clearly falls outside of the 300 day limit, while the telephone call incident falls within the 300 day limit. In order for the Commission to have jurisdiction over the termination claim, there must be a credible allegation that the termination and the telephone call represent points in either a chain of continuing violation of the ordinance or points in a pattern or practice of discrimination. They do neither.

As of December 21, 1996, the Complainant was no longer an employee of the Respondents. The Complainant presents no fact or argument and the record reflects no facts that could give rise to any claim that the telephone call occurring on December 29, 1996 represents a violation of the ordinance. If the telephone call incident does not represent a violation of the ordinance, then it cannot be used to form part of a pattern or practice of discrimination.

A claim of discrimination in termination does not represent a continuing violation by itself. The effects of a termination are felt at the time of the termination and though those effects may linger economically a termination represents a single discrete occurrence. Krebs, supra. Absent some additional evidence, the record does not support a claim of a continuing violation.

The second circumstance that supports jurisdiction even where the allegedly discriminatory act occurred outside of the 300 day period is where the victim did not learn of the discriminatory nature and could not have reasonably known of the discriminatory nature of the action until some later time within the 300 day limitations period. Ennis, supra. The record relating to this theory is somewhat stronger, but still does not carry the day.

On this record, the Complainant might have argued that at the time of his firing, the Complainant did not know nor could he have reasonably known of the allegedly discriminatory motive for his

termination. The argument would continue that he only became aware of the allegedly discriminatory basis for his termination when he was confronted with the telephone call on December 29, 1996. Under such a theory, the Commission would have jurisdiction over the complaint even though the incident had occurred outside of the 300 day period because the period would only run from when the Complainant knew or reasonably should have known that his sexual orientation was the basis for his termination.

While one could extract such a theory from this complaint, it appears that the Complainant believed at the time of his termination that his sexual orientation may have played a part. The complaint indicates that the Complainant had allegedly been warned that Wojtal was "homophobic" and if his sexual orientation became known, he would have a difficult time. The Complainant clearly believed at the time of his termination that something might not be proper because he indicated that even though he was given a reason for his termination, he believed that it was a pretext because other employees had not been terminated for similar reasons. Under these circumstances, it appears likely that either the Complainant suspected that his termination was discriminatorily based or he should have reasonably suspected that to be the case at that time. Given this knowledge or the fact that a reasonable person would have suspected discrimination at the time of termination, the complaint must be dismissed as falling outside of the 300 day limitation period.

Both Respondents raise other arguments in support of the motion to dismiss. The Hearing Examiner need not address these additional arguments given this holding.

### **ORDER**

The complaint is hereby dismissed for the reasons stated above.

Signed and dated this 3rd day of April, 1998.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell III  
Hearing Examiner