

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

---

PAUL F. MURRAY,  
Complainant

v.

DOCKET NO. 99-BPA-3466

TOWN OF HOLBROOK,  
Respondent

---

DECISION OF THE FULL COMMISSION

On May 9, 2003, Hearing Officer Betty Waxman entered a finding of default pursuant to 804 CMR 1.21(8) against Complainant for his failure to appear at the public hearing scheduled for that day. On May 19, 2003, Complainant filed a petition pursuant to 804 CMR 1.21(8)(d) seeking to remove the default. On June 10, 2003, the Hearing Officer issued a decision denying Complainant's petition for failure to show good cause. As part of her ruling, the Hearing Officer issued sanctions in the amount of \$1,252.50 against Complainant's counsel in fees and costs incurred by Respondent. Complainant now seeks review by the Full Commission.

Complainant's appeal must be denied because Complainant filed on May 9, 2003 a notice of removal to court pursuant to M.G.L. c. 151B, s. 9. As such, the Commission no longer has jurisdiction over Complainant's claim. We do note, however, that the Hearing Officer's ruling with respect to sanctions may stand because it was issued to address the parties' conduct before the Commission. A party may not flout the rules of the Commission and then escape sanction by removing the claim. This is a fundamental tenet that underpins the effective operation of any tribunal and one that has been reaffirmed by

the United States Supreme Court. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 398 (1990). In Cooter & Gell, the plaintiff’s attorney had committed a Rule 11 violation, but argued that his voluntary dismissal rendered the court “powerless to impose sanctions thereafter.” Id. at 395. The Supreme Court rejected the argument, holding that “[e]ven if the careless litigant quickly dismisses the action, the harm triggering Rule 11’s concerns has already occurred. Therefore, a litigant who violates Rule 11 merits sanctions even after dismissal.” Id. at 398.

That case is directly applicable here. Complainant’s representatives failed to appear at the public hearing on May 9, 2003 and Complainant was defaulted. At some time on that same day, Complainant’s representative came to the Commission and filed with the receptionist a hand-written notice of removal pursuant to M.G.L. c. 151B, s. 9. The Hearing Officer sanctioned Complainant’s counsel for costs and fees incurred by Respondent as a result of the default. Therefore, Complainant’s removal did not defeat the Commission’s jurisdiction for the purpose of issuing sanctions.

Thus, the Hearing Officer’s ruling with respect to sanctions and the default stands and the case is dismissed as a result of Complainant’s removal.

SO ORDERED, this 23<sup>rd</sup> day of July, 2003.

---

Dorca I. Gomez,  
Chairwoman

---

Cynthia A. Tucker,  
Commissioner

---

Walter J. Sullivan, Jr.  
Commissioner