



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Ahmad El-Shenawy

Applicant

-and-

**Markham Aquatic Club, Kathy Salvo, Kevin Walker,
Glen Steacy, Darren Ward and Lawrence Mills**

Respondents

DECISION

Adjudicator: Cyndee Todgham Cherniak
Date: May 25, 2022
File Number: 2019-38614-I
Citation: 2022 HRTO 687
Indexed as: **El-Shenawy v. Markham Aquatic Club**

APPEARANCES

| | | |
|--|------------------|------------------------------------|
| Ahmad El-Shenawy, Applicant |)))) | Alireza Hesami, Paralegal |
| Markham Aquatic Club, Respondent |)))) | Elisabeth van Rensburg, Counsel |
| Cathy Salvo, Kevin Walker, Darren Ward, Glen Steacy, Lawrence Mills, Respondents |)))) | No one appearing |
| Swim Ontario, Affected Party |)))) | Kevin Bridel, Counsel |

INTRODUCTION

[1] The Application alleges discrimination in the social area of employment because of race, colour, place of origin, ethnic origin, and disability contrary to the *Human Rights Code*, R.S.O. 1990 c. H.19, as amended.

[2] On November 10, 2021, the Tribunal issued a Case Assessment Direction and ordered that a combined summary and preliminary hearing be held to determine whether the Application should be dismissed because (1) it has no reasonable prospect of success, and (2) it is an abuse of process or under section 45.1 of the *Code* on the basis that a Swim Ontario proceeding appropriately dealt with the allegations in the Application.

[3] The Tribunal canvassed the parties for the dates that they were available to participate in the combined summary and preliminary hearing. The applicant's legal representative responded on February 28, 2022 that the applicant was available to participate in a combined summary and preliminary hearing on a number of dates, including May 18, 2022.

[4] On March 1, 2022, the Tribunal issued a Notice of Preliminary/Summary Hearing (the "Notice") to the parties, including the applicant's legal representative, confirming that a full day hearing would take place on May 18, 2022 starting at 9:30 am.

[5] The Tribunal sent the Notice to the applicant's legal representative by email to the address provided by the applicant and from which the Tribunal received communications about scheduling the combined summary and preliminary hearing. The email included a link to participate in the Zoom hearing.

[6] The applicant's legal representative confirmed that he received the Notice and that he sent the Notice to the applicant on March 2, 2022. Therefore, I am satisfied that the applicant received the Notice (including the date of the combined summary and preliminary hearing and the start time) and the log-in information for the Zoom hearing.

[7] The applicant was not in attendance at the combined summary and preliminary hearing start time. However, the applicant's legal representative was in attendance at the start time and asked for an adjournment because the applicant had not provided his legal representative with instructions.

[8] I find that the applicant had received the Notice, which provided the following warnings to the applicant:

ATTENDANCE

The hearing will be rescheduled only in exceptional circumstances, even if all parties agree. (Note that retaining a new representative who is not available or prepared to proceed on the scheduled date is not considered an exceptional circumstance.)

If you need to reschedule, contact the other parties immediately. Adjournment requests will only be considered if:

1. The request is submitted in writing
2. All parties are copied in accordance with Rule 1.12 and 1.20
3. 3 – 5 mutually agreeable dates are provided

All three criteria listed above must be met for the Tribunal to consider the rescheduling request. Otherwise the hearing will proceed as scheduled.

...

FAILURE TO ATTEND THE HEARING

If you do not attend the hearing after receiving proper notice, the HRTO may proceed in your absence (if you are a respondent or intervener) or dismiss the Application as abandoned (if you are the applicant).

[9] I denied the applicant's request for an adjournment because it was made on the morning of the hearing and did not comply with the clear instructions to the parties set out in the Notice. Further, the organizational respondent was present and prepared to proceed.

[10] In accordance with its usual practice the Tribunal waited 30 minutes before proceeding. The Tribunal gave the applicant's legal representative an opportunity to contact the applicant.

[11] At 10:00 am, the applicant was still not in attendance at the combined summary and preliminary hearing, nor had he communicated with the Tribunal to explain his failure to attend. The applicant's legal representative indicated that he had not reached the applicant and that the Tribunal was not required to attempt to contact the applicant. The applicant's legal representative indicated that the applicant was aware of the start time for the combined summary and preliminary hearing.

[12] The applicant's legal representative asked to withdraw the Application on a without prejudice basis pursuant to Rule 10 of the Tribunal's Rules of Procedure. The applicant's legal representative also informed the Tribunal that he had instructions to not proceed with a previously filed Form 10 Request for Order During Proceedings to add Swim Ontario as a party to the proceeding.

[13] I exercised my discretion pursuant to Rule 1.7(w) of the Tribunal's Rules of Procedure to dispense with the requirement for the applicant to file a Form 9. Instead, I confirmed with the applicant's legal representative that the applicant had given him authority to withdraw the Application and the applicant's legal representative confirmed that he was instructed to withdraw the Application.

[14] I asked counsel for the organizational respondent to make submissions and the organizational respondent indicated she would not oppose the withdrawal being provided verbally and that the organizational respondent took no position on whether the withdrawal should be on a with prejudice or without prejudice basis. Counsel for the organizational respondent requested that the Tribunal accept the applicant's request to withdraw the Application.

[15] In accordance with Rule 10.5 of its Rules of Procedure, the Tribunal grants the applicant's request to withdraw the Application on a without prejudice basis. In light of the withdrawal of the Application, there is no need for me to separately withdraw the request to add Swim Ontario as a party as it is now a moot issue.

ORDER

[16] Accordingly, the Tribunal grants the applicant's request to withdraw the Application on a without prejudice basis.

Dated at Toronto, this 25th day of May, 2022.

"Signed by"

Cyndee Todgham Cherniak
Member