



NO. CV 115015388S : SUPERIOR COURT

KIMBERLY ALBRIGHT-LAZZARI, ET AL.

v.

JUDICIAL DISTRICT OF
NEW BRITAIN

*Ficap# 2011-1
Fic #2010-380
Atty: PSP*

COLLEEN MURPHY, CONNECTICUT
FREEDOM OF INFORMATION COMMISSION :

AUGUST 8, 2012

NO. CV 115015389S

SUPERIOR COURT

KIMBERLY ALBRIGHT-LAZZARI, ET AL.

v.

JUDICIAL DISTRICT OF
NEW BRITAIN

*Ficap# 2011-016
Fic #2010-486
Atty: PSP*

COLLEEN MURPHY, CONNECTICUT
FREEDOM OF INFORMATION COMMISSION :

AUGUST 8, 2012

NO. CV 115015455S

SUPERIOR COURT

KIMBERLY ALBRIGHT-LAZZARI, ET AL.

v.

JUDICIAL DISTRICT OF
NEW BRITAIN

*Ficap# 2011-022
Fic # 2010-623
Atty: PSP*

COLLEEN MURPHY, CONNECTICUT
FREEDOM OF INFORMATION COMMISSION :

AUGUST 8, 2012

NO. CV 115015473S

SUPERIOR COURT

KIMBERLY ALBRIGHT

v.

JUDICIAL DISTRICT OF
NEW BRITAIN

*Ficap# 2011-027
Fic # 2011-105
Atty: PSP*

COLLEEN MURPHY, CONNECTICUT
FREEDOM OF INFORMATION COMMISSION :

AUGUST 8, 2012

SUPERIOR COURT

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FILED

MEMORANDUM OF DECISION

The plaintiffs Kimberly Albright-Lazzari and Anthony Lazzari appeal from four final decisions of the defendant freedom of information commission (FOIC) dismissing their complaints for failure to attend noticed hearings of the FOIC.¹

With regard to three of these appeals, in which Albright-Lazzari is a co-plaintiff with Lazzari (HHB CV 11-5015388, HHB CV 11-5015389 and HHB CV 11-5015455), on October 4, 2011, the Hon. George Levine entered defaults against Albright-Lazzari, because she did not attend noticed pre-trials. With regard to the fourth case (HHB CV 11-50115473) Albright² filed her case as the sole plaintiff. She failed to appear in court at the oral argument on July 24, 2012. No reason was given for her failure to appear, and her suit is dismissed for failure to prosecute under P. Bk § 14-3 (a). See also *Skinner v. Doelger*, 99 Conn. App. 540, 549, 915 A.2d 314 (2007) (dismissal appropriate where case appears on an assignment list for final adjudication). Based on this court history, judgment may enter against Albright-Lazzari dismissing her appeals from the FOIC.

With regard to Anthony Lazzari's three appeals, the record in Docket No. HHB CV 11-5015388 shows as follows: On June 17, 2010, he (along with Albright-Lazzari)

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Because the FOIC has dismissed their complaints, the plaintiffs are aggrieved pursuant to General Statutes § 4-183 (a).

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The summons in this case lists the plaintiff as "Albright."

filed a complaint with the FOIC alleging that the Naugatuck police department had

violated the freedom of information act (FOIA) by failing to provide them with access to public records. (Return of Record, ROR, p. 1). On July 15, 2010, the FOIC provided the parties notice of the docketing of the complaint. On September 29, 2010, a notice of hearing was sent to the parties, setting the time for a hearing as October 28, 2010 at 9:30 a.m. in the FOIC's hearing room. The notice also advised that a hearing officer's report would be prepared after the hearing that would be considered at a full meeting of the FOIC. The parties were advised to attend the full FOIC meeting when it occurred. (ROR, pp. 7-9). The notice concluded by informing the parties that "punctuality will be essential." (ROR, p. 11).

In the early morning hours of October 28, 2010, at approximately 3:42 a.m., Albright-Lazzari emailed the FOIC that she was having a babysitting issue that might require rescheduling the hearing for later that morning. A follow-up message stated that the complainants were having car trouble and that they were en route to the hearing. (ROR, pp. 18, 22).

At 10:00 a.m., when the town's attorney and witnesses had appeared, but neither Albright-Lazzari nor Lazzari had appeared, the town moved to dismiss the complaint. (ROR, p. 22). Albright-Lazzari and Lazzari subsequently moved for a new hearing claiming that they were not able to appear promptly due to the towing of their car as well

as road traffic. (ROR, p. 24). On November 8, 2010, the hearing officer submitted a report noting that the hearing “was scheduled to be heard as a contested case on October 28, 2010, at 9:30 a.m., at which time the respondents were present but the complainants failed to appear.” (ROR, p. 35). The hearing officer recommended that the complaint be dismissed. (Id.)

On March 3, 2011, the FOIC mailed copies of the proposed final decision to the parties, notifying them that the FOIC would consider the matter for disposition at its April 13, 2011 regular meeting at 2:00 p.m. and that they would be allowed to offer oral argument concerning the hearing officer’s proposed finding and order at that meeting. (ROR, p. 34). At its April 13, 2011 meeting, the FOIC adopted the hearing officer’s report. (ROR, p. 36). The complainants did not offer oral argument at the meeting.

Similarly, in Docket No. HHB CV 11-5015389, Lazzari (along with Albright-Lazzari) filed a complaint with the FOIC to obtain documents held by the West Haven police department. The parties were notified that the hearing was set for November 5, 2010. (ROR, pp. 8-10). Ten minutes before the hearing, Lazzari called the FOIC to inform the hearing officer that he had overslept and was running late. (ROR, p.34). The hearing officer recommended a dismissal and this was approved by the FOIC at its meeting of April 13, 2011. (ROR, p. 39). The complainants did not appear at the meeting.

Finally, in Docket No. HHB 11-5015455, Lazzari and Albright-Lazzari

complained to the FOIC about production of records by the department of public safety (state police). They received a hearing date of April 25, 2011 (ROR, p. 18). On April 25, 2011 at 12:07 a.m., Albright-Lazzari emailed the FOIC stating that they were having transportation problems. (ROR, p.40). The hearing officer recommended a dismissal that was approved at the June 8, 2011 meeting of the FOIC. (ROR, p. 57). The complainants did not appear at the meeting. This appeal followed.

There is no question that the FOIC may resolve complaints filed with it by an order of default. § 4-177 (c). The court must decide whether the FOIC acted unreasonably, arbitrarily, illegally, or in abuse of its discretion in defaulting Lazzari on this record. See *Blinkoff v. Commission on Human Rights & Opportunities*, 129 Conn. App. 714, 721, 20 A.3d 1272 (2011).

While Lazzari argues his due process rights³ have been violated, our Supreme Court has stated that his claims must be evaluated under the Uniform Administrative Procedure Act that provides more protection for him than due process. See *Pet v. Dept. of Health Services*, 228 Conn. 651, 661, 638 A.2d 6 (1994). In each case, Lazzari received appropriate notice from the FOIC as required by § 4-177 (b) that the hearings would be held on a particular date several weeks in the future. Certainly he could have

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He also raises equal protection claims that have no relevance in this appeal.

arranged to attend on time and worked out his transportation, the reasons for missing the hearings raised in appeals 11-5015389 and 11-5015455.

With regard to the last-minute towing of his car in 11-5015388, it is true that this is an unforeseen occurrence. But had he appeared at the April 13, 2011 FOIC commission meeting, he would have been able to explain the circumstances of the towing and his efforts to arrive speedily in Hartford. With the full facts before the FOIC, the agency may well have changed the hearing officer's proposed final decision and permitted another hearing. As the Appellate Court has recently stated in regard to this plaintiff, whether a hearing was properly denied depends upon "time, place and circumstances." *Albright-Lazzari v. Freedom of Information Commission*, 136 Conn. App. 76, 81, 44 A.3d 859 (2012).

On this record, the court concludes that the FOIC did not abuse its discretion in dismissing Lazzari's complaints. These appeals are therefore dismissed.



Henry S. Cohn, Judge