UTAH LABOR COMMISSION

PAUL LEE BORREGO, **Petitioner,** **vs.** **ALBERTSONS, INC.,** **Respondent.**	**ORDER SETTING ASIDE ALS'S DECISION/ORDER OF REMAND** **Case No. 8-01-0158**

Paul Lee Borrego asks the Utah Labor Commission to review Administrative Law Judge Poelman's summary determination that Albertsons, Inc. did not discriminate against Mr. Borrego in violation of the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Labor Commission exercises jurisdiction in this matter pursuant to Utah Code Annotated §63-46b-12 and §34A-5-107(11).

BACKGROUND AND ISSUE PRESENTED

On March 17, 2003, Albertsons filed a motion for summary dismissal of Mr. Borrego's employment discrimination complaint. Albertsons mailed a copy of its motion to Mr. Borrego at 3532 South 5450 West, West Valley, Utah 84120. However, at that time Mr. Borrego's address of record was 409 Clubhouse Drive, #4710, Salt Lake City, Utah 84123.[1]

Mr. Borrego did not respond to Albertsons' motion for summary judgment. Judge Poelman therefore concluded that Albertsons' statement of facts was undisputed and, on that basis, granted Albertsons' motion for summary judgment against Mr. Borrego. Judge Poelman's order was issued on May 7, 2003, and mailed to Mr. Borrego at the incorrect West Valley address, rather than his address of record on Clubhouse Drive.

On May 13, 2003, Mr. Borrego filed a motion for Commission review Judge Poelman's order in which he alleged that he his failure to respond to Albertsons' motion for summary judgment was because he never received it.

At the time Mr. Borrego filed his motion for review, Judge Poelman retired from the Commission. Mr. Borrego's motion for review was not forwarded to the Commission until February 26, 2007.

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1 The Commission notes that its address of record for Mr. Borrego also contained an error—instead of "409 Clubhouse Drive," the address should have been "4095 South Clubhouse Drive."

DISCUSSION AND CONCLUSION OF LAW

From the record available in this matter, the Commission finds that Mr. Borrego did not receive Albertsons' motion for summary judgment and, consequently, was unaware of the need to respond. The Commission therefore concludes that Mr. Borrego has not yet been afforded a reasonable opportunity to present his defense to Albertsons' motion for summary judgment.

In light of the foregoing, the Commission sets aside Judge Poelman's order of May 7, 2003, and remands this matter to the Commission's Adjudication Division. Because Judge Poelman has retired from the Commission, the Adjudication Division will designate another administrative law judge to preside over this proceeding. Mr. Borrego is allowed until March 19, 2007, to file his response to Albertsons' motion for summary judgment. The administrative law judge will then issue a new ruling on Albertsons' motion for summary judgment that takes into consideration any response submitted by Mr. Borrego. The administrative law judge may also take such other action as is appropriate to complete the adjudication of this matter.

ORDER

The Commission hereby grants Mr. Borrego's motion for review, sets aside Judge Poelman's order of May 7, 2003, and remands this matter to the Adjudication Division for further action consistent with this decision. It is so ordered.

Dated this 1st day of March, 2007.

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Sherrie Hayashi
Utah Labor Commissioner