Glenn R. Wallace,
Petitioner,

v.

Township of Nutley,
Respondent.

STATE OF NEW JERSEY
DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT

FINAL ADMINISTRATIVE ACTION
OF THE
COMMISSIONER

OAL DKT. NO LID 03167-16
AGENCY DKT. NO. D61-16-029

Issued: February 16, 2017

The Division of Public Safety and Occupational Safety and Health (the Division), within the Department of Labor and Workforce Development, issued a determination dismissing the discrimination complaint of Glenn R. Wallace (petitioner), on the basis that he had not met the standard for establishing an act of discrimination under N.J.A.C. 12:110-7.5. Following the Division's dismissal of petitioner's complaint, he requested a hearing, at which time the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case. The matter was assigned to Administrative Law Judge (ALJ) Barry E. Moscowitz.

Prior to a hearing, respondent filed a motion to dismiss petitioner's appeal due to petitioner's failure to answer discovery. In his initial decision, the ALJ found that answers to discovery had been due on July 17, 2016 and that when petitioner had failed to answer discovery, the period to answer discovery had been enlarged twice; first to September 28, 2016 and then again to October 31, 2016.

Under N.J.A.C. 1:1-10.5, an ALJ may impose sanctions for failure to comply with discovery, including the following: dismiss or grant a motion or application; suppress a defense or claim; exclude evidence, order costs or reasonable expenses, or take any other appropriate case-related action. As to respondent's motion, the ALJ concluded the following:

> Given petitioner's repeated failure to answer discovery in this case – and the fact that it is now nearly six months overdue – I CONCLUDE that the appropriate case-related action in this case is the requested action – dismissal – and grant respondent's motion to dismiss this case.

The ALJ, therefore, issued his initial decision ordering that petitioner's appeal be dismissed. No exceptions to the ALJ's initial decision were filed.

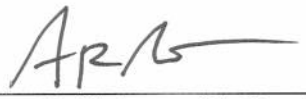
Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, I have accepted and adopted the findings of fact, conclusions and recommendation contained in the ALJ's initial decision

ORDER

Therefore, it is ordered that the discrimination complaint of Glenn R. Wallace be dismissed.

This is the final administrative decision in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY
THE COMMISSIONER, DEPARTMENT
OF LABOR AND WORKFORCE DEVELOPMENT



Aaron R. Fichtner, Ph.D., Acting Commissioner
Department of Labor and Workforce Development

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