

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION**

**URBAN EXPRESS CHARTER, INC.,**

**CASE NO. 16CVC-07-6429**

**APPELLANT,**

**JUDGE WOODS**

**VS.**

**OHIO STATE CIVIL  
RIGHTS COMMISSION  
ET AL.,**

**APPELLEES.**

**DECISION AND ENTRY**  
**GRANTING THE OHIO STATE CIVIL RIGHTS COMMISSION'S MOTION TO**  
**DISMISS AS FILED ON JULY 14, 2016**

**WOODS, J.**

This action comes before the Court upon an appeal commenced by Urban Express Charter Inc., (Appellant) on July 8, 2016. The Appellant named the Ohio Civil Rights Commission's (Commission) and Julie Mills (Appellee).

The matter currently before the Court is the Commission's Motion to Dismiss as filed on July 14, 2016; the Memorandum in Opposition filed by the Appellant on July 29, 2016; and the Reply filed by the Commission on August 4, 2016. (The Appellant has not otherwise moved or plead.) For the reasons that follow the Court **GRANTS** the Commission's Motion to Dismiss.

**STATEMENT OF THE CASE**

The Appellant appealed the Letter of Determination issued by the Commission on June 9, 2016. Said document noted that the Commission had found probable cause to proceed with the Appellee/Charging party's claim of discrimination. The Appellant then commenced this appeal.

**FACTS NOT IN DISPUTE**

Appellee filed a charge of discrimination with the Commission. After the initial review, the Commission found no information or records that raised an inference that the Appellant unlawfully discriminated against the Appellee. The Commission issued a No Probable Cause letter and the Appellee applied to the Commission for reconsideration. After reconsidering the Appellee's claims, the Commission issued its June 9, 2016 Letter of Determination Upon Reconsideration. That letter informed the Appellant that the Commission had reconsidered the matter and now it held that there was probable cause to believe that the Appellant had engaged in alleged unlawful discriminatory practices.

The Commission's letter of June 9, 2016 contained the following language:

**DECISION:**

Upon reconsideration and based on the investigation conducted in this matter, the Ohio Civil Rights Commission has determined that there is **PROBABLE CAUSE** to believe that the Respondent engaged in an unlawful discriminatory practice under section 4112 of the Ohio Revised Code based on Charging Party's disability and hereby orders that **CONCILIATION BE SCHEDULED**. (Emphasis in the original)

The same letter also contained language concerning a right to judicial review.

Apparently, prior to any conciliation being attempted, the Appellant commenced this appeal.

The Commission's Motion is now ready for review.

**STANDARD OF REVIEW**

The Commission's Motion asserted that this Court does not have jurisdiction to hear this matter because the Commission's finding of probable cause is not a final order subject to judicial review. Please note the following concerning subject matter jurisdiction:

"Jurisdiction" refers to a court's " 'statutory or constitutional power to adjudicate the case.' " *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 11, quoting *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89 (1998). Courts of common pleas only have "such powers of review of proceedings of administrative officers and agencies as may be provided by law." Ohio Constitution, Article IV, Section 4(B); see also *Springfield Fireworks, Inc. v. Ohio Dept. of Commerce*, 10th Dist. No. 03AP-330, 2003-Ohio-6940, ¶ 17. Thus, courts of common pleas lack jurisdiction to review actions of administrative agencies unless R.C. 119.12 or some other specific statutory authority grants it. *Total Office Prods. v. Dept. of Adm. Servs.*, 10th Dist. No. 05AP-955, 2006-Ohio-3313, ¶ 12. *Estep v. Ohio Dept. of Job & Family Servs.*, 2013-Ohio-82 (10<sup>th</sup> Dist.) ¶13.

Appellant may appeal from the actions of the Commission, pursuant to R.C. §4112.06 but it may do so only if the Commission's action is the final order from the Commission.

The Court will review the arguments of counsel within the above noted framework.

### ANALYSIS

The Commission has argued that a plain reading of R.C. §§4112.05 & 4112.06 leads to the inescapable conclusion that a probable cause letter is not the final order from the Commission. Without a final order, an appeal is untimely. Furthermore, the 'error' in placing the Notice of Right to Obtain Judicial Review on its probable cause letter did not and cannot provide this Court with jurisdiction.

The following language from the case of *Hous. Advocates, Inc. v. Am. Fire & Cas. Co.*, 2006-Ohio-4880 is helpful in order to understand the process associated with an action stemming from a Commission's review:

"Prior to the filing of a complaint, the procedure set out in the statute [R.C. 4112.05] is informal and in the nature of an *ex parte* proceeding. Although the commission investigates the charge, it does not seek to receive formal evidence. Unlike the procedure set forth for a post-complaint formal hearing, R.C. 4112.05 does not provide for the swearing of witnesses, the taking of testimony, or the keeping of a record during a preliminary investigation. A determination of no probable cause is one which cannot,

therefore, be reviewed on the basis of reliable, probative and substantial evidence."

Hence, when there is a finding of probable cause, additional actions are triggered and a full hearing *may* occur.

The Commission asserted that because additional steps are required, the letter finding probable cause cannot be viewed as the final decision of the Commission. The following statutory language is relevant:

4112.06 Judicial review of final commission order.

(A) Any complainant, or respondent claiming to be aggrieved by a final order of the commission, including a refusal to issue a complaint, may obtain judicial review thereof, and the commission may obtain an order of court for the enforcement of its final orders, in a proceeding as provided in this section. Such proceeding shall be brought in the common pleas court of the state within any county wherein the unlawful discriminatory practice which is the subject of the commission's order was committed or wherein any respondent required in the order to cease and desist from an unlawful discriminatory practice or to take affirmative action resides or transacts business.

As noted, the Commission asserted that a finding of probable cause is not a final order because other steps are still in play and the Commission is not finished with the process.

This Court agrees.

Without a final order this Court lacks jurisdiction to entertain the current appeal. That fact remains even though the Commission imprudently placed a Notice to Right to Obtain Judicial Review section in its letter. This Court needs a final order to obtain subject matter jurisdiction. See, *Estep v. Ohio Department of Job and Family Services*, 2013-Ohio-82 (10th Dist.). *Estep* is also supportive of this Court's determination that the finding of probable cause made by the Commission is not the final order. Hence the inclusion of the language giving notice of a right to judicial review does not – as a matter of law – provide this Court with jurisdiction to hear the matter.

The Commission's Motion to Dismiss is **GRANTED**.

**DECISION**

The Commission's Motion to Dismiss filed on July 14, 2016 is **GRANTED**.

Appellant's appeal is **DISMISSED**.

Cost to the Appellant.

**THIS IS A FINAL APPEALABLE ORDER**

**Judge William Woods**

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Franklin County Court of Common Pleas

**Date:** 09-27-2016  
**Case Title:** URBAN EXPRESS CHARTER INC -VS- OHIO STATE CIVIL RIGHTS COMMISSION ET AL  
**Case Number:** 16CV006429  
**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "W. H. Woods", is written over a circular blue seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "ALL THINGS ARE POSSIBLE".

/s/ Judge William H. Woods

Court Disposition

Case Number: 16CV006429

Case Style: URBAN EXPRESS CHARTER INC -VS- OHIO STATE  
CIVIL RIGHTS COMMISSION ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 16CV0064292016-07-1499970000  
Document Title: 07-14-2016-MOTION TO DISMISS -  
DEFENDANT: OHIO STATE CIVIL RIGHTS COMMISSION  
Disposition: MOTION GRANTED