STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

SG,	)	
	)	
Plaintiff,	)	
	)	No.
vs.	)	
	)	Division No. 31
THE BI-STATE DEVELOPMENT AGENCY,	)	
	)	
	)	
Defendant.	)	

ORDER

The Court has before it Defendant's Motion to Dismiss, and Defendant's Motion for Protective Order. The Court now rules as follows.

Plaintiff SG brought this action alleging that Defendant Bi-State denied him full and equal use of its public transportation services and facilities in violation of the Missouri Human Rights Act ("MHRA"). Plaintiff is blind. He alleges that on many occasions over the past fifteen years, Defendant Bi- State Development Agency d/b/a Metro Transit ("Bi-State") has refused to stop and transport Plaintiff and his guide dog, J, while Plaintiff and J waited at the bus stop. On April 3, 2014, Plaintiff filed a Charge of Discrimination with the Missouri Commission on Human Rights, alleging discrimination in public

accommodation on account of his disability. On November 30, 2015, the MCHR issued Plaintiff a Notice of Right to Sue. Plaintiff filed this action on December 23, 2015.

Defendant moves to dismiss, arguing that Plaintiff fails to state a claim against Bi-State and that the Court lacks subject matter jurisdiction over Plaintiff's claim, because Bi-State is not subject to the MHRA.

The only requirements imposed by §213.111 RSMo to file a claim under the MHRA are that: (1) an employee file a charge with the Commission prior to filing a state court action; (2) the Commission issue a right to sue letter; and (3) the state court action be filed within ninety days of the issuance of the right to sue letter but no later than two years after the alleged cause occurred or its reasonable discovery by the alleged injured party. Farrow v. Saint Francis Med. Ctr., 407 S.W.3d 579, 591 (Mo. banc 2013). Defendant does not challenge the requirements of §213.111, but argues that as a creation of an interstate compact, it is not subject to the MHRA.

Bi-State is an entity created in 1949 by an interstate compact entered into by Missouri and Illinois, and approved by the United States Congress, pursuant to the Compact Clause of the United States Constitution. U.S. Const. art. I, § 10, cl. 3.; Mo. Rev.

Stat. § 70.370 (1998); 45 Ill. Comp. Stat. 100/1 (2008). KMOV TV, Inc. v. Bi-State Dev. Agency of the Missouri-Illinois Metro. Dist., 625 F. Supp. 2d 808, 809 (E.D. Mo. 2008). The Compact created Bi-State, defined a regional Bi-State Development District, and established a basic administrative structure for its governance. Id. Bi-State's purpose is "to provide a unified mass transportation system" for the bi-state region. Id. (quoting Bartlett v. Bi-State Devel. Agency, 827 S.W.2d 267, 269 (Mo. App. E.D. 1992)).

"Compact agencies and entities are said to exist in a no-man's land. They lie somewhere in the space between independent and dependent, sovereign and subject, state and federal." Matthew S. Tripolitsiotis, *Bridge over Troubled Waters: The Application of State Law to Compact Clause Entities*, 23 Yale L. & Pol'y Rev. 163, 167 (2005). Bi-state entities are "not subject to the unilateral control of any one of the states that compose the federal system." Hess v. Port Authority of Trans-Hudson Corp., 513 U.S. 30, 41 (1994).

As Defendant concedes, Missouri courts have not ruled on the applicability of the MHRA to an interstate compact. Nonetheless, Defendant argues that other courts have uniformly held that state discrimination laws not specifically incorporated into an interstate compact do not apply to the compact agency. As a general

matter, the extent to which each compacting state's laws apply to a compact entity "turns exclusively on the language of the compact and the intent of the contracting states." Spence-Parker v. Del. River, 616 F. Supp. 2d 509, 516 (D.N.J. 2009).

The MHRA is not "specifically incorporated" into the compact, nor is it specifically excluded. In Grady v. Bi-State Dev. Agency, 151 Ill. App. 3d 748, 104 Ill. Dec. 427, 502 N.E.2d 1087 (Ill. App. Ct. 5th Dist. 1986), the Illinois Appellate Court determined that Bi-State was subject to Illinois' Tort Immunity Act, which is not specifically incorporated in the compact. This holding was affirmed in Hubble v. Bi-State Dev. Agency of the Illinois-Missouri Metro. Dist., 238 Ill. 2d 262, 274 (Ill. 2010), despite the Illinois legislature's failure to expressly add or exclude Bi-State from the Tort Immunity Act's coverage in the six times it was amended since Grady.

Even more similar to the case at hand, in Redbird Eng'g Sales, Inc. v. Bi-State Dev. Agency of Missouri-Illinois Metro. Dist., 806 S.W.2d 695 (Mo.App. E.D. 1991), the Court inquired whether Bi-State was subject to §107.170 RSMo, which requires the bonding of public works contractors. The purpose of §107.170 "is to protect those providing labor and materials to public work contractors in

lieu of mechanics' liens, which are inapplicable to public property." Id. at 701.

The Court in Redbird recognized that "one party to an interstate compact may not enact legislation which would impose burdens upon the compact absent the concurrence of other signatories." Id. However, it also recognized the corollary of that proposition, that "the agency may be made subject to complimentary or parallel state legislation." Id. Finding that Illinois has a complementary statute, Ill.Ann.Stat. Ch. 29, ¶ 15, also requiring the bonding of public works contractors, the Court determined that Missouri's §107.170 did not impose an impermissible, unilateral burden on Bi-State.[1]

Illinois also has legislation similar or identical to the MHRA. The Illinois Human Rights Act, 775 ILCS 5, Sec. 5-102 (A) (Enjoyment of Facilities, Goods, and Services), provides in part that "It is a civil rights violation for any person on the basis of unlawful discrimination to:[] Deny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation." Section 5-101(A) of the

[1] The United States District Court for the Eastern District of Missouri criticized Redbird as a "departure from precedent" in KMOV TV, 625 F.Supp.2d at 813, and stated that the "Eighth Circuit approach," congruent with the "New York approach," requires explicit approval by both states, and not merely the enactment of "complementary and parallel" legislation in both states. However, Redbird remains the controlling precedent for this Court.

Act includes "transportation facility of any kind" in its definition of "place of public accommodation." Defendant has not shown that the MHRA creates upon it any impermissible unilateral burden, or that it is not subject to the MHRA.

Next, in its motion for protective order, Defendant argues that it has a pending action in Cole County, State ex rel. The Bi-State Development Agency of the Missouri-Illinois Metropolitan District v. Missouri Commission on Human Rights, No. ("writ proceeding") , in which it is requesting that the MCHR rescind the Notice of Right to Sue it issued in response to Plaintiff's charge of discrimination. Defendant requests that this Court stay discovery in this matter until the resolution of the writ proceeding.

The Court has broad discretion to determine the appropriateness and terms of protective orders relating to discovery. Rule 56.01(c); State ex rel. Ford Motor Co. v. Manners, 239 S.W.3d 583, 586 (Mo. banc 2007). The Court believes that a stay of discovery is not warranted at this time.

THEREFORE, it is Ordered and Decreed that Defendant's Motion to Dismiss is DENIED, and Defendant's Motion for Protective Order is DENIED.

SO ORDERED:

JO[redacted]

Dated: 7/27/17