

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )  
FOR REVIEW BY: )

**Mark Sanders,** )  
 )  
Petitioner. )

CHARGE NO.: **2021CH0716**  
HUD NO.: **5-21106-8**  
ALS NO.: **22-0047**

**ORDER**

This matter coming before the Commission on July 20, 2022 by a panel of three, Panel Chair Robert A. Cantone, Commissioners Barbara R. Barreno-Paschall and Janice M. Glenn presiding, upon the Request for Review (“Request”) of Mark Sanders (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2021CH0716, and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent’s dismissal of Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.<sup>2</sup>

**DISCUSSION**

On November 24, 2020, Petitioner filed a charge of discrimination with the U.S. Department of Housing and Urban Development (“HUD”), perfected with the Respondent on December 10, 2020, alleging that Elmhurst Terrace, LLC (“Manager”) and Cohen Esrey (“Owner”) subjected him to unequal terms and conditions related to rental because of his race, Black (Counts A and B), in violation of Section 3-102(B) of the Illinois Human Rights Act (“Act”). On January 13, 2022, the Respondent dismissed Petitioner’s charge for Lack of Substantial Evidence. Petitioner filed a timely Request.

**Factual Background**

Petitioner, a Black man, moved into his apartment in July 2015. Owner purchased the apartment complex on February 24, 2020. Petitioner’s most recent lease, signed with the previous owners of the property, expired on July 31, 2020, but he continued to live in his unit after its expiration.

The Respondent’s Investigative Report (“Report”) reveals that the property is a 315-unit apartment complex, consisting of five clusters of buildings. Petitioner stated that his building contains six apartment units, and that the other units are occupied by another Black person, two Hispanic families, one transgender female, and one older white male.

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<sup>1</sup> In a request for review proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge requesting review of the Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

<sup>2</sup> This order is entered pursuant to a 3-0-0 vote by the Commissioners.

In November 2020, the apartment complex underwent a major exterior renovation, including the installation of four communal barbecue grills scattered throughout the complex. Property Manager Lisa Ralston stated that the grills were open for use by anyone.

Petitioner stated that no grill was placed near his building cluster. In his Request, Petitioner stated that the nearest grill is approximately 250 yards from his apartment and across a parking lot, so it is not practical for him to use. Petitioner further stated that people of color, older people, and LGBT people were “assigned to the further reaches of the complex” while white and younger people were “placed closer to the offices and other amenities.” Ralston stated that Owner and Manager do not assign tenants to certain units, and that prospective tenants are free to apply to any available unit. The Report revealed that Petitioner was not assigned to his unit.

Additionally, Petitioner stated that he became unemployed in April 2020 because he caught COVID. Petitioner had a balance of about \$338 on his account at the time. Petitioner applied for emergency rental assistance through the Illinois Housing Development Authority (IHDA), and Ralston stated that she assisted with this application. The Report revealed that Petitioner received a \$5,000 rental assistance grant from IHDA on December 30, 2020.

Throughout the summer and fall of 2020, Petitioner also applied for rental assistance from two non-profit agencies. The Report revealed that Ralston communicated with Petitioner and the agencies regarding each application. One agency denied Petitioner assistance because he could not provide proof of income, and another denied funds because he did not have a current lease. Ralston provided evidence that she offered Petitioner a lease so he could get assistance funds, but Petitioner refused to sign the lease.

The Report further revealed that in May 2021, Ralston applied to IHDA for rental assistance on Petitioner’s behalf. Ralston stated that she applied on behalf of 14 tenants, nine of whom were Black. Petitioner provided evidence in his Request that his application expired because it was not completed, which he claimed was due to Ralston not signing a form. Petitioner’s evidence reveals that Ralston emailed Petitioner to let him know there was a problem with IHDA’s platform and encouraged him to reach out to IHDA because she did not “want [him] to not get the money because something is missing.” Petitioner’s evidence also reveals that IHDA notified him directly that he needed to submit evidence of government assistance.

Additionally, Petitioner provided evidence in his Request that Owner filed to evict him in January 2022. Petitioner provided evidence that he then applied for further rental assistance but was denied because Ralston did not assist in the process. Petitioner also alleged in his Request that he was harassed by people loitering around and taking photos of his apartment, that Owner and Manager discriminated against him because of his disability, and that they retaliated against him for filing this discrimination Charge.

## Analysis

The Commission concludes that the Respondent properly dismissed Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D). Under the Act, substantial evidence is "evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." 775 ILCS 5/7A-102(D)(2).

To establish a *prima facie* case for discriminatory terms and conditions related to rental, Petitioner must show that (1) he is a member of a protected class, (2) the Owner and Manager were aware of the Petitioner's membership in the protected class, (3) Petitioner was a tenant in good standing, (4) the Owner and Manager altered the terms, conditions, and privileges of Petitioner's tenancy, and (5) the Owner and Manager treated similarly situated tenants outside of Petitioner's protected class more favorably under similar circumstances. *In re Request for Review by: Lorelei Reidy*, IHRC, ALS No. 21-0022, 2021 ILHUM LEXIS 49, \*3-4 (August 3, 2021).

### Count A: Barbeque Grill Placement

In Count A, Petitioner alleged that Manager and Owner subjected him to unequal terms and conditions related to rental because of his race, Black, by constructing communal barbeque pits far away from his apartment but closer to non-Black tenants' apartments. Petitioner has not provided sufficient evidence to satisfy the fourth and fifth elements of his *prima facie* case.

To satisfy the fourth *prima facie* element, Petitioner must provide substantial evidence that Owner and Managers' actions were "sufficiently severe or pervasive as to alter the terms, conditions or privileges of the Petitioner's real estate transaction." *In re Request for Review by: Genevieve York*, IHRC, ALS No. 11-0127, 2018 ILHUM LEXIS 242, \*7 (July 30, 2018). Here, Petitioner has not offered evidence that the original terms and privileges of his tenancy guaranteed that amenities would be placed close to his unit. Therefore, Owner and Manager's placement of amenities relatively far from his building does not constitute an alteration of Petitioner's rental terms and privileges. Further, even if Petitioner was prevented from using the grills, the denial of such an amenity would not be sufficiently severe to constitute an adverse action. *See In re Request for Review by: Angel Patterson*, IHRC, ALS No. 11-0388, 2019 ILHUM LEXIS 294, \*3-4 (February 27, 2019) (holding that a landlord who instructed a tenant to remove a grill from her front porch had not performed an adverse action).

Even if the grill placement did constitute an alteration of Petitioner's rental terms, he has not provided evidence that Owner and Manager treated similarly situated tenants outside of Petitioner's protected class (Black) more favorably. Petitioner did not offer evidence of specific non-Black tenants who had grills placed closer to their units. Respondent's Report indicated that Owner intended to scatter the grills throughout the complex and that there was at least one Black tenant residing in each of the

building clusters. Further, Petitioner acknowledged that several non-Black tenants lived in his building and therefore were the same distance from the closest grill.

Accordingly, Petitioner has not presented sufficient evidence to show that the Respondent's dismissal of Count A was not in accordance with the Act.

#### Count B: Failure to Help Obtain Rental Assistance

In Count B, Petitioner alleged that Owner and Manager subjected him to unequal terms and conditions related to rental because of his race, Black, by failing to help him obtain rental assistance. Petitioner has not provided sufficient evidence to establish his *prima facie* case.

Petitioner provided evidence that he applied for rental assistance through multiple government and community organizations throughout 2020. However, Respondent's Report indicates that Manager did in fact assist or attempt to assist with these applications, and that Petitioner did in fact receive a \$5,000 rental assistance grant from IHDA on December 30, 2020. Petitioner's other applications were denied due to factors outside of Manager and Owners' control. Further, Ralston provided evidence that she initiated a rental assistance application with IHDA on Petitioner's behalf in May 2021. Petitioner did not provide substantial evidence that Owner and Manager impeded or refused to assist with any of these applications. Therefore, Petitioner has not provided sufficient evidence to satisfy the fourth element of his *prima facie* case.

Finally, even if Petitioner can show that Owner and Manager did not help him obtain rental assistance, he provided no evidence that they treated similarly situated non-Black tenants more favorably under similar circumstances. Petitioner stated that he did not know if any other residents of the complex received rental assistance. Further, Ralston stated that in May 2021, she applied for IHDA rental assistance on behalf of 14 residents, nine of whom were Black, including Petitioner. Therefore, Petitioner has not satisfied the final element his *prima facie* case.

Accordingly, Petitioner has not presented sufficient evidence to show that the Respondent's dismissal of Count B was not in accordance with the Act.

#### New Allegations and Evidence in the Request

In his Request, Petitioner made several new allegations against Owner and Manager. He alleged that he was harassed by people loitering around and taking photos of his apartment, that Owner and Manager discriminated against him because of his disability, and that they retaliated against him for filing this discrimination Charge. Petitioner also provided evidence in his Request that after Owner moved to evict him, Ralston refused to assist him in obtaining further rental assistance. However, the Commission does not have jurisdiction over new allegations or claims made for the first time in a Request. *In re Request for Review by: Roben B. Hall*, IHRC, ALS No. 10-0242, 2011 ILHUM LEXIS 43, 6 (Jan. 12, 2011); *see also Deen v. Lustig*, 337 Ill. App. 3d 294, 305-06 (4th Dist. 2003) (holding that

