

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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

ESTEBAN ALVAREZ,)
)
Petitioner.)

CHARGE NO.: **2020CH2626**
ALS NO.: **22-0057**

ORDER

This matter coming before the Commission on August 3, 2022 by a panel of three, Panel Chair Barbara R. Barreno-Paschall, Chair Mona Noriega and Commissioner Stephen A. Kouri II presiding, upon the Request for Review (“Request”) of Esteban Alvarez (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2020CH2626, 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**.²

DISCUSSION

On June 16, 2020, Petitioner filed a perfected charge of discrimination with the Respondent alleging that Eastlake Management Group, Inc. (“Manager”) and Chicago Housing Authority (“CHA”) subjected him to discriminatory terms, conditions, privileges, or services and facilities related to a real estate transaction in retaliation for opposing unlawful discrimination (Count A) and subjected him to interference, coercion, or intimidation regarding a real estate transaction (Count B), in violation of Sections 3-102(B), 6-101(A), and 3-105.1 of the Illinois Human Rights Act (“Act”). On November 23, 2021, the Respondent dismissed Petitioner’s charge for lack of substantial evidence. Petitioner filed a timely Request.

Factual Background

CHA is a public housing agency that has a housing voucher program and owns “Scattered Site properties,” approximately 2,800 public housing units. Manager manages the day-to-day operations of those Scattered Site properties. Petitioner was on the waitlist to receive a public housing unit from sometime in 2019 until September 4, 2019, when Manager removed the Petitioner from the list. Petitioner alleged that this removal was because of a previous discrimination charge he made, while

¹ 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.”

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

Manager asserted that Petitioner was removed because he failed to respond to correspondence or show up to mandatory open houses.

Petitioner previously worked for Manager as a janitor and general laborer for over three years when he was discharged on June 1, 2016. That same day, Petitioner filed an employment discrimination charge against Manager. The Department dismissed the charge, and Petitioner filed a request for review on November 15, 2017. On August 28, 2019, Petitioner alleged that he and Manager attended a Commission hearing regarding that request for review in which the Commission vacated the Department's dismissal for further investigation.

Petitioner stated that he received a letter from Manager and CHA a few days after this hearing telling him that he had reached the top of the waitlist and that he would have to attend an open house or call to make an appointment. The dates listed for the open houses were August 20-24 and 26, 2019. All the dates had passed by the time that Petitioner received the letter, which was postmarked on August 29, 2019. Then, on September 4, 2019, Petitioner received the letter that told him he had been removed from the waitlist because he failed to respond to previous attempts to contact him. Petitioner stated that he tried to schedule a mitigation hearing with CHA but his attempts to do so were ignored.

For its part, Manager asserted that it did not attend the Commission hearing regarding the employment discrimination charge. Manager stated that, as a non-party, it was not notified of when the proceeding would take place and did not know about the Commission's ruling until sometime after August 30, 2019, when the order was signed. Furthermore, Manager asserted that it employed 780 people in August 2019 and that the employees who manage the Scattered Sites would have no reason to know that Manager previously employed Petitioner, especially since Petitioner's prior duties had no relation to the Scattered Sites. Likewise, Manager stated that the employees who decided to take Petitioner off the waitlist had no knowledge of the employment discrimination charge or any Commission review of the Respondent's decision on that matter.

As it relates to the correspondence, Manager asserted that it sent Petitioner three letters and an email. The first letter was sent on August 16, 2019, and an email and second letter were sent on August 20, 2019. The third letter was sent on September 4, 2019 and was a form letter that Manager sent to all applicants who did not respond to the previous correspondence, informing them that they had been removed from the waitlist. All correspondence was stock form that was not unique or personalized to the housing applicants and was sent to all similarly situated applicants. Manager averred that other applicants timely responded to the letters and email and provided sign-in sheets from the open houses. Finally, Manager asserted that its actions complied with its standard procedures for outreach and that it had no control over how Chicago mail was routed or when it arrived or was processed by a mail processing plant.

In his Request, Petitioner provides text messages between him and Michael Sheahan, who appears to work for Manager. Petitioner stated that he accidentally texted the wrong person when he sent Sheahan the initial message. The screenshots show the other person using expletives and calling

Petitioner a “Rat.” Petitioner also attaches an email from another former employee of Manager that described events that occurred while Petitioner worked there. Lastly, he attaches copies of the Commission’s August 30, 2019 vacate order, the two letters he received from Manager and their envelopes with postmarks, and emails he sent to CHA and Governor Pritzker attempting to rectify the situation.

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).

Count A: Retaliation Resulting in Discriminatory Terms and Conditions of a Real Estate Transaction

To prove a *prima facie* case of retaliation, the Petitioner must prove the following three elements: (1) Petitioner engaged in a protected activity, (2) the defendants took an adverse action against him, and (3) there was a causal nexus between the protected activity and the adverse action. *Carter Coal Co. v. Illinois Human Rights Comm’n*, 261 Ill. App. 3d 1, 7 (5th Dist. 1994). The Petitioner may establish the necessary “causal nexus” by: (1) showing direct evidence of retaliation, (2) showing evidence of unequal treatment of similarly situated persons who did not engage in protected activity, or (3) establishing that the time period between the protected activity and the adverse action is short enough to create an inference of “connectedness.” *In re Giuseppe Scalera and Vill. of Oak Park*, IHRC, ALS No. 11112, 2002 WL 32828292, *5 (September 23, 2002). Past decisions have found that a time span of six months was too remote to establish this inference of connectedness. *In re Request for Review by: Carmen Rentas*, IHRC, ALS No. 20-0174, 2020 ILHUM LEXIS 246, *7 (Nov. 23, 2020) (citing *Leonard v. Eastern Illinois Univ.*, 606 F.3d 428, 432 (7th Cir. 2010)). If Petitioner can make his *prima facie* case, the defendants have an opportunity to offer a legitimate, non-retaliatory basis for its decision. *Zaderaka v. Illinois Human Rights Comm’n*, 131 Ill. 2d 172, 178-79 (1989). Once the defendants do so, the burden shifts back to Petitioner to show that that basis is pretextual. *Id.*

As it relates to CHA, Petitioner never filed a charge of discrimination against it or alleged any other protected activity, so CHA could not have retaliated against Petitioner. Moreover, nothing in the record suggests that CHA played any role in the decision to remove Petitioner from the waitlist. As a result, there is insufficient evidence to find that CHA retaliated against Petitioner in violation of 6-101(A).

When it comes to Manager, Petitioner has failed to establish the third element of his *prima facie* case, even if we take all his factual allegations as true. Petitioner does not contest that he never attended an open house and never made an appointment with Manager prior to September 4, 2019.

He also does not contest that others were removed from the waitlist for not responding to the correspondence. Rather, Petitioner's allegations amount to a claim that Manager held on to his letters until after the Commission's hearing instead of mailing them out with everyone else's on August 16, 2019. Since the action of withholding the letters occurred before the Commission's hearing, it could not have been done in retaliation of Petitioner attending that hearing. See *In re Request for Review by: James Michael Fields*, IHRC, ALS No. 11-0409, 2018 ILHUM LEXIS 109, *8 (Aug. 2, 2018) (finding no causal nexus when the protected activity occurred after the employer disciplined the employee). If Petitioner were to argue that the protected activity was his filing a request for review on November 15, 2017, his claim would fail because the adverse action took place nearly two years later, which is far beyond the six-month time span that previous decisions have found to be too remote. *In re Request for Review by: Carmen Rentas*, 2020 ILHUM LEXIS 246 at *7.

Even without these timing issues, Petitioner has failed to rebut Manager's non-retaliatory explanation as pretextual. Manager has maintained that it sent out Petitioner's correspondence with everyone else's and that the only reason it removed Petitioner from the waitlist was because he did not respond to the correspondence. Notably, Petitioner never contested the fact that he received an email from Manager on August 20, 2019. He instead said, "[t]he Complainant best way to contact [sic] has always been through US Postal, and not through email." Manager sending an email to Complainant alerting him to the open houses undermines any causal nexus between the protected action and the adverse action. The only evidence that Petitioner gives for pretext is text messages purportedly between him and Sheahan in which the latter called him a "Rat." However, even if this were true, no allegations have been made that Sheahan played any role in any decision-making regarding the Scattered Sites. Indeed, there is no evidence to show that Sheahan even knew Petitioner was on the housing waitlist. Without more, we cannot find that there is a causal link between any protected activity that Petitioner engaged in and any adverse actions taken by Manager.

Count B: Interference, Coercion, or Intimidation Regarding a Real Estate Transaction

Section 3-105.1 of the Act provides that it is a civil rights violation to "coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Article 3." 775 ILCS 5/3-105.1. It does not appear that Illinois courts have defined the parameters of this section, so the Commission will use the interpretation of a nearly identical federal law to guide its analysis. See *Robinson v. Vill. Of Oak Park*, 2013 IL App (1st) 121220, ¶ 19; 42 U.S.C. § 3617. Thus, to prove a violation of Section 3-105.1, Petitioner must demonstrate: (1) he is a protected individual under the Act, (2) he was engaged in the exercise or enjoyment of his fair housing rights, (3) the defendants coerced, threatened, intimidated, or interfered with Petitioner on account of his protected activity under the Act, and (4) the defendants were motivated by an intent to discriminate. *In re Request for Review by: John Lugo*, IHRC, ALS No. 19-0346, 2020 ILHUM LEXIS 165, *5–6 (Jan. 23, 2020) (citing *Bloch v. Frischholz*, 587 F.3d 771, 783 (7th Cir. 2009)). Furthermore, a mere quarrel between neighbors or an isolated incident of discrimination or harassment is insufficient to establish a violation of the Act. *Id.* at *6.

Petitioner fails to satisfy the second element of his *prima facie* case. Petitioner alleges that Manager took him off of the housing waitlist because of his employment discrimination claim. However, employment discrimination claims are covered under Article 2 of the Act, and Section 3-105.1 expressly applies only when a person has exercised, enjoyed, or helped another person exercise or enjoy “any right granted or protected *by this Article 3.*” 775 ILCS 5/3-105.1 (emphasis added). Being that Petitioner has never alleged that he exercised any right under Article 3—let alone that Manager and CHA discriminatorily interfered, coerced, or intimidated him for doing so—this claim must fail.

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

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of Petitioner’s charge for lack of substantial evidence is hereby **SUSTAINED**.
2. This is a final Order. A final Order may be appealed to the Illinois Appellate Court by filing a Petition for Review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Eastlake Management Group, Inc., and Chicago Housing Authority as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 9th day of August, 2022.

Commissioner Barbara R. Barreno-Paschall

Commissioner Stephen A. Kouri II

Chair Mona Noriega

