

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2010CP2676
)	EEOC NO.: N/A
GEORGETTE CARTER,)	ALS NO.: 11-0297
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners, Diane M. Viverito¹, David J. Walsh² and Chairman Martin R. Castro³ presiding, upon Georgette Carter's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")⁴ of Charge No. 2010CP2676; 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, **WHEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. On March 9, 2010, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Cardinal Fitness of Oak Lawn ("Cardinal") denied her the full and equal enjoyment of its facility and services because of her race, Black, in violation of Section 5-102(A) of the Illinois Human Rights Act ("Act"). On February 15, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On May 31, 2011, the Petitioner filed a timely request for review.
2. The Petitioner was a Patron of Cardinal Fitness.
3. The Petitioner alleged Cardinal Fitness is a place of public accommodation as defined by the Act. The Petitioner alleged that General Manager of Cardinal Fitness, denied her the full and equal enjoyment of its facility when he made her feel uncomfortable, failed to give his manager's or the corporate office's contact information, and called the police and asked her to leave the facility. The Petitioner further alleged that non-black patrons were not treated in this manner.

¹ This Order is in accordance with a vote cast by Commissioner Viverito prior to the expiration of her term.

² This Order is in accordance with a vote cast by Commissioner Walsh prior to the expiration of his term.

³ This Order is in accordance with a vote cast by Chairman Castro prior to the expiration of his term.

⁴ 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 Department's action shall be referred to as the "Petitioner."

4. Cardinal Fitness stated is that it afforded the Petitioner full and equal enjoyment of its health club facility and its services.
5. The Respondent's investigation revealed that Cardinal has in place Regulations and Rules, which state that "All members and guests shall be subject to strict compliance with all Regulations and Rules. Failure by any member or guest to so comply shall permit the Club to revoke this Contract and immediately terminate all of member's privileges and Club's obligations under this contract."
6. The Respondent's investigation revealed that Petitioner was a member of Cardinal Fitness and that on November 9, 2009, Petitioner was exercising at Cardinal's facility.
7. The Respondent's investigation revealed that on November 9, 2009, while in Cardinal's facility, Petitioner became loud and abusive toward the Cardinal's facility manager. The Petitioner acknowledged during the Respondent's investigation that she did make a scene at Cardinal's facility.
8. The Respondent's investigation revealed that a few days thereafter, on or about December 2, 2009, Petitioner again returned to use the facility and its services and General Manager told her someone would contact her about her membership and Petitioner left.
9. The Respondent's investigation revealed that on December 3, 2009, Petitioner's membership was terminated for the stated reason that Petitioner had created a distraction and the General Manager had the right to terminate her membership.
10. The Respondent's investigation revealed that Cardinal had revoked memberships of three non-Black members for misconduct at Cardinal's facility.
11. In his Request, the Petitioner argues that her membership should not have been revoked unless she was not paying her dues. The Petitioner further reiterates that she was not allowed to speak to the Manager's supervisor concerning the incident at the Cardinal's.
12. In its Response, the Respondent requests that the Commission sustain the dismissal the Petitioner's charge for Lack of Substantial Evidence. The Respondent argues the evidence was insufficient to establish a prima facie case of discrimination. The Respondent further argues Cardinal articulated a non-discriminatory reason for its actions and there was no evidence that the articulated non-discriminatory business reason was pretext for unlawful discrimination.

Conclusion

The Commission concludes that the Respondent properly dismissed all counts of the 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. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence

sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

The Commission concludes that the evidence was insufficient to establish a *prima facie* case under Section 5-102(A) of the Act. Generally to establish a *prima facie* case of discrimination concerning a public accommodation the Complainant must show that: 1) the Petitioner is within a protected category; 2) Petitioner was denied full enjoyment of the respondent's facilities; and 3) others outside her protected class were given full enjoyment of those facilities. In the Petitioner's case the third element was not established. There was no evidence that a non-Black member whose conduct was similar to the Petitioner's was treated more favorably under similar circumstances.

The further concludes that Cardinal articulated a non-discriminatory reason for revoking the Petitioner's membership. The Respondent's investigation revealed the Petitioner became loud and abusive toward the Cardinal's facility manager. Cardinal determined that the Petitioner had violated its Rules and Regulations concerning conduct and revoked her membership pursuant to its membership contract. The Respondent found no evidence that the articulated non-discriminatory reason was pretext for unlawful discrimination.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and, Wal-Mart, 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 4th day of December 2018.

Commissioner Diane M. Viverito

Commissioner David J. Walsh

Chairman Martin R. Castro