

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF0239
)	EEOC NO.: 21BA02556
FELICIANO BARRERA-MARTINEZ,)	ALS NO.: 11-0491
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Rozanne Ronen¹, Nabi Fakhroddin, and Merri Dee², presiding, upon Feliciano Barrera-Martinez’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)³ of Charge No. 2011CF0239; 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 the Petitioner’s charge is **SUSTAINED** on the following ground:

LACK OF JURISDICTION

In support of which determination the Commission states the following findings of fact and reasons:

1. On July 29, 2010, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged River Valley Recycling, LLC d/b/a KB Cores (“River Valley”) subjected him to harassment because of his color, dark skin (Count A), his national origin, Mexico (Count B), his ancestry, Hispanic (Count C) and perceived mental disability, drug addiction (Count D); sent him home because of his color (Count E), his national origin (Count F), ancestry (Count G) and perceived disability (Count H); and discharged him because of his color

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

² This Order is in accordance with a vote cast by Commissioner Dee prior to the expiration of her term

³ In a Request for Review Proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge who is requesting review of the Department’s action shall be referred to as the “Petitioner.”

(Count I), his national origin (Count J), ancestry (Count K) and perceived disability (Count L), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On April 4, 2011, the Respondent dismissed the Petitioner’s charge for Lack of Jurisdiction. On May 6, 2011, the Petitioner filed a Request for Review.

2. The Petitioner was employed as a mechanic by the Employer.
3. In Counts A through D the Petitioner alleged that from January 2010 through April 19, 2010, the River Valley subjected him to harassment on the basis of his color, national origin, ancestry and perceived mental disability. The Petitioner alleged that similarly situated non-dark skin, non-Mexican, non-Hispanic employees, who were not perceived to be mentally disabled, were not subjected to harassment under similar circumstances.
4. In Counts E through H, the Petitioner alleged that on April 19, 2010, the River Valley sent him home based on his color, national origin, ancestry and perceived mental disability. The Petitioner alleged that similarly situated non-dark skin, non-Mexican, non-Hispanic employees, who were not perceived to be mentally disabled, were not sent home under similar circumstances.
5. In Counts I through L, the Petitioner alleged that on June 1, 2010, the River Valley discharged him based on his color, his national origin, his ancestry and a perceived mental disability. Complainant alleges that similarly situated non-dark skin, non-Mexican, non-Hispanic employees, who were not perceived to be mentally disabled, were not discharged under similar circumstances.
6. As to Counts A through L, River Valley denied that it is Petitioner’s employer. Nonetheless, River Valley further denies that it subjected Petitioner to harassment, sent him home and discharged him because of his color, national origin, ancestry and a perceived mental disability. Further, River Valley denied that non-dark skin, non-Mexican, non-Hispanic employees, who were not perceived to be mentally disabled, were treated more favorably under similar circumstances.
7. The Petitioner was employed by Labor Power which is a temporary employment agency.
8. Labor Power and River Valley have a Service Agreement (“Agreement”). The Respondent’s investigation further revealed that the Agreement states that Labor Power would be the lawful employer of all persons whom Labor Power furnished

to provide temporary help services to River Valley. Additionally, Labor Power shall be responsible for payment of all wages, salaries and other compensation; fringe benefits; unemployment insurance; Social Security and other payroll taxes, including withholdings and contributions required by law; all expenses incurred by Labor Power's employees and agents while on assignment at Client and any other expenses associated with Labor Power's employees or agents of Labor Power's performance under this Agreement"

9. Luis Enrique Ayala ("Ayala"), the alleged harasser and decision maker, was not a Valley River employee, but was also employed by Labor Power.
10. The Payroll History Report for the Petitioner states that Labor Power paid the Petitioner. A Payroll History Report for Ayala states that Ayala was also paid by Labor Power.
11. In his Request for Review, the Petitioner argues that the River valley is lying. The Petitioner contends that River Valley Respondent is the correct Employer because it makes his wage check.
12. In its response, the Respondent argues that it lacks jurisdiction in the Petitioner's charge because River Valley was not the Petitioner's employer within the meaning of the Act.

Conclusion

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of Jurisdiction. If the Person is not an employer within the meaning of the Act, there must be a finding of lack of jurisdiction. See 775 ILCS 5/2-101(B)(1)(a).

The Act recognizes an "employee" to be "any individual performing services for remuneration within this State for an employer." 775 ILCS 5/2-101(A)(1)(a). The Commission generally applies four factors in determining whether an individual performing services is an employee or an independent contractor. **(1)** the amount of control or supervision, **(2)** the right of discharge, **(3)** the method of payment, **(4)** the skill level required and the amount of work to be done, and **(5)** the source of tools, materials, and equipment. See In the Matter of Whittington and K-Mart Corp., IHRC, Charge No. 1987CF0520, 1992 WL 721840, *2 (November 18, 1987).

In the Petitioner's case, the Petitioner was employed by Labor Power. Labor Power supervised the Petitioner and maintained control over his movements and

assignments. Furthermore Labor Power and the River Valley Respondent had a Service Agreement which stipulated that Labor Power was the Petitioner's lawful employer. The Agreement also stipulated that Labor Power was responsible for the payment of all wages to the Petitioner. As such, River Valley was not the Petitioner's employer as defined by the Act and the Respondent lacked jurisdiction over the Petitioner's charge.

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 River Valley Recycling, LLC d/b/a KB Cores, as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 4th day of December 2018.

Commissioner Rozanne Ronen

Commissioner Nabi Fakroddin

Commissioner Merri Dee