

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2010CH1161</b>
	)	HUD NO.: <b>05-10-0077-8</b>
<b>JOAN A. CONWAY</b>	)	ALS NO.: <b>11-0570</b>
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito<sup>1</sup>, David J. Walsh<sup>2</sup>, and Rozanne Ronen<sup>3</sup> presiding, upon Joan A. Conway's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>4</sup> of Charge No. 2010CH1161; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; 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 SUBSTANTIAL EVIDENCE**

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

**A. PROCEDURAL HISTORY**

1. The Petitioner filed an unperfected charge of discrimination with the Respondent on October 14, 2009, which was perfected on October 22, 2009. The Petitioner alleged that Realty & Mortgage Co. (Realty), Supera Asset Management, Inc.( Supera), Admir Ajvaz (Ajvaz), Harold D. Rider (Rider Sr.), Harold D. Rider, Jr. (Rider Jr.), and Michael Supera (M. Supera) ("hereafter referred collectively as Management") subjected her to discriminatory terms, conditions, privileges, or services and facilities because of her age (71 years old) (Counts A, G, J, L, and O), her sex (female) (Counts B, H, K, M, and P), and her physical disability (Counts C, I, N, and Q); failed to rent an apartment because of her age (Count D), her sex (Count E), and her disability (Count F), in violation of Sections 3-102(A) and 3-102.1(B) of the Illinois Human Rights Act.
2. In Counts A, B, and C, the Petitioner alleged that on December 12, 2008, Management subjected her to unequal terms and conditions of tenancy because of her age, her sex, and her disabilities in that Management: 1) failed to prevent fumes from going into her unit; 2)

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

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

<sup>3</sup> This Order is in accordance with a vote cast by Commissioner Ronan prior to the expiration of her term.

<sup>4</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 Department's action shall be referred to as the "Petitioner."

charged her more for another unit into which she moved to avoid the fumes; 3) subjected her to unequal terms and conditions relating to rental because of her age rental in that Respondents failed to fix the problem of toxic fumes to her satisfaction because of her age, her sex, and her disability.

3. In Counts D, E, and F, the Petitioner alleged that Management refused to rent to her because of her age, her sex, and her disability in that on March 23, 2009, she requested to be transferred to another apartment due to toxic fumes emanating from her apartment and Management told her that she could leave at any time and Management would never rent another apartment to her.
4. In Counts G, H, and I, the Petitioner alleged that Management subjected her to unequal terms and conditions relating to rental because of her age, her sex, and her disability in that due to Management's unsatisfactory explanations about having a closed system and in addition to Management's refusal to accept any more of her complaints on December 12, 2009, delaying repairs to her flooded apartment, and denying the toxic fume event, she had no option but to end her lease and move out of her apartment on June 30, 2009.
5. In Counts J and K, the Petitioner alleged that Management subjected her to unequal terms and conditions relating to rental because of her age and her sex in that Management tried to bribe her to fix the pipes that lead to toxic fumes seeping into her apartment.
6. In Counts L, M and N, the Petitioner alleged that Management subjected her to unequal terms and conditions a to rental because of her age, her sex and her disability in that Management returned her security deposit prior to the end of her lease without giving her a opportunity to bargain for consideration.
7. In Counts O, P, and Q, the Petitioner alleged that Management subjected her to unequal terms and conditions relating to rental in that Management returned her security deposit prior to the end of her lease without giving her an opportunity to bargain for consideration.
8. The Petitioner further alleged that Management allowed other similarly situated younger, male, non-disabled tenants the opportunity to bargain for consideration prior to returning their security deposit. Further, as to Count A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P and Q, the Petitioner alleged that Management did not treat similarly situated younger, male, non-disabled tenants the same, under similar circumstances.
9. On March 22, 2010, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On April 5, 2010, the Petitioner filed her first Request for Review with the Commission. On May 17, 2010, pursuant to the Respondent's Response, the Commission vacated the dismissal of the charge and remanded the charge for further investigation.

10. On August 18, 2011, the Respondent again dismissed the Petitioner's charge for Lack of Substantial Evidence. On September 6, 2011, the Petitioner filed a second Request for Review. On January 18, 2012, the Respondent filed its Response.
11. On January 26, 2012, the Petitioner filed a Reply to the Respondent's Response to Request for Review.

## **B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS**

1. The Petitioner was a former tenant of the property located at 420 W. Melrose Street, Chicago, Illinois ("the property"). The Petitioner became a resident of the property on October 15, 2004 and from that time Management continued to renew the Petitioner's lease on an annual basis through 2008. Further, in 2008 the Petitioner had a hip replacement surgery and Management immediately installed a ramp, grab bars, and railings in Petitioner's bathroom in order to accommodate Petitioner.
2. Realty is the management agent that performs the day-to-day operations of the property. Rider Sr. is the President of Realty and Rider Jr. is the Vice-President of Realty. Further, Supera is the Asset Manager for the property and undertakes tasks such as capital improvements and other similar responsibilities. Supera is owned by Rider Sr. and Rider Jr. Ajvais is the Manager of the property where Petitioner resides.
3. The property has 70 apartments, of which, 65 are currently occupied. Further, of the 65 apartments that are occupied, 32 are occupied by female tenants. Finally, at the time of the filing of Petitioner's charge, Management did not maintain a security deposit for any of its tenants.
4. On or about December 12, 2008, the Petitioner's apartment was damaged due to a water leak from the apartment above Petitioner's. The Petitioner alleged that due to the water damage she began to suffer from unexplained toxic fumes events that were emitting from the hot water heating system that heated her unit.
5. The Petitioner reported to Management that the hot water heating system in her unit was emitting toxic fumes into her apartment. Management went to the Petitioner's property and attempted to fix the problem Petitioner had with the emission of toxic fumes. However, Management was unable to detect any toxic fumes that were emitted in the Petitioner's apartment.
6. On June 10, 2009, a Building Inspector from the City of Chicago conducted an inspection of Petitioner's apartment to determine whether toxic fumes were emitted into her apartment. The Building Inspector's inspection determined that there were no toxic fumes being emitted into the Petitioner's apartment.
7. The Petitioner admitted that she purchased a carbon monoxide detector which failed to detect the emission of toxic fumes in her apartment.

8. On March 23, 2009, she requested to be transferred to another apartment due to toxic fumes emanating from her apartment.
9. Management stated that despite making expeditious repairs to Petitioner's apartment except for the toxic fumes, the Petitioner has continued to find faults with the services provided by Management.
10. Management denied that it ever bribed the Petitioner.
11. In December 2008, Management sent a letter to all their tenants, including the Petitioner, informing them that Management will no longer require new tenants to pay a security deposit nor will Management maintain a security deposit for their current tenants.
12. In January 2009, Management returned the security deposits they held for all the tenants they had at that time. On January 13, 2009, Management refunded Petitioner's security deposit along with the amount of \$3.15 in interest that had accrued.
13. In her Request, the Petitioner argued that the Respondent's investigator and staff acted unprofessionally. The Petitioner further stated that Respondent's investigation was flawed which caused the dismissal of her charge. Second, the Petitioner argued two of the named Management should have been defaulted for not appearing at the fact finding conference.
14. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argues the evidence was insufficient to establish a *prima facie* case of discrimination.
15. In her Reply the Petitioner reiterates the same arguments she made in her Request.

### **C. DISCUSSION & DETERMINATION**

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).

In Counts A, B, and C, In the Petitioner's matter, the evidence was insufficient to establish a *prima facie* case of discrimination. In order to establish a *prima facie* case of housing discrimination, there must be some evidence that the Petitioner was: (1) a member of a protected class; (2) that she was a tenant in good standing; (3) that Management altered the terms, conditions, and privileges of the Petitioner's tenancy, and that the Management treated a similarly situated tenant outside the

Petitioner's protected class more favorably under similar circumstances. See *Turner v. Human Rights Commission*, 177 Ill.App.3d 476, 488, 532 N.E.2d 392, 399 (1st Dist. 1988). The third and fourth elements were not established. There was no evidence Management treated other, similarly situated tenants outside of the Petitioner's protected class more favorably under similar circumstances. Rather, the evidence shows that the Management took steps to investigate and abate the toxic fumes, however the Management found no evidence that toxic fumes were being emitted.

In Counts D, E, F, G, H, and I, the evidence was insufficient that Management discriminated against the Petitioner because of her age, sex and her disability. Management articulated a non-discriminatory business reason for their actions and there was no evidence of pretext in the articulate non-discriminatory business reason. In the Petitioner's case the Petitioner requested to transfer to a different apartment and Management denied her request. Management stated that despite making expeditious repairs to the Petitioner's apartment, except for the toxic fumes, the Petitioner continued to find fault with the services provided by Management. Management determined that because of that because of Petitioner's numerous requests, it was in their best interest that they and the Petitioner mutually part ways. In her Request, the Petitioner offered no evidence of pretext. Similar to employment cases, in the absence of any evidence that the business consideration relied upon by the Management is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the Management. See *Berry and State of Illinois, Department of Mental Health and Developmental Disabilities*, IHRC, ALS No. S-9146 (December 10, 1997).

In Counts J and K, the evidence was insufficient that Management subjected the Petitioner to unequal terms and conditions relating to rental because of her age, sex and disability. Again contends that the third and fourth elements were not established. As previous stated the Management took steps to investigate and abate the toxic fumes, however Management found no evidence that toxic fumes were being emitted. There was no evidence that Management tried to bribe the Petitioner to fix the pipes that the Petitioner alleged fumes were being emitted.

In Counts L, M, N, O, P, and Q, the evidence was insufficient that Management subjected the Petitioner to unequal terms and conditions relating to rental because of her age, sex and disability. The Petitioner alleged that she was subjected to unequal terms and conditions relating to rental, in that Management returned her security deposit prior to the end of her lease without giving her an opportunity to bargain for consideration and that Management treated other, similarly situated tenants outside of the Petitioner's protected class more favorably under similar circumstances. The third and fourth elements were not established again. The evidence revealed that Management sent a letter to all tenants including the Petitioner that Management will no longer require new tenants to pay a security deposit nor will Management maintain a security deposit for their current tenants. The evidence revealed that Management returned the security deposits they held for all tenants that they had at the time. There was no evidence that Management treated other, similarly situated tenants outside of the Petitioner's protected class more favorably under similar circumstances.

