

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CH1848
)	HUD NO.: 05-11-0412-8
RICHARD BENJAMIN SMITH)	ALS NO.: 10-0614
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang¹, Robert A. Cantone, and Rozanne Ronen² presiding, upon Richard Benjamin Smith's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")³ of Charge No. 2011CH1848; 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 grounds:

- A) LACK OF SUBSTANTIAL EVIDENCE**
- B) LACK OF JURISDICTION**

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

1. On December 10, 2010, the Petitioner filed an unperfected charge of discrimination with the Respondent, which was perfected on January 26, 2011. The Petitioner alleged the Hollywood Terrance Condominium Association ("Association") subjected him to discriminatory terms, conditions, privileges, or services and facilities because of his race, Black (Counts A, B and C), in violation of Section 3-102(B) of the Illinois Human Rights Act ("Act"). On June 23, 2011, the Respondent dismissed Count A of Complainant's charge for Lack of Substantial Evidence and Counts B and C for Lack of Jurisdiction. On September 26, 2011, the Petitioner filed his request for review.
2. The Petitioner is a tenant of a condominium managed by the Association. The Petitioner rents his unit from Paul Ujari ("Ujari").

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

² This Order is in accordance with a vote cast by Commissioner Ronan 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."*

3. In Count A, the Petitioner alleged on or about August 23, 2010, the Association changed the locks on the main entrance of his condominium building and failed to issue him or his landlord a new electronic key fob. The Petitioner alleged that he was locked out for a week before the Association issued him a new key because of his race.
4. In Count B, the Petitioner alleged that that since July 2010 he has been paying for the use of three parking spaces and Respondent has rented out his parking spaces
5. In Count C, the Petitioner alleged that the Association has towed his cars based on his race.
6. The Association denied that it subjected the Petitioner discriminatory terms, conditions, privileges, or services and facilities because of his race and articulated a non-discriminatory reason for its actions. The Association stated that it properly notified Petitioner's unit owner/landlord, Ujari, and all other unit owners and residents about the lock change and electronic key fob upgrade procedures and issued new keys to both Ujari and the Petitioner upon request without regards to their race. The Petitioner further stated that it does not own nor manage the garage or garage spaces at the subject property and had no authority to collect parking rent, lease parking spaces, or tow illegally parked cars at the said garage.
7. On June 28, 2010, the Association issued two key fobs to the owner of the unit where the Petitioner resided and leased a condominium.
8. On or about August 23, 2010, the Association changed the locks so that occupants needed the new key fob to enter. Because Petitioner either had not received a key fob from Ujari or misplaced the key fob, on August 23, 2010, the key fob that Petitioner had did not work. On or about August 28, 2010, Association provided the Petitioner a new key fob for the entrance.
9. The evidence revealed that the towing of his car took place in November 2009, approximately thirteen months prior to the date Petitioner filed his charge with the Respondent.
10. In his Request, the Petitioner reiterates the allegations of his charge.
11. In its response, As to Count A, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge because the evidence is insufficient to establish even a prima facie case of discrimination. Specifically, there is no substantial evidence that the Landlord treated a similarly situated tenant outside the Complainant's protected class more favorably under similar circumstances. As to Counts B and C, Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of jurisdiction because these charges were not timely filed.

CONCLUSION

Count A subjected him to discriminatory terms, conditions, privileges, or services and facilities because of his race

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed all Count A 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 Count A, the Commission concludes that the evidence was insufficient to establish a prima facie case of discrimination under Section 3-102(B) of the Act. Generally, a *prima facie* under Section 3-102(B) the evidence must show: (1) that the Petitioner is a member of a protected class, (2) that he was a tenant in good standing, (3) that the Landlord altered the terms, conditions, or privileges of the Petitioner's real estate transaction, and (4) that the Landlord treated a similarly situated employee outside the Complainant's protected class more favorably under similar circumstances. See In re Request for Review of Phyllis Guajardo, IHRC, ALS No. 09-0329, (September 16, 2009), 2009 WL 6063790 (Ill.Hum.Rts.Com.); see also Turner v. Human Rights Commission, 177 Ill.App.3d 476, 488, 532 N.E.2d 392, 399 (1st Dist. 1988). In the Petitioner matter, the Commission finds there is no substantial evidence that the Landlord gave key fobs only to non-Black tenants. The Petitioner's key fob for his unit did not work on August 23, 2010, and around August 28, 2010 the Landlord provided the Petitioner a new key fob.

Counts B and C subjected him to discriminatory terms, conditions, privileges, or services and facilities because of his race

In Counts B and C, the Commission concludes that these counts were not timely filed. Therefore, the Respondent lacked jurisdiction to investigate these charges. Section 5/7B-102(A)(1) of the Act states that a charge must be filed within 365 days after the date that a civil rights violation allegedly has been committed. The Petitioner's failure to file his charge within this time period deprives the Respondent of jurisdiction to investigate Counts B and C of the charge. In the Petitioner case the Petitioner filed his charge 13 months after the alleged civil rights violation.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act, and that the Respondent does not have jurisdiction over two of the Counts in the Petitioner's charge. 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, Hollywood Terrance Condominium Association 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 7th day of December 2018.

Commissioner David Chang

Commissioner Robert A Cantone

Commissioner Rozanne Ronen
