

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2010CH0386
)	HUD NO.: 05-10-1576-8
ANASTASIA KAROVIC and)	ALS NO.: 11-0724
ZORAN KAROVIC,)	
Petitioners.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang¹, Robert A. Cantone, and Lauren Beth Gash² presiding, upon Anastasia Karovic (“Petitioner #1”) and Zoran Karovic’s (“Petitioner #2”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)³ of Charge No. 2010CH0386; 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. On August 10, 2010, the Petitioners filed an unperfected charge of discrimination with the Respondent, which was perfected on September 10, 2010. The Petitioners alleged A & D Development, LLC (“Landlord”) subjected them to a discriminatory refusal to rent because of their familial status, parents of minor children, in violation Section 3-102(A) of the Illinois Human Rights Act (“Act”)
2. The Petitioners alleged they have three sons ages 7, 6 and 2 years old. The Petitioners alleged that Petitioner #1 and her real estate agent, Sarah Vilips (“Vilips”) met the Landlord’s agent, Leonard DiCristofano, in early May, 2010. While viewing a two bedroom unit located at the Landlord’s property DiCristofano informed the Petitioner that the building was very quiet. He also asked Petitioner #1 how many children she has and their ages.
3. The Petitioners alleged that on or around June 3, 2010 Petitioners’ agent contacted DiCristofano about viewing another two bedroom unit located at the landlord’s property.

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 Gash 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 requesting review of the Department’s action shall be referred to as the “Petitioner.”

DiCristofano informed the Petitioners' agent that he remembered Petitioner #1 and he would not show the unit to her due to the number of people that would be living there. The Petitioners believe they were denied the opportunity to view and rent the unit due to their familial status, three children under the age of 18.

4. On July 18, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
5. On July 25, 2011, the Petitioners filed a timely Request. On December 9, 2011, the Respondent filed its Response to the Petitioner's Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioners were prospective tenants.
2. The subject property, located at 6493 N. Northwest Highway, Chicago, is a 36-unit rental building which is owned by the Landlord. Approximately 17 of the 36 units are rented to families with minor children, having from one to four children in their households.
3. In May 2010, Petitioner #1 and Vilips went to the Landlord's property to view a two-bedroom apartment located at 6493 N. Northwest Highway, Apt. 205, Chicago, Illinois. The landlord showed Petitioner #1 and Vilips the rental unit in question.
4. Petitioner #1 made the decision not to rent the apartment because it was allegedly too small for her family. In addition, Petitioner #1 told Vilips that she was interested in renting an apartment across the street from Landlord's property because that unit had two large bedrooms, a formal dining room, living room, laundry room, many closets, parking for two cars in a garage, and the rent was \$200.00 less than the rent charged by the landlord.
5. During the Respondent's investigation of the charge, Vilips stated that she did not hear Landlord make or ask the Petitioner any questions that could be construed as discriminatory. Vilips further stated that Petitioner #1 initially rejected Landlord's apartment because it was too small.
6. The Landlord denied that he told Petitioner #1 that the building was quiet, asked the Petitioner the number of people who would be living in the apartment, or asked her the ages of her children.
7. Ernesto Padron, M.D., former tenant of the rental unit of the subject building, stated that he rented an apartment at the subject building, 6493 N. Northwest Highway, Chicago, from June 1, 2008 through June 30, 2010. He stated that he is a divorced father with sole custody of his four children. At the time that he entered into a lease agreement with DiCristofano, his children were ages 15, 10, 5 and 3.

8. On or about June 3, 2010, Petitioner #1 contacted Vilips and asked her to contact the landlord and set up an appointment to view a two bedroom apartment located at 6493 N. Northwest Highway, Apt. 209, Chicago, Illinois. Vilips informed the Petitioner #1 that on or about June 3, 2010, she contacted DiCristofano and he told her that he remembers Petitioner #1 and he would not show her the available apartment due to the amount of people that would be on the lease and that the unit was the same size as the one Petitioner #1 had seen, which Petitioner #1 said was too small.
9. The Landlord denied that on June 3, 2010, Vilips contacted him on behalf of the Petitioner regarding the scheduling of an appointment to view the two-bedroom apartment located at 6493 N. Northwest Highway, Apt. 209, Chicago, Illinois.
10. In her request the Petitioner argues that the Respondent's report is full of inaccuracies and Petitioner #1 further denies that she refused the apartment unit because it was too small.
11. In its response, 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 under Section 3-102(A) of the Act. The Respondent further argues that the Landlord articulated a non-discriminatory business reason for its actions and that its investigation did not reveal any evidence of pretext in the articulated non-discriminatory business reason.

C. DISCUSSION & DETERMINATION

The Commission concludes that the Respondent properly dismissed 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 finds the evidence insufficient to establish even a *prima facie* case of discrimination under Section 3-102(A) of the Act. Generally, to establish a *prima facie* case of discrimination based on familial status, the evidence must show: (1) that the Petitioners are members of a protected class of persons having children under the age of 18; (2) the Landlord was aware of the Petitioners' membership in their protected class; (3) the Petitioners were qualified, ready, willing and able to rent consistent with the terms and conditions of the Landlord at the time of the alleged harm; (4) the Respondent refused to rent to the Complainants based on their protected class; and (5) after the Landlord refused to rent to the Petitioners, the Landlord rented the unit to a less qualified individual who was not in the Complainants' protected class or the unit remained unavailable. See In the Matter of Peggy Buchanan, IHRC, Charge No. 1988CH0129, 1991 WL 698583, *11 (September 6, 1991).

In the Petitioners' case there is no evidence that the Landlord refused to rent to the Petitioners based on their protected class. Rather, the evidence revealed that the Petitioners made a decision not to rent because it was allegedly too small for the Petitioners' family. The evidence showed that the Landlord showed Petitioner #1 the property in May 2010, and Petitioner #1 made the decision not to rent the apartment because it was allegedly too small for her family. Furthermore, Vilips confirmed that Petitioner did not rent the apartment the apartment from Landlord in May 2010, because it was too small for her family.

The Commission concludes that the Employer articulated a non-discriminatory business reason for not showing the Petitioners a second apartment and there was no evidence of pretext. Similar to employment cases, Landlords are entitled to business decisions based on its reasonable belief surrounding the situation. The correctness is not important as long as there was a good faith belief by the Landlord in its decision. See Carlin v. Edsal Manufacturing Company, Charge No. 1992CN3428, ALS No. 7321 (May6 1996), citing Homes and Board of County Commissioner, Morgan County, 26 Ill HRC Rep. 63 (1986).

In the Petitioners' case, assuming that Petitioner #1 's allegation is taken as true that her real estate agent contacted the Landlord on June 3, 2010, and he told her that he would not show Petitioner #1 the apartment because it was the same size as the apartment she previously viewed, the Landlord is permitted to refuse to show Petitioner #1 the apartment in June 2010, because Petitioner #1 already refused to rent the apartment in May because Petitioner #1 stated that the apartment was too small for her family. The Commission finds no evidence of pretext, and in the absence of pretext, the Commission cannot substitute its judgment for the Landlord's business judgment. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (Dec. 10, 1997).

Lastly, the evidenced showed that the property in question is a 32 unit building. Moreover, of the 32 units, the Landlord rented 16 units to families with children under the age of 18. As such, based on the totality of the circumstances, there was no evidence that the Landlord refused to rent to the Petitioners based on a discriminatory reason.

D. CONCLUSION

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of the Charge was not in accordance with the Act. The Petitioners' 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 A & D Development, LLC 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 Lauren Beth Gash