

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)

DONALD MEADOWS,)

Petitioners.)

CHARGE NO.: **2011CF2298**

EEOC NO.: **21BA10997**

ALS NO.: **11-0798**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic¹, Terry Cosgrove², and Patricia Bakalis Yadgir presiding, upon Donald Meadow's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")³ of Charge No. 2011CF2298; 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 February 15, 2011, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged the Rockford Housing Authority ("RHA") discharged him because of his race, Black (Count A) and in retaliation for opposing unlawful discrimination, in violation Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act").
2. The Petitioner alleged that on September 22, 2010, he was discharged by the RHA because of his race and in retaliation for his prior filing of charges of discrimination against the RHA. The Petitioner alleged had been employed with the RHA since 1991, and alleges that his performance had been satisfactory. The Petitioner further alleged that foreman Enrico Enna ("Enna"), a similarly situated non-Black employee who had not.
3. On September 7, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
4. On December 12, 2011, the Petitioner filed a timely Request. On January 18, 2012, the Respondent filed its Response to the Petitioner's Request.

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

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

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioners was as a Building Engineer by the RHA.
2. The Petitioner had filed a charge of discrimination against the RHA with the Respondent on April 20, June 9, and July 12 of 2010.
3. The investigation revealed that the Petitioner had been employed with the RHA since 1991. As a part of his compensation as a Building Engineer with the RHA, the Petitioner rented a housing unit from the RHA at one of RHA's properties.
4. RHA's Rules state that: 1. violation of public law when at work on RHA property, 2. willfully or negligently misusing, damaging or misusing property belonging to RHA, or 3. fighting, which includes any kind of physical contact between employees or tenants on RHA premises, are all examples of rules whose violation could result in dismissal on the first occasion.
5. The Petitioner's Building Engineer lease with RHA states that "Building Engineer agrees not to assign this Lease, nor to sublet or transfer possession of the premises, nor to give accommodation to any other persons without the written consent of Management."
6. In August 2010, RHA received a report that an adult male and a young female child were residing in Petitioner's unit. RHA conducted an investigation into the report by monitoring people that entered and exited Petitioner's unit.
7. On September 17, 2010, Deputy Chief Novay ("Novay") from Metro Enforcement, which provided security services at RHA's residences, went to the Petitioner's unit and spoke to Mark Sockwell ("Sockwell"), Petitioner's cousin. Sockwell informed Novay that he was "helping the Petitioner out", and that any arrangements were between "me and Don." Novay informed Sockwell that Sockwell and his daughter needed to leave the Petitioner's unit because they were not listed on the Petitioner's lease. Novay confiscated Sockwell's key to Petitioner's unit.
8. On or about September 18, 2010, Novay returned to Complainant's unit to change the locks. The Complainant returned to his unit as Novay was changing the locks. Complainant conceded that he made "some physical contact" with Novay as he tried to push Novay out of his apartment.
9. The Petitioner conceded that he made "some physical contact" with Novay as he tried to push Novay out of his apartment.
10. On September 22, 2010, RHA discharged the Petitioner for violating his lease by allowing a non-resident to live in his unit with a young child, and for violating Respondent's Rules.
11. The Petitioner's comparative, Enrico Enna ("Enna") (non-Black, no protected activity), Foreman, was accused of conspiring with his wife to obtain housing. On or about January 22, 2007, Enna's wife initially applied for housing with RHA for herself and two minor children. On or about March 7, 2007, Enna's wife drafted a letter requesting that Enna be added as a tenant in the unit. The RHA conducted an investigation into the Enna's behavior and concluded that the Enna's conspired to make Lisa Enna

available for immediate housing, and that Lisa Enna may have been untruthful in her original housing application. On July 25, 2007, the Enna's submitted to RHA an intent to vacate their unit.

12. In his request the Petitioner first argues the evidence supported a finding of substantial evidence because it was uncontested that he had filed previous charges of discrimination against the RHA and the RHA discharged him two months after the last charge was filed. This close causal sequence of events constitutes indirect evidence that gives rise to an inference of retaliation. The Petitioner further argues that the RHA failed to give a credible, non-pretextual reason for his discharge.
13. 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 that the evidence is insufficient to establish a *prima facie* case of discrimination or retaliation.

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).

As to Count A, the Commission finds the evidence insufficient to establish even a *prima facie* case. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: (1) that he is a member of a protected class; (2) that he was performing his work satisfactorily; (3) that he was subject to an adverse action; (4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994). In the Petitioner's case, there was no evidence that the RHA treated a non-Black employee more favorably under similar circumstances. Even though the Petitioner named a comparative that was alleged to have been treated more favorably, the Petitioner's identified comparative was not similarly situated. Enna, was determined to have been involved in a deception regarding his wife's application for public housing for their family in 2007, but was not accused of subletting an apartment nor did he receive any subsidized living quarters as a benefit from his position as a foreman. Furthermore, Enna was not involved in a physical confrontation with RHA's security services. As such, there were no similar circumstances.

As to Count B, the Commission finds the evidence insufficient to establish even a *prima facie* case of retaliation. Generally to establish a *prima facie* case of retaliation the Petitioner must show: (1) he engaged in a protected activity; (2) the Employer committed an adverse action against him; and (3) a causal connection existed between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd dist. 2000). The Petitioner may also establish the causal nexus by showing evidence of unequal treatment of similarly situated persons who did not engage in the protected activity. See In the Matter of: Giuseppe Scalera and Village of Oak Park, IHRC, Charge No. 1997CF1270, 2002 WL 32828292, *5 (September 23, 2002). Similar to Count A, there was no evidence of unequal treatment of similarly situated persons who did not engage in the protected activity.

Lastly, the Commission further finds that the Employer articulated a non-discriminatory business reason for discharging the Petitioner and there was no evidence of pretext. The RHA stated that it discharged the

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Petitioner because the Petitioner sublet his apartment, which was provided to him at a subsidized rate related to his employment, in violation of his lease agreement, as well as having engaged in an altercation including a reported battery of a representative of the RHA's security contractor. In the absence of any evidence that the business consideration relied upon by the Employer is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

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 the Rockford Housing Authority 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 Marti Baricevic

Commissioner Terry Cosgrove

Commissioner Patricia Bakalis Yadgir