

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012SP0226
	EEOC NO.: N/A
MARY TAYLOR,)	ALS NO.: 12-0189
)
)
Petitioner.)	

ORDER

This This matter coming before the Commission by a panel of three, Commissioners David Chang¹, Robert A. Cantone, and Lauren Beth Gash² presiding, upon Mary Taylor's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")³ of Charge No. 2012SP0226; 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 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 Notice of Dismissal 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 July 26, 2011, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Vono Pharmacy & Convenience Center, Inc., d/b/a Vono Medical Supplies ("Vono") denied her the full and equal enjoyment of its services as a place of public accommodation because of her race, Black (Counts A and B), in violation of Section 5-102(A) of the Illinois Human Rights Act ("Act").
2. In Count A, the Petitioner alleged that from May 25, 2011, until July 11, 2011, Vono denied her the full and equal enjoyment of its services and facility because of her race in that Vono was hostile toward her and refused to fill her prescription for a walker but filled the prescription of a customer (name unknown) whose race is non-black.

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."

3. In Count B, the Petitioner alleged that on July 11, 2011, Vono denied her the full and equal enjoyment of its services and facility because of her race in that Vono would not provide the Petitioner the type of back brace that she wanted even though Vono had the brace available.
4. On January 11, 2012, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
5. On January 24, 2012, the Petitioner filed a timely Request. On May 3, 2012, the Respondent filed its Response.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. Vono is a medical supply store that deals with customer prescriptions.
2. The Petitioner was a customer of Vono. The Petitioner has been a customer of Vono's since at least a couple of years ago, and has gotten her prescriptions for Ensure drink filled from Vono then.
3. On May 25, 2011, Petitioner provided Vono a prescription dated May 21, 2011, for a walker. The prescription did not state the walker should have wheels or a seat. Vono presented Petitioner with a walker that met the description in her prescription. The Petitioner was unsatisfied with the walker because it did not have a seat or wheels and did not purchase the walker. Vono notified the Petitioner that she would need a new prescription if she wanted a walker with a seat and wheels.
4. On July 11, 2012, the Petitioner again went to Vono's store and requested a walker with wheels and a seat. While Petitioner was at the store, another customer, whose race is non-black, purchased a walker with wheels and a seat.
5. On July 11, 2012, the Petitioner also provided Vono a prescription for a back brace. Vono offered to fill Petitioner's prescription with a brace in accordance with Petitioner's prescription and told Petitioner that it could not fill a prescription for a brace with metal stays or strips because her prescription did not specify that feature.
6. There was no evidence that the customer whose race is non-black and who purchased a walker with a seat and wheels had a prescription that failed to specify these features.
7. There was no evidence that Vono provided a customer whose race is non-black with a brace with metals stays or strips, even though the prescription did not specify that feature.

8. On or about July 12, 2011, when Petitioner brought in another prescription specifying that her walker should have a seat and wheels, Vono filled the prescription for the Petitioner.
9. In her Request, the Petitioner argued that Vono's staff treated her rudely and the Respondent was biased.
10. In its Response, the Respondent requests the Commission to sustain the 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 public accommodation discrimination.

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 that the evidence was insufficient to establish a *prima facie* case for public accommodation discrimination. Generally, to establish a *prima facie* case for public accommodation discrimination, the evidence must show: (1) the Petitioner is within a protected category; (2) he was denied full enjoyment of the Vono's facilities; and (3) that others not within his protected class were given full enjoyment of those facilities. See In the Matter of Velma J. Henderson and Steak N Shake, Inc., IHRC, Charge No. 1996CP2939, 1999 WL 33252627, *9 (March 24, 1994). In the Petitioner's case, the second and third elements were not established. First, the second element was not established because Vono filled her prescription. As such, there was no evidence Vono denied full Petitioner the enjoyment of the Vono's facilities. Second, there was no evidence that a non-Black customer with a similar prescription given full enjoyment of those facilities.

The Commission further finds that Vono articulated a non-discriminatory reason for its actions and that there was no evidence of pretext. The evidence revealed that the prescriptions must specify features of the device. The Petitioner provided Vono with two prescriptions which Vono filled, albeit after the Petitioner submitted new prescriptions that met her needs. The evidence further revealed that Vono filled the Petitioner's prescriptions for the last two years. The Petitioner offered no evidence of pretext in her Request. In the absence of any evidence that the business consideration relied upon by Vono is a pretext for discrimination, it is improper to substitute judgment for the judgment of Vono. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

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.

WHEREFORE, 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, Vono Pharmacy & Convenience Center, Inc., d/b/a Vono Medical Supplies, 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 10th day of December 2018.

Commissioner David Chang

Commissioner Robert A. Cantone

Commissioner Lauren Beth Gash