

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CH0725
)	HUD NO.: 05-11-1495-8
JOHN A. JONES and LENNIE JONES,)	ALS NO.: 12-0441
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Lauren Beth Gash¹, and Patricia Bakalis Yadgir presiding, upon the Request for Review (“Request”) of John A. Jones and Lennie Jones (“Petitioners”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2012CH0725 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 Petitioners’ charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On September 13, 2011, the Petitioners filed a charge of discrimination with the Respondent alleging that New City Mortgage Company (“Bank”) subjected them to discriminatory terms, conditions, privileges, or services and facilities because of their race, and retaliated against them for opposing unlawful discrimination, in violation of Sections 3-102(B) and 6-101(A) of the Illinois Human Rights Act (“Act”).

Petitioners owned a group of rental properties for which the Bank had provided the mortgages. In March 2011, Petitioners missed payments on these properties. In April 2011, Petitioners contacted the Bank and explained that they were having difficulty collecting rents from problem tenants. Petitioners asked the Bank to restructure their mortgages, and the two parties discussed it over the ensuing months. Ultimately, they were unable to agree: Petitioners wanted forbearance on all their mortgages, which the Bank rejected; the Bank offered Petitioners a small loan modification, which Petitioners rejected. Meanwhile, Petitioners did not pay their mortgages for several months. On August 31, 2011, the Bank filed a complaint to foreclose on the mortgages.

On April 16, 2012, the Respondent dismissed the Petitioners’ charge in its entirety. The Petitioners filed a timely Request.

¹ This Order is in accordance with a vote cast by Commissioner Gash prior to the expiration of her term.
² 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 Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

Section 3-102(B) prohibits altering the “terms, conditions, or privileges” of a real estate transaction based on racial discrimination. Petitioners must show that they were members of a protected class; the Bank was aware of their membership; the Bank subjected them to an adverse action; the Bank did so because of Petitioners’ membership in a protected class; and the Bank treated similarly situated customers who were not members of that class more favorably under similar circumstances. Petitioners’ case fails at the final prong: they did not present evidence that similarly-situated customers of a different race, who had failed to make their mortgage payments, received better terms than the ones offered by the Bank.

A *prima facie* case of retaliation requires evidence that the Petitioner engaged in a protected activity, that they suffered an adverse action, and that there is evidence of a causal connection between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035 (3rd Dist. 2000). The foreclosure complaint was filed *before* Petitioners filed their complaint, so Petitioners cannot show a causal connection between the two events.

In their Request, Petitioners note that the Bank was closed by state regulators while the charge was being investigated. But this only supports the Bank’s version of events: the Bank admits that, during its discussions with Petitioners, it was being monitored by state and federal regulators and was operating under a consent decree. This required the Bank to be more cautious about modifying loans and more proactive in foreclosing on properties, like Petitioners’, where payments had not been made.

Petitioners also allege that they filed a charge with HUD in July 2011, before the Bank tried to foreclose on their properties. Even if the Petitioners had presented a *prima facie* case, the Bank must then produce a legitimate, nondiscriminatory reason for its action, and Petitioners must prove that this reason is a pretext for discrimination. Zaderaka v. Illinois Human Rights Comm’n, 131 Ill. 2d 172, 179 (1989). The consent decree motivated the Bank to offer less generous terms than Petitioners desired, and foreclose on Petitioners when they failed to pay their mortgages. Petitioners have not shown that this was pretextual.

Accordingly, the Petitioners have not presented any evidence to show that the Respondent’s dismissal of the charge was not in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of the Petitioners’ charge is hereby **SUSTAINED**.
2. 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 New City Mortgage Company, as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

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)
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Entered this 2nd day of November 2018.

Commissioner Duke Alden

Commissioner Lauren Beth Gash

Commissioner Patricia Bakalis Yadgir