

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012SF1713
)	EEOC NO.: 21BA20580
LEONADOUS EPHRON,)	ALS NO.: 12-0596
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Lauren Beth Gash¹ presiding, upon Leonadous Ephron's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")² of Charge No. 2012SF1713 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 for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On December 8, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Bond County Housing Authority ("Employer") failed to hire him due to his race in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On June 14, 2012, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

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. 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. In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

In general the *prima facie* elements in a failure to hire case alleging discrimination are as follows: 1) the Petitioner is a member of a protected class; 2) he applied for an open position; 3) he was qualified for the position applied for; 4) he was not hired; and 5) thereafter, the position remained open and the Employer sought other applicants, or the Employer filled the available position with a person not in the Petitioner's protected class. In re Luis and Sonia Fragoso and Federal Chicago Corporation, Charge Nos. 1987CF1680; 1987CF1679, 1997 WL 407826, *7 (May 19, 1997).

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."

There is no substantial evidence that Petitioner was denied employment because of his race. The Petitioner's charge lists two separate occasions on which he was passed over for a position as a maintenance worker: first, on July 28, 2011 and again on September 28, 2011. The Petitioner stated that he had had an application on file with the Employer for years, and was passed over for candidates whose applications had not been on file as long. However, the investigation revealed that the Employer did not keep applications on file, and did not even consider the Petitioner as a candidate for the opening the first time it was filled. Therefore, the Petitioner cannot establish the elements of his *prima facie* case of discrimination as to the July 28, 2011 allegations.

The Petitioner has established all of the elements of his *prima facie* claim for the September 28, 2011 allegations: he had applied for and was considered for the position, his resume included 15 years of maintenance work, he was not hired, and the applicant who was hired was not a member of his protected class. However, the Employer was able to articulate a legitimate, non-discriminatory reason for hiring the candidate that they did. The candidate who was hired had 19 years of maintenance experience on his resume. The Petitioner had presented no evidence to establish that this articulated non-discriminatory reason is mere pretext. The Commission will not substitute its judgment for that of a business making a legitimate business decision. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, Charge No. 1994SA0240 (December 10, 1997).

Accordingly, the Petitioner has 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 Petitioner's 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 Bond County 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)
) **Entered this 16th day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Nabi R. Fakroddin, P.E., S.E.

Commissioner Hermene Hartman

Commissioner Lauren Beth Gash