

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CA1460
)	EEOC NO.: 21BA20393
DELIA FAMATIGAN,)	ALS NO.: 13-0031
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hamilton Chang, Steve Kim, and Robert A. Cantone presiding, upon the Request for Review (“Request”) of Delia Famatigan (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) ¹ of Charge No. 2012CA1460 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 dismissal of the Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On November 23, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Alden Network d/b/a Alden Estates of Naperville (“Employer”) issued her a negative performance evaluation, because of her national origin, age, mental disabilities, and in retaliation for opposing unlawful discrimination, in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”).

On November 2, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner has failed to present a *prima facie* case that she was discriminated against based on her national origin, age, or mental disabilities. She must show: 1) she is a member of a protected class; 2) she was performing her work satisfactorily; 3) she was subject to an adverse action; and 4) the Employer treated a similarly situated employee outside her protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm’n, 262 Ill. App. 3d 247, 253-54 (2d Dist. 1994). Petitioner’s claims fail at the third prong. An adverse action must be sufficiently severe or pervasive to constitute a term or condition of employment. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365 (October 4, 1999), 1999 WL 33252975 (Ill.Hum.Rts.Com.). Negative performance evaluations, standing alone, do not qualify. See Smart v. Ball State Univ., 89 F.3d 437, 441–42 (7th Cir. 1996).

¹ 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.”

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). Petitioner asserts that she wrote a letter to Employer complaining about management practices, but this letter did not oppose unlawful discrimination, so it does not qualify as a “protected activity.” 775 ILCS 5/6-101(A). Further, she did not suffer an adverse action. Smart, 89 F.3d at 441-42.

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 Alden Network d/b/a Alden Estates of Naperville 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 21st day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim