

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )  
FOR REVIEW BY: )  
**JULIANNA WEDELL,** )  
)  
)  
Petitioner, )

CHARGE NO.: **2012CH3672**  
HUD NO.: **N/A**  
ALS NO.: **13-0069**

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim and Cheryl Mainor presiding, upon Julianna Wedell's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2012CH3672 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, WHEREFORE, it is hereby **ORDERED** that the Respondent's Notice of Dismissal is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

**DISCUSSION**

On June 14, 2012, the Petitioner filed an unperfected charge of discrimination with the Respondent, perfected on June 18, 2012, amended on July 23, 2012, alleging that Colonial Village Apartments, LLC , Paula Moshi, and B.A. Feller Company ("herein after collectively referred as Colonial") subjected her to discriminatory statements (Count A); subjected her to discriminatory terms, conditions, privileges, or services and facilities (Counts B and D); failed to accommodate her physical disability (Counts C, E, F, G, H, and J); refused to rent or otherwise make unavailable (Count K) because of her disability, split bilateral posterior tibia tendons and tendonitis, in violation of Sections 3-102.1(A), 3-102.1(B), 3-102.1 (C)(2), and 3-102(F) of the Illinois Human Rights Act ("Act")

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence and lack of Jurisdiction.

As to Counts A, F, G, and I, The Commission finds that the Respondent properly dismissed Counts A, F, G, and I for Lack of Jurisdiction. Section 7B-102 (A) (1) of the Illinois Human Rights Act states that a housing discrimination charge must be filed within one year after the date that a civil rights violation has been committed or terminated. See 775 ILCS 5/7B 102(A) (1). Section 7B-102(A) of the Act is a jurisdictional requirement and failure to file a charge within the prescribed time period deprives the Respondent of jurisdiction to investigate the charge. See Trembczynski v. Human Rights Commission,

<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

252 Ill.App.3d 966, 625 N.E.2d 215, 218 (1st Dist. 1993). . In the Petitioner's matter, Counts A, F, G, and I were all filed well after the 365 day time limit. Therefore, Counts A, F, G, and I were not timely filed.

In Counts B, C, D, E, H, and K , The Commission concludes that the Respondent properly dismissed Counts B, C, D, E, H, and K of 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 the Discriminatory terms, conditions, privileges, or services and facilities-Access to Fitness Center, The Commission finds the Petitioner cannot establish a *prima facie* case of discrimination in of housing because there is no substantial evidence that Colonial denied the Petitioner access to the fitness center. Generally, a *prima facie* case of discriminatory terms, conditions, privileges, or services and facilities in the provision of housing requires proof of the following: (1) The Petitioner is a member of a protected class; (2) Colonial was aware of the Petitioner's membership in that protected class; (3) the Petitioner was a tenant in good standing with the terms and conditions of tenancy; (4) Colonial altered the terms, conditions, and privileges of the Petitioner's real estate transaction, and (5) Colonial treated similarly situated tenants outside of the Petitioner's protected class more favorably under similar circumstances. See In re Request for Review of Phyllis Guajardo, IHRC, ALS No. 09-0329,(September 16, 2009). In the Petitioner's matter, the subject property was first occupied and constructed prior to March 13, 1991. Nothing in the Act requires an owner of any property to provide a ramp or an elevator to a building that was constructed or occupied before March 13, 1991. The Petitioner alleged that she requested some sort of modification to the building to add a ramp or elevator to gain access to the fitness center. However it is well settled that generally landlords are not required to make modifications or alterations of the building if it is unduly expensive or costly. See Oconomowoc Residential Programs, Inc. v. City of Milwaukee, 300 F.3d 775, 783 (7thCir. 2002).

There was no evidence that Colonial denied her access to the fitness room, nor is there evidence the Petitioner requested some sort of modification to the building to add a ramp or elevator to gain access to the fitness center. The Petitioner contends that the mere presence of a stairway to the fitness center subjects her to "discriminatory terms and facilities" because of her physical disability. However, the Petitioner fails to cite any authority for this contention.

As to access to the Leasing Office, the evidence was insufficient to establish a case a *prima facie* case of discrimination. Generally, to establish a *prima facie* case for denial of reasonable accommodation, the Petitioner would have to show that: (1) she is disabled within the meaning of the Act; (2) Colonial knew or should have known that the Petitioner is disabled; (3) The Petitioner requested that Colonial make one or more reasonable accommodations in the rules, policies, or procedures; and (4) that the requested accommodations were necessary to afford the Petitioner an equal opportunity to use and enjoyment of the premises; and (5) Colonial denied or unreasonably delayed the Petitioner's request for a reasonable accommodation. Additionally, to show that Colonial subjected her to discriminatory terms, conditions, privileges, or services and facilities because of her disability, the Petitioner must show that: (1)

she is disabled as defined by the Act; (2) Colonial were aware of Petitioner's disability; (3) the Petitioner was qualified, ready, willing, and able to continue occupancy consistent with the terms and conditions offered by Colonial; (4) that Colonial subjected her to discriminatory terms, conditions, privileges, or services and facilities because of her disability (i.e., denied her access to the leasing office); and (5) Colonial not treat similarly situated nondisabled tenants the same under similar circumstances. In the Petitioner's matter there was no evidence that the Petitioner requested an accommodation. Additionally, Colonial, offered the Petitioner a key to the side door entrance which the Petitioner refused. Further, the evidence revealed that there were other entrances in the north side and west side of the building where the Petitioner would not have to climb any stairs to access the leasing office. As such, there was no substantial evidence Colonial denied the Petitioner access to the Leasing Office.

As to reasonable accommodation elevator repairs, the evidence was insufficient to establish a case a *prima facie* case of denial of a reasonable accommodation. The evidence shows that Colonial did engage in an interactive process with the Petitioner regarding the elevators. Colonial offered Petitioner to move in to the first floor at the same rent price as her current unit. The Petitioner declined the offer. The evidence further revealed that Colonial did send an elevator service company to repair and regularly maintain the elevators. The evidence revealed that the elevators passed inspection by a neutral state agency, The Illinois State Fire Marshall's Office. There is no evidence that shows that Colonial failed, refused, or neglected to maintain the elevator in the subject property.

As to the reasonable accommodation claim of a leaky ceiling, the evidence was insufficient to establish a case a *prima facie* case of denial of a reasonable accommodation. The evidence again revealed that Colonial engaged in an interactive process with the Petitioner to repair the ceiling. Colonial attempted to fix the leak in her apartment unit and on two different occasions offered the Petitioner to move to a first floor apartment to avoid any leaks and would not change her rental amount. It was also uncontested that Colonial gave the Petitioner a \$200 rent reduction for August 2011 because of the leak in the ceiling. Colonial also offered the Petitioner a release from the balance of the lease. As such, there is no substantial evidence that Colonial was in violation of the Act.

As to the reasonable accommodation of the stove repair, the evidence was insufficient to establish a case a *prima facie* case of denial of a reasonable accommodation. The evidence showed that Colonial again engaged in an interactive process with the Petitioner and sent maintenance repair staff to clean and repair the stove pilot on several occasions. Colonial also replaced the Petitioner's stove after numerous attempts to fix the pilot light. As such, there is no substantial evidence that Colonial failed to accommodate her physical disability as to the stove repair.

As to failure to rent or otherwise make unavailable a rental unit, was insufficient to establish a case a *prima facie* case of failure to rent. Generally, to establish a failure to rent based on disability, the Petitioner must show that: (1) she is disabled within the meaning of the Act; (2) she applied or offered to rent and satisfied Colonial's terms and conditions for rental; (3) she was qualified, ready, willing and able to rent consistent with the terms and conditions of Colonial; (4) Colonial had knowledge of the Petitioner's disability and refused to rent or otherwise made the unit unavailable; and (5) after

Colonial refused the property remained available or Colonial rented to a similar or lesser qualified non-disabled person. The Petitioner alleged Colonial refused to rent to her or otherwise make her apartment unit unavailable because of her physical disability. The Petitioner failed to identify the exact date when Colonial failed to rent to her or otherwise make rental unit unavailable. The Petitioner admitted in her charge that the adverse action occurred during the period of her tenancy with Colonial. As such, there was no evidence Colonial refused to rent to her or otherwise make her apartment unit unavailable because of her physical disability.

It is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act.

**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, Colonial Village Apartments, LLC, Paula Moshi, and B.A. Feller Company 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 28<sup>th</sup> day of November 2018**

Commissioner Hermene Hartman

Commissioner Cheryl Mainor

Commissioner Steve Kim