

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013CP0321
)	EEOC NO.: N/A
DUSTIN HOFFMAN)	ALS NO.: 13-0131
)	
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Chair Rose Mary Bombela-Tobias and Commissioners Patricia Bakalis Yadgir and Duke Alden presiding, upon the Request for Review (“Request”) of Dustin Hoffman (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2013CP0321 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 August 2, 2012 the Petitioner filed a perfected charge of discrimination with the Respondent alleging that Kevin J. Bulmann, d/b/a Chick-fil-A at Orland Park FSU (“Operator”), as the operator of a place of public accommodation, directly and indirectly published communications which the Operator knew had the effect of denying Petitioner a place of public accommodation free from being unwelcome, objectionable, or unacceptable because of his sexual orientation, homosexual (Count A), marital status, single (Count B), and religion, Christian (Count C) in violation of Section 5-102(B) of the Illinois Human Rights Act.

On January 9, 2013, the Respondent dismissed Petitioner’s charge for Lack of Substantial Evidence. Petitioner filed a timely Request.

The Commission finds 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). A finding of Lack of Substantial Evidence is proper in this case because

the Petitioner failed to prove that the Operator directly or indirectly published, circulated, displayed, or mailed any written communication that had the effect of making him feel unwelcome, objectionable, or unacceptable at the Operator's location.

The Petitioner asserts that the Operator is liable, under the Act, for Dan Cathy's July 16, 2012 statements because the Operator and Chick-fil-A are parties to a joint venture. Petitioner, however, has failed to prove that Chick-fil-A and the Operator are a joint venture. "A joint venture is not a status created or imposed by law, but is a relationship voluntarily assumed and arising wholly *ex contractu* and the relationship is a matter of intent as between the parties. Richton v. Farina, 14 Ill. App. 3d 697, 704, 303 N.E.2d 218, 222-23 (5th Dist. 1973). "In evaluating that intent, courts look to the following elements: 1) an express or implied agreement to carry on an enterprise; 2) demonstration of intent to be joint venturers; 3) a community of interest, as reflected in the contribution of property, money, effort, skill, or knowledge; 4) a measure of joint control and management of the enterprise; 5) and sharing of profits and losses. See Fitchie v. Yurko, 212 Ill.App.3d 216, 227, 156 Ill. Dec. 416, 424, 570 N.E.2d 892, 900 (1991). "In the absence of any of these elements, there is no joint venture." O'Brien v. Cacciatore, 227 Ill. App. 3d 836, 843, 169 Ill. Dec. 506, 511, 591 N.E.2d 1384, 1389 (1992).

Here, there is no demonstration of intent by the parties to form a joint venture. The franchise agreement between Chick-fil-A and the Operator explicitly states that the Operator is not in a joint venture with Chick-fil-A and makes clear that the Operator is independent:

Nothing herein shall be deemed to make the Operator an agent, partner, legal representative, **joint venture**, or employee with or of Chick-fil-A. In all public records in his relationship with all other persons or entities, and in any document, the Operator agrees to indicate clearly the independent ownership and operation by Operator of the Businesses.

The Petitioner asserts that despite the language of the franchise agreement, Chick-fil-A and the Operator are a joint venture because Chick-fil-A exercises significant control over the franchise. The Petitioner references a 2007 Forbes magazine article and sections of the Operator Agreement to support this argument. This evidence is not persuasive, however, because these documents do not show that Chick-fil-A directed franchisees on welcoming, or providing services to, customers based on sexual orientation. The Operator further demonstrated his independence from Chick-fil-A in his actions after Cathy's statements. In an email to his employees, the Operator stated that Cathy does not speak for the Operator and reiterated a zero-tolerance policy against discrimination against employees and customers.

Dan Cathy's comments may have made the Petitioner feel unwelcome because of his sexual orientation, marital status, and religion. However, the Petitioner has failed to prove that the Operator and Chick-fil-A are a joint venture and that the Operator is liable

