

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CP2482
)	EEOC NO.: N/A
HUGO A. MENDEZ JR.,)	ALS NO.: 13-0140
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang and Nabi R. Fakroddin presiding, upon Hugo A. Mendez Jr.,'s ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2012CP2482 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 March 7, 2012, the Petitioner filed a perfected charge of discrimination with the Respondent alleging that Walgreen Co., ("Walgreens") denied him the full and equal enjoyment of its facilities and services based on his national origin and mental disability in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On February 6, 2013, 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 in its entirety. 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).

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."

Generally, to establish a *prima facie* case for discrimination in public accommodation the Petitioner must show that (1) he is a member of a protected class; (2) he was denied or refused the full and equal enjoyment of the facilities and services; and (3) that similarly situated individuals outside the Petitioner's protected class were treated differently. Friedner and Happy Reunion, IHRC, Charge No. 2000SP0220, 2001WL1717010, ALS No. S-11365 (August 1, 2001).

There is no substantial evidence that the Petitioner was denied full and equal enjoyment of Walgreens' facilities and services due to his national origin or disability. Here, the Petitioner admitted to having an objectionable interaction with a Walgreens' security guard ("Espinosa") and engaging in an argument with Walgreens' cleaning floor vendor. It is also alleged that he spit saliva onto the Walgreens' property, attempted to strike a customer outside of the store, and waited in the Walgreens' parking lot to engage another Walgreens' employee in conversation following her shift. The Petitioner was later arrested and charged with criminal trespassing at the Walgreens facility.

There is no nexus between the alleged incidents and the Petitioner's national origin or disability. The Petitioner admitted that he did not make anyone at Walgreens aware of his national origin and that Walgreens did not discriminate against him based on his national origin. Additionally, while the Petitioner speculated that a pharmacist informed Espinosa about his mental disability, there is no evidence that Espinosa knew that the Petitioner suffered from bipolar disorder. Moreover, there is no evidence that similarly situated patrons received services after engaging in the behavior Walgreens perceived the Petitioner to have engaged in.

Furthermore, Walgreens articulated a legitimate, nondiscriminatory reason for its interactions with the Petitioner in that he engaged in inappropriate and provoking behavior. The Commission finds no evidence of pretext, and in the absence of pretext, the Commission cannot substitute its judgment for Walgreens' business judgment. Berry and State of Illinois, Dep't of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (Dec. 10, 1997).

Accordingly, the Petitioner has not presented any substantial 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 Illinois Appellate Court by filing a Petition for Review, naming the Illinois Department of Human Rights, the Illinois Human Rights Commission, and Walgreen Co., as named party respondents,

with the Clerk of the Illinois Appellate Court within 35 days after the date of service of this Final Order.

STATE OF ILLINOIS

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Entered this 20th day of December 2018

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakhroddin