

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)

PEGGY EVANS,)
Petitioner.)

CHARGE NO.: **2013CH0819**
HUD NO.: **05-12-1489-8**
ALS NO.: **13-0208**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakhroddin, Hermene Hartman, and Duke Alden presiding, upon Peggy Evans's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2013CH0819; 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 Notice of Dismissal is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

A. PROCEDURAL HISTORY

1. The Petitioner filed an unperfected charge of discrimination with the Respondent on September 28, 2012, which was perfected on October 19, 2012. The Petitioner alleged that Morningside North Apartments ("Morningside"), subjected her to discriminatory terms, conditions, privileges, or services, and facilities because of her race, black (Count A) and her disability (Count B), in violation of Section 3-102(B) of the Illinois Human Rights Act ("Act").
2. On January 11, 2013, the Respondent dismissed the Petitioner's Charge for Lack of Substantial Evidence.
3. On April 16, 2013, the Petitioner filed this timely Request. On July 3, 2013, the Respondent filed its Response to the Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner was a prospective tenant.
2. Morningside's facility is an apartment building complex for seniors over the age of 62 or non-elderly individuals who are disabled. Morningside's property has a total of 255 units located at 170 West Oak Street, Chicago, Illinois.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent."

3. There are a total of 294 tenants of which 254 are race, white; 29 race, black; 2 race, Asian; and 9 race, other. Morningside's Site Manager, Marifela Santiago ("Santiago") (non-black), stated that Morningside's practice is that Morningside does not hand out applications for rental. Rather, Morningside mails out pre-application material. Santiago further articulated that Morningside's practice is to inform prospective tenants who inquire, on-site, about availability or an application that Morningside has a five-year waiting list and inform them that Morningside will mail out a pre-application to them at their current address.
4. The Petitioner alleged, that on or about August 27, 2012, Morningside subjected her to discriminatory terms, conditions, privileges, or services and facilities because of her race and her disability in that she attempted to apply for an apartment at Morningside's facility and was told that Morningside does not give out applications but she would be mailed a pre-application. The Petitioner further alleged that she did not receive the pre-application. The Petitioner further alleged that during a previous telephone inquiry to Morningside regarding an apartment, the rental agent asked her where she lived and when she replied that she lived in a predominantly black neighborhood, she detected tension in the agent's telephone voice.
5. The Petitioner alleged that on several occasions she told Morningside's rental agent that she was disabled and on a third occasion the rental agent asked the Petitioner if she was disabled as though Morningside did not believe that she was disabled.
6. The Petitioner alleged that when she first called Morningside to inquire about an apartment, she told the agent her name, Peggy, and the agent acted pleasant toward her. The Petitioner alleged that the agent thought she was white because of her name and because she does not have a racially-identifiable voice.
7. The Petitioner alleged that the agent attempted to discourage her from applying at the two locations Morningside manages by informing her that there was a five-year waiting list for prospective disabled tenants and when she turned age 62 Morningside would place her on a senior waiting list.
8. The Petitioner alleged that Morningside failed to answer questions such as the available amenities, floor plans, etc. The Petitioner alleged that Morningside told her to look for properties somewhere else and apply at other properties.
9. The Petitioner alleged that Morningside gave her a rental pre-application only after she threatened to file a fair housing claim.
10. The Petitioner alleged that Morningside treated her race and her disability and did not treat white, non-disabled applicants the same under similar circumstances.
11. The Petitioner did not complete and submit the pre-application to Morningside.
12. The Petitioner was actually given a pre-application despite the fact that Morningside's practice is to mail it out to prospective tenants.

13. The following individuals were also placed on Morningside's five-year waiting list: Mandy Redmond (black), Patricia Mangan (non-black), Robert Holmes (black), and Yadiwiga Binkowska (non-black).
14. In her Request, the Petitioner argued that the Respondent's investigation did not include her specific disability or disabilities, did not state that Morningside received funding in the form of Tax Credit and Illinois Department of Housing Development, failed to state that Pacific Management, Inc., ("Pacific") manages Morningside, failed to mention that Pacific mailed her a listing of their properties for subsidized apartments, and failed to interview Ollie Crawley ("Crawley").
15. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argued the evidence was insufficient to establish a *prima facie* case of discrimination. The Respondent further argued that the Morningside articulated a non-discriminatory reason for its actions and its investigation uncovered no evidence of pretext.

C. DISCUSSION & DETERMINATION

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. 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 Counts A and B, the Commission finds there is no substantial evidence to establish a *prima facie* case of discrimination. Generally, to establish a *prima facie* case of housing discrimination, the Petitioner must show: 1) the Petitioner is a member of a class of persons protected by the Act; 2) Morningside was aware of the Petitioner's membership in her protected class; 3) that Morningside subjected her to discriminatory terms, conditions, privileges, or services and facilities because of her membership in her protected class; and 4) Morningside did not treat similarly situated prospective tenant who were not in the Petitioner's class the same under similar circumstances. See Turner v. Human Rights Commission, 177 Ill.App.3d 476 (1st Dist. 1988). In the Petitioner's matter, there was no evidence that Morningside treated other prospective tenants outside the Petitioner's protected class more favorably under similar circumstances. Rather, the evidenced showed that prospective tenants outside the Petitioner's protected class were treated similarly.

The Commission further concludes that Morningside articulated a non-discriminatory reason for its actions and there was no evidence of pretext in the articulated non-discriminatory reason. Morningside stated that the Petitioner was provided pre-application and provided answers to any questions regarding the property. Morningside further stated that at the time of the alleged harm, Morningside had a temporary person working at the front desk and she may not have known specific answers for some of Petitioner's questions but was given the basic information that Petitioner reported that she was told. Lastly, Morningside stated that the Petitioner did not return the pre-application. The Petitioner offered no evidence in her Request to rebut Morningside's business reason. In the absence of any evidence that the business consideration relied upon by

the Employer is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

D. CONCLUSION

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of the Charge was not in accordance with the Act. The Petitioners' Request is not persuasive.

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, Morningside North Apartments 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 29th day of October 2018.

Commissioner Nabi R. Fakroddin

Commissioner Hermene Hartman

Commissioner Duke Alden