

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013CF0380
)	EEOC NO.: 21BA22460
ANDREW S. OH,)	ALS NO.: 13-0272
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Michael Bigger, Amy Kurson, and Cheryl Mainor presiding, upon Andrew S. Oh's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2013CF0380 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 JURISDICTION**.

DISCUSSION

The Petitioner filed a charge of discrimination with the Respondent on August 13, 2012, perfected on August 14, 2012, alleging that Total Insurance Services, Inc. ("Total"), subjected him to unequal terms and conditions of employment based on his race, Asian, and discharged him based on his race, in violation of Section 2-102(A) of the Illinois Human Rights Act. On March 6, 2013, the Respondent dismissed the Petitioner's charge for Lack of Jurisdiction. On June 10, 2013, the Petitioner filed a timely Request for Review ("Request").

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of Jurisdiction. The Act defines 'employee' to include any individual performing services for remuneration within this state for an employer. See 775 ILCS 5/2-101(A)(1)(a). The Commission generally applies four factors in determining whether an individual performing services is an employee or an independent contractor. (1) the amount of control or supervision, (2) the right of discharge, (3) the method of payment, (4) the skill level required and the amount of work to be done, and (5) the source of tools, materials, and equipment. See In the Matter of Whittington and K-Mart Corp., IHRC, Charge No. 1987CF0520, 1992 WL 721840, *2 (November 18, 1987). In the Petitioner's matter, the Petitioner stated that he set his own hours, went to Total's facility and used Total's desk and telephone lines and went into the field to pursue sales, as the Petitioner deemed appropriate. The Petitioner further stated that he was paid a commission split on his sales, which Total processed. Additionally, Total and the Petitioner

¹ 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."

entered into a contract that was dated July 13, 2011. The contract indicates, under a section entitled, "Form of Transaction," that the Petitioner, as an Associate, "shall operate as an independent contractor of [Total] and is paid commissions on all business transacted through Total insurance contracts" and "shall maintain [hi]s own office, and staff it at [hi]s own discretion and expense." As such, the evidence shows that the Petitioner was a contractor, and responsible to direct his ow activities, and was not employed by Total, and the Respondent had no jurisdiction in the instant charge.

In his Request, the Petitioner does not address the jurisdictional basis of the dismissal of his charge. Rather the Petitioner reiterates that he was subjected him to unequal terms and conditions of employment and discharge because of his race. 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, Total Insurance Services, Inc. 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 30th day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Michael Bigger

Commissioner Amy Kurson

Commissioner Cheryl Mainor