

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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

DONNA FISCHER,)

Petitioner.)

CHARGE NO.: **2012CA3371**
EEOC NO.: **21BA21740**
ALS NO.: **13-0387**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Nabi R. Fakroddin presiding, upon the Request for Review (“Request”) of Donna Fischer (“Petitioner”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012CA3371 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 May 17, 2012, the Petitioner filed a perfected charge of discrimination with the Respondent alleging that Apartment Management Consultants, LLC, d/b/a Aspen Place Apartments (“Employer”) disciplined her on two occasions and discharged her based on her age, 46, sex, female, and in retaliation for opposing sexual harassment, in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On May 15, 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. 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).

In order to establish a prima facie case of employment discrimination, the Petitioner must show that 1) she is a member of a protected group; 2) she performed her job satisfactorily; 3) the employer took an adverse action against her despite the adequacy of her work; and 4) a similarly situated

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.”

employee, who is not a member of the protected group, was not subjected to the same adverse action. Anderson v. Chief Legal Counsel, Ill. Dep't of Human Rights, 334 Ill. App. 3d 630, 634 (3rd Dist. 2002). A prima facie case of retaliation requires that 1) the Petitioner engaged in a protected activity; 2) the employer took an adverse action against her; and 3) there was a causal nexus between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035 (3rd Dist. 2000). If the employer rebuts the presumption of unlawful discrimination by articulating a legitimate, nondiscriminatory reason for its employment decision, the Petitioner must prove that the reason was merely a pretext for unlawful discrimination. In the Matter of F. Gene Beenenga, IHRC, Charge No. 1993SA0101, 1997 WL 313423, *6 (April 4, 1997).

The Employer manages residential properties. On April 23, 2012, the Employer wrote the Petitioner up for two infractions: for falsely telling a resident at a party that a female coworker showed her genitals to a male coworker, thus creating tension in the workplace, and for making the same comment on a separate occasion to another resident. The Petitioner argues that the Employer disciplined her because of her age and sex and in retaliation for opposing sexual harassment. Her claims fail, however, because the Petitioner did not prove that the Employer's legitimate, nondiscriminatory reasons for writing her up, namely inappropriate behavior on both occasions, were a pretext for discrimination.

The Petitioner next argues that the Employer discharged her on April 25, 2012, because of her age and sex and in retaliation for opposing sexual harassment. The Employer attested that its reason for discharging her was that the Petitioner got into an altercation with a prospective renter, and then later that same day failed to follow company procedure for adding records into the database. Because the Petitioner did not prove that this reason was a pretext for discrimination, her claims lack sufficient evidence to move forward.

In her Request for Review, the Petitioner argues that the Employer was wrong in concluding that it was her and not her sister who made the statements that led to her second disciplinary write-up. The Employer decided that it believed a resident who stated that it was the Petitioner who made the statement, and that determination is not one that the Commission will review. See Carlin v. Edsal Mfg. Co., IHRC, Charge No. 1992CN3428, 1996 WL 652580, *7 (May 6, 1996) (noting that an employer is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation). The Petitioner also points out that an employee who made multiple mistakes was not discharged like she was, but she concedes that it is because the employee excelled at closing deals for the Employer. By her own argument, the Employer was not basing any difference in treatment on the Petitioner's age or sex or in retaliation for opposing sexual harassment.

The Petitioner has not presented any 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 Human Rights Commission, the Illinois Department of Human Rights, and Apartment Management Consultants, LLC, d/b/a Aspen Place Apartments as respondents, with the Clerk of the Illinois Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 18th day of December 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakhroddin, P.E., S.E.