

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014CP1162
)	EEOC NO.: N/A
Concepcion Matos)	ALS NO.: 15-0059
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor, presiding upon Concepcion Matos's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2014CP1162 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 dismissal of the Petitioner's charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On November 7, 2013, the Petitioner filed a perfected charge of public accommodation discrimination with Respondent alleging that PAV YMCA ("YMCA") denied him the full and equal enjoyment of its facilities and services on November 5, 2013, in retaliation for filing a charge of discrimination in violation of Section 5-102(A) of the Illinois Human Rights Act ("Act").

On December 1, 2014, the Respondent dismissed the Petitioner's charge in its entirety. The Petitioner filed a timely Request on February 13, 2015.

The Commission concludes that the Respondent properly dismissed the Petitioner's charge of racial and gender discrimination 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).

The record shows that Petitioner had been a member of the YMCA beginning in October 2005 until his membership was terminated for violating the YMCA's Code of Conduct which states that verbally abusive behavior, including angry or vulgar language, swearing, name calling, or shouting is not permitted. The YMCA's mission is to instill Christian principles into practice through programs that build healthy, spirit, mind, and body for all.

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."

On May 2, 2013, Petitioner complained about the dirty condition of the pool. Petitioner became aggressive and was verbally abusive towards another member for putting his shoes in the pool. At that time, Petitioner was asked to leave. On his way out, Petitioner cursed and drove out of the parking lot at an excessive rate of speed for which his membership was suspended 60 days.

A month later, Petitioner filed a charge of discrimination with Respondent. However, the charge was not filed against the YMCA.

Since Petitioner agreed to follow the code of conduct, his membership was ultimately reinstated. While attending lunch on November 4, 2013, however, Petitioner shouted at another member who complained that he was fanning sweat in her food. Petitioner was asked to step out of the lunchroom and proceeded to again curse and behave aggressively. This time, Petitioner was asked to leave and was also informed that his membership was cancelled. Petitioner drove his vehicle the wrong way out of the parking lot.

Public accommodation is defined in Section 5-101 (A) as a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, facilities, privileges, advantages or accommodation are extended, offered, sold, or otherwise made available to the public. 775 ILCS 5/5-102(A). The YMCA facility is a place of “public accommodation” because it is a place of public gathering, exercise and recreation within the meaning of the Act. Generally, to establish a *prima facie* case of public accommodation discrimination, the Petitioner must prove as follows: 1) he is within a protected class; 2) he was denied full enjoyment of the YMCA’s facilities; and 3) that others not within his protected class were given full enjoyment of those facilities. *In the Matter of Velma J. Henderson and Steak ‘n Shake, Inc.*, IHRC, Charge No. 1996CP2939, 1999 WL 33252627, *9 (March 24, 1995).

Here, Petitioner is unable to satisfy elements 2 and 3 of his *prima facie* case. There is no evidence that Petitioner was “denied the full and equal enjoyment of the facilities, goods and services of a place of public accommodation based on unlawful discrimination.” Instead, Petitioner’s membership was suspended and eventually cancelled for conduct unbecoming in violation of the YMCA’s Code of Conduct. As to prong four, the record reveals that the YMCA suspended and terminated other members for violations of its policies. On April 1, 2013, Abedallah Ayyad (“Ayyad”) was suspended for fighting. After another fight ensued on February 18, 2014, Ayyad’s membership was terminated. Joseph Wagge (“Wagge”) was suspended on April 28, 2011 for swearing and disrespecting staff. On May second, 2011, Wagge swore at the staff after a basketball game and was directed to leave the premises at which point his membership was terminated.

Next, to show a *prima facie* case for retaliation, the following must be established by Petitioner: 1) he engaged in protected activity; 2) YMCA committed an adverse action against her; and 3) a causal connection existed between the protected activity and the adverse action. *Hoffelt v. Ill. Dep’t of Human Rights*, 367 Ill. App.3d 628, 867N.E.2d 14 (1st Dist. 2006); *Welch v. Hoeh*, 314 Ill.App.3d 1027, 1035, 733 N.E. 2d 410,416 (3d Dist. 2000).

As to prong three, Petitioner provided no evidence that he was engaged in protected activity. Petitioner stated that his prior charge of discrimination was not filed against the YMCA. Further, complaining about the condition of the swimming pool is not protected activity within the meaning of the Act.

The YMCA also had a legitimate non-discriminatory reason for suspending and terminating Petitioner's membership, namely violating its code of conduct. Petitioner failed to provide any evidence that the YMCA's rationale was pretextual. Therefore, Petitioner fails to show substantial evidence that he was denied the full and equal enjoyment of its YMCA's facilities and services, in retaliation for filing a prior charge of discrimination.

In his Request for Review, there is no additional evidence provided by Petitioner to the contrary.

Accordingly, the Petitioner has not presented 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 Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and YMCA as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 21st day of November 2018.

Commissioner Steve Kim

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Commissioner Cheryl Mainor