

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014SF2327
)	EEOC NO.: 21BA41150
)	ALS NO.: 14-0530
CARLA STEWART,)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor presiding, upon Carla Stewart's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2014SF2327, 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 January 28, 2014, the Petitioner, a former sales associate, filed an unperfected charge of discrimination with the Respondent, perfected on March 5, 2014, alleging that Macy's Retail Holdings, Inc. ("Employer") subjected her to harassment because of her race, black (Counts A-C), and denied her a refund in retaliation for filing a previous charge of discrimination (Count D), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On September 3, 2014, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

For the reasons that follow, the Commission concludes that the Respondent properly dismissed the Petitioner's claims for lack of substantial evidence. Substantial evidence is that which "a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." 775 ILCS 5/7A-102(D); Owens v. Dep't of Human Rights, 403 Ill. App. 3d 899, 917, 936 N.E.2d 623, 638 (1st Dist. 2010). If no substantial evidence of

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."

discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. Id.

Counts A-C

In Counts A-C, the Petitioner alleges that she was subject to harassment because of her race in December 2013, after several incidents with the Employer's Loss Prevention Department. On December 11, the Petitioner was stopped by Alycia Mosley, a Loss Prevention Detective, after purchasing several items from the Employer, because she had not been charged for one of the items. Ms. Mosley later told the Petitioner that the Loss Prevention Manager had reprimanded Ms. Mosley for not pursuing an arrest and discharge of the Petitioner.

On December 14, the Petitioner was reported to Loss Prevention by a Sales Manager over the Petitioner's attempts to discount merchandise for another employee. The Petitioner did not ultimately receive any reprimand for doing so. Later that day, the Petitioner attempted to return a number of items she had previously purchased from the Employer, and individual(s) from Loss Prevention were again alerted. Ultimately, the Petitioner was provided her refund; however, the refund went back to a credit card rather than her debit card as she requested.

To establish her harassment claim, the Petitioner must show that the Employer's behavior was motivated by a discriminatory intent and that she was subjected to a pattern of incidents sufficiently severe and pervasive so as to alter the terms and conditions of her employment. Village of Bellwood Bd. of Fire and Police Com'rs v. Human Rights Com'n, 184 Ill. App. 3d 339, 541 N.E.2d 1248 (1st Dist. 1989). Sporadic or isolated incidents do not suffice to meet this standard; rather, the employee must have been subject to a "steady barrage" of offensive conduct to trigger protection under the Act. See id.

Here, the incidents the Petitioner cites do not create a severe and pervasive pattern of conduct that would rise to the level of actionable harassment. The Petitioner was not actually subjected to any discipline or other reprimand over the December 2013 incidents. Rather, she simply heard from Ms. Mosley that she had come to the attention of the Loss Prevention Department. And though the Petitioner was met with questioning upon returning items previously purchased, she was ultimately provided a full refund. These events do not constitute a "steady barrage" of offensive conduct that could establish a claim for unlawful discrimination under the Act.

Moreover, other than the Petitioner's sense that she and other black employees were targeted more by Loss Prevention than other non-black employees, there is no evidence to establish that the Employer's behavior toward the Petitioner was motivated by a discriminatory intent. At best, the evidence shows the actions of "heavy-handed management," but this is not enough to show that the Employer was motivated by discriminatory animus. Patel v. Allstate Ins. Co., 105 F.3d 365 (7th Cir. 1997).

Count D

In Count D, the Petitioner alleges that on December 27, 2013, she approached Sales Manager Bruce Miller to obtain a refund of \$170.00 of "Macy Money" that was due to her from the December 14 transaction. Mr. Miller refused to refund her the Macy Money, and the Petitioner believes this was in retaliation for her filing a previous discrimination charge on August 2013 (Charge No. 2014SF0315). However, the Respondent's investigation revealed that the Petitioner ultimately received a refund of \$180.00 of "Macy Money" on January 2, 2014.

To prove a *prima facie* case of retaliation under the Act, the Petitioner must establish that: (1) she engaged in a protected activity; (2) the Employer took an adverse action against her; and (3) a causal nexus between the protected activity and the adverse action. See Carter Coal Co. v. Human Rights Commission, 261 Ill. App. 3d 1, 633 N.E.2d 202 (5th Dist. 1994).

The Petitioner has not established an adverse action sufficient for a retaliation claim. Ultimately, the Respondent's investigation found that the Petitioner received her refund, albeit a few days delayed, January 2, 2014.

Accordingly, the Petitioner has not presented enough 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 Macy's Retail Holdings, Inc. 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)

Entered this 21st day of November 2018

Commissioner Hermene Hartman

Commissioner Steve Kim

Commissioner Cheryl Mainor