

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2014SA0388
	)	EEOC NO.: 21BA32368
LARRY SHAW	)	ALS NO.: 14-0574
	)	
	)	
	)	
Petitioner.	)	

**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 Larry Shaw (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2014SA0388 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 is **SUSTAINED**.

**DISCUSSION**

On August 2, 2013, the Petitioner filed a charge with the Respondent alleging that Mel Foster Co. of Illinois (“Foster”) harassed him because of his sexual orientation, homosexual (Count A), age, 66 (Count B), and in retaliation for opposing unlawful discrimination (Count C) in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act.

On September 23, 2014, the Respondent dismissed the Petitioner’s charge, in its entirety, for Lack of Jurisdiction. The Petitioner filed a timely Request.

The Commission concludes that the Respondent properly dismissed Counts A and B Petitioner’s charge for Lack of Substantial Evidence. The Commission concludes that the Respondent improperly dismissed Count C of the charge for Lack of Jurisdiction; however, the Commission sustains the dismissal of Count C for Lack of Substantial Evidence.

*Counts A & B*

The Act defines “employee” to include, “any individual performing services for remuneration within this state for an employer.” 775 ILCS 5/2-101(A)(1)(a). Independent

contractors are not employees under the Act, and the Commission applies a four factor analysis to determine 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. In the Matter of Whittington and K-Mart Corp., IHRC, Charge No. 1987CF0520, 1992 WL 721840, \*2 (November 18, 1987).

The Respondent's investigation revealed that the Petitioner was not an employee of Foster, but an independent contractor. Petitioner signed an Independent Contractor Agreement with Foster in which Foster agreed to make its listings and facilities available to the Petitioner. Foster had no daily, discretionary control over the Petitioner's work hours or duties; Petitioner paid Foster \$60.00 per month to use Foster's website; Foster paid earned commissions to a corporation that the Petitioner created; Foster did not treat the Petitioner as an employee for tax purposes; and the Petitioner was not covered by workers' compensation laws. Based on these factors, the Commission concludes that the Petitioner was not an "employee" of Foster as defined by the Act. As a result, the Respondent's dismissal of Counts A and B of the charge are sustained for Lack of Jurisdiction.

#### *Count C*

The Commission concludes that the Respondent properly dismissed the Petitioner's charge, but on improper grounds. The Respondent concluded that it lacked jurisdiction over Petitioner's charge because Foster was not an employer under the Act. However, the retaliation provision of the Act covers retaliation committed by *any person*, not just employers. See 775 ILCS 6-101(A). As a result, the Commission has jurisdiction over this charge. The Respondent's dismissal should be sustained, however, because the Petitioner has failed to make a *prima facie* case of retaliation.

Generally, to establish a *prima facie* case of retaliation, the Petitioner must show 1) he engaged in protected activity; 2) Respondent took an adverse action against him, and 3) there is 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). Section 6-101(A) of the Act prohibits a person from retaliating against another person because he or she, "opposed that which he or she reasonably and in good faith believes to be unlawful discrimination...because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act." In this case, Petitioner fails to show that he engaged in protected activity as defined by the Act.

The Petitioner filed an internal complaint with Foster after having a contentious meeting with a managing broker about the Petitioner's late arrival to the office for floor time. The Petitioner alleged that the managing broker blocked the door, preventing him from leaving the office during the meeting. The Petitioner's allegations, if true, may describe inappropriate behavior; but the Petitioner's complaint did not allege that Foster or the managing broker engaged in discriminatory behavior, so his complaint is not one

brought under the Act. As a result, the retaliation provision of the Act does not apply, and the Respondent's dismissal must be sustained.

**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 Mel Foster Co. of Illinois as named party respondents, with the Clerk of the Circuit Court for the Illinois Appellate Court within 35 Days after the date of service of this order.

**STATE OF ILLINOIS** )  
 ) **Entered this 14th day of December 2018.**  
**HUMAN RIGHTS COMMISSION** )

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakroddin