

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014SF0040
)	EEOC NO.: 21BA32056
LARRY SHAW)	ALS NO.: 14-0575
)	
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Nabi R. Fakhroddin 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. 2014SF0040 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 is **SUSTAINED**.

DISCUSSION

On June 19, 2013, the Petitioner filed a charge of discrimination with the Respondent against Mel Foster Co. of Illinois (“Foster”) alleging that Foster discharged him (Count A) and harassed him (Count B) on because of his physical disability, diabetic amputation, in violation of Section 2-102(A) of the Illinois Human Rights Act.

On September 22, 2014, the Respondent dismissed the charge for Lack of Jurisdiction. The Petitioner filed a timely Request.

The Commission concludes that the Respondent properly dismissed the Petitioner’s claims for Lack of Jurisdiction.

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.

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