

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014SR1363
)	EEOC NO.: 440-2014-00014
JASON L. NIEMAN)	ALS NO.: 14-0584
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor presiding, upon Jason L. Nieman’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2014SR1363 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**.

DISCUSSION

On October 1, 2013, the Petitioner filed a charge of discrimination with the Respondent alleging that RLI Corp. (“RLI”) and Daniel Kennedy (“Kennedy”) harassed him in retaliation for settling a prior charge of discrimination in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On October 28, 2014 the Respondent dismissed the Petitioner’s charge for lack of jurisdiction. The Petitioner filed a timely request.

While the Commission finds that the Petitioner has established jurisdiction under Section 6-101(A) of the Act, the Commission concludes that the Petitioner’s charge should be dismissed for lack of substantial evidence. 775 ILCS § 5/6-101(A). 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

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.”

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 Commission found that the Petitioner lacked substantial evidence to establish a *prima facie* case of retaliation. Generally, retaliation is established by showing that the (1) Petitioner engaged in a protected activity; (2) that RLI and Kennedy committed an adverse act against the Petitioner, and (3) a causal connection existed between the protected activity and the adverse act. Stone v. Department of Human Rights, 299 Ill.App.3d 306, 316, 700 N.E.2d 1105, 233 Ill. Dec. 397 (1998). In the instant case, the Petitioner failed to establish both the second and third elements.

To constitute an adverse action the alleged retaliatory conduct must be sufficiently severe or pervasive. In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365, 1999 WL 33252975 (October 4, 1999). Additionally, occasional, isolated, or trivial remarks do not constitute harassment. Franklin W. Lay and St. Mary's Hospital, 34 Ill. HRC Rep. 197 (September 25, 1987). Here, the counsel for RLI and Kennedy sent the Petitioner a letter advocating for their clients and advising the Petitioner to abide by the terms of their prior settlement agreement and refrain from defaming RLI and Kennedy. A single letter to the Petitioner does not rise to the level of severe or pervasive and does not amount to substantial evidence of an adverse action required to establish a *prima facie* case of retaliation.

Moreover, RLI and Kennedy's counsel engaged in a legitimate, obligatory exercise for its clients by sending the Petitioner a letter seeking to enforce the terms of the settlement agreement. The Commission finds no evidence of pretext, and in the absence of pretext, the Commission cannot substitute its judgment for RLI and Kennedy's counsel's business judgment. Berry and State of Illinois, Dep't of Mental Health and Developmental Disabilities, IHRC, Charge No. 1994SA0240, 1997WL812491. ALS No. S-9146 (Dec. 10, 1997).

Furthermore, the Petitioner failed to establish the third element as approximately eleven months elapsed between the Petitioner's settlement agreement with RLI and Kennedy and when their counsel sent the Petitioner the letter. The time period between the Petitioner's protected activity and the Employer's adverse acts is not sufficiently short to raise an inference of retaliatory motivation.

Accordingly, the Petitioner has not presented any 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 RLI Corp. and Daniel Kennedy, as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 21st day of November 2018**
HUMAN RIGHTS COMMISSION)

Commissioner Hermene Hartman

Commissioner Steve Kim

Commissioner Cheryl Mainor