

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: <b>2014CA0962</b>
)	EEOC NO.: <b>21BA40135</b>
)	ALS NO.: <b>15-0010</b>
<b>JAVIER ALMANZA,</b> )	
)	
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 Javier Almanza’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2014CA0962, 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 **Count A** for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED** and the Respondent’s dismissal of **Count B** for **LACK OF JURISDICTION** is **SUSTAINED**.

**DISCUSSION**

On October 15, 2013, the Petitioner, a former maintenance worker, filed a charge of discrimination with the Respondent, alleging that Bayshore Properties, Inc. (“Employer”) discharged him based on his physical disability, right shoulder disorder (Count A), and his age, 46 (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On October 22, 2014, the Respondent dismissed Count A of the Petitioner’s charge for lack of substantial evidence and dismissed Count B for lack of jurisdiction. The Petitioner filed a timely Request.

For the reasons that follow, the Commission concludes that the Respondent properly dismissed Count A for lack of substantial evidence, and properly dismissed Count B for lack of jurisdiction. Substantial evidence is that which “a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than

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<sup>1</sup> 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.”

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

### **Count A**

To establish his disability discrimination claim, the Petitioner first bears the burden to show a *prima facie* case. Kreczko v. Triangle Package Machinery Co, 2016 IL App (1st) 151762, 53 N.E.3d 1070 (1st Dist. 2016). Once the Petitioner has established a *prima facie* case, the burden shifts to the Employer to articulate a non-discriminatory reason for its employment action. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) (adopted by Illinois Supreme Court in Zaderaka v. Human Rights Comm., 131 Ill.2d 172, 179, 545 N.E.2d 684, 687 (1989)). The Petitioner must then show that the Employer’s articulated reason for its employment action was a pretext. Id.

The uncontested evidence clearly shows that the Employer had a legitimate, non-discriminatory reason for terminating the Petitioner’s employment. In September 2013, the Employer sold the property where the Petitioner primarily performed maintenance duties. Thereafter, the Employer did not manage the property and no longer had a position available for the Petitioner. The Petitioner states that he was “replaced” by Eduardo Ortiz, a maintenance worker who is not disabled. But in fact, the investigation revealed that Mr. Ortiz was another maintenance employee who had been hired a year prior to the Petitioner.

### **Count B**

The Respondent properly found a lack of jurisdiction under the Act for the Petitioner’s age discrimination claim, because the Employer employed less than 15 employees in 2012 and 2013. Unlike the Petitioner’s claim based on his disability (which may be pursued against any employer with one or more employees), the Act only provides jurisdiction for an age discrimination claim against an employer who employs 15 or more employees for 20 or more calendar weeks within the year preceding the alleged violation. See 775 ILCS 5/2-101(B). The Employer’s records showed it employed between seven and eight employees in the years 2012 and 2013.

### **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 Bayshore Properties, Inc. 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 December 2018**  
**HUMAN RIGHTS COMMISSION** )

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakhroddin