

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014CP2016
)	
)	ALS NO.: 15-0011
CARLENE BLUMENTHAL,)	
)	
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 Carlene Blumenthal’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2014CP2016, 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 March 17, 2014, the Petitioner filed a perfected charge of discrimination with the Respondent, alleging that Fitness International, LLC (“Fitness International”) denied her the full and equal enjoyment of its exercise facility because of her age (76), and disabilities (arthritis, diabetes, Sjogren’s syndrome, and erythromelalgia), in violation of Section 5-102(A) of the Illinois Human Rights Act (“Act”). On October 16, 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.

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.”

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.

Section 5-102(A) of the Act provides that it is a civil rights violation to "[d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation" on the basis of unlawful discrimination. 775 ILCS 5/5-102(A).

It is uncontested that on October 29, 2013, Fitness International notified the Petitioner that it was cancelling her gym membership of several years. Prior to the cancellation, the Petitioner claimed that in mid-September 2013, she was yelled at and berated by a fellow patron of Fitness International, who told her that she was old and stupid, and that people her age did not belong in the exercise facility. Later that day in the locker room, the Petitioner encountered the patron again, and when the Petitioner asked her to move from the handicapped shower, the patron again yelled at her, calling her "stupid" and "crazy." The Petitioner states that her physical disabilities are plainly evident as she uses a walker.

The Petitioner does not contend that she reported this conduct to any employee of Fitness International. The Petitioner has identified the woman in question as a fellow patron, and not as an employee or agent of Fitness International. The Petitioner did state that on a subsequent day in October 2013, she observed the woman speaking with one of the locker room attendants, but she did not know what the conversation entailed because the two spoke in Spanish. The evidence therefore revealed no connection whatsoever between this patron and the cancellation of the Petitioner's membership.

The evidence further showed that Fitness International had a manager's note of verbal reports from its employees that the Petitioner violated its terms and conditions of membership. Those terms and conditions stated that members may not use foul, loud, or slanderous language, or engage in badgering or harassing behavior. Fitness International's system notes dated October 28, 2013 state that janitorial staff reported being harassed by the Petitioner, and specifically that she made racist remarks like "get out of our country" to a female staff member. The notes reflected that other club members had informed the staff of such conduct as well.

No substantial evidence suggests that anyone acting on behalf of Fitness International acted with a discriminatory intent in denying the Petitioner further access to its facility. At most, the Petitioner has established that a fellow patron made offensive

remarks to her, which she did not report, and which occurred over a month before her membership was cancelled. Those facts do not establish any connection between the patron's remarks and Fitness International's actions. Moreover, Fitness International had multiple reports of the Petitioner engaging in behavior which violated its conditions of membership. 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 Fitness International, LLC 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

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Entered this 21st day of December 2018

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakroddin