

No. 1-09-2148

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DIVISION
March 31, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JIAN LI & LEI LIU,)	Petition for Direct
)	Review of an order
Petitioners-Appellee,)	of the Illinois
)	Human Rights
)	Commission
v.)	
)	
ILLINOIS HUMAN RIGHTS COMMISSION,)	
THE DEPARTMENT OF HUMAN RIGHTS,)	
PRAIRIE MANAGEMENT & DEVELOPMENT INC.)	
AND NEIGHBORHOOD REDEVELOPMENT)	
ASSOCIATES)	No. 09 CH 1182
)	
Respondents-Appellant.)	

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Presiding Justice Fitzgerald-Smith and Justice Howse
concur in the judgment.

O R D E R

HELD: Where couple's tenancy was terminated after man argued with building manager and court order was entered barring him from building, Human Rights Commission did not abuse its discretion in sustaining the dismissal of housing discrimination charge; the Commission's decision was affirmed.

Petitioners Jian Li and Lei Liu filed a charge of discrimination with the Illinois Department of Human Rights (the Department), alleging they were denied housing because of Li's disability. After the Department dismissed the charge based on a lack of substantial evidence, Li and Liu sought review from the Illinois Human Rights Commission (the Commission), which sustained the dismissal. Li and Liu now appeal the Commission's decision *pro se*. We affirm.

In December 2008, Li and Liu¹ filed a charge with the Department alleging unlawful housing discrimination pursuant to section 3-102.1(B) of the Illinois Human Rights Act (the Act) (775 ILCS 5/3-102.1(B) (West 2008)) and federal housing laws. The respondents to the charge were Neighborhood Redevelopment Associates, which owns the Chicago apartment building in which the couple lived, and Prairie Management and Development, which manages the building. The building provides housing for senior citizens with low incomes.

Li alleged that beginning in 2002, he worked as a resident maintenance engineer for the building and as a benefit of his employment, the couple lived in an apartment without paying rent and without a lease. Li was diagnosed with bladder cancer in

¹Li and Liu are husband and wife and, for ease of discussion, will be referred to as "Li" or "the couple."

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July 2007 and underwent multiple surgeries. In January 2008, Li's employment with the building was terminated, and building management ordered the couple to vacate the apartment. The couple moved out in February 2008. Li alleged the couple was forced to vacate the apartment upon the termination of his employment because of his health condition. Li alleged a former resident building manager, Ping Ning Lai, was not required to vacate his apartment in 2007 upon retiring from his job but was allowed to stay in the building and pay rent.

The Department conducted an investigation into Li's claims, and the Department's investigator recommended a finding of lack of substantial evidence of discrimination. The report stated that Li was arrested in October 2007 after arguing with resident building manager Daniel Kung, who told the investigator Li raised his hand at him while the two men argued about a posting from the building's bulletin board. After Li's arrest, an assault charge was filed. On January 16, 2008, Li appeared in Cook County circuit court, and the court barred Li from any contact with Kung or from going to the building for six months. The State dismissed the charge without prosecution. On January 24, 2008, Li was informed his employment and tenancy were being terminated. Li acknowledged the argument but denied threatening Kung. Li said that in the weeks before his arrest, Kung had questioned his

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ability to work and told Li he should retire because of his illness.

The report further stated that Alan Keribar, area manager of Prairie Management and Development, said he and Peter Condich, the company's general manager, agreed after Li's court appearance that Li should be fired because he threatened Kung. Condich said the building's management was aware of Li's cancer and had allowed Li to work on a reduced schedule since July 2007. Condich said Li helped to train a "supplemental worker," who eventually replaced Li.

Condich also stated that unlike Li's case, Lai was allowed to remain in the building and pay rent after his employment ended because Lai lived in a different classification of unit than the couple. Lai, who also was disabled, had been on a waiting list for a unit in the building since 1992; Li had been on the list since 2000.

The Department's report concluded Lai was not similarly situated to Li and that the building owners and management terminated Li's tenancy and required him to move out because his employment was terminated and no comparable apartment was available. On March 3, 2009, the Department issued a notice of dismissal of the discrimination charge for lack of substantial evidence.

Li sought the Commission's review of that decision. On July 22, 2009, the Commission sustained the Department's dismissal of the discrimination charge. The Commission concluded Li did not present a *prima facie* case of discrimination because he did not show a similarly situated person was treated more favorably. The Commission further concluded that even if Li had established a *prima facie* case, he did not present evidence that the stated reason for terminating his tenancy was a pretext for disability discrimination. The Commission noted building management took steps to accommodate Li's disability by adjusting his work schedule. Li now appeals the Commission's decision.

On appeal, Li contends the Commission erred in dismissing his charge of discrimination. In particular, Li maintains that he had been medically approved to return to work and Kung fabricated the alleged assault, as shown by the dropped charge.

The Act provides a comprehensive scheme of remedies and procedures to redress human rights violations under Illinois law. *Habitat Co. v. McClure*, 301 Ill. App. 3d 425, 436 (1998). Under the Act, it is "a civil rights violation to alter the terms, conditions or privileges of sale or rental of a dwelling" because of a person's disability. 775 ILCS 5/3-102.1(B) (West 2008). It is not disputed that Li had a disability, *i.e.*, bladder cancer.

Upon the filing of a discrimination charge with the Department, the Department investigates the charge, completes a

written report, and determines if there is substantial evidence of the alleged violation. 775 ILCS 5/7A-102(D)(2) (West 2008).² If the Department dismisses the charge, the dismissal is reviewable by the Commission (775 ILCS 5/7B-102(D)(2)(a) (West 2008)), and the aggrieved party may seek review of the Commission's decision in the appellate court. 775 ILCS 5/8-111(B) (West 2008).

The Commission's function is to review the Department's factual findings and determine whether there is enough evidence to support the filing of a charge. *Truger v. Department of Human Rights*, 293 Ill. App. 3d 851, 858 (1997). In doing so, the Commission is not to resolve credibility issues or questions of fact, and the Commission must adopt the Department's factual findings unless they are against the manifest weight of the evidence. *Truger*, 293 Ill. App. 3d at 858.

The task of this court is to review the decision of the Commission, not that of the Department. See *Marinelli v. Human Rights Comm'n*, 262 Ill. App. 3d 247, 253 (1994). Our review involves whether the Commission's decision to sustain the dismissal of the charge was arbitrary and capricious or constituted an abuse of discretion. *Budzileni v. Department of*

² The Act defines "substantial evidence" as "evidence 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)(2) (West 2008).

Human Rights, 392 Ill. App. 3d 422, 442 (2009). A decision is arbitrary and capricious if it contravenes the legislature's intent or offers an implausible explanation contrary to agency expertise, and an abuse of discretion is found when a decision is reached without conscientious judgment or without employing clear logic. *Budzileni*, 392 Ill. App. 3d at 442, citing *Allen v. Lieberman*, 359 Ill. App. 3d 1170, 1177 (2005), and *Bodine Electric of Champaign v. City of Champaign*, 305 Ill. App. 3d 431, 435 (1999).

To set forth a *prima facie* case of housing discrimination in this case, Li must establish: (1) he was a member of a protected group, *i.e.*, had a disability; (2) the building management and owners were aware of that status; (3) he was a tenant in good standing and was qualified to live in the building; (4) he was denied the opportunity to live there; and (5) housing was not denied to similarly situated individuals. See *Atkins v. City of Chicago Comm'n on Human Relations ex rel. Lawrence*, 281 Ill. App. 3d 1066, 1074 (1996); *Acorn Corrugated Box Co. v. Illinois Human Rights Comm'n*, 181 Ill. App. 3d 122, 137 (1989) (elements of discrimination charge will vary depending on nature of claim and factual situation presented).

If Li establishes those elements, a rebuttable presumption of discrimination arises, and the burden shifts to the building owners and management to articulate a legitimate, non-

discriminatory reason for its decision. See *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 180 (1989). If such a reason is presented, Li must prove the articulated reason was not the true reason for the decision but instead was a pretext for discrimination. See *Zaderaka*, 131 Ill. 2d at 180. A reason is pretextual if a discriminatory purpose more likely motivated the decision or if the reason is unworthy of belief. *Atkins*, 281 Ill. App. 3d at 1074.

The Department's investigation established that Li's disability was not a determining factor in the termination of the couple's residency but, rather, that Li's employment was terminated after he appeared in court in January 2008. Li lived in the building as a benefit of his employment, and that benefit ended when his employment was terminated after he argued with Kung and appeared in court on that charge. Li therefore was no longer able to live in the building under the court's order, which barred him from the site.

Li contends on appeal that his actions did not rise to the level of an assault and that he was found eligible to receive unemployment benefits. Li was not prosecuted for assault, and whether his actions while arguing with Kung met the legal definition of an assault is not germane to his discrimination claim. Moreover, Li's ability to collect unemployment benefits following the loss of his job does not establish that building

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management and owners unlawfully discriminated against him in terminating his employment and tenancy.

The crux of Li's position in this appeal is that the facts supported a *prima facie* case of housing discrimination and, furthermore, the articulated reason by the building management and owners for terminating his tenancy was pretextual. The Department made factual findings that Li was arrested for the attempted assault of Kung and a court order was entered barring Li from the building. As a result, Li could no longer live in the building. Based on the Commission's adoption of those findings, the Commission did not abuse its discretion in dismissing Li's charge.

Accordingly, we affirm the Commission's decision dismissing the discrimination charge.

Affirmed.