

No. 1-10-1408

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FIRST DIVISION
DATE May 9, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RAYMOND WILLIAMS,)	Petition for Direct
)	Review of an Order
Petitioner,)	of the Illinois
)	Human Rights
v.)	Commission.
)	
ILLINOIS HUMAN RIGHTS COMMISSION,)	
ILLINOIS DEPARTMENT OF HUMAN RIGHTS,)	
and HARRIS, N.A.,)	No. 08 CP 3589
)	
Respondents.)	

PRESIDING JUSTICE HALL delivered the judgment of the court.
Justices LAMPKIN and ROCHFORD concurred in the judgment.

O R D E R

HELD: The Commission's decision to sustain the Department's dismissal of petitioner's charge was not erroneous when the charge did not allege unlawful discrimination and the respondent bank offered a legal, non-pretextual reason for excluding him from its premises. There was no evidence of impropriety by the Department or Commission in the admission of evidence or state of the record.

Petitioner Raymond Williams appeals from an order of respondent Illinois Human Rights Commission (Commission) sustaining the dismissal by respondent Illinois Department of Human Rights (Department) of petitioner's charge against respondent Harris N.A. (Bank) pursuant to the Illinois Human Rights Act (the Act), 775 ILCS 5/1-101 *et seq.* (West 2008). This is a direct appeal from the Commission to this court pursuant to section 8-111(B) of the Act (775 ILCS 5/8-111(B) (West 2008)) and Supreme Court Rule 335 (eff. Feb. 1, 1994). Petitioner contends that the Commission's decision was erroneous, that the Department did not investigate his case properly, and that the Department did not submit a complete record to the Commission for review.

In June 2008, petitioner filed a charge with the Department alleging that the Bank is a place of public accommodation, that employees of the Bank mistreated him in some unspecified manner, that he complained of this mistreatment in March 2008 to named Bank supervisory personnel, and that the Bank barred him from its premises on or about March 1, 2008, in retaliation for his complaints. The charge did not mention racial discrimination.

The Bank filed a response to the charge, denying the substantive allegations and noting that the charge did not allege discrimination prohibited by the Act. The Bank also alleged that petitioner had engaged in "repeated acts of appalling behavior over the past two years necessitat[ing] the Bank's making several

telephone calls to [petitioner]'s father, who is the account holder on whose behalf [petitioner] comes into the Bank to conduct transactions, about his son's conduct." The "lengthy string of harassing and abusive incidents that has disrupted the business of not only the Bank, but its customers," culminated on February 21, 2008, when petitioner yelled at an elderly Bank customer ahead of him in line, which was witnessed by several Bank customers as well as being recorded on the Bank's video system. On the day after this incident, the Bank branch manager phoned petitioner's father to inform him that petitioner was no longer welcome in the Bank. Petitioner phoned the manager, using "obscene epithets." An investigator for the Bank investigated the incident and then informed petitioner again that he was not welcome at the Bank. To the best of the Bank's knowledge, petitioner had not returned to the Bank since February 21, 2008, but had made several telephone calls to the Bank to register complaints and express his intent to sue the Bank.

The Bank also filed a position statement setting forth in greater detail its allegations of "abusive, harassing, and tortious conduct" by petitioner. Petitioner told a particular Bank employee "that he knew her husband's name and where he worked," which the employee took as a threat. He had blocked a Bank employee from parking his car and then made an obscene

gesture to him. On separate occasions, petitioner yelled at a Bank customer and slapped an unidentified person inside the Bank.

The Department issued an investigation report in June 2009 finding a lack of substantial evidence that the Act had been violated. The report indicated that the investigator interviewed petitioner and the Bank's branch manager and accepted into evidence several documents from petitioner and the manager. The Bank's documents included e-mails describing several of the incidents involving petitioner. The Bank also provided letters to an unrelated Bank customer banning him from Bank premises and closing his accounts in late 2007 for harassing Bank employees and customers, in support of the manager's testimony that the Bank had a practice of barring or excluding customers who threatened its employees or customers. The report acknowledged petitioner's testimony that he complained to the Bank branch manager and to various supervisory Bank employees at its downtown Chicago headquarters, and the investigator accepted into evidence a copy of petitioner's telephone bill in support of that testimony. The investigator found a lack of substantial evidence "because having made a complaint to [the Bank's] management is not a basis for a charge of retaliation under the" Act.

Petitioner filed a request for review by the Commission, alleging that the Bank was "engaging in racially motivated practices." He acknowledged that he was expressly raising the

racial allegation for the first time: "even though I did not remit my complaint in writing to the [Bank] that I believed that their actions towards me were racially motivated, [that] does not eliminate the fact that I did complain." He argued that the Bank "has not presented a legal, rational, non-pretextual reason for failing to allow me to" be served by the Bank. Specifically, he claimed that there was a telephone record of his complaint from February 21, 2008, that he was told by a Bank employee on February 27 that he could not enter the Bank, and that when the Bank branch manager told him on the telephone that he was unwelcome at the Bank, there were racial undertones in his vocal tone. Lastly, petitioner argued that the Department investigator had acted unethically by entering a decision *in absentia*. Attached was a copy of a telephone bill showing calls on the morning and midday on February 21, 2008, to telephone numbers in downtown Chicago and the suburbs that petitioner annotated as being Bank telephones.

Petitioner filed a motion before the Commission for leave to file an "ancillary document" in which he objected to the Bank's description of his alleged prior actions on the basis that some of the descriptions did not include names and none were supported by affidavits, accused the Bank's branch manager of lying, and argued that the Department investigator "allowed outrageous statements to be entered into evidence." The Bank's e-mails and

letters referred to in the Department report were attached to the ancillary document.

The Commission on September 10, 2009, denied petitioner leave to file his ancillary document as untimely filed when considered as a filing in support of his request for review. However, the Commission informed him that he could include such documents in his reply in support of his request for review.

The Department responded to petitioner's request for review, noting that petitioner had not alleged that Bank employees mistreated him on grounds prohibited by the Act until his request for review and arguing that this new allegation was untimely. The Department also argued that its investigation was properly conducted and found that petitioner "had engaged in a number of harassing and abusive incidents at" the Bank.

Petitioner replied in support of his request for review, incorporating the allegations and supporting documents from his earlier ancillary document.

On February 24, 2010, the Commission issued an order sustaining the Department's denial of petitioner's charge for lack of substantial evidence. The Commission found that petitioner's charge did not allege that Bank employees mistreated him on grounds prohibited by the Act, and that there was no evidence from the investigation showing that petitioner had complained to the Bank that its employees mistreated him on

grounds prohibited by the Act. The Commission concluded that it could not consider petitioner's allegation, raised for the first time in his request for review, that the Bank had engaged in racial discrimination. The Commission also found that the Bank had banned petitioner from its premises for harassing and abusive conduct towards its employees and customers. Petitioner timely petitioned this court for review of the Commission's order.

On appeal, petitioner contends that the Commission's decision was erroneous, that the Department did not investigate his case properly, and that the Department did not submit a complete record to the Commission for review.

The Act provides that it "is a civil rights violation for any person on the basis of unlawful discrimination to *** [d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation." 775 ILCS 5/5-102(A) (West 2008). The term "public places of accommodation" includes banks. 775 ILCS 5/5-101(A)(6) (West 2008). It is also a civil rights violation to "[r]etaliante against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination *** or because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act." 775 ILCS 5/6-101(A) (West 2008). Unlawful discrimination under the

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Act is limited to discrimination on the basis of "race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, or unfavorable discharge from military service." 775 ILCS 5/1-103(Q) (West 2008).

A case under the Act is commenced by an aggrieved party's written charge filed with the Department. 775 ILCS 5/7A-102(A) (West 2008). The respondent under the charge must file a response to the charge, and both the charging party and the respondent may file a position statement and other materials with the Department. 775 ILCS 5/7A-102(B) (West 2008). The Department then investigates to determine whether there is substantial evidence that the violation of the Act alleged in the charge has been committed. 775 ILCS 5/7A-102(C) (West 2008). "Substantial evidence is 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). If the Department finds in its report following the investigation that there is no substantial evidence that the Act was violated, the charge is dismissed, but the charging party may file with the Commission a request for review of the dismissal. 775 ILCS 5/7A-102(D) (1), (3) (West 2008).

Upon a properly-filed request for review, "the Commission may consider the Department's report, any argument and supplemental evidence timely submitted, and the results of any additional investigation conducted by the Department in response to the request." 775 ILCS 5/8-103(B) (West 2008). We reverse the Commission's decision on review of the Department's dismissal of a charge only if it was arbitrary and capricious or the Commission abused its discretion. *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 917 (2010).¹

Here, first and foremost, petitioner's charge referred to retaliation in public accommodation without alleging any of the bases for discrimination prohibited by the Act. The Department was required to investigate the charge actually filed by petitioner rather than the one he would with hindsight like to have filed. Secondly, it was not in serious dispute either by the Bank nor in the findings of the Department or Commission that petitioner had complained to Bank managers and supervisors nor that the Bank banned him from its premises. The Bank referred to petitioner's telephone complaints in its response to the charge. Any Bank denial that he had complained as alleged in the charge is attributable to reasonable confusion: petitioner alleged in

¹*Owens* applies this standard to review by the Department's chief legal counsel. However, after *Owens* began, the Act was amended to vest review of the dismissal of a charge with the Commission. Pub. Act 95-243 (eff. Jan. 1, 2008) (amending 775 ILCS 5/7A-102 (West 2008)).

the charge that he lodged his complaints in March 2008 when his own evidence showed that he did so in February. Moreover, contrary to petitioner's argument to the Commission, the Bank did offer a legal, non-pretextual basis for excluding him from its premises: harassment of Bank employees and customers.

Lastly, we see no error in the admission of evidence by the Department or Commission nor in the state of the record submitted to the Commission. The Act clearly allows parties to submit any documents they desire so long as they do so in a timely manner, and both petitioner and the Bank were allowed to do so. Any documents not attached to the Department's report were both referenced in the report as properly-admitted evidence and provided to the Commission by petitioner.

We conclude that the Commission's decision to sustain the Department's dismissal of the charge was not erroneous, nor is there evidence of impropriety by the Department or Commission. Accordingly, the decision of the Commission is affirmed.

Affirmed.