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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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GERALD KAVONIUS,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-MR-781
	)	
THE CITY OF ROCKFORD,	)	Honorable
	)	Eugene G. Doherty,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Hutchinson and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Plaintiff did not show an equal-protection violation in defendant’s prosecution of him for housing-code violations, as plaintiff established, at most, mere selective enforcement and not a “campaign of harassment,” and, in any event, he did not establish that he was treated worse than others who were similarly situated; (2) plaintiff was not denied due process at his administrative hearing: the hearing examiner had given plaintiff three continuances and was not required to give him a fourth, especially where plaintiff was prepared to proceed; (3) the hearing officer was entitled to credit defendant’s testimony over plaintiff’s.

¶ 2 Defendant, the City of Rockford, cited plaintiff, Gerald Kavonius, for 14 housing-code violations. Following a hearing that was continued several times, a hearing examiner found plaintiff guilty of 10 violations. On administrative review, the trial court affirmed the hearing

examiner's decision. Plaintiff appeals, contending that (1) defendant abused its enforcement discretion, (2) defendant denied plaintiff equal protection; (3) defendant denied plaintiff due process; and (4) the hearing examiner erred in evaluating witness credibility. We affirm.

¶ 3 Plaintiff purchased a commercial building at 3041 Kishwaukee Street in Rockford. On August 21, 2013, city inspector James Vronch inspected the property and cited plaintiff for 14 code violations. A notice of violation, summons, and property-maintenance report were mailed to plaintiff, with a hearing set for March 5, 2014. On that date, plaintiff appeared before hearing examiner Timothy Horning, he denied the allegations, and the matter was continued to April 2, 2014.

¶ 4 The hearing was subsequently continued to May 14 and June 11. Each time, plaintiff stated that he was working to correct the violations and requested more time to finish the work. On June 11, Horning continued the matter to July 23. On that date, plaintiff objected to proceeding with the hearing, stating that he had suffered a setback in completing the work. He requested an additional 30 days. Horning denied a further continuance and completed the hearing.

¶ 5 On August 6, Horning issued his written decision, finding plaintiff guilty of 10 violations. He imposed a \$50 fine per violation per day for a total of \$15,000. Plaintiff was ordered to remedy the remaining violations by August 30.

¶ 6 Plaintiff sought administrative review in the circuit court of Winnebago County. Following a hearing, the trial court affirmed the hearing examiner's decision. Plaintiff timely appeals.

¶ 7 Plaintiff's primary contention is that defendant deprived him of equal protection. U.S. Const., amend. XIV. He argues that defendant prosecuted him while he was attempting to

rehabilitate a previously vacant property, yet took no action against neighboring owners who allowed their properties to remain in a state of disrepair.

¶ 8 “The equal[-]protection clause requires that the government treat similarly situated individuals in a similar fashion, unless the government can demonstrate an appropriate reason to treat them differently.” *People v. Masterson*, 2011 IL 110072, ¶ 24. As plaintiff acknowledges, selective enforcement generally does not implicate equal-protection concerns, but he cites *Esmail v. Macrane*, 53 F.3d 176 (7th Cir. 1995), to show that selective enforcement can sometimes rise to the level of an equal-protection violation.

¶ 9 In *Esmail*, the plaintiff alleged that the mayor of Naperville, who was also its liquor-control commissioner, had denied the plaintiff’s application for a license renewal and denied his request for a second license as part of a “ ‘campaign of vengeance’ ” against the plaintiff, that the reasons for the denials were “either trivial or trumped-up charges,” and that state courts had reversed the denials. *Id.* at 178. The complaint listed numerous examples of other liquor licensees who had been guilty of violations more serious than those of which the plaintiff had been accused, but who were punished more lightly if at all. *Id.* Finally, the plaintiff alleged that the denials were based on a personal animosity resulting from his having had a prior license revocation overturned, from his advertising campaign against underage drinking (which implicitly accused village officials of lax enforcement), and from his having withdrawn political support from the mayor. *Id.*

¶ 10 The Seventh Circuit held that these allegations, if true, stated an equal-protection violation. The court observed that selective enforcement *per se*, whether due to “ineptitude or (more commonly) because of lack of adequate resources,” does not violate equal protection. *Id.* The court held, however, that the type of vindictive campaign alleged by the plaintiff implicates

equal-protection concerns. The court elaborated that “[i]f the power of government is brought to bear on a harmless individual merely because a powerful state or local official harbors a malignant animosity toward him, the individual ought to have a remedy” in court. *Id.* at 179. The court did note that the principle “is no doubt subject to abuse by persons whose real complaint is selective prosecution in the sense that is not cognizable in suits to enforce the equal protection clause.” *Id.*

¶ 11 Plaintiff’s case for an equal-protection violation appears to be of this type: a selective-enforcement case presented as a personal vendetta. Missing from plaintiff’s case are any of the elements that distinguished Esmail’s complaint from a routine selective-enforcement case. Although he refers generally to a “campaign of harassment” by defendant, he alleges no motive for such a campaign. He does not contend that the violations of which he was convicted were trivial or trumped-up, and indeed he admitted to most of them at various times in the proceedings. In any event, he fails to provide factual support for the most fundamental element of an equal-protection claim: that others who were guilty of similar or worse violations were treated better. See *Masterson*, 2011 IL 110072, ¶ 25 (“As a threshold matter, though, it is axiomatic that an equal protection claim requires a showing that the individual raising it is similarly situated to the comparison group”). Plaintiff refers generally to some neighboring owners of dilapidated properties who were not cited, but provides no specific examples. In summary, plaintiff has established nothing more than a routine case of selective enforcement, which is not actionable as a violation of equal protection.

¶ 12 Plaintiff also contends that defendant violated his right to due process. This is apparently based on Horning’s denial of a continuance on July 23. On that date, plaintiff objected to proceeding with the hearing, stating that he had suffered a setback in completing the work and

requesting an additional 30 days. An administrative agency possesses broad discretion in determining whether to allow a continuance. *Wilson v. Department of Professional Regulation*, 344 Ill. App. 3d 897, 911 (2003). Here, Horning continued the hearing three prior times to give plaintiff more time to correct the violations, and each time plaintiff failed to complete the work. He provides no reason to believe that an additional continuance would have produced a different result.

¶ 13 Plaintiff does not contend that he was not able to participate in the hearing. See *Chamberlain v. Civil Service Comm'n of Village of Gurnee*, 2014 IL App (2d) 121251, ¶ 46 (“At the core of due process is notice and a meaningful opportunity to be heard.”). Despite his protests, plaintiff was apparently prepared to proceed: he was able to testify and offer documentary evidence.

¶ 14 Plaintiff raises two additional arguments that require only brief comment. Plaintiff contends that Rockford abused its enforcement discretion. However, this appears to be simply an introduction to the equal-protection argument, and, other than quoting the Fourteenth Amendment, it does not cite any authority. To the extent it purports to raise a separate argument, it is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 15 Plaintiff also contends, “Without commenting on the veracity of the witnesses, Rockford’s Administrative Hearing Officer obviously gave greater weight to Rockford’s testimony than to Kavonius’.” Other than baldly stating that this was reversible error, plaintiff does not develop the argument or cite authority. Thus, it is forfeited. *Id.* In any event, the findings of an administrative agency on questions of fact are *prima facie* correct and, if the issue is merely one of witness credibility, we generally should affirm the agency’s decision. *Gregory v. Bernardi*, 125 Ill. App. 3d 376, 383 (1984). Plaintiff provides no reason to disturb the hearing

examiner's findings here. We note that the only specific example plaintiff provides is his testimony that he did not live at the site despite Vronch's testimony that on several occasions he observed food in the refrigerator. However, Horning found plaintiff not guilty of the charge that he resided in a commercial building, thus apparently accepting plaintiff's testimony on this point.

¶ 16 Finally, we note that we are not unsympathetic to plaintiff's plight. If, as plaintiff argues, defendant cited him for numerous violations while he was attempting to rehabilitate a previously vacant structure, yet ignored ongoing violations by his neighbors who were making no effort to improve their buildings, we can understand plaintiff's frustration. However, the wisdom of defendant's actions is not at issue in this case. See *Fumarolo v. Chicago Board of Education*, 142 Ill. 2d 54, 111 (1990) (a court's function is not to pass on the wisdom or lack thereof in government action). That defendant fortuitously prosecuted plaintiff and not his neighbors does not, without more, violate equal protection.

¶ 17 The judgment of the circuit court of Winnebago County is affirmed.

¶ 18 Affirmed.