2020 IL App (1st) 191783-U
No. 1-19-1783

SECOND DIVISION
September 15, 2020

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANDREW U.D. STRAW, Petitioner, v. ILLINOIS STATE BOARD OF ELECTIONS, ILLINOIS HUMAN RIGHTS COMMISSION, and ILLINOIS DEPARTMENT OF HUMAN RIGHTS, Respondents.	)	Petition for Direct Administrative Review of an Order of the Illinois Human Rights Commission. ALS No. 18-0063 IDHR Charge No. 2016 CP 2378

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Coghlan concurred in the judgment.

ORDER

¶ 1 *Held:* Where the Illinois State Board of Elections did not qualify as a place of public accommodation under the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.* (West 2014)), the Illinois Human Rights Commission did not err in dismissing the petitioner's charge for lack of jurisdiction. In the alternative, where there was no evidence that petitioner was denied the services of the Board of Elections or that non-disabled individuals were treated better than petitioner, the Commission did not err in dismissing the petitioner's charge for a lack of substantial evidence.

¶ 2 In this direct administrative review, petitioner, Andrew U.D. Straw, seeks review of an order of the Illinois Human Rights Commission ("Commission") sustaining the Illinois

Department of Human Rights' ("Department") dismissal of his charge of discrimination based on disability for lack of jurisdiction and concluding that the dismissal of Straw's charge was also proper on the basis that there was not substantial evidence of Straw's claim of unlawful discrimination.[1] For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 In August 2016, Straw filed a "Public Accommodation Charge" with the Department, alleging that the Illinois State Board of Elections ("Board"), a place of public accommodation, unlawfully discriminated against him by denying him "full and equal enjoyment" of the Board's services on the basis of his disability. More specifically, Straw alleged that he sought to be on the March 2016 Republican primary ballot for the 8th Congressional District. To get on the ballot, Straw was required to submit a petition for nomination, which was to include the signatures of 0.5% of the qualified primary electors of the Republican party in the 8th Congressional District. 10 ILCS 5/7-10(b) (West 2014). Those signatures were to be given in the presence of the person circulating the petition. 10 ILCS 5/7-10 (West 2014). At the time Straw was seeking nomination, he was required to obtain 475 signatures.

¶ 5 Straw alleged that due to his disability—residual pain from broken legs and pelvis sustained in a prior car accident[2]—he was only able to collect 128 signatures. He further alleged that during the process of collecting signatures, he sought accommodations from the Board in the

[1] We note that Straw's *pro se* petition for review incorrectly listed this case's caption as "Andrew U.D. Straw v. Illinois State Board of Elections, In re 2016 Republican Primary and Disability Discrimination Under the Illinois Human Rights Act." To avoid confusion, we have chosen to use the correct caption, which matches the caption reflected in the record on appeal, in this disposition. For this reason, the caption used in this disposition differs from the title used to docket this matter in our records.

[2] Straw also claimed that he is disabled as a result of "mental illness from poisoning," but he alleges it that it was his "mobility impairment" that served as the basis for the Board's alleged discrimination.

form of collecting electronic signatures over the internet, witnessing signatures via internet video, and submitting fewer than the required number of signatures, but the Board denied all of these requested accommodations. Ultimately, because Straw failed to obtain the required number of signatures, his name was not placed on the ballot. Straw alleged that the refusal to place his name on the ballot deprived him of the full and equal enjoyment of the Board's services and that people who did not have a disability were treated more favorably.

¶ 6 The Department dismissed Straw's charge, concluding that it lacked jurisdiction to conduct an investigation into it, because the Board was not a place of public accommodation under the Illinois Human Rights Act ("Act") (775 ILCS 5/1-101 *et seq.* (West 2014)).

¶ 7 Straw then sought review by the Commission. In his request for review and supporting affidavit, Straw argued that the Department did have jurisdiction over his charge, because not only was the Board a place of public accommodation, but also its members qualified as public officials under the Act. In addition, Straw argued that because he was a potential employee of the federal government, the Board's actions violated the employment provisions of the Act.

¶ 8 In response, the Department argued that the Board did not qualify as a place of public accommodation under the Act and that the Board did not have the authority to unilaterally alter the signature requirement imposed by the Election Code. The Department also argued that the Commission should not consider Straw's claims that the Board members qualified as public officials under the Act or that the Board's actions violated the employment provisions of the Act, because he did not allege any such claims in his charge.

¶ 9 After review, the Commission sustained the Department's dismissal of Straw's charge on the basis that the Department did not have jurisdiction, because the Board did not qualify as a place of public accommodation under the Act. The Commission also went on to sustain the

dismissal on the independent basis that Straw did not present substantial evidence that he was denied full enjoyment of the Board's facilities or services and that a non-disabled person was placed on the ballot despite not having obtained the required number of signatures.

¶ 10 Thereafter, Straw instituted this action for direct review.

¶ 11 ANALYSIS

¶ 12 On direct review, Straw argues that the Commission erred in sustaining the Department's dismissal of his charge for lack of jurisdiction because, under the Act, the Board qualified as a place of public accommodation, the Board members were public officials, and he was a potential federal employee. Straw also argues that he presented substantial evidence of discrimination, because the Board refused to allow him any accommodations in gathering signatures. We conclude that none of these contentions warrant reversal.

¶ 13 Our review in this matter is of the Commission's decision, not the Department's. *Marinelli v. Human Rights Commission*, 262 Ill. App. 3d 247, 253 (1994). Although the Commission's findings and conclusions are presumed to be *prima facie* true and correct (735 ILCS 5/3-110 (West 2018)), we exercise *de novo* review over questions of statutory construction and give no deference to the Commission's conclusions on such questions (*Baksh v. Human Rights Commission*, 304 Ill. App. 3d 995, 999-1000 (1999)). In contrast, the Commission's decision to dismiss a charge for a lack of substantial evidence will not be disturbed unless it was arbitrary and capricious or an abuse of discretion. *Marinelli*, 262 Ill. App. 3d at 253.

¶ 14 Jurisdiction

¶ 15 " 'An administrative agency *** has no greater powers than those conferred upon it by the legislative enactment creating it.' " *Board of Trustees of Southern Illinois University v. Department of Human Rights*, 159 Ill. 2d 206, 210 (1994), quoting *Village of Lombard v.*

Pollution Control Board, 66 Ill. 2d 503, 506 (1977). Accordingly, the jurisdiction of the Department over Straw's charge depends upon the scope of the Act. *Id.*

¶ 16 One of the purposes of the Act is to "secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her *** physical or mental disability *** in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations." 775 ILCS 5/1-102(A) (West 2014). Straw alleged in his charge that he was denied the full and equal enjoyment of a place of public accommodation, in that he was denied the services of the Board when the Board refused to grant him accommodations in collecting the required signatures, resulting in his name not being placed on the ballot. With respect to public accommodations, the Act provides in relevant part:

> "It is a civil rights violation for any person on the basis of unlawful discrimination to:
>
> (A) Enjoyment of Facilities, Goods, and Services. Deny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation;
>
> ***
>
> (C) Public Officials. Deny or refuse to another, as a public official, the full and equal enjoyment of the accommodations, advantage, facilities or privileges of the official's office or services or of any property under the official's care because of unlawful discrimination."

775 ILCS 5/5-102 (West 2014). The Act goes on to define the following relevant terms:

> "(A) Place of Public Accommodation. 'Place of public accommodation' includes, but is not limited to:
>
> (1) an inn, hotel, motel, or other place of lodging ***;

(2) a restaurant, bar, or other establishment serving food or drink;

(3) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) an auditorium, convention center, lecture hall, or other place of public gathering;

(5) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) public conveyances on air, water, or land;

(8) a terminal, depot, or other station used for specified public transportation;

(9) a museum, library, gallery, or other place of public display or collection;

(10) a park, zoo, amusement park, or other place of recreation;

(11) a non-sectarian nursery, day care center, elementary, secondary, undergraduate, or postgraduate school, or other place of education;

(12) a senior citizen center, homeless shelter, food bank, non-sectarian adoption agency, or other social service center establishment; and

(13) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

***

> (C) Public Official. 'Public official' means any officer or employee of the state or any agency thereof, including state political subdivisions, municipal corporations, park districts, forest preserve districts, educational institutions, and schools."

775 ILCS 5/5-101 (West 2014).

¶ 17 It is undisputed that for Straw's allegations to fall within the scope of section 5-102(A) of the Act, the Board must qualify as a place of public accommodation under the Act. The Commission concluded that it did not, and we agree. There is no question that the Board is not included in the list of public accommodations contained in section 5-101(A) of the Act. It is also undisputed that the list of public accommodations in section 5-101(A) of the Act is not exhaustive. Thus, to determine whether the Board qualifies as a place of public accommodation under the Act, we apply the doctrine of *ejusdem generis*. Under that doctrine, "when a statute lists several classes of persons or things but provides that the list is not exhaustive, the class of unarticulated persons or things will be interpreted as those 'others such like' the named persons or things." *Board of Trustees*, 159 Ill. 2d at 211. In the context of determining whether an entity constitutes a place of public accommodation, courts have looked at whether the activity in which the entity was engaged was similar to the activities engaged in by the places listed in the Act, whether the entity's services were provided only after pre-screening and assessing the individual's qualifications, and whether the entity provided its services to people like any one customer is the same as the last. See *Gilbert v. Department of Human Rights*, 343 Ill. App. 3d 904, 909-10 (2003) (summarizing the public accommodations analysis in a number of cases).

¶ 18 As an initial matter, we observe that although Straw makes the conclusory assertion that the Board qualified as a place of public accommodation under the Act, he makes no attempt to explain how the Board falls within the scope of the Act's definition of a place of public

accommodation or how the Commission's conclusion that the Board was not a place of public accommodation was erroneous. He also fails to cite any authority that would offer any insight into the basis for his assertion. For this reason, his assertion that the Board was a place of public accommodation is waived. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (requiring that the argument section of appeals briefs "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009) ("The failure to assert a well-reasoned argument supported by legal authority is a violation of Supreme Court Rule 341(h)(7) [citation], resulting in waiver."); *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986) ("A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.").

¶ 19 Even so, we conclude that the Board is not a place of public accommodation. Unlike the items listed in the statutory definition, the Board is not a physical location open to the general public. Rather, it is a government body charged with administering laws. Also, unlike the public accommodations listed in the definition, the Board is not a commercial, recreational, educational, or social service establishment intended to offer goods, services, or accommodations to anyone and everyone. Rather, the purpose of the Board is confined to supervising the administration of the registration and election laws in Illinois for those who have met the specified qualifications. 10 ILCS 5/1A-1 (West 2014). In other words, the Board's services in placing individuals on election ballots—the service which Straw contends he was denied—is open only to those who meet the requirements to be on the ballots, not to just any member of the public who might desire

to be on the ballot. For these reasons, we agree with the Commission's conclusion that the Board did not qualify as a place of public accommodation.

¶ 20 Straw contends, nevertheless, that the Department had jurisdiction to review his charge because the Board and its staff qualified as public officials under section 5-101(C) of the Act and, under section 5-102(C) of the Act, public officials are prohibited from engaging in discrimination.[3] Assuming without deciding that Straw is correct that the Board and its staff qualify as public officials under section 5-101(C), the Act does not prohibit them from discrimination in any and all contexts. Instead, section 5-102(C) simply prohibits public officials from denying an individual "the full and equal enjoyment of the accommodations, advantage, facilities or privileges of the official's office or services ***." 775 ILCS 5/5-102(C). Thus, the Department's jurisdiction still hinges on whether the Board qualified as an "accommodation[]." See *Board of Trustees*, 159 Ill. 2d at 212 (where the Board of Trustees admitted they were public officials under the Act, "the issue [became] whether academic programs are 'accommodations' of these public officials for purposes of section 5-102(C)").

¶ 21 Our supreme court has held that the accommodations of a public official's office in section 5-102(C) of the Act refers to public accommodations as used in section 5-102(A) of the Act. Accordingly, the same definition of public accommodations that applied to section 5-102(A) of the Act applies to the accommodations of a public official's office. *Id.* at 212-13. As

[3] The respondents argue that Straw waived this contention by failing to allege in his charge unlawful discrimination by a public official under section 5-102(C) of the Act. The "Public Accommodation Complainant Information Sheet" Straw filed with the Department contained a question asking what type of respondent discriminated against Straw. In response, Straw checked the box labeled "Professional Office/Public Official." According to Straw, his checking of that box constituted an allegation of unlawful discrimination by a public official under section 5-102(C) of the Act. We choose to give Straw the benefit of the doubt under these circumstances, because the documents submitted to the Department, if construed liberally, could encompass a claim of discrimination by a public official and because, in any case, Straw's claim fails as explained above.

a result, the refusal to place Straw's name on the ballot because he did not obtain the required number of signatures, even if done by public officials, did not violate the strictures of section 5-102(C) of the Act, because the Board is not a public accommodation. See *id.* (although the Board of Trustees were public officials, the Department lacked jurisdiction to investigate the alleged race and sex discrimination against the Board of Trustees because the academic program at issue did not qualify as a public accommodation).

¶ 22 Straw also argues that as a potential candidate for Congress, he was a potential employee of the federal government, and, therefore, the Department had jurisdiction over his charge under the provisions of the Act that prohibit unlawful discrimination in the employment context. Straw has forfeited this contention by failing to raise it in his charge. *Deen v. Lustig*, 337 Ill. App. 3d 294, 305 (2003) (assertions of a new act of discrimination must be raised in a new or amended charge to be considered); *Kalush v. Illinois Department of Human Rights Chief Legal Counsel*, 298 Ill. App. 3d 980, 991 (1998) (Department would not have jurisdiction to review an allegation not timely raised in the charge).

¶ 23 Nowhere in his charge does Straw make any allegations regarding employment or the provisions of the Act governing discrimination in employment. Straw contends that it was unnecessary for him to cite the employment provisions of the Act in his charge, because Illinois is a fact pleading state. Although this is true, Straw also failed to allege any facts that would suggest that he intended to allege a claim of employment discrimination. Rather, all of Straw's factual allegations focused on the Board's alleged status as a place of public accommodation. In fact, the forms that Straw used to file his charge are specifically labeled as related to public accommodation claims. Accordingly, because there is nothing in the record that indicates that

Straw made a claim of employment discrimination to the Department, we decline to consider one here for the first time.

¶ 24 Moreover, other than claiming that he was a potential employee of the federal government, Straw makes no argument on appeal as to how his claim fits into the scope of employment discrimination claims under the Act. In fact, on appeal, Straw does not even cite any of the provisions of the Act that address discrimination in employment. Accordingly, even if Straw had raised a claim of employment discrimination in his charge, he waived any claim on appeal that the Department had jurisdiction to investigate his claim because it fell within the scope of the Act's employment provisions. See Ill. S. Ct. R. 341(h)(7); *Sakellariadis*, 391 Ill. App. 3d at 804; *Thrall Car Manufacturing Co.*, 145 Ill. App. 3d at 719.

¶ 25 In sum, we conclude that the Department lacked jurisdiction to investigate and review Straw's charge because the Board does not qualify as a place of public accommodation under the Act. Accordingly, the Board's alleged discriminatory acts could not violate sections 5-102(A) or 5-102(C).

¶ 26 Substantial Evidence

¶ 27 Although our conclusion that the Commission correctly found that the Department lacked jurisdiction to review Straw's charge effectively disposes of this matter, we also conclude that the Commission's dismissal of Straw's charge is sustainable on the independent ground that there was a lack of substantial evidence that a civil rights violation had occurred. "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 2014). As previously stated, the Commission's decision to dismiss a charge for a lack of substantial evidence to support it will

not be disturbed unless it was arbitrary and capricious or an abuse of discretion. *Marinelli*, 262 Ill. App. 3d at 253.

¶ 28 The Act's public accommodations provisions are similar to those found in Title II of the federal Civil Rights Act of 1964 (42 U.S.C. § 2000a (2000)), which protects individuals' "full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation," albeit on the grounds of discrimination based on race, color, religion, or national origin. When analyzing claims of discrimination under the Act, it is not uncommon for us to look for guidance from federal cases. See *Zaderaka v. Illinois Human Rights Commission*, 131 Ill. 2d 172, 178 (1989). Accordingly, because Straw has presented no direct evidence of discrimination, we apply the three-step indirect test. *Id.* at 178-79. First, Straw must establish by a preponderance of the evidence a *prima facie* case of unlawful discrimination. Success on that front gives rise to a rebuttable presumption of discrimination, which the Board would be required to rebut by articulating a legitimate, nondiscriminatory reason for its actions. The burden would then shift back to Straw to prove by a preponderance of the evidence that the Board's articulated reason was pretextual. *Id.* To make out a *prima facie* case of public accommodation discrimination, Straw must show the following: (1) he is a member of a protected class, (2) he attempted to exercise the right to the full benefits and enjoyment of a place of public accommodation, (3) he was denied those benefits and enjoyment, and (4) he was treated less favorably than similarly situated persons outside of his protected class. *McCoy v. Homestead Studio Hotels*, 390 F. Supp. 2d 577, 583-85 (S.D. Tex. 2005).

¶ 29 On review, we conclude that Straw has failed to demonstrate that the Commission abused its discretion in dismissing his charge for a lack of substantial evidence. In this case, the

Commission explicitly stated that Straw failed to establish that the was denied the full and equal enjoyment of the Board, because the Board allowed him physical access to its facility and accepted and reviewed his petition as required. In addition, the Commission explained that Straw failed to establish that non-disabled individuals were afforded the accommodations he requested and was denied or that a non-disabled person was placed on the ballot despite not obtaining the required number of signatures.

¶ 30 Despite this clear explanation by the Commission of its basis for finding a lack of substantial evidence, Straw's only response and argument on appeal is that the Board discriminated against him by refusing his requested accommodations. Clearly, the conclusory statement that the denial of the requested accommodations—especially given that Straw cites no authority in support—constitutes unlawful discrimination does not rebut or demonstrate error in the Commission's conclusions. In addition, Straw fails to make any effort to address the elements of a *prima facie* case of public accommodation discrimination or explain how the alleged facts of his claim satisfy those elements.

¶ 31 Finally, even putting aside the shortcomings in Straw's arguments on appeal, we do not find the Commission's dismissal of Straw's charge for lack of substantial evidence to be an abuse of discretion. Based on the record before us, we see no evidence—or even allegations—that the Board denied Straw the benefits of its services. As discussed above, the Board's services consist of administering the election laws. The election law at the time required Straw to obtain 475 signatures witnessed in person in order to get on the ballot. Straw's complaint is not that the Board did not properly administer that law with respect to him, but that it *did* administer that law with respect to him, *i.e.*, did not deviate from that law on his behalf by allowing him to obtain electronic signatures or to submit fewer than the required number of signatures. It is also worth

noting that the Board's services do not include revising the statutory requirements for obtaining a place on a ballot. In fact, the Board is expressly prohibited from taking any actions outside of those permitted by law. 10 ILCS 5/1A-1 (The Board "shall perform only such duties as are or may hereafter be prescribed by law."). Accordingly, granting the accommodations requested by Straw did not fall within the scope of services provided by the Board, and, thus, any denial of those accommodations cannot be considered a denial of the Board's services.

¶ 32 In addition, although he made the general allegation in his charge that candidates who did not have disabilities were treated more favorably than him, Straw offered no evidence or details in support of that allegation. For instance, Straw did not offer any evidence or allegations that non-disabled individuals were granted the accommodations Straw requested or that non-disabled individuals were permitted to appear on the ballot absent the required number of signatures. In fact, in his "Public Accommodation Complainant Information Sheet," Straw explicitly stated that "[n]on-disabled people got on the ballot *with 475+ signatures*." (Emphasis added.)

¶ 33 Because Straw failed to offer any evidence in support of at least two elements of a *prima facie* case of public accommodation discrimination, we conclude that the Commission did not abuse its discretion in dismissing Straw's charge for a lack of substantial evidence.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, the order of the Illinois Human Rights Commission dismissing Andrew U.D. Straw's charge is affirmed.

¶ 36 Affirmed.