STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008SH3427
	)	EEOC NO.: N/A
JINRUN GAO and SHENJU RONG,	)	HUD NO.: 05-08-1069-8
	)	ALS NO.: 08-0423
Complainants.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Rozanne Ronen presiding, upon Complainants' Request for Review ("Request") of the Notice of Dismissal ("Notice") issued by the Department of Human Rights ("Department") of Charge No. 2008SH3427, Jinrun Gao and Shenju Rong, Complainants, and Brickyard Apartments LLC, Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report ("Report") and the Complainants' Request and supporting materials, and the Department's response to Complainants' Request; and the Commission being fully advised of the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Complainants' charge is **SUSTAINED** on the following grounds:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On May 19, 2008, the Complainants filed a two-count charge of discrimination with the Department. The first count alleged that the Respondent subjected the Complainants to discriminatory terms, conditions, privileges, or services and facilities because of their race, Asian, in violation of § 3-102(B) of the Illinois Human Rights Act ("Act"). The second count alleged that the Respondent failed to make reasonable accommodations for Complainant Rong's physical disability, asthma, in violation of § 3-102.1(C)(2) of the Act.

2. The Department's investigation into the Complainants' charge revealed that the Respondent had a lease with the Complainants from August 1, 2007 until July 31, 2008. The Department's investigation also revealed that in January 2008, the Complainants complained that smoke was entering their apartment from a nearby unit

and that the smoke was aggravating Complainant Rong's asthma. The Respondent suggested that the Complainants filter the air in their unit.

3. The Complainants and the Respondent agree that at some point during the Complainants' tenancy, in response to the Complainants' complaints of odors and smoke, the Respondent's maintenance personnel and an inspector from the City of Bloomington checked the Complainants' unit for smoke and did not detect anything abnormal.

4. The Department's investigation also showed that on February 2, 2008, the Complainants entered the Respondent's office and demanded allowance to terminate their lease because of Complainant Rong's asthma. The Respondent stated that they could either buy the remaining time on their lease or sublease their apartment. After the Complainants declined both options, the Department's investigation showed that an altercation ensued, creating a disturbance on the Respondent's property, which resulted in one of the two parties calling the police.

5. On February 4, 2008, the Respondent notified the Complainants that as a result of the February 2, 2008 disturbance, they were banned from using the Respondent's clubhouse/office for the duration of their tenancy, and that their lease would not be renewed.

6. Eventually, the Respondent told the Complainants that if it received medical documentation that Complainant Rong needed to move from the apartment because of her asthma, then the Respondent would release the Complainants from their lease early and without penalty. The Department's investigation revealed that on February 11, 2008, after receiving the medical documentation, the Respondent did in fact release the Complainants on the agreed terms.

7. On August 28, 2008, the Department dismissed the Complainants' charge for lack of substantial evidence of discrimination. On October 1, 2008, the Complainants filed a timely request for review.

8. In their request for review, the Complainants contend that the Respondent banned the Complainants from the clubhouse because of their race and that the Respondent failed to reasonably accommodate Complainant Rong's physical disability, asthma, in violation of the Act.[1]

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[1] In their request for review, the Complainants also allege that the Department refused to investigate their allegations that (1) the Respondents ignored multiple requests for maintenance to their apartment because of their race, and (2) the Respondents refused to accommodate Complainant Rong's disability when it did not invoke smoke-free policies, change the ventilation system or repair the Complainants walls. The Department housing discrimination complaint that the Complainants reviewed, signed and dated does not contain these allegations of discriminatory conduct. Therefore, these allegations amount to the assertion of new acts of discrimination based on different conduct, and the Commission does not have jurisdiction to review new acts of discrimination based on different conduct raised for the first time in a request for review. *See* Deen v. Lustig, 337 Ill.App.3d 294 (4th Dist. 2003).

9. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainants' charge for lack of substantial evidence.

Race Discrimination

10. As to the Complainants' claim that they were banned from the Respondents' clubhouse/office because of their race, the Commission finds that the Respondent demonstrated a legitimate, non-discriminatory reason for its actions. Further, the Complainants failed to prove that this proffered reason was mere pretext for discrimination.

11. Specifically, both the Complainants and the Respondent agree that on February 2, 2008, the parties were involved in some sort of altercation that caused a disturbance on the Respondent's property and which ultimately led to the police being called to the scene. It is undisputed that two days after this incident, the Complainants received notice that they were banned from using the Respondent's clubhouse/office, and that their lease would not be renewed. The Complainant has not submitted any evidence that would suggest that it was the Complainants' race, and not the disturbance, that caused the Respondent to engage in this course of action.

12. Further, the Complainants could not raise an inference that the Respondent's proffered reason for its actions was mere pretext for unlawful discrimination because the Complainants did not present any evidence that similarly situated non-Asian tenants who created disturbances on the Respondents' property were treated more favorably.

13. To the contrary, the undisputed evidence in the investigation file showed that there were two prior instances where the Respondent also banned white tenants from the clubhouse/office, and refused to renew their leases, after those tenants created disturbances on the Respondent's premises.

14. Accordingly, it is the Commission's decision that the Complainants have not presented any evidence to show that the Department's dismissal of the first count of their charge, alleging race discrimination, was not in accordance with the Act. The Complainants' Request is not persuasive.

Failure to Accommodate

15. The Commission further finds that there is no substantial evidence to support the Complainants' claim that the Respondent failed to reasonably accommodate Complainant Rong's physical disability, asthma.

16. The undisputed facts in the investigation file demonstrate that the Respondent took steps to investigate the Complainants' concerns and complaints about smoke entering their unit. The Respondent's maintenance personnel checked the Complainants' unit numerous times following complaints of odors and smoke. The

parties agree that the Respondent went so far as to call in a City of Bloomington inspector to try to detect the presence of smoke in the unit.

17. Despite the fact that neither the Respondent's maintenance personnel or the city inspector detected smoke in the Complainants' unit, the uncontradicted evidence in the investigation file shows that the Respondent accommodated Complainant Rong's disability by granting the Complainants' request for early termination of their lease, without penalty, once it received medical documentation of the need for the accommodation.

18. Accordingly, it is the Commission's decision that the Complainants have not presented any evidence to show that the Department's dismissal of the second count of their charge, alleging failure to reasonably accommodate a disability, was not in accordance with the Act. The Complainants' Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Complainants' charge is hereby **SUSTAINED.**

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 Respondent Brickyard Apartments, LLC, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
) Entered this 14th day of January 2009.
HUMAN RIGHTS COMMISSION)

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Rozanne Ronen