STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CH3108
	)	EEOC NO.: N/A
MICHAEL WALKER,	)	HUD NO.: 05-08-0953-8
	)	ALS NO.: 08-0452
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of two, Commissioners Marti Baricevic and Robert S. Enriquez presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal ("Notice") issued by the Department of Human Rights ("Department") of Charge No. 2008CH3108, Michael Walker, Complainant, and Gerry Heffernan, Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report ("Report") and the Complainant's Request and supporting materials, and the Department's response to the Complainant's Request; and the Commission being fully advised of the premises;

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

LACK OF SUBSTANTIAL EVIDENCE

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

1. On April 25, 2008, the Complainant filed a charge of discrimination with the Department, alleging that the Respondent failed to accommodate his physical disability, in violation of § 3-102.1(C)(2) of the Illinois Human Rights Act ("Act"). On September 15, 2008, the Department dismissed the Complainant's charge for lack of substantial evidence. On November 12, 2008, the Complainant filed a timely request for review.

2. The Department's investigation revealed that the Complainant rents a unit at the 1355 W. Washington Boulevard Condominium, which is managed and

controlled by the Washington Boulevard Condominium Association ("Association"). The Respondent is a member of the 1355 W. Washington Boulevard, LLC ("Company"), the company that developed the condominium. The Department's investigation showed that in June 2003, the Company transferred ownership of the condominium to the Association and assigned twenty-five of twenty-six parking spaces to the units. The Complainant's unit was assigned a parking space that does not accommodate his lift-equipped van. The Company retained ownership of parking space P-9, a space immediately adjacent to an access aisle.

3. The Department's investigation also showed that between July 2007 and June 2008, the Complainant asked the Respondent to switch parking spaces with him so that the Complainant would be able to park his van and use the access aisle, but the Respondent refused. The Respondent's articulated non-discriminatory reason for not trading parking spaces with the Complainant was that the Respondent did not have a duty to accommodate the Complainant. The Department also learned that the Respondent has not managed or administered the Association's business since the Company transferred ownership to the Association in 2003.

4. The Complainant contends that the Association has a duty to accommodate the Complainant's request. Further, the Complainant alleges that the parking spaces are limited common elements, in support of which he refers to the plat of survey in the condominium's Declaration of Condominium Ownership, showing that the twenty-five assigned parking spaces were limited common elements. The Complainant also argues that the Respondent never produced a deed proving that he and/or the Company owns parking space P-9 and contends that the parking space may still be a common element over which the Association has control.

5. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge because the Respondent articulated a legitimate non-discriminatory reason for not accommodating the Complainant. The Complainant has not established a relationship between himself and the Respondent that would give rise to a duty on the Respondent's part to accommodate him. Specifically, the uncontradicted evidence in the investigation file shows that the Respondent did not manage or administer the Association's business during the time of the alleged adverse action. The Complainant presented no evidence and the Department's investigation did not reveal any evidence that the Respondent engaged in any real estate transaction with the Complainant or the owners from whom the Complainant is renting that would create a duty to accommodate. While it is unfortunate that the Respondent refused to trade parking spaces with the Complainant, nothing in the Act requires the Respondent to accommodate the Complainant.

6. The Commission makes no determination as to whether the Association has a duty to accommodate the Complainant because the Complainant did not file a charge of discrimination against the Association as a Respondent.

7. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of his charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Complainant's 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 Gerry Heffernan 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 28th day of January 2009.
HUMAN RIGHTS COMMISSION	)	

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez