STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008SH3023
	)	HUD NO.: 05-08-0913-8
JENNIFER INMAN,	)	ALS NO.: 08-0513
	)	
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Greg Simoncini and Diane Viverito, presiding, upon the Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008SH3023, Jennifer Inman, Complainant, and Colony West Condominium Association, Mark Voss a/k/a Mark Hubbard[1], and Jeff Corley, Respondents; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation 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 upon 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. The Complainant filed an unperfected thirteen-count charge of discrimination with the Department on April 24, 2008, perfected on May 2, 2008, and amended on August 29, 2008. The Complainant alleged that the Respondents committed various acts of housing discrimination in violation of Sections 3-102(B), 3-102.1(B) and 3-102.1(C)(2) of the Illinois Human Rights Act (the "Act"). The Department dismissed the Complainant's charge on October 17, 2008, for lack of substantial evidence. The Complainant thereafter filed a timely request for review on November 20, 2008.

[1] According to the Department's Investigation Report, Respondent Mark Voss a/k/a Mark Hubbard has used the names Mark Voss and Mark Voss-Hubbard in the past, but now currently goes by the name of Mark Hubbard. Therefore, he will be referred to in this Order as "Respondent Hubbard."

2. The undisputed evidence in the investigation file shows that the Complainant leased a three-bedroom condominium unit in a 266-unit housing subdivision. All common areas of the subdivision are controlled by Respondent Association. All condominium units in the subdivision are privately owned. Respondent Hubbard was the owner of the condominium unit that the Complainant was leasing. The leasing period was from June 1, 2007 through May 31, 2008.

3. The Complainant resided in the condominium unit with her disabled child (autism and ADHD), and a second younger child (no disability alleged). The Complainant's disabled child sometimes had "temper tantrums" that involved outbursts, such as screaming, yelling, or throwing objects, and the "temper tantrums" were alleged to be caused by the child's disability.

4. When the Complainant sought to renew her lease with Respondent Hubbard, he declined renewal of her lease because he claimed to have received notice of complaints from other tenants regarding noise coming from the Complainant's unit. Respondent Hubbard also claimed to have received violation notices regarding the Complainant from Respondent Association and Respondent Corley, who was the property manager for Respondent Association. The Complainant alleged in her complaint that the complaints and violation notices about excessive noise related to noise caused by her disabled child, as well as her younger, non-disabled child.[2]

5. The Complainant asked Respondent Hubbard to accommodate her child's disability by renewing her lease. The Complainant also asked Respondent Association and Respondent Corley to accommodate her by not fining her or Respondent Hubbard for the alleged noise violations. Finally, the Complainant asked that Respondents Association and Corley accommodate her by moving her to a different three-bedroom unit on the ground floor, or to a single-family home in the subdivision.

6. Respondents Association and Corley stated that there were no three-bedroom units located on a ground floor, and that further, all units, including single-family homes, were privately owned. The Complainant's lease with Respondent Hubbard was not renewed.

7. Thereafter, the Complainant filed a thirteen-count charge of housing discrimination (*Counts A-M*) against the Respondents in which she alleged various counts of disability and familial status discrimination.

8. After an investigation, the Department dismissed all thirteen counts of the Complainant's charge for lack of substantial evidence. In its response to the Complainant's Request, the Department asked the Commission to vacate its dismissal of all but four counts of the charge[3]: **(a)** *Count D,* which alleged that Respondent

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[2] The Complainant did allege that the noise caused by her children was no louder or no more excessive than noise caused by other children who resided in the subdivision.

[3] Pursuant to 56 Ill. Adm. Code sec. 5300.460, because the Department did not oppose the Complainant's Request for Review as to Counts A, B, C, E, F, H, I, J, and K of the charge, on December 17, 2008, the Commission's Executive Director entered an order which automatically vacated the dismissal of counts A, B, C, E, F, H, I, J and K of the charge and remanded those counts to the Department for further investigation.

Hubbard subjected the Complainant to unequal terms and conditions by threatening fines on the basis of her child's disability; **(b)** *Count G*, which alleged that Respondent Hubbard subjected the Complainant to unequal terms and conditions by threatening to fine her because of her familial status; **(c)** *Count L*, which alleged that Respondent Association failed to make a reasonable accommodation for a disability by refusing to move the Complainant to a different three-bedroom unit or a single family home, and **(d)** *Count M*, which alleged that Respondent Corley failed to make a reasonable accommodation for a disability by refusing to move the Complainant to a different three-bedroom unit or a single family home.

9. Therefore, the only matter before the Commission is the review of the Department's dismissal of Counts D, G, L, and M of the Complainant's charge.

10. The Commission's review of the Department's investigation file leads it to conclude that the Department properly dismissed Counts D,G, L and M of the Complainant's charge for lack of substantial evidence.

11. As to *Count D*, the Commission finds that the Department properly determined that the Complainant could not establish a *prima facie* case of disability discrimination against Respondent Hubbard because there was no evidence in the file that Respondent Hubbard had the authority to fine the Complainant for violating Respondent Association's policies, or that Respondent Hubbard threatened to fine the Complainant. In fact, it is clear from the undisputed evidence that only Respondent Association had the power to levy fines against Respondent Hubbard, and that he was liable to pay fines based either on his own violations of Association rules, or based on violations by his tenants.

12. For the same reason that the Department properly dismissed *Count D* of the charge against Respondent Hubbard, the Commission finds that the Department also properly dismissed *Count G* of the charge against Respondent Hubbard, which alleges that Respondent Hubbard threatened to fine the Complainant because of her familial status. Again, there is no evidence that Respondent Hubbard had any authority to fine the Complainant for violating any of Respondent Association's rules.

13. *Count L* and *Count M* of the charge are against Respondent Association and Respondent Corley, respectively. *Count L* and *Count M* make the same allegations as to both Respondent Association and Respondent Corley: That Respondents Association and Corley failed to make a reasonable accommodation for the Complainant's child's disability because they refused to move her to either a single-family home or to a three-bedroom unit on a ground floor.

14. The Commission finds that the Department correctly dismissed *Count L* and *Count M* for the same reason: because there is no evidence in the file that Respondents Association and/or Corley had the ability to accommodate the Complainant in the manner that she requested.

15. Specifically, the undisputed evidence in the record shows that all condominium units in the subdivision, including single-family homes, are privately owned. There was no evidence that either Respondent Association or Respondent Corley owned or

controlled any of the units. Therefore there is no evidence that either or both of these Respondents had the power or authority to simply transfer the Complainant to another condominium unit. The Complainant's only recourse would be to enter into a private leasing agreement with a unit owner, and there is no evidence in the file that either Respondent Association or Respondent Corley had the authority to compel a unit owner to enter into a leasing agreement with the Complainant in order to accommodate her child's disability.

16. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of Counts D,G, L and M charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Counts D, G, L and M 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 the Respondents Colony West Condominium Association, Mark Voss a/k/a Mark Hubbard, and Jeff Corley, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
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HUMAN RIGHTS COMMISSION)

Entered this 18th day of February 2009.

Commissioner Munir Muhammad

Commissioner Greg Simoncini

Commissioner Diane Viverito