STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008SF2625
	)	EEOC NO.: 21BA81513
CHERIE REED,	)	HUD NO.: N/A
	)	ALS NO.: 09-0065
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Yonnie Stroger presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008SF2625, Cherie Reed, Complainant, and Casino Queen, Inc., Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request, 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 March 20, 2008, the Complainant filed a charge of discrimination with the Department, in which she alleged that the Respondent subjected her to unequal terms and conditions of employment based on her race and color, African American and black[1], in violation of § 2-102(A) of the Illinois Human Rights Act ("Act"), and in retaliation for having engaged in a protected activity, in violation of § 6-101(A) of the Act. On January 21, 2009, the Department dismissed the Complainant's charge for lack of substantial evidence. On February 20, 2009, the Complainant filed a timely request for review.

2. The Department's investigation revealed that the Complainant worked for the Respondent as a Uniform Attendant. The Complainant's duties included covering the Respondent's coat check area while the coat check employees were on break. While covering these breaks, the Complainant was not allowed to keep the tips received. The Complainant worked full-time until she was reduced to part-time hours in February 2008. The Department's

[1] From the investigation file, the Complainant appeared to be asserting that the Respondent was also discriminating against her because she was a darker-skinned African American, hence her allegation of color discrimination.

investigation also showed that the Complainant was disciplined by her supervisor for a work error in February 2008.

3. The Department's investigation also revealed that the Respondent articulated non-discriminatory reasons for its actions. Specifically, the Respondent stated that: it reduced the Complainant's hours due to a reduction in workload in the Complainant's department and efforts to make the Complainant's department more profitable; it disciplined the Complainant because the Complainant made an error; and other similarly situated employees who were not in a protected class were also barred from keeping the tips that they received while covering the coat check area.

4. In her charge of discrimination filed with the Department, the Complainant alleged that she opposed unlawful discrimination in November 2007 when she hired an attorney to pursue a discrimination suit against the Respondent. The Complainant contends that the attorney may have sent the Respondent a letter advising it of a potential discrimination lawsuit. In her Request, the Complainant contests several of the Department's findings. She also argues that the Department based its decision to dismiss her charge on witness credibility determinations.

5. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge because the Complainant did not provide any evidence that the Respondent subjected her to discriminatory terms or conditions of employment because of her race or color, or in retaliation for the Complainant's participation in a protected activity. Further, the Complainant presented no evidence that the Respondent's articulated non-discriminatory reasons were pretext for unlawful discrimination. If no substantial evidence of discrimination exists after the Department's investigation of a charge, the charge must be dismissed. *See* 775 ILCS 5/7A-102(D)(2008).

6. The evidence in the investigation file supports the Department's dismissal. First, the investigation file shows that the Respondent experienced an economic downturn, reflected in a loss of revenue from 2007 to 2008. The undisputed evidence in the file shows that in 2008, in order to remain profitable, the Respondent instituted a hiring freeze in 2008, laid off some of its employees, and reduced the hours of various employees of different races and colors, including a lighter-skinned African American woman. Second, the Respondent has a collective bargaining agreement ("CBA") that covers the Complainant's position. The CBA establishes that the Respondent may take disciplinary action against an employee if an employee displays negligence or carelessness in the performance of her duties. The Complainant does not dispute that she committed the work error. There is no evidence to suggest that the Respondent was not adhering to the CBA when it disciplined the Complainant for the February 2008 work error. Further, there is undisputed evidence that the same supervisor, who disciplined the Complainant in February 2008, had also previously disciplined a white male employee in December 2007 for a work error. Finally, the evidence also shows that other Uniform Attendants of different races and colors were unable to keep tips when they relieved coat check employees.[2]

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[2] The Department's Response also questions its jurisdiction pursuant to § 7A-102(A) of the Act to investigate the issue of the coat check tips because the Complainant most recently relieved coat check personnel approximately three years prior to the filing of the charge. The jurisdictional issue is not addressed above because the Department did investigate the Complainant's allegation of not receiving coat check tips and the Complainant presented no evidence of unlawful discrimination.

7. There is also no evidence that the Respondent retaliated against the Complainant for engaging in a protected activity because there is no evidence that the Respondent ever received any notice that the Complainant hired an attorney with the intent to file a discrimination lawsuit against it. A *prima facie* case for retaliation requires: (1) that the Complainant engaged in a protected activity; (2) that the Respondent committed an adverse action against the Complainant; and (3) that a causal connection existed between the protected activity and the adverse action. Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035 (3rd Dist. 2000).

8. Assuming that hiring an attorney for the purpose of filing a discrimination lawsuit would constitute a protected activity under the Act, the Complainant presents no evidence that the Respondent was ever made aware that she had engaged in this protected activity. While the Complainant asserts that her attorney "may have" sent the Respondent notice of her intent to file a discrimination lawsuit against it, the Complainant has not presented any evidence that such a letter was ever even written by her attorney, let alone sent to the Respondent. Therefore, because there is no evidence that the Respondent ever received notice that the Complainant hired an attorney to file a discrimination lawsuit against it, there is no evidence that the Respondent took adverse action against the Complainant because she engaged in a protected activity.

9. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of her 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 the Respondent, Casino Queen, Inc., 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 6th day of May 2009.
HUMAN RIGHTS COMMISSION)

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Yonnie Stroger