STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CH3422
	)	EEOC NO.: N/A
JAMES GARNER,	)	HUD NO.: 050810878
	)	ALS NO.: 09-0091
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008CH3422, James Garner, Complainant, and GMAC Homecomings Financial, Respondent; 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 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 May 22, 2008, the Complainant filed an unperfected charge of discrimination with the Department, perfected on September 16, 2008, in which he alleged that the Respondent refused to sell a house to him and subjected him to unequal terms, conditions, or privileges relating to the sale of a house because of the Complainant's race (African American), in violation of § 3-102(A) and § 3-102(B) of the Illinois Human Rights Act ("Act"). On January 23, 2009, the Department dismissed the Complainant's charge for lack of substantial evidence. On February 27, 2009, the Complainant filed a timely request for review.

2. The Department's investigation revealed that the Respondent sold certain foreclosed real property via an auction that was open to the general public. Certain property was sold "with reserve," which meant that the Respondent was entitled

to accept or reject the highest bid on the reserved property. The Complainant placed a bid of $100,000.00 on one of the Respondent's reserved properties (the "Subject Property") on September 20, 2007 ("September 2007 bid"). The September 2007 bid was the highest bid on the Subject Property, making him the successful bidder at the auction. According to the Complainant,[1] the Respondent counter-offered the Complainant's bid with $125,000.00, which the Complainant did not accept. The Subject Property was released back to auction.

3. The Department's investigation showed that in November 2007, during another auction, the Complainant placed a successful bid of $55,000.00 on the Subject Property ("November 2007 bid"). After flooding occurred in the basement of the Subject Property, the Respondent notified the Complainant that it was unable to obtain a water certificate, which would result in a delay of the closing date. A dispute arose between the Complainant and the Respondent and in December 2007, the Complainant voluntarily terminated the sale. The Subject Property was again released back to auction.

4. The Department's investigation also showed that in April 2008, at a third auction, the Complainant placed another successful bid on the Subject Property in the amount of $63,000.00 ("April 2008 bid"). Thereafter, the Complainant discovered that the Subject Property had been vandalized and reduced his offer to $22,000.00. The Respondent responded with a counter-offer of $50,000.00, which the Complainant did not accept.

5. In his Request, the Complainant alleges that the Department was biased in its investigation of his claim. The Complainant also contends that many of his accusations were uncontested by the Respondent.

6. 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 refused to sell a house to him and subjected him to unequal terms, conditions, or privileges relating to the sale of a house because of the his race. 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).

7. The Respondent's articulated non-discriminatory reason for not selling the Subject Property to the Complainant is that the Complainant and the Respondent were unable to reach an agreement on the terms of the sale. The Complainant presented no evidence and the Department's investigation revealed no evidence that the Respondent's articulated reason is pretext for unlawful discrimination.

8. Further, there is no evidence that the Respondent offered more favorable terms of sale of the Subject Property or similar properties to a similarly situated comparative whose race is not African American. To the contrary, the investigation revealed that the Respondent also rejected the successful high bids of similarly situated

[1] The Respondent denies that it demanded $125,000.00 from the Complainant to purchase the property. However, this dispute is immaterial because the Complainant admits that he did not accept this alleged counter-offer.

non-African American individuals who attempted to purchase the Respondent's "reserved" properties at auction.

9. There is also no evidence that the Respondent refused to sell the Subject Property to the Complainant because of his race. The Commission's review of the investigation file leads it to conclude that the Complainant did not obtain the Subject Property because: (a) the Complainant admittedly did not accept the Respondent's counter-offer to his September 2007 bid and thus, the negotiations were unsuccessful; (b) the Complainant voluntarily terminated the sale following his November 2007 bid; and (c) the Complainant rejected the Respondent's counter-offer to his April 2008 bid and thus, the negotiations were again unsuccessful.

10. The Commission's review of the investigation file indicates that the Department's investigation was conducted in a neutral manner and followed the established Department investigation procedures.

11. 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 Respondent, GMAC Homecomings Financial, 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 20th day of May 2009.
HUMAN RIGHTS COMMISSION)

Commissioner Sakhawat Hussain

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen