STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF2299
	)	EEOC NO.: 21BA81250
SHEQUITA IRVING,	)	ALS NO.: 09-0164
	)	
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. 2008CF2299, Shequita Irving, Complainant, and Collector's Training Institute of Illinois, Inc., 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 Complainant's Reply; 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 a two-count charge of discrimination with the Department on February 28, 2008, in which she alleged that the Respondent harassed her and suspended her from work because of her sex in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). In Count A of the charge, the Complainant alleged that her male manager harassed her from January 7, 2008 through February 25, 2008 because of her sex. In Count B of the charge, the Complainant alleged that the Respondent suspended her

because of her sex on three (3) separate occasions: January 19, 2008; February 18, 2008, and February 25, 2008. The Department dismissed the Complainant's charge on March 10, 2009 based on finding a lack of substantial evidence of a violation of the Act. The Complainant thereafter filed a timely Request on April 13, 2009.

2. The Respondent is a debt collection agency that is governed by the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq. (West 2009). Under the FDCPA, the Respondent is required to keep its customer's information confidential. The Complainant was hired by the Respondent on June 11, 2007 as a collector. On December 31, 2007, R.W., a male, became the Complainant's supervisor.

3. On January 3, 2008, R.W. suspended the Complainant for not attending work and for not calling in on January 2, 2008, i.e., for being a "no call, no show." The Complainant told R.W. that her prior supervisor had approved her for that day off, but R.W. was not convinced, and the Complainant remained suspended.

4. On January 7, 2008, once her suspension ended, the Complainant returned to work. She complained about her suspension to the Respondent's Human Resources Manager, a female. The Human Resources Manager talked to R.W. about the suspension and informed R.W. that the Complainant had been approved for time off work on January 2, 2008.

5. Thereafter, the Complainant alleged that R.W. began harassing her from January 7, 2008 through February 25, 2008. The Complainant alleged that during this time period, R.W. treated similarly situated male employees better than her, subjected her to verbally humiliating treatment in front of her co-workers, and suspended her on three occasions.

6. The Complainant alleged that she was first suspended on January 19, 2008 by R.W. because of her sex. The Complainant does not dispute that on January 19, 2008, she was conducting a call with a customer on a speakerphone, which violated the Respondent's duty of confidentiality under the FDCPA. R.W. apparently saw the Complainant using the speakerphone to conduct the call. An exchange of words occurred between R.W. and the Complainant in front of the Complainant's co-workers. As a result of the exchange, the Complainant felt humiliated and belittled and did not want to complete the call. R.W. ordered her to complete the call, and the Complainant asked R.W. to complete the call. When the Complainant refused to complete the call, R.W. told the Complainant to leave the floor and go home. The Complainant repeatedly asked R.W. why she was being sent home, and he ultimately told her that she was suspended for four days.

7. The disciplinary action form which documents the Complainant's January

19, 2008, suspension indicates that R.W. issued the suspension because the Complainant engaged in disruptive behavior on the work floor and refused to leave when told to do so.

8. The second suspension occurred on February 18, 2008. The suspension was issued because the Complainant was a "no call, no show" to work on the preceding Saturday, February 16, 2008. The Complainant does not dispute that she did not go to work that day. The Complainant believed that she should not have been scheduled to work that day. The Respondent submitted undisputed evidence that the Complainant was scheduled to work on Saturday, February 16, 2008. The Complainant contended that similarly situated male collectors were not suspended for being "no call, no shows."

9. Finally, the Complainant alleged that she was suspended for a third time on February 25, 2008 for violating the Respondent's attendance policy. In the file, there is documentation which shows that the Complainant was to be suspended from February 25, 2008 through March 3, 2008. However, there is no evidence that the Respondent ever enforced this suspension against the Complainant. The Respondent's attendance summary for the Complainant does clearly note and record that the Complainant was suspended on February 18 through February 20, 2008. However, it does not record the Complainant as being on suspension from February 25 through March 3, 2008. Rather, the attendance summary shows that the Complainant worked on February 25, 2008, that she left work early February 26, 2008 for lack of a baby sitter; that she took vacation days February 27 through March 1, and that on March 3, 2008, she was a "no call, no show."

10. In June of 2008, the Respondent discharged R.W. based on its determination that he was not a "good fit" for the position.

11. On July 30, 2008, the Department conducted a fact-finding conference. Present at the fact-finding conference on behalf of the Respondent was a former Department employee. The Department failed to address the fact that a former Department employee appeared at the fact-finding conference on behalf of the Respondent.

12. In her Request, the Complainant first contends that there was a conflict of interest because the former Department employee was allowed to attend the fact-finding conference in her new capacity as the Respondent's employee and speak on behalf of the Respondent. The Complainant also states that she was suspended on February 25, 2008, and that a male employee was not suspended when he did not show up for work on Saturday, February 16, 2008. She further contends that R.W. made the workplace hostile and uncomfortable, and that the Respondent took no action to resolve the hostile situation.

13. In its Response, the Department argues that as to <u>Count A</u>, the Complain-

ant's allegations did not rise to the level of actionable gender-based harassment or gender discrimination under the Act. As to Count B, the Department argues that the Complainant provided no evidence that the Respondent's articulated, non-discriminatory reasons for issuing the suspensions were a pretext for discrimination.

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

15. As to Count A, the allegations do not rise to the level of actionable harassment based on sex. In order to establish a *prima facie* case of actionable harassment based on sex, the Complainant must present substantial evidence that she was subjected to harassment that was severe enough to constitute a term and condition of her employment, and that the harassment would not have occurred but for her gender. *See* In the Matter of Jerry Lever and Wal-Mart Stores, 2001 WL 474082, at *5 (1998SF0551, January 2, 2001), *citing* Hill and Peabody Coal Co., ____ Ill. HRC Rep. ____ (1991SF0123, June 26, 1996).

16. The Complainant alleges that she was treated in a crude, unprofessional, and humiliating manner by R.W. over a six-week period of time. While the Commission does not condone R.W.'s conduct, there is insufficient evidence that the Complainant was subjected to harassment that was severe and pervasive enough to constitute a term and condition of her employment. Further, there is insufficient evidence in the file from which the Commission can find that the Complainant's gender was a "but for" cause of R.W.'s conduct. In other words, there is not substantial evidence from which the Commission can determine that R.W. harassed the Complainant because she is a woman.

17. As to Count B, there is no evidence in the file which substantiates the Complainant's allegations that she was suspended three times because of her sex. In each instance, the suspensions were documented and stemmed from violations of the Respondent's legitimate policies and procedures, and there is undisputed evidence in the file which shows that R.W. had suspended similarly situated male employees for attendance policy violations.

18. As to the Complainant's contention that it presented a conflict of interest when the former Department employee was allowed to speak on the Respondent's behalf at the fact-finding conference, the Commission believes that, as is the case here, even the appearance of conflict should be addressed when the issue arises, if only to reassure all parties who appear before the Department that, regardless of the outcome of the investigation, they have undoubtedly received a fair consideration of their claim. In this case, the Commission believes that the Department should have addressed this issue, notwithstanding the fact that the Commission found nothing in the file which suggested that the Department was biased in favor of the Respondent. The file

shows that the Department conducted the investigation in a fair and unbiased manner, in adherence to proper procedure.

19. 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 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 Collector's Training Institute of Illinois, Inc., as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 8th day of July 2009.

Commissioner Munir Muhammad

Commissioner Greg Simoncini

Commissioner Diane Viverito