STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CA2438
	)	EEOC NO.: 21BA81360
SANDRA JORDAN,	)	HUD NO.: N/A
	)	ALS NO.: 09-0174
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Greg Simoncini presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008CA2438, Sandra Jordan, Complainant, and Fairview Nursing Home, 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 10, 2008, the Complainant filed a charge of discrimination with the Department, in which she alleged that the Respondent subjected her to harassment and forced her to resign because of her age (49), sex (female), and race (African American), in violation of § 2-102(A) of the Illinois Human Rights Act ("Act"). On March 20, 2009, the Department dismissed the Complainant's charge for lack of substantial evidence. On April 15, 2009, the Complainant filed a timely Request.

2. The Department's investigation revealed that the Complainant was hired by the Respondent in October 2005 as a Housekeeper. In July 2006, the Complainant was promoted to the position of Housing Supervisor. The Complainant resigned on March 7, 2008.

3. The Department's investigation also revealed that in the Fall of 2007, the Respondent implemented a dress code policy that required Housekeepers to wear beige pants and shirts. The Complainant asked Mark Solomon ("Solomon"), the Administrator, whether she had to wear beige clothing or business casual clothing. Solomon referred to the attire of Jodi

Moran ("Moran"), Assistant Director of Nursing, as an example of how the Complainant could dress.[1]

4. In March 2008, Solomon scolded the Complainant for failing to place an order for new mattresses and failing to completely clean a certain area.

5. The investigation revealed that the Complainant has a history of reprimands from the Respondent. In November 2006, the Respondent issued the Complainant a written warning for being over budget in employee hours and ordering supplies. In March 2007, the Respondent placed the Complainant on a corrective action plan, which indicated that she must improve in having her staff properly clean the Respondent's facilities. In August 2007, the Respondent gave the Complainant a negative evaluation for poor performance. In November 2007, an internal Quality Assurance Survey indicated that many of the rooms that were the Complainant's responsibility were not properly cleaned.

6. In March 2008, the Respondent removed the Complainant from the Housekeeping Supervisor position and, rather than terminate her employment, offered to demote her to her original position as Housekeeper, with reduced pay and no managerial responsibilities. On March 7, 2008, rather than accept the demotion, the Complainant resigned.

7. In her Request, the Complainant claims that her charge should not have been dismissed because the fact finding conference was conducted in an unfair manner.[2] Specifically, the Complainant alleges that she could not hear the Respondent's statements and was *pro se*.

8. 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 harassed her or forced her to resign because of her age, sex, or 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).

9. The evidence in the investigation file supports the Department's dismissal. There is no evidence that a similarly situated non-black, male, or younger employee was treated more favorably under similar circumstances. There is no evidence that the Respondent harassed the Complainant. The Complainant's allegations of the two instances of Solomon scolding her simply do not rise to the level of actionable harassment. Further, even if Complainant's version of events is accepted as true, the incidents are related to the performance of the Complainant's job duties and do not indicate any animus towards the Complainant's race, sex, or age.

10. Additionally, there is no evidence that the Complainant was forced to resign. After months of the Complainant's documented poor performance in the Housing Supervisor position, the Respondent offered the Complainant a demotion. Rather than being demoted, the Complainant decided to resign. The evidence supports that the Respondent had previously demoted three other employees (two non-African American females and one African American male) for poor performance.

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[1]The Respondent states that Solomon instructed the Complainant to dress like Moran or wear the same colors as the Complainant's subordinates. The Complainant alleges that Solomon told her to dress more like Moran. The discrepancy is immaterial to the Commission's decision.

[2] In her Request, the Complainant refers to the fact finding conference as "mediation." For clarity of the record, the Commission refers to it as the fact finding conference.

11. Further, the Complainant, who participated in the fact finding conference via telephone, now argues in her Request that she could not hear what the Respondent said during the fact finding conference; however, she presents no evidence that she ever informed the Department that she was having difficulty hearing during the fact finding conference. Instead, by her silence, the Complainant gave the impression that she was able to full participate in the proceedings. The Complainant is not required to have an attorney present at the fact finding conference and is not entitled to cross-examine the Respondent during the fact finding conference. There is simply no evidence that the Department in any way deprived the Complainant of the opportunity to fully participate in the fact finding conference.

12. 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, Fairview Nursing Home, 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 22nd day of July 2009.
HUMAN RIGHTS COMMISSION)

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Greg Simoncini