STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009CP0057
	)	EEOC NO.: N/A
LAJUAN POLK-BEY,	)	HUD NO.: N/A
	)	ALS NO.: 09-0193
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. 2009CP0057, LaJuan Polk-Bey, Complainant, and Cirilo's, Inc. d/b/a McDonald's, 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[1]; 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:

FAILURE TO PROCEED

In support of which determination the Commission states the following findings of fact and reasons:

1. On July 10, 2008, the Complainant filed a charge of discrimination with the Department, alleging that the Respondent denied him the full and equal enjoyment of its facilities and services because of his race (African American), in violation of § 5-102(A) of the Illinois Human Rights Act ("Act"). On March 18, 2009, the Department dismissed the Complainant's charge for failure to proceed with the Department's investigation. On April 21, 2009, the Complainant filed a timely request for review.

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[1] The Department timely filed its Response on May 8, 2009. Therefore, the Complainant's Reply brief, if any, was due to be filed with the Commission by no later than May 27, 2009. However, the Commission did not receive a Reply brief from the Complainant until June 10, 2009. The Complainant neither requested nor received any extensions of time within which to file a Reply brief. Therefore, the Complainant's untimely filed Reply brief could not be considered by the Commission in the course of determining the Complainant's Request.

10. The Commission's review of the file leads it to conclude that the Department properly dismissed the Complainant's charge because the Complainant did demonstrate good cause for his failure to attend the fact finding conference.

11. First, the evidence shows that the February 10, 2009 was undoubtedly a fact finding conference and not a "mediation conference" as the Complainant contends. The Notice sent to Saporta clearly described the February 10, 2009 conference as a "fact finding conference" no less than five times in the two-page Notice. Further, because Saporta had filed an appearance with the Department, the Complainant was properly served with Notice of the fact finding conference when Notice was served on the Complainant's attorney.

12. Second, there is no evidence that the Complainant was allowed to have his attorney attend the fact finding conference in his absence. To the contrary, the Notice clearly stated that the Complainant himself was required to appear at and participate in the fact finding conference. The Notice explicitly stated that persons named "[...] may not send [substitutes] for themselves." Further, the Administrative Code states that a party who appears at the fact finding conference exclusively through an attorney shall be deemed to have failed to attend. *See* 56 Ill. Adm. Code 2520.440(d)(2) (2008).

13. Third, the Act states that any party's failure to attend the fact finding conference without good cause shall result in dismissal or default. *See* 775 ILCS 5/7A-102(c)(4)(2008). Here, the Complainant, despite the Department's request for a documented explanation, has not shown good cause for his failure to attend the fact finding conference. The Complainant provided no evidence to show that he was unable to attend the fact finding conference. The Complainant's argument that Notice was sent to the Complainant's former home address is unsupported by the evidence. In fact, the evidence shows that the Notice was properly sent to the office of the Complainant's attorney of record, Saporta. It was Saporta's duty to thereafter advise the Complainant, his client, that the Complainant had to attend the fact-finding conference as specified in the Notice.

14. Finally, the evidence shows that the Respondent, through two members of the Respondent's management, and the Respondent's attorney, did attend the fact finding conference. Thus, the Complainant's argument to the contrary is also unsupported by the evidence and without merit.

15. 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 Cirilo's, Inc. d/b/a McDonald's, Respondent, 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 8th of July 2009.**
HUMAN RIGHTS COMMISSION	)	

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Yonnie Stroger