STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF3372
	)	EEOC NO.: 21BA82114
HECTOR PEREZ,	)	HUD NO.: N/A
	)	ALS NO.: 09-0279
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. 2008CF3372, Hector Perez, Complainant, and C.A.P.I. Telecommunications Corp., Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request and supporting documents, 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 grounds:

LACK OF SUBSTANTIAL EVIDENCE AND LACK OF JURISDICTION

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

1. On May 21, 2008, the Complainant filed a charge of discrimination with the Department, in which he alleged that the Respondent discharged him because of his national origin (Mexico) ("Count A"), in violation of § 2-102(A) of the Illinois Human Rights Act ("Act") and in retaliation for opposing a breach of contract ("Count B"), in violation of § 6-101(A) of the Act. On April 28, 2009, the Department dismissed Count A of the Complainant's charge for lack of substantial evidence and Count B of the Complainant's charge for lack of jurisdiction. On May 28, 2009, the Complainant filed a timely request for review.

2. The Department's investigation revealed that the Respondent provides consulting, installation, and maintenance services to major cable operators in the broadband industry. The Complainant had worked at the Respondent since August 2005 as a warehouseman. The Complainant's duties included picking up cable boxes from various locations, scanning and distributing cable boxes for installation, being responsible for the cable boxes assigned to him, and submitting monthly inventory documents to the Respondent.

Count A: Lack of Substantial Evidence

3. In October 2007, the Respondent received a chargeback fee from one of its suppliers in the amount of $22,385.00 for missing cable boxes. Upon inquiry, the Respondent determined that the Complainant was responsible for the missing cable boxes. Further, the Complainant had not submitted monthly inventory documents to the Respondent. On December 7, 2007, the Respondent discharged the Complainant. The Respondent's articulated non-discriminatory reason for the discharge is that the Complainant was responsible for the missing cable boxes.

4. In his Request, as to Count A, the Complainant argues that the Department failed to properly investigate the claim and made improper credibility determinations in favor of the Respondent. Further, the Complainant alleges that most of the lost cable boxes were not attributable to him.[1]

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 discharged him because of his national origin. 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 articulated a non-discriminatory reason for discharging the Complainant. Specifically, the Respondent claims to have discharged the Complainant because he was responsible for a loss of $22,385.00 in cable boxes. Further, the Complainant had not submitted monthly inventory documentations. The Complainant provides no evidence that this reason was pretext for unlawful discrimination.

8. Further, 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.

Count B: Lack of Jurisdiction

9. In Count B of his charge of discrimination, the Complainant alleges that he engaged in a protected activity when he complained about a breach of contract.

10. The Act states that it is a civil rights violation to:

> Retaliate against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination, sexual harassment in employment or sexual harassment in higher education, discrimination based on citizenship status in employment, or because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act. 775 ILCS 5/6-101(A).

[1] The Complainant wrote "see attached" in his Request; however, no supporting documentation was submitted with his Request.

11. The Complainant here alleges that he opposed a breach of contract. Opposition to a breach of contract is not a protected activity within the meaning of the Act. Thus, the Department had no statutory authority to investigate the Complainant's allegations that the Respondent retaliated against him because of his opposition to a breach of contract.

12. 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 the Respondent, C.A.P.I. Telecommunications Corp., 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 12th day of August 2009.
HUMAN RIGHTS COMMISSION)

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Yonnie Stroger