

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

CHARGE NO.: 2009CP0019

JOSEPHINE CESTA,

ALS NO.: 09-0316

Complainant.

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee Freeman and Yonnie Stroger, 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. 2009CP0019, Josephine Cesta, Complainant, and Regents Park Commercial, LLC, d/b/a The Regents Club, 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; 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 charge of discrimination with the Department on July 3, 2008, alleging that the Respondent denied her the equal enjoyment of a public accommodation and unlawfully discriminated against her because of her physical disabilities (degenerative joint disease and kyphoscoliosis) and age, (80), and cancelled her membership with the Respondent because of her physical disabilities and age, in violation of Section 5-102(A) of the Illinois Human Rights Act (the "Act"). The Department dismissed the Complainant's charge on May 13, 2009, for lack of substantial evidence. The Complainant thereafter filed a timely Request on June 17, 2009.
2. The evidence in the investigation file shows that at all relevant times alleged, the Complainant was a member of the Respondent, a private health club. The Respondent may terminate the membership of a member who does not abide by its rules, policies and procedures.

3. On April 25, 2006, the Respondent terminated the Complainant's membership because it determined that she suffered episodes of incontinence in its locker room, and that this posed a health risk to its other members.

4. In May 2008, the Complainant reapplied for membership. The Respondent agreed to renew the Complainant's membership with the following conditions: 1) the Complainant could not use the Respondent's facility unless the Complainant was accompanied by her daughter, and 2) if the Complainant experienced another incident of incontinence, the Respondent would have the right to terminate her membership.

5. On June 6, 2008, the Complainant alleged that she went to the Respondent for her morning workout. While her disabilities caused the Complainant to have constant back pain, limited mobility in her hands, arms, and neck, and to have curvature of the spine resulting in a "hunch back" appearance, the Complainant was mobile and did not use a wheelchair. Her routine at the Respondent consisted of pedaling a stationary reclining bike and using the Respondent's swimming pool and whirlpool.

6. On June 6th, after pedaling on the stationary bike, the Complainant went to use the Respondent's bathroom facilities. The Complainant's daughter did not accompany her. On that day, the Respondent's disability-accessible restroom stall was temporarily closed because of renovations that were being made to the women's locker room. The Respondent's other restroom stalls were open and available.

7. The Complainant used one of the other non-disabled accessible restroom stalls. The Complainant fell while using one of those stalls. Prior to using the non-disabled accessible stall, the Complainant did not inform the Respondent that she had difficulty using the non-disabled stall, nor did she request any assistance from the Respondent prior to using the non-disabled stall. There was a female attendant in the exercise room at the time, but the Complainant did not ask her for any assistance prior to using the non-disabled stall.

8. On or about June 10, 2008, the Respondent cancelled the Complainant's membership to the health club. The Respondent stated that it cancelled the Complainant's membership because on June 6, 2008, the Complainant had suffered an episode of incontinence on the Respondent's exercise bike, and that the Complainant's continuing incontinence posed a health hazard.

9. The Complainant alleges that she was denied a public accommodation for her physical disabilities on June 6, 2008 (Counts A and B) because the disabled-accessible restroom stall was not available to her on that day. The Complainant alleged that on June 10, 2008, the Respondent denied her the enjoyment of a public accommodation based on her disabilities (Counts C and D) and her age (Count E), when it cancelled her membership.

10. In its Response, the Department recommends that the Commission sustain its dismissal of all Counts of the charge for lack of substantial evidence. As to Counts A and B, the Department argues that all of Respondent's members had full and equal access to the facilities. As to Counts C through E, the Department argues that there was no evidence that the Respondent's articulated reason for cancelling the Complainant's

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membership was a pretext for disability or age discrimination. The Department stated that during the course of its investigation into the Complainant's charge, the Respondent produced affidavits from three individuals who stated that they had witnessed the Complainant cleaning a soiled exercise bike on June 6, 2008.

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

12. As to Counts A and B of the charge, the Complainant did not show that she established a prima facie case of public accommodations discrimination because there is no evidence that the Respondent treated its similarly-situated non-disabled club members more favorably than the Complainant. See Davis and Ben Schwartz Food Mart, 23 Ill. HRC Rep. 2, 8 (1986).

13. As to Counts C through E of the charge, the Commission finds no substantial evidence that the Respondent cancelled the Complainant's health club membership or subjected her to different terms and conditions of membership either because of her physical disabilities or because of her age. The Department's investigation revealed that several witnesses saw that on June 6, 2008, the Complainant experienced an episode of incontinence while using the Respondent's exercise equipment. The evidence shows that several individuals complained to the Respondent about this incident, and the Respondent investigated those complaints. Thereafter, the Respondent terminated the Complainant's membership in accordance with her membership agreement. There is no evidence that the Respondent terminated the Complainant's membership because of her age and disability.

14. Further, the evidence shows that when the Respondent renewed the Complainant's membership, with conditions, on May 8, 2008, it did so because of the Complainant's prior incidents of incontinence, and not because of the Complainant's age or disabilities. There is no evidence that the Respondent harbored any animus against the Complainant because of her age, especially in light of the fact that elderly individuals are members of the Respondent, and that the Respondent has fitness programs specifically geared to the needs of the elderly.

15. The Complainant alleges, in general, that other non-disabled members had episodes of incontinence but that their memberships were not terminated. However, the Complainant fails to identify any such members, and there is no such evidence of differential treatment in the file.

16. 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.

