

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF2249
RICKEY KELSEY)	EEOC NO.: 21BA90987
)	ALS NO.: 10-0135
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Rickey Kelsey’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)^[1] of Charge No. 2009CF2249; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent’s dismissal of the Petitioner’s charge is **SUSTAINED** on the following ground:

LACK OF JURISDICTION

In support of which determination the Commission states the following:

1. On January 21, 2010, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that on December 18, 2008, Total Facility Maintenance (“Total Facility”), his former employer, issued him a negative employment reference to his then current employer based on his race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On January 28, 2010, the Respondent dismissed the Petitioner’s charge for Lack of Jurisdiction. On February 22, 2010, the Petitioner timely filed this Request.
2. The Petitioner last worked for Total Facility in September 2004.
3. The Petitioner contends that on December 18, 2008, Total Facility provided the Petitioner’s then current employer with a negative employment reference because of the Petitioner’s race.

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge who is requesting review of the Department’s action shall be referred to as the “Petitioner.”

4. The Respondent dismissed the Petitioner's employment discrimination charge against Total Facility for lack of jurisdiction because at the time of the alleged civil rights violation, Total Facility was not the Petitioner's employer.
5. In his Request, the Petitioner argues that he felt defamed by Total Facility. The Petitioner does not address the issue of jurisdiction.
6. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of jurisdiction. The Respondent argues that at the time of the alleged civil rights violation, no employer-employee relationship existed between the Petitioner and Total Facility, as defined by 775 ILCS 5/2-102(A)(1)(a) of the Act.

Conclusion

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of jurisdiction.

The Act defines an "employee" to be... "any individual performing services for remuneration within this State for an employer." 775 ILCS 5/2-101(A)(1)(a).

The Petitioner last worked for Total Facility in September 2004. The Petitioner alleged that Total Facility engaged in employment discrimination on December 18, 2008. There is no evidence the Petitioner was employed by Total Facility on December 18, 2008. Therefore, because there was no employer-employee relationship in existence between Total Facility and the Petitioner on the date of the alleged civil rights violation, the Petitioner cannot maintain an employment discrimination claim against Total Facility under the Act, and the charge was properly dismissed for lack of jurisdiction.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner'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 Total Facility Maintenance, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 22nd day of September 2010

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini