**STATE OF ILLINOIS**
**HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST | ) | |
| FOR REVIEW BY: | ) | |
| | ) | CHARGE NO.: 2009CH1572 |
| **VICTOR HURST and** | ) | HUD NO.: 050902338 |
| **BRENDA HURST,** | ) | ALS NO.: 09-0392 |
| Petitioners. | ) | |

## ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman and Yonnie Stroger presiding, upon Victor Hurst's and Brenda Hurst's ("Petitioners") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")[1] of Charge No. 2009CH1572; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioners' Request, and the Respondent's response to the Petitioners' Request; and 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. On November 17, 2008, the Petitioners filed an unperfected charge of discrimination with the Respondent, perfected on November 26, 2008. The Petitioners alleged in their charge that the 4414-4416 North Ashland Condominium Association ("Association") altered the terms conditions or privileges of their real estate transaction because of their race, Black, in violation of Section 3-102(B) of the Illinois Human Rights Act ("Act") in that the Association refused to allow the Petitioners to speak at a board meeting (Count A), took down the Petitioners' "For Sale" sign that was posted on a common area of the property (Count B), and refused to disclose financial records to the Petitioners (Count C). On June 25, 2009, the Respondent dismissed the Petitioners' charge for Lack of Substantial Evidence. On July 24, 2009, the Petitioners filed a timely Request.

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

2. The Petitioners own three investment units at the property commonly known as 4414 North Ashland, Chicago, Illinois.

3. The property is operated by the Association's board which is made up of elected members. On January 2007, Ann McGregor was elected Association President. McGregor circulated to all residents the Association's Rules of Order for Association Boards (the "Rules") to inform residents of how Association board meetings would be conducted. In Section E of the Rules, titled "Open Forum," it is stated that the Association board had the discretion to provide "open forums" during which unit owners could speak. The Rules also provided that once this "open forum" was closed, unit owners could not participate in the discussion had by the Association board members. Unit owners would be recognized only if an Association board member specifically sought input from a particular unit owner.

4. On October 17, 2007, and on January 15, 2008, during Association board meetings, Petitioner Victor Hurst attempted to voice his dissatisfaction with certain management decisions by the Association. However, he alleged he was "shouted down" by McGregor, while other non-Black residents were allowed to speak. There is evidence in the file that on occasion, White residents were also not permitted to speak during Association meetings.

5. On April 3, 2008, McGregor sent an e-mail to all residents in which she informed them that management decisions are made by the Association Board and not by popular vote of the residents; and therefore, individual residents were not entitled to participate in management decisions made by the Association.

6. Prior to January 2008, the Association had in place by-laws that required residents to obtain the Association's approval prior to posting "For Sale" signs on the common areas. In May 2007, the Petitioners had put up a "For Sale" sign in common areas without prior approval by the Association. As of January 2008, this requirement was still in effect. On January 20, 2008, McGregor informed the Petitioners the "For Sale" sign had been removed because they had not received the Association's approval to post the sign. On July 12, 2008, Petitioner Victor Hurst requested authorization to re-post the "For Sale" sign on a common area. On July 15, 2008, the Association approved his request.

7. On at least two occasions, in December 2007 and October 2008, the Petitioners requested the Association provide them with access to the Association's financial records. The Association denied the Petitioners' request.

8. In their charge and Request, the Petitioners argue they were precluded from speaking, posting their "For Sale" sign and accessing the Association's financial records because of their race.

## *CONCLUSION*

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed all counts of the Petitioners' charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. *See* 775 ILCS 5/7A-102(D).

As to Count A, there is no substantial evidence that the Association's articulated reason for preventing the Petitioners to speak at various board meetings was a pretext for unlawful race discrimination. The evidence in the investigation file shows that on several occasions the Association told the Petitioners they were out of order and refused to allow them to speak. However, there were other occasions when they were allowed to speak. The evidence further shows the Association refused to allow Margaret and Christine Plunkett ("Plunketts"), non-Black unit owners, to speak at these meetings. There is no substantial evidence that the Association treated the Petitioners differently because of their race.

The Commission finds no substantial evidence to support the Petitioners' claim in Count B that their "For Sale" sign was removed from a common area because of their race. There is no dispute that at the time the "For Sale" sign was removed, the Association had in place by-laws that required residents to obtain prior approval before posting such signs in common areas. There is further no dispute the Petitioners had neither requested nor received prior approval to post the "For Sale" sign. Therefore, in accord with the Association's by-laws, the unauthorized sign was taken down. Once the Petitioners had requested and received authorization, they were allowed to repost their "For Sale" sign. There is no substantial evidence that the legitimate, non-discriminatory reason for removing the Petitioners' "For Sale" sign was a pretext for race discrimination.

The Petitioner also failed to establish a *prima facie* case of race discrimination as to Count C because there is no evidence that similarly situated non-Black owners were treated more favorably under similar circumstances. It is uncontested that the Association denied the Petitioners' request to review the Association's records. However, the evidence also shows the Plunketts submitted a request to review these records and the Association likewise denied their request.

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

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of Petitioners' 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 4414-4416 North Ashland Condominium Association, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

**STATE OF ILLINOIS** )
) **Entered this 10th day of February 2010.**
**HUMAN RIGHTS COMMISSION** )

Commissioner David Chang

Commissioner Marylee Freeman

Commissioner Yonnie Stroger