

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CP3461
)	HUD NO.: N/A
ANTHONY COTTEN)	ALS NO.: 09-0697
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Rozanne Ronen, and Nabi Fakroddin, upon Anthony Cotten’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)¹ of Charge No. 2008CP3461; 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, THEREFORE, it is hereby **ORDERED** that the Respondent’s dismissal of the Petitioner’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 June 3, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleges in his charge that Mi Tierra (“Restaurant”) denied him the full and equal enjoyment of its facilities and services because of his physical disability (paraplegic), in violation of Section 5-102(A) of the Illinois Human Rights Act (“Act”). On July 8, 2009, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. On August 12, 2009, the Petitioner filed a timely Request for Review. On September 17, 2009, at the request of the Respondent, the Commission vacated the dismissal of the Petitioner’s charge. On October 28, 2009, after conducting further investigation, the Respondent again dismissed the Petitioner’s charge for Lack of Substantial Evidence. On December 3, 2009, the Petitioner filed this timely Request.
2. The Petitioner’s disability requires him to use a wheelchair. On April 6, 2008, the Petitioner was a patron of the Restaurant. In its men’s restroom, the Restaurant had at least one (1) stall designated for use by the disabled.

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.”

3. During his April 6, 2008, visit the Petitioner went to the Restaurant's men's restroom. Once in the restroom, the Petitioner alleges that, "the stall was inaccessible for [his] wheel chair (sic)." The Petitioner alleges that as a result, he was unable to shut the restroom stall door completely while he was utilizing the facilities.
4. During this visit the Petitioner did not report to the Restaurant's management that he had experienced any problems with a men's restroom stall. The Petitioner returned to his table and completed his meal.
5. In his charge, the Petitioner contends he was denied full and equal enjoyment of the Restaurant's facilities because the Restaurant did not provide a restroom stall that was sufficiently large enough to accommodate his wheelchair.
6. The Respondent's investigator went to the Restaurant on October 20, 2009, and examined the Restaurant's men's restroom. The investigator determined that the Restaurant provided at least one (1) stall for use by the disabled in its men's restroom, and that this stall complied with the Americans with Disabilities Act (ADA) Standards for Accessibility Design regarding restroom stalls.² The stall included familiar grab bars, which are intended for use by people in wheelchairs, and the stall was 36 inches wide and 61 inches from the wall behind the toilet to the opposite wall. The Respondent determined there was no substantial evidence the Restaurant had violated the Act, and dismissed the Petitioner's charge.
7. In his Request, the Petitioner argues that the washroom stall that he attempted to use on April 6, 2008, was not compliant with the Americans with Disabilities Act ("ADA"), the Illinois Human Rights Act, or any other law, and because of this the Restaurant denied him the full and equal enjoyment of its facility. The Petitioner further contends he was not given an opportunity to rebut the Respondent's findings in that neither he nor his attorney had the opportunity to independently measure the restroom stall. The Petitioner does not state what prevented either him or his attorney from independently measuring the restroom stall.
8. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of substantial evidence.

CONCLUSION

The Commission concludes that the Respondent properly dismissed the Petitioner's 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). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient

² See 28 CFR pt. 36, ch. 4.

to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

Section 5-102(A) of the Act provides in pertinent part:

It is a civil rights violation for any person on the basis of unlawful discrimination to...[d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation.

775 ILCS § 5/5-102(A) (West 2010).

In the first instance, the Commission does not enforce federal law; therefore, the Commission has no jurisdiction to enforce alleged violations of the ADA. See Blount v. Stroud, 232 Ill.2d 302, 904 N.E.2d 1 (2009).

However, the Commission does take into consideration the fact that the Restaurant took steps to ensure that its disabled patrons had access to a restroom stall designed to meet their needs. The fact that the Restaurant complied with the ADA regulations when designing its restroom stall for the disabled indicates the Restaurant took steps to make its establishment accessible to disabled persons. This indicates the Restaurant was not seeking to deny or refuse to disabled patrons the full and equal enjoyment of its establishment. To the contrary, the Restaurant took affirmative steps to ensure the full and equal enjoyment of its establishment by its disabled and non-disabled patrons.

The Petitioner contends he had no opportunity to rebut the Respondent's findings regarding the dimensions of the restroom stall. However, the Petitioner had ample opportunity to present his own evidence regarding the restroom stall's measurements in his Request, which he failed to do. In fact, other than the Petitioner's bare allegation, the Petitioner failed to present any evidence that on April 6, 2008, the Restaurant lacked accessible restroom facilities in the men's restroom.

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

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of 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 Mi Tierra as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this order.

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In the Matter of the Request for Review by: Anthony Cotten-ALS 09-0697

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION) **Entered this 9th day of June 2010.**

Commissioner Munir Muhammad

Commissioner Rozanne Ronen

Commissioner Nabi Fakroddin