



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>TERESITA LERMO,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>and</b>	)	<b>Charge No.: 1990CA2243</b>
	)	<b>EEOC No.: 21B901230</b>
	)	<b>ALS No.: 9156</b>
<b>THE PALMER HOUSE HILTON,</b>	)	
	)	
	)	
<b>Respondent.</b>	)	

**RECOMMENDED ORDER AND DECISION**

On December 5, 1995, the Illinois Department of Human Rights (IDHR) filed a complaint on behalf of Complainant, Teresita Lermo. That complaint alleged that Respondent, The Palmer House Hilton, discriminated against Complainant on the basis of her national origin when it subjected her to unequal terms and conditions of employment by harassing her and when it discharged her. On May 13, 1996, the IDHR filed an amended complaint. The amended complaint contained the same substantive allegations as the original complaint.

On October 28, 2002, the harassment allegations of the complaint were dismissed pursuant to a motion for summary decision brought by Respondent. The motion for summary decision was denied on the discharge claim.

A public hearing was held on the discharge allegation of the complaint on June 9 and 10, 2003. At the close of Complainant's case in chief, Respondent moved for a directed finding in its favor. The ruling at the time was that the motion likely would be granted. Nonetheless, the parties were given the opportunity to brief the issues. Pursuant to that ruling, both parties filed posthearing briefs. The matter is ready for decision.

## FINDINGS OF FACT

Facts numbers one through five are facts that were stipulated by the parties or admitted in the answer to the amended complaint. The remaining facts were determined to have been proven by a preponderance of the evidence at the public hearing in this matter. Assertions made at the public hearing that are not addressed herein were determined to be unproven or were determined to be immaterial to this decision.

1. Respondent, The Palmer House Hilton, operates a hotel in downtown Chicago.
2. On or about August 15, 1989, Respondent hired Complainant, Teresita Lermo, as a steady extra banquet waitress.
3. Complainant is a woman of Cuban national origin.
4. Complainant worked for Respondent's Banquet Department.
5. On September 19, 1990, Respondent discharged Complainant.
6. Between the time of her hire and the time of her discharge, Complainant received at least two verbal warnings, two written warnings, and two three-day suspensions.
7. At the public hearing in this matter, Complainant did not introduce any evidence of the national origin of her co-workers.

## CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").
2. Respondent is an "employer" as defined by section 2-101(B)(1)(a) of the Act and is subject to the provisions of the Act.
3. Complainant did not establish a *prima facie* case of discrimination against her on the basis of her national origin.
4. A directed finding in Respondent's favor is appropriate in this case.

## DISCUSSION

Respondent, The Palmer House Hilton, operates a hotel in downtown Chicago. On or about August 15, 1989, Respondent hired Complainant, Teresita Lermo, as a steady extra banquet waitress. During her tenure with the hotel, Complainant worked for the Banquet Department. Complainant did not remain in her position for long. On September 19, 1990, Respondent discharged her.

Complainant then filed a charge of discrimination against Respondent. That charge alleged that Respondent discriminated against Complainant on the basis of her national origin when it discharged her.

The method of proving a charge of discrimination is well established. First, Complainant must establish a *prima facie* case of discrimination. If she does so, Respondent must articulate a legitimate, non-discriminatory reason for its actions. For Complainant to prevail, she must then prove that Respondent's articulated reason is pretextual. ***Zaderaka v. Human Rights Commission***, 131 Ill. 2d 172, 545 N.E.2d 684 (1989). See also ***Texas Dep't of Community Affairs v. Burdine***, 450 U.S. 251 (1981).

To establish a *prima facie* case of national origin discrimination, Complainant had to establish three elements. She had to establish 1) that she is a member of a protected class, 2) that she was satisfying the normal requirements of her job, and 3) that she was discharged and replaced by someone outside her protected class or that she was discharged while similarly situated persons outside her protected class were retained. ***Shah and Warshawsky & Co.***, 45 Ill. HRC Rep. 321 (1988), *aff'd sub nom Shah v. Illinois Human Rights Commission*, 192 Ill. App. 3d 263, 548 N.E.2d 695 (1st Dist. 1990).

There is no dispute that Complainant established the first element. Complainant is in a protected class by virtue of her Cuban national origin. The remaining two elements, though, are very much in dispute.

Certainly, there are questions about whether Complainant was meeting the normal requirements of her job. Between the time of her hire and the time of her discharge, Complainant received at least two verbal warnings, two written warnings, and two three-day suspensions. Those disciplines all took place before the incident that triggered her discharge. That history of discipline makes it difficult to argue that Complainant's performance was acceptable.

There is no need, though, to determine whether Complainant established the second element of the *prima facie* case. That is because there is no doubt at all that she failed to establish the third element.

As noted above, there are two ways to establish the third element. Everyone agrees Complainant was discharged. She then had to prove either that she was replaced by someone not of Cuban national origin or that similarly situated non-Cubans were retained when she was discharged. She failed to prove either of those propositions.

Complainant presented evidence on the disciplinary histories of some of her co-workers. She also tried to argue that she was treated more harshly than some of those co-workers. Nonetheless, incredibly, there was no evidence whatsoever offered on the national origin of any of those co-workers. In fact, during the two days of public hearing, the only mention of national origin during the testimony came when Respondent's attorney inexplicably raised the issue during cross-examination of one of the witnesses. In the complete absence of any evidence of the national origin of the co-workers, it is impossible to conclude that a specific national origin played any part in their treatment. Thus, it is absolutely clear that Complainant failed to establish the third element of her *prima facie* case.

Complainant did attempt to address that failure in her posthearing briefing. She attached several affidavits and notarized statements which contained additional information about the way she and others were treated. That information, though, cannot be considered at

this point in the proceedings. Complainant rested her case at the public hearing. At that point, she lost the right to submit further evidence. Moreover, the statements submitted after the hearing are hearsay. They would not have been admissible even if presented during the hearing. As a result, those statements cannot be considered as valid evidence and they had no effect on the conclusions reached in this Recommended Order and Decision.

Because there was no useful evidence on the national origin of Complainant's claimed comparatives, there is no need to go further in discussing her case. There is no way to conclude, on the basis of the existing record, that national origin played any part in the manner in which Complainant was treated by Respondent. It is clear that Complainant failed to prove her case and the complaint in this matter should be dismissed in its entirety.

RECOMMENDATION

Based upon the foregoing, Complainant failed to prove by a preponderance of the evidence that Respondent discriminated against her on the basis of her national origin. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: April 16, 2004