

No. 1-12-3410

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

WEST PACES HOTEL GROUP, LLC, d/b/a HOTEL 71,)	Petition for Review of Order
)	of the Illinois Human Rights
Petitioner,)	Commission
)	
v.)	No. 2007 CA 2223
)	
ILLINOIS HUMAN RIGHTS COMMISSION and)	
CAROLYN RICHARDSON,)	
)	
Respondents.)	

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Connors and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 **Held:** We affirm the order of the Illinois Human Rights Commission, which found that petitioner discriminated against respondent, Carolyn Richardson, based on her race and age. In affirming this order, we conclude that: (1) the Commission did not rely upon improper evidence in making its findings; (2) the Commission did not improperly substitute its judgment for that of petitioner in its evaluation; (3) the Commission used the proper legal standard to determine pretextual discrimination; and (4) the decision of the Commission was not against the manifest weight of the evidence.

¶ 2 Petitioner, West Paces Hotel Group, LLC, d/b/a Hotel 71 (West Paces), filed this action for direct administrative review of the order of respondent, the Illinois Human Rights Commission (the

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Commission), which found that West Paces discriminated against respondent, Carolyn Richardson, because of her race and age in violation of section 2-102(A) of the Illinois Human Rights Act (775 ILCS 5/2-102(A) (West 2010)). West Paces argues this court should reverse the decision of the Commission because: (1) it relied on improper evidence to find that West Paces had discriminated against Richardson; (2) it impermissibly substituted its business judgment for that of West Paces; (3) it used an incorrect legal standard for determining pretextual discrimination against Richardson; and (4) the Commission's finding that Richardson was discharged for pretextual discriminatory reasons was against the manifest weight of the evidence. For the following reasons, we affirm the order of the Commission.

¶ 3

BACKGROUND

¶ 4 On December 1, 2006, West Paces terminated Richardson from her position as group sales manager at Hotel 71. Richardson subsequently filed a charge of discrimination with the Illinois Department of Human Rights (the Department), alleging that her former employer, West Paces, discriminated against her based on her race (African-American) and age (55-years old at the time of her termination).

¶ 5 Following an investigation, the Department filed a two-count complaint for civil rights violations with the Commission on Richardson's behalf, naming West Paces as the respondent. The Department alleged that West Paces discriminated against Richardson in violation of section 2-102(A) of the Human Rights Act, due to race and age. The Department sought damages, including Richardson's lost wages and all benefits, bonuses, commissions, and seniority status she would have received but for the alleged civil rights violation committed by West Paces.

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¶ 6 A Commission administrative law judge (ALJ) heard evidence presented by the parties on January 11, 12, and 14, 2010. Based on the testimony and exhibits presented at the hearing, the ALJ issued a recommended liability determination finding that West Paces discharged Richardson due to her race and age and awarded damages. West Paces filed exceptions to the ALJ's recommended liability determination. On October 18, 2012, the Commission declined further review and issued an order summarily adopting the ALJ's decision. As the ALJ's recommended liability determination provides a thorough recitation of the facts leading to Richardson's termination, we repeat here only those pertinent facts relevant to the disposition of West Paces' petition for review.

¶ 7 Richardson's Employment History and Performance

¶ 8 The Executive House Hotel, a predecessor to Hotel 71, initially hired Richardson in 1985 to serve as the hotel's travel industry sales manager. During the 20-year period Richardson worked at Hotel 71 and its predecessors, the ownership and management of the hotel changed three times and the hotel underwent three major renovations. Despite changes of ownership of the hotel from the Taj Group in 1989 to the Boykin Company (Boykin) in 1999, Richardson continued to meet or exceed her employer's sales goals and was never disciplined or reprimanded before the current owner, the Falor Family (Falor), purchased the hotel. Richardson received numerous promotions during her employment at the hotel, including promotions to assistant director of sales, director of travel industry sales, director of sales, and business travel sales manager.

¶ 9 Richardson's former supervisor, Bill Navarre, testified before the ALJ that Richardson was an "outstanding performer," who always made or exceeded her sales goals. Navarre testified that Richardson had a great reputation and that "she had never not made a bonus based on her

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¶ 14 The February 23, 2005 Freeman Meeting

¶ 15 At the end of 2004, the general manager of Hotel 71 resigned because he knew the hotel was being sold and that he would not be retained. The incumbent owner, Boykin, hired Joyce Lisle Freeman (an African-American female) to be the acting general manager.

¶ 16 On February 23, 2005, Freeman met with Richardson and Kirkman to tell them they would not be retained upon the sale of the hotel to Falor, but that three white men in the sales department would be retained. Freeman told Richardson she was “horrificed” of this news because Richardson and Kirkman were the best sales managers in the department. Freeman advised Richardson and Kirkman to contact the Department because she believed the personnel decision was discriminatory. Freeman separately told Navarre that Richardson would not be retained by the new hotel ownership because “she didn’t fit the image of what they were looking for at the hotel.”

¶ 17 Shortly after their meeting with Freeman, Richardson and Kirkman contacted KOR to inquire about the decision to discharge them. In a conversation with a woman who identified herself as KOR’s vice president of human resources and development, Richardson and Kirkman were told that KOR had based its discharge decision on their stability and performance as compared to others in the sales department. Kirkman responded that, based on those criteria, she and Richardson should be retained because they both had the highest sales totals and the most seniority. During the first week of March 2005, an individual named Angelo, apparently one of the new investors in the hotel, visited the hotel and informed both Richardson and Kirkman that they were being retained and that their jobs were secure.

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¶ 18 Consummation of Hotel Sale and Staff Reorganization

¶ 19 Kirkman further testified that, in her experience, the sale of Hotel 71 to Falor proceeded in an unusual fashion. According to Kirkman, interviews for staff positions tend to occur after the sale of the hotel. In this case, KOR began hiring sales personnel and making sales management decisions for Falor before to the final sale. For example, after KOR hired Zudyk, he recruited Greg Naylor (a white, 37 year-old male) away from the Hard Rock Hotel to assist with managing the sales team. While working at the Hard Rock Hotel, Naylor reported to Zudyk, and David Martell (a white, 37-year old male) and Colleen Corcoran (a white, 24-year old female) reported to Naylor. Naylor began working for KOR under Zudyk's supervision on February 28, 2005.

¶ 20 In mid-March 2005, Falor and KOR ended their business relationship. Falor hired Zudyk and Naylor in the interim to oversee the sales department. Falor completed its purchase of Hotel 71 on April 1, 2005.

¶ 21 That same day, Naylor became Hotel 71's new director of sales and marketing. In that position, he was Richardson's direct supervisor. Also on that day, Kirkman resigned because she believed new management would have terminated her anyway.

¶ 22 Naylor hired Corcoran to replace Kirkman. From April 2005 until December 2006, Richardson and Corcoran served as the only group sales managers for the hotel. Navarre became the catering director and remained in that position until March 2006.

¶ 23 Naylor testified that he knew Richardson initially was told she was being terminated prior to the sale of the hotel. Naylor agreed that he did nothing to reassure Richardson that she would not be discharged. Shortly after Naylor arrived at Hotel 71, he ordered Richardson to give all of her

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accounts to Corcoran. Richardson testified that it took her 20 to 25 years to establish her client base. When she challenged Naylor's order, Naylor told her, "if you don't like it, you can leave." Naylor told Richardson to develop a new market of clients needing 30 or more rooms per night plus meeting space. Richardson testified that Hotel 71 did not previously target large groups needing meeting spaces and that the hotel could not accommodate that request "because of the proximity of the meeting space and the layout of the meeting space."

¶ 24 Although Navarre transferred to a different department, he continued to work with the group sales managers on a daily basis. Navarre observed that numerous files were taken from Richardson's office and given to Corcoran. Naylor denied taking all of Richardson's files and giving them to Corcoran, but admitted that he redeployed the clients and told Richardson to book groups needing 30 rooms or more plus meeting space while assigning Corcoran sales of groups needing 10 to 30 rooms.

¶ 25 On July 8, 2005, Zudyk left his employment at Hotel 71.

¶ 26 Falor Hires New Management Company and Begins Renovations

¶ 27 In September 2005, Falor hired West Paces, a hotel management company, to oversee operations of the hotel, at which time Naylor became its employee. West Paces had a new vision for the hotel, planning to rebrand it under a different name and convert it from a three-star hotel into an upscale four- to five-star hotel. Soon after its hire, West Paces began a multi-million dollar renovation project which affected the entire hotel. As a result of this work, the hotel suffered disruptions in 2006 including: (1) closing of the restaurant for reconstruction; (2) closing of the bar, fitness center, and spa; (3) stripping of three to ten floors of guest rooms in preparation for

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renovation, resulting in only half of the guest rooms being available to sell; (4) elevators that were often out of service; (5) noise and dust throughout the hotel created by construction workers, sometimes beginning as early as 5 a.m.; and (6) consistent unavailability of meeting rooms for events.

¶ 28 Richardson testified that the renovation project made it virtually impossible to sell meeting space because there was almost no useable meeting space. Richardson acknowledged that the renovations made it especially difficult to book her high-tier clients in large groups requiring over 30 rooms.

¶ 29 Both Richardson and Corcoran had difficulty meeting their sales expectations. Those sales shortcomings resulted in progressive disciplinary action pursuant to the management policy in place. That policy, described in a March 3, 2006 “Sales Meeting Agenda,” provided that sales managers would receive a verbal warning if they missed their revenue goals for one month, a written warning if they failed to achieve their goals for a second consecutive month, and a final warning – and possibly termination – for failure to achieve their goals for a third consecutive month. The persons attending the March 3, 2006 sales meeting included Naylor, Richardson, Corcoran, Martell, and newer hires, Karl Chase (a white, 36-year old male), the associate director of sales who also supervised Richardson, and Anne Alper (a white, 32-year old female).

¶ 30 Pursuant to this policy, on March 16, 2006, Chase issued to Corcoran a “Write-Up Form” for failing to achieve her sales revenue goals for two consecutive months. On June 12, 2006, Richardson received a “Coaching/Counseling Notice” from Chase indicating that she failed to achieve her booking goal for two consecutive months. Corcoran missed her sales goals again in May

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“Revised Group Goals for September-December, 2006 and Definition of Trial Period” (Revised Group Goals), and distributed to Richardson and Corcoran. Notably, the Revised Group Goals warned, “A failure to meet any will result in further performance review up to, and possibly including termination.”

¶ 34 The Revised Group Goals confirmed that each of the three aforementioned goals was an independent part of the probationary-review process. For example, the document first discussed the revenue aspect of the test, and then stated, “The Trial Period will also include the above noted prospecting call goals and entertainment goals.” Naylor also confirmed that the Revised Group Goals included three distinct goals.

¶ 35 Naylor verbally warned both Richardson and Corcoran that the failure to meet any of the Revised Group Goals would result in their termination. Naylor testified that the reference to a failure to meet “any” goal was intended as part of a “standard statement” in the industry. Naylor also clarified that, although the Revised Group Goals referred to termination as a “possibility,” that word is considered a mere nicety when used in the context of probationary employees. According to Naylor, once a probation is initiated, “it is common and understood that at the end of that time period, you need to meet the objectives of that [probation], or we will have to make other arrangements, and we will be parting ways.”

¶ 36 Results of the Probationary Period Under the Revised Group Goals

¶ 37 At the end of the probationary period, neither Richardson nor Corcoran had satisfied each of the monthly goals in the three areas set forth in the Revised Group Goals. Richardson satisfied four of the nine established monthly goals, achieving both the revenue and entertainment

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benchmarks for September and the prospecting goals for October and November. Corcoran satisfied two of the nine monthly goals, meeting the revenue and prospecting expectations for November. Viewing the 90-day probationary period as a whole instead of month-by-month, Richardson satisfied the prospecting expectation, but did not meet either the revenue or the entertainment goals. Corcoran satisfied the revenue and prospecting requirements, but did not meet the entertainment goal. In addition, neither Richardson nor Corcoran met the three-month cumulative expectation for room-nights sold, and Corcoran satisfied only the November monthly goal for that benchmark.

¶ 38 Termination and Replacement of Richardson

¶ 39 On December 1, 2006, the day after the close of the probationary period, West Paces terminated Richardson's employment. West Paces asserted it terminated Richardson because she failed to meet her three-month cumulative revenue goal. West Paces claimed it was able to immediately terminate Richardson because it carefully monitored her sales performance throughout November and knew she did not meet her sales goals.

¶ 40 However, the record demonstrates that Richardson had a pending \$172,000 contract that closed on December 12, 2006. Attributing this contract to her would have caused her to exceed all aggregate revenue goals. Richardson testified that she discussed this pending contract with Naylor and Chase and that Naylor would have known about it because it was in his sales system. Naylor testified he did not know that Richardson had a \$172,000 contract pending. Naylor wanted to retain Richardson, but could not consider the \$172,000 pending contract because of the language included in the Revised Group Goals. Naylor found it "shocking" that Richardson did not try to close the \$172,000 contract before the end of the probationary period.

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¶ 41 In contrast, in December 2006, West Paces booked a cancellation of \$45,000 for rooms previously sold by and credited to Corcoran. Those cancellations resulted in a total revenue of negative \$28,970 for Corcoran in December. West Paces retained Corcoran because she met the three-month cumulative revenue expectation.

¶ 42 West Paces replaced Richardson with Perrin Himmel (a white, 32-year old male). The Hotel 71 sales team as of December 1, 2006 included Naylor, Chase, Martell, Corcoran, Alper, Nick Mearsheimer (a white, 24-year old male), and Jennifer Guskey (a white, 27-year old female).

¶ 43 The ALJ's Recommended Liability Determination

¶ 44 On November 17, 2010, the ALJ issued a recommended liability determination analyzing whether Richardson met her burden of proving discrimination using either (1) direct proof, or (2) indirect proof through the three-pronged test set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

¶ 45 As to direct proof, the ALJ found Richardson did not prove a direct case of discrimination. The ALJ noted “[t]he facts regarding the chain of events from late 2004 through April, 2005 would clearly support a direct case for discrimination had [Richardson] been terminated at that time or shortly after.” The ALJ considered, among other evidence, the conversation with Freeman on February 23, 2005, the telephone conversation with the KOR vice president of human resources and development, and Freeman’s statement to Navarre. Because Hotel 71 abandoned its intention to discharge Richardson upon the sale of the hotel to Falor, no timely adverse action existed to support a direct case of discrimination. The ALJ found that the evidence to support direct discrimination was too remote in time to have motivated the December 1, 2006 termination.

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¶ 46 As to Richardson's indirect claim of discrimination, the ALJ applied the *McDonnell Douglas* test, which includes three distinct stages. First, a complainant must establish a *prima facie* case of discrimination by proving that: (1) she is in a protected class; (2) she was discharged; (3) a similarly situated employee outside the protected class was not discharged; and (4) the complainant was replaced by someone outside the protected class. *Id.* at 802. Second, if the complainant is successful in making a *prima facie* case, the employer must then articulate a legitimate, non-discriminatory reason for the discharge. Third, if the employer identifies such a non-discriminatory reason, the complainant must prove that the proffered reason is a pretext "by showing either that (1) the employer's explanation is not worthy of belief; (2) the proffered reason had no basis in fact; (3) the proffered reason did not actually motivate the decision; or (4) the proffered reason was insufficient to motivate the decision." See, e.g., *Zaderaka v. Illinois Human Rights Commission*, 131 Ill. 2d 172, 179 (1989).

¶ 47 The ALJ found Richardson easily made her *prima facie* cases for both race and age discrimination. The parties do not dispute that Richardson, a 55-year old African-American, is a member of two protected classes and that she suffered an adverse employment action when she was discharged on December 1, 2006. The ALJ ruled that Richardson established the third element of her *prima facie* case because Richardson had a similar performance record as Corcoran, who is white and was 25-years old at the time of Richardson's termination. The ALJ found Corcoran was treated more favorably than Richardson because she was not discharged. Richardson also proved the fourth element of her *prima facie* case because West Paces hired Himmel, a 32-year old, white male as her replacement.

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¶ 48 The ALJ determined that West Paces articulated a legitimate, non-discriminatory reason for discharging Richardson. West Paces legitimately claimed it terminated Richardson for failing to meet her revenue sales goals after having been put on a 90-day probationary plan.

¶ 49 To establish pretext, Richardson argued West Paces' proffered reason for discharging her was not worthy of belief, was insufficient to motivate the discharge decision, and did not actually motivate the discharge decision. Applying the third stage of the *McDonnell Douglas* analysis, the ALJ concluded that West Paces' proffered explanation was pretextual. The ALJ delineated five principal reasons for that conclusion.

¶ 50 First, the ALJ found that West Paces did not evaluate Richardson and Corcoran even-handedly under the same standard provided in the Revised Group Goals. Naylor cautioned Richardson and Corcoran that "failure to meet any of the terms and responsibilities of the probationary goals (rooms and revenue, prospecting and entertainment) would result in termination." West Paces' specific directive in the 90-day probationary policy stated that "both employees would be held particularly accountable for the assigned prospecting and entertainment goals." The ALJ found nothing in the record explaining why such accountability "was suddenly abandoned." Even though neither Richardson nor Corcoran met all the probation-period goals, West Paces terminated only Richardson. Although West Paces argued it terminated Richardson because she failed to meet her three-month revenue goal and retained Corcoran because she met her three-month revenue goal, West Paces "wait[ed] until the end of the 90-day probationary period to suddenly cherry-pick which specific goal it would ultimately hold each employee accountable for."

¶ 51 Second, the ALJ pointed to other facts in the record suggesting that West Paces' sudden focus

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on revenue generation to the exclusion of other objectives “was a ruse to orchestrate [Richardson’s] discharge.” The ALJ concluded that if West Paces considered revenue generation as the deciding factor for sales performance, it would have retained Richardson over Corcoran. Richardson had sold 4,098 room reservations (61.4% of her assigned goal) and generated \$877,600 in revenue (66.6% of her assigned goal) for the first 11 months of 2006, until her termination on December 1, 2006. In comparison, for the first 11 months of 2006, Corcoran sold 3,450 room reservations (46% of her assigned goal) and generated \$644,909 in revenue (45.3% of her assigned goal). According to the ALJ, because Richardson “performed better in actual revenue and actual room sales and reached a higher percentage of both revenue and room goals than her identified comparable for the 2006 year, it is difficult to believe that [West Paces] would be genuinely concerned with revenue generation only for a specific 90-day period while indifferent to total revenue generation for the 2006 year.”

¶ 52 Third, the ALJ found the reliability of Corcoran’s probationary period revenue total implausible. West Paces’ sales record showed that Corcoran met her 90-day probationary revenue goal by a small margin of \$5,848 at the end of November. In December, the sales record indicated that Corcoran had a negative \$28,070 in revenue. Naylor explained that this negative figure stemmed from a \$45,000 sales cancellation from one of Corcoran’s clients. The ALJ found, “Although Naylor testified that Corcoran’s December, 2006 revenue sales had no bearing on whether she met her 90-day probationary revenue goal that ended November 30, 2006, the timing of a cancellation of \$45,000 in sales conveniently just a few weeks after Corcoran barely exceeded her probationary revenue goal, presents a suspicious fact chronology that simply strains credulity.” The ALJ also considered Richardson’s credible testimony that she telephoned Corcoran during the first

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or second week of December 2006 and Corcoran told Richardson that she had not met her probationary goals.

¶ 53 Fourth, following the consummation of the hotel purchase on April 1, 2005, all the newly hired salespeople (Corcoran, Martell, Alper, Chase, Guskey, and Mearsheimer) were white and under 40 years of age. Himmel, hired to replace Richardson, was white and also under 40-years old at the time.

¶ 54 Fifth, the ALJ considered Richardson's extensive work history at Hotel 71. "Leading up to the Falor ownership change in April, 2005, [Richardson] had a spotless 20-year career with Hotel 71 under Boykin and previous owners." The ALJ found the facts supported that, with the ownership and management change "came a desire to target [Richardson] for separation from Hotel 71 for reasons that had nothing to do with her job performance."

¶ 55 The ALJ determined that West Paces' proffered reason for discharging Richardson was "not worthy of belief; was insufficient to motivate her discharge; and did not actually motivate the discharge decision." The ALJ concluded that a preponderance of the evidence supported finding that West Paces' decision to discharge Richardson was motivated by her race and age. The ALJ recommended an award of: (1) \$123,788.65 in back pay; (2) \$329,486.08 in front pay; (3) prejudgment interest; and (4) reasonable attorney fees and costs.

¶ 56 On January 26, 2011, the ALJ issued another recommended order and decision in which she reaffirmed her November 17, 2010 determination and additionally found that West Paces owed \$167,223.75 in attorney fees and \$5,943.22 in costs.

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¶ 57 The Commission's Order

¶ 58 In an order issued on October 18, 2012, the Commission adopted the ALJ's January 26, 2011 recommended order and decision, and declined further review in accordance with section 8A-103(E)(1) and (3) of the Human Rights Act (775 ILCS 5/8A-103(E)(1), (3) (West 2010)). West Paces filed a timely petition for direct review of the Commission's order pursuant to section 8-111(B)(1) of the Human Rights Act (775 ILCS 5/8-111(B)(1) (West 2010)).

¶ 59 ANALYSIS

¶ 60 On direct review, West Paces challenges the Commission's findings on four separate grounds. First, West Paces argues the ALJ relied on improper evidence in the recommended liability determination adopted by the Commission. Second, West Paces contends the Commission improperly substituted its business judgment for that of West Paces. Third, West Paces asserts the ALJ and, therefore, the Commission, applied the improper legal standard to determine pretext. Finally, West Paces argues the Commission's order must be overturned because the ALJ's finding of pretext was against the manifest weight of the evidence.

¶ 61 Standard of Review

¶ 62 On appellate review, the findings and conclusions of an administrative agency on questions of fact are held to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2010). The Commission's factual findings must be affirmed unless the court concludes that they are against the manifest weight of the evidence. *Raintree Health Care Center v. Illinois Human Rights Comm'n*, 173 Ill. 2d 469, 478 (1996); *Southern Illinois Clinic, Ltd. v. Human Rights Comm'n*, 274 Ill. App. 3d 840, 846 (1995). In order to set aside the Commission's findings as against the manifest weight

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of the evidence, the reviewing court must find that “no rational trier of fact, after viewing all of the evidence in a light most favorable to the agency, could have found as that agency did.” *Szkoda v. Human Rights Comm’n*, 302 Ill. App. 3d 532, 539 (1998). The reviewing court cannot reweigh the evidence, the credibility of the witnesses, or the reasonable inferences to be drawn from the evidence. *Christ Hospital & Medical Center v. Illinois Human Rights Comm’n*, 293 Ill. App. 3d 105, 109 (1997). Thus, if a review of the record reveals any evidence supporting the administrative agency’s conclusions, the decision must be affirmed. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992); *Interstate Material Corp. v. Human Rights Comm’n*, 274 Ill. App. 3d 1014, 1023 (1995).

¶ 63 A reviewing court, however, is not bound to give the same deference to an administrative agency’s conclusions of law and exercises independent review over such questions. *Raintree Health Care Center*, 173 Ill. 2d at 481. This court reviews questions of law on a *de novo* basis. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998).

¶ 64 An administrative agency’s evidentiary rulings are reviewed for an abuse of discretion. *Matos v. Cook County Sheriff’s Merit Board*, 401 Ill. App. 3d 536, 541 (2010). An abuse of discretion occurs only if a “ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view.” *People v. Sharp*, 391 Ill. App. 3d 947, 955 (2009).

¶ 65 Evidentiary Challenges

¶ 66 West Paces challenges a number of evidentiary findings by the Commission. West Paces asserts the ALJ mishandled the evidence related to the February 23, 2005 Freeman meeting, which improperly influenced her ultimate decision. West Paces also argues the ALJ improperly relied on

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specifically alluded to a “chain of events,” including Richardson’s conversation with Freeman in the findings for the direct case of discrimination. The ALJ rejected Richardson’s direct case of discrimination. In other words, West Paces won on that issue and now complains the ALJ relied upon improper hearsay. The ALJ specifically found Richardson’s 2005 discharge did not constitute direct evidence of discrimination because it was too remote in time.¹ The ALJ’s conclusion that West Paces indirectly discriminated against Richardson included no mention or analysis of the Freeman evidence and, therefore, we conclude that West Paces has not established an abuse of discretion.

¶71 Moreover, West Paces failed to object to the testimony related to the Freeman meeting. West Paces claims it objected to the Freeman testimony, but the record shows the hearsay objection related to Richardson’s testimony concerning industry rumors that Zudyk and Naylor were conducting interviews to replace Richardson and Kirkman. The ALJ acknowledged this testimony was based on industry rumor. Richardson next testified that Freeman told her in a meeting that she was being discharged and that her termination was racially motivated. West Paces did not object to this testimony. When Kirkman offered corroborating testimony, West Paces objected to Kirkman testifying that Zudyk and Naylor were interviewing people to replace her. West Paces did not object when Kirkman later testified that Freeman told her she and Richardson were being discriminated

¹ West Paces argues, as part of its challenge to the Freeman testimony, that it played no role in the 2005 decision to terminate Richardson because Falor had yet to hire West Paces. West Paces also asserts that Naylor was not involved in that decision either, because he began working for KOR on February 28, 2005. In light of the ALJ’s finding that Richardson did not prove a case of direct discrimination, these arguments are irrelevant to the disposition of this case and we need not address them.

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against and should contact the Department.

¶ 72 We find that West Paces' failure to object to the Freeman testimony on the basis of hearsay forfeits its argument on this issue. See *Guski v. Raja*, 409 Ill. App. 3d 686, 695 (2011) (failure to object contemporaneously to hearsay testimony results in forfeiture).

¶ 73 The Challenged Corcoran Statement

¶ 74 West Paces also argues that the Commission erred by relying on Corcoran's admission that she did not meet her 90-day probationary goals, which is allegedly hearsay. West Paces did not object to Richardson's testimony of Corcoran's admission at the hearing. Therefore, we find this argument has been forfeited.

¶ 75 Alleged Improper Reliance on Evidence From Exhibit 56

¶ 76 West Paces also contends that the Commission improperly relied upon evidence set forth in its exhibit 56 establishing that: (1) all of the individuals hired by Naylor prior to the date of Richardson's termination were white and under 40-years old; and (2) Richardson's replacement was white and under 40-years old. The ALJ stated "the makeup of the sales team stemming from Naylor's tenure as the sales director for Hotel 71" presented "curious facts that bear on the implausibility" of West Paces' articulated reason for terminating Richardson. West Paces' argument is two-pronged.

¶ 77 First, West Paces argues that the Commission should not have focused as much on the young, white individuals hired prior to Richardson's discharge but, instead, should have placed greater weight on other information contained in exhibit 56 indicating that, after Richardson was terminated, Naylor hired: (1) Robin Rovner, a 56-year old white woman; and (2) Sharon Blazer, a 55-year old

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African-American woman.

¶ 78 Second, West Paces argues that, if it does not succeed on that argument, then the Commission erred by placing any reliance on exhibit 56 because the information contained therein is meaningless and irrelevant as a matter of law. According to West Paces, the exhibit only provides a small sample size of the seven employees from the sales department of the hotel and does not provide evidence of the race, age, and qualifications of persons who competed for those positions. West Paces contends the statistics in exhibit 56 are useless absent “evidence in the record as to the race and age and qualifications of the persons who competed for [the] seven positions” Naylor filled.

¶ 79 However, West Paces fails to mention that it stipulated to the information contained in exhibit 56 and that it was the party that offered the exhibit into evidence. In fact, West Paces invited the ALJ and, therefore, the Commission, to use the exhibit’s information exactly as it did – to look at raw data concerning the ages and races of other sales staff members as evidence that no discrimination took place. Having asked the ALJ to consider and admit the exhibit, West Paces cannot now object to its use after it recognized the admission of the information harmed its position.

¶ 80 The transcript of the proceedings clearly establishes that West Paces urged the ALJ to consider exhibit 56. While counsel for Richardson was entering stipulations into the record, counsel for West Paces noted that he was preparing an additional stipulation that ultimately would be designated as exhibit 56:

“MR. TERRELL [counsel for West Paces]: Another stipulation we’ve been working on is a list of all of the persons employed in the sales department from the time that Greg Naylor was hired in April of 2005 through to the present, and we’ve

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prepared a list that has all those names, the dates of their employment, their dates of birth, and their ethnicity.

And we have a stipulation that all of the information on this sheet is accurate and will be supported by business records of the hotel.”

Counsel for West Paces then labeled the document as exhibit 56 and the parties stipulated to the authenticity of the document as a business record.

¶ 81 Later, while West Paces offered exhibit 56 into evidence to examine one of its witnesses about Rovner, Richardson objected, arguing that “unless [West Paces] present[ed] all of their workforce data and provide[d] an actual selection pool,” raw data concerning other hirees is “meaningless.” The ALJ agreed with Richardson, but West Paces persisted, insisting that the testimony and corresponding exhibit were relevant regarding the question of racial discrimination. Over Richardson’s objection, the ALJ admitted exhibit 56 into evidence.

¶ 82 The record shows West Paces, now on appeal, embraces the objections that Richardson argued before the ALJ, asserting that statistical data about the races and ages of its other employees in the sales department tells little about whether discrimination occurred without information concerning the races and ages of others who applied for those jobs. West Paces’ objection here to allegedly “meaningless” evidence is, at its root, an objection to relevance. Logically, an objection to relevance cannot be made by the proponent of that evidence. See *Oakleaf of Illinois v. Oakleaf & Associates*, 173 Ill. App. 3d 637, 652 (1988) (“no objection was made as to relevance and was therefore waived”).

¶ 83 Furthermore, even if it were error for the ALJ to have considered exhibit 56, the error was

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one that West Paces invited and, therefore, cannot now object. “Under the doctrine of invited error, a party may not request to proceed in one manner and then later contend on appeal that the course of action was in error.” (Internal quotation marks omitted.) *Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 92. West Paces, having sought the stipulation to and admission of exhibit 56, cannot claim the ALJ committed error by engaging in an analysis that West Paces itself invited. We reject West Paces’ argument on this issue.

¶ 84 Alleged Improper Substitution of Business Judgment

¶ 85 West Paces next argues that on two occasions, the Commission improperly substituted its business judgment for that of West Paces. First, the ALJ improperly relied upon Richardson’s “spotless 20-year career” prior to her employment by West Paces. West Paces asserts this was an impermissible substitution of what the ALJ believed West Paces should have considered in deciding whether to terminate Richardson. Second, West Paces contends the ALJ substituted her business judgment for that of West Paces when pointing out that Richardson generated more in revenue and rooms for 2006 as a whole. West Paces argues that by doing so, the ALJ is not relying on evidence quantifying proof of pretext, rather, “she is merely stating her belief as to a preferred business standard.” West Paces claims the ALJ ignored the March 3, 2006 “Sales Meeting Agenda,” setting forth progressive disciplinary measures. West Paces asserts “[t]he decision to discharge on December 1, particularly in view of [Richardson’s] previous brush with termination after missing four consecutive monthly revenue goals, was a legitimate exercise of business judgment.”

¶ 86 Addressing the first prong of the business judgment argument, “[w]hile the relevant time for determining the effectiveness of an employee is the time of discharge, ‘previous employment history

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may be relevant and probative in assessing performance at the time of termination.’ ” *Culver v. Gorman & Co.*, 416 F.3d 540, 549 (7th Cir. 2005) (quoting *Fortier v. Ameritech Mobile Communications, Inc.*, 161 F.3d 1106, 1113 (7th Cir. 1998)). A review of the recommended liability determination shows that the ALJ considered Richardson’s “spotless 20-year career” with Hotel 71 under its previous owners for purposes of addressing Richardson’s burden of proving the proffered reason for her termination was pretextual. The ALJ raised Richardson’s extensive work history, not to substitute its business judgment for West Paces, but to conclude that West Paces’ proffered reason for terminating her was “not worthy of belief,” considering her work record. In support of this finding, the ALJ noted that Richardson had no problems with the previous owners of Hotel 71 and even won a sales award in 2004, the year before Falor took ownership of the hotel. The testimony also established that Richardson had always met or exceeded her sales goals before Falor bought Hotel 71. The record shows Naylor transferred Richardson’s clients to Corcoran, which significantly undermined Richardson’s ability to meet her sales goals. Richardson’s alleged incompetence as a salesperson was, therefore, suspiciously sudden, occurring only when the new owner and management company arrived on the scene. Thus, evidence of Richardson’s employment history called into question the truthfulness of West Paces’ proffered reason for termination. Accordingly, the evidence was properly considered by the ALJ and the Commission did not improperly substitute its business judgment. *Culver*, 416 F.3d at 549; see also *Abrahamson*, 153 Ill. 2d at 88; *Interstate Material Corp.*, 274 Ill. App. 3d at 1023 (if a review of the record reveals any evidence supporting the administrative agency’s conclusions, the decision must be affirmed).

¶ 87 Turning to the second part of West Paces’ argument, we find West Paces incorrectly claims

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the ALJ and, therefore, the Commission, relied upon 2006 actual revenues as the “preferred business standard” for evaluating Richardson’s performance. West Paces distorts the record on this issue. Notably, West Paces cried foul when the ALJ purportedly “cherry-picked” the components for evaluating Richardson and Corcoran during the 90-day probationary period, but then argues the ALJ erred by not applying the March 3, 2006 progressive disciplinary policy. West Paces ignores the fact that both Richardson and Corcoran were eligible for termination under that policy as well.

¶ 88 In discussing actual revenues for 2006, the ALJ simply addressed West Paces’ erroneous claim that revenue was the sole measure of a salesperson’s evaluation. If revenue were, in fact, the ultimate consideration of whether to retain a salesperson, then an employer would rationally choose the employee with the greatest sales revenue. In this case, the record shows the ALJ relied on the 2006 revenue total for Richardson, which was \$877,608 for an 11-month period, as compared to \$644,909 generated by Corcoran for the full 12-month year. If prospecting and entertainment calls were relevant only to the extent that they generate revenue, as West Paces now claims, then a rational employer would have chosen Richardson as well. She had prospecting and entertainment calls far in excess than those generated by Corcoran.

¶ 89 The crux of this argument involves a credibility determination, not a business judgment, as West Paces asserts. This court cannot reweigh the evidence, the credibility of the witnesses, or the reasonable inferences to be drawn from the evidence. *Christ Hospital*, 293 Ill. App. 3d at 109. Nevertheless, West Paces’ reliance solely on revenue as the critical criterion while, at the same time, refusing to consider Richardson’s actual revenue through the course of 2006 simply strains West Paces’ credibility. Furthermore, we note that the Revised Group Goals, which specifically included

prospecting and entertainment calls as part of the 90-day probationary period, was prepared and distributed by West Paces. Any ambiguity in an employment directive is to be construed against the drafter. See *Mitchell v. Jewel Food Stores*, 142 Ill. 2d 152, 166-67 (1990). Based on the foregoing, we conclude that the Commission did not substitute its business judgment for that of West Paces when it considered total 2006 revenue to determine whether Richardson's termination was based on pretextual discrimination.

¶ 90 Use of the Correct Legal Standard for Pretextual Discrimination

¶ 91 West Paces next argues that the Commission applied an incorrect legal standard when it found West Paces' proffered reason for discharge was pretextual. According to West Paces, the ALJ ignored *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993), improperly relied on cases which predate *Hicks*, and misapplied the principals set forth in *Hicks*. West Paces contends that according to the holding in *Hicks* and *Illinois J. Livingston Co. v. Illinois Human Rights Comm'n*, 302 Ill. App. 3d 141 (1998), the Commission must also make a separate finding that the employer intentionally discriminated against the employee.

¶ 92 Contrary to West Paces' argument, the ALJ did not ignore *Hicks* but specifically cited to it in her recommended liability decision. In *Hicks*, the Supreme Court held that proof of pretext permits, but does not require, an additional finding of intentional discrimination as follows:

“The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will *permit* the trier of fact to infer the

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ultimate fact of intentional discrimination, and the Court of Appeals was correct when it noted that, upon such rejection, “[n]o additional proof of discrimination is required.” (Emphasis in original.) *Hicks*, 509 U.S. at 511 (quoting the case it overturned, *St. Mary’s Honor Center v. Hicks*, 970 F.2d 487, 493 (8th Cir. 1992)).

Illinois courts have followed the holding in *Hicks*. See, e.g., *Illinois J. Livingston Co.*, 302 Ill. App. 3d at 152 (Emphasis in original.) (“the employee must present sufficient evidence to permit a finding that the employer’s proffered reasons masked *intentional* *** discrimination rather than some other legitimate, though not necessarily commendable, motive”); *Christ Hospital*, 293 Ill. App. 3d at 111 (same).

¶ 93 Since *Hicks*, *Livingston*, and *Christ Hospital*, the Supreme Court has reaffirmed its holding that a plaintiff *need not* always introduce additional, independent evidence of discrimination, contrary to West Paces’ argument. See *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 149 (2000) (“It suffices to say that, because a prima facie case and sufficient evidence to reject the employer’s explanation may permit a finding of liability, the Court of Appeals erred in proceeding from the premise that a plaintiff must always introduce additional, independent evidence of discrimination.”). West Paces argues that additional evidence of intentional discrimination is required, but *Hicks* and its progeny do not so hold. A rejection of the employer’s proffered reason for termination *permits* the trier of fact to *infer* the ultimate fact of intentional discrimination, which is what the ALJ found here.

¶ 94 As stated in the ALJ’s recommended liability determination, Richardson bore the burden of proving “by a preponderance of the evidence that the employer’s articulated reason was not its true

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reason, but rather, merely a pretext for discrimination.” After the ALJ found Richardson met her burden by a preponderance, she could then infer the ultimate fact of intentional discrimination, as “the employee retains the burden of persuasion throughout the case.” *Christ Hospital*, 293 Ill. App. 3d at 111 (citing *Hicks*, 509 U.S. at 511).

¶ 95 In this case, the ALJ did not merely find that West Paces’ proffered reason for discharge was untrue. The ALJ relied upon additional evidence produced by Richardson to find that West Paces’ stated reason for termination was both untrue *and* a pretext for race and age discrimination. The ALJ found:

“The evidence supports that [West Paces’] proffered reason for discharging [Richardson] – failure to meet her revenue goal for the 90-day probationary period – is not worthy of belief; was insufficient to motivate her discharge; and did not actually motivate the discharge decision.

When considering all of the aforementioned facts, the evidence presented here supports, by a preponderance, that [West Paces’] decision to discharge [Richardson] was motivated by her race, African American (black) and age, 55.”

As the ALJ’s recommended liability determination, adopted by the Commission, finds that West Paces’ proffered reason for discharge is both untrue and a pretext for discrimination, we find that the ALJ and the Commission followed the proper legal standard to determine West Paces committed race and age discrimination against Richardson.

¶ 96 Whether the Discrimination Finding was Against the Manifest Weight of the Evidence

¶ 97 Finally, West Paces argues that Richardson failed to meet her ultimate burden of proving her

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discharge was motivated by discriminatory intent based on race or age. West Paces asserts the Commission's order must be reversed as against the manifest weight of the evidence. West Paces repeats its argument that the ALJ improperly relied upon the "chain of events" surrounding the February 23, 2005 Freeman meeting. West Paces also contends the ALJ relied upon "thin statistical evidence." In addition, West Paces contends that, although the probationary period had three separate monthly criteria (revenue, prospecting calls, and entertainment calls), the ALJ erred by treating those goals "as if they were equivalents in importance." According to West Paces, the sole standard for the probationary period was the cumulative amount of revenue actually generated by Richardson and Corcoran over the 90 days. West Paces argues Richardson should have understood that the other two stated goals – prospecting and entertainment calls – were meaningless and were mentioned only as aids to assist Richardson and Corcoran in achieving the primary goal of generating revenue.

¶ 98 We have already addressed and disposed of West Paces' arguments concerning the Freeman meeting and the "thin statistical" evidence (referring to West Paces' own exhibit 56 that it sought to and succeeded in getting admitted into evidence at the hearing). Here, we focus on whether the ALJ's findings in her recommended liability determination, as adopted by the Commission, were against the manifest weight of the evidence. *Raintree Health Care Center*, 173 Ill. 2d at 478. Again, we cannot reweigh the evidence, the credibility of the witnesses, or the reasonable inferences to be drawn from the evidence. *Christ Hospital*, 293 Ill. App. 3d at 109.

¶ 99 A review of the record reveals an abundance of evidence supporting the ALJ's conclusions and, therefore, the order of the Commission must be affirmed. *Abrahamson*, 153 Ill. 2d at 88;

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Interstate Material Corp., 274 Ill. App. 3d at 1023. The Revised Group Goals given to both Richardson and Corcoran set forth “the newly established goals” for the 90-day probationary period. The first goal involved revenue and the Revised Group Goals articulated the particular methodology that would be used for calculating revenue during the probationary period (“new definite business, less cancellations (unless solely as the result of the renovation project), less reevaluations, plus any collected cancellation [*sic*] and attrition charges”). The Revised Group Goals also provided that “[t]he Trial Period will also include the above noted prospecting call goals and entertainment goals.” The document warned both Richardson and Corcoran that “[a] failure to meet any will result in further performance review up to, and possibly including termination.”

¶ 100 Naylor’s testimony also confirmed the requirement of three distinct goals and he identified those goals as “revenue,” “prospecting calls,” and “entertainment goals.” Therefore, the ALJ’s reliance on these three goals to determine the existence of pretext was not contrary to the manifest weight of the evidence.

¶ 101 West Paces nevertheless contends that the ALJ “reads far too much into the language” of the Revised Group Goals. Yet, Naylor testified that the Revised Group Goals were intended to “clearly defin[e] what the expectation was.” West Paces’ argument would require us to reweigh the evidence, which we cannot do. See *Zaderaka*, 131 Ill. 2d at 180 (in Illinois, it is well established “that a reviewing court may not reweigh the evidence or substitute its judgment for that of the trier of fact”).

¶ 102 The record shows that, at the end of the 90-day probationary period, neither Richardson nor Corcoran had satisfied each of their monthly goals for the three criteria set forth in the Revised

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Group Goals, yet West Paces terminated only Richardson. The ALJ found that West Paces did not evaluate Richardson and Corcoran even-handedly under the same standard provided in the Revised Group Goals. The evidence demonstrated that West Paces waited until the end of the 90-day probationary period and then decided that it would base its retention solely on revenue, in direct contravention of the Revised Group Goals that it drafted. In other words, West Paces cannot set forth a disciplinary policy and then choose what elements to apply within that policy if it results in race and age discrimination. See *Mitchell*, 142 Ill. 2d at 166-67 (1990) (Any ambiguity in an employment directive is to be construed against the drafter). Viewing this evidence in the light most favorable to the Commission, we find that a rational trier of fact could have found as the ALJ and Commission did in this case.

¶ 103 West Paces also points to the March 3, 2006 “Sales Meeting Agenda,” which, in its view, highlighted revenue as the key component in its employee evaluations. West Paces contends the Commission did not give adequate weight to that document and to Naylor’s corresponding testimony to “underscore[] the central importance of revenue” in the probationary period.

¶ 104 Again, the defect in this contention is that West Paces invites us to reweigh the evidence. See *Zaderaka*, 131 Ill. 2d at 180. The record shows that the old policy from March 3, 2006 was suspended in favor of the Revised Group Goals because neither Richardson nor Corcoran were able to meet their revenue goals due to the hotel renovation. As Naylor testified, the advent of the 90-day probationary period in September 2006 “changed the rules” for Richardson and Corcoran. Thus, it is reasonable for the ALJ to have given controlling weight to the Revised Group Goals over the previous March 3, 2006 disciplinary policy.

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¶ 105 The record demonstrates that after West Paces reviewed the results of the 90-day probationary period on November 30, 2006, it decided to: (1) disregard monthly goals altogether; (2) ignore prospecting and entertainment goals entirely; and (3) consider only cumulative revenue over the three-month period as the sole criterion of success. In other words, West Paces changed the probationary requirements after the fact to focus exclusively on the lone measurement that Corcoran purportedly passed and Richardson failed. Based on the record and the ALJ's findings, we conclude the Commission's order finding that West Paces discriminated against Richardson based on her age and race was not against the manifest weight of the evidence.

¶ 106

CONCLUSION

¶ 107 We find the evidence supports the ALJ's conclusions in her recommended liability determination and, therefore, we affirm the order of the Commission. The evidence supports the Commission's finding that West Paces discriminated against Richardson because of her race and age in violation of section 2-102(A) of the Human Rights Act. We find that the Commission did not rely on improper evidence to conclude that West Paces had discriminated against Richardson. The Commission did not impermissibly substitute its business judgment for that of West Paces. The Commission followed the proper legal standard for determining pretextual discrimination. Finally, we find the Commission's decision was not against the manifest weight of the evidence.

¶ 108 Affirmed.