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2018 IL App (1st) 172517-U  
No. 1-17-2517  
Order filed December 26, 2018

Second Division

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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|                                      |   |                                    |
|--------------------------------------|---|------------------------------------|
| DOROTHY STERLING,                    | ) |                                    |
|                                      | ) |                                    |
| Petitioner-Appellant,                | ) | Petition for Review of an Order of |
|                                      | ) | the Illinois Human Rights          |
| v.                                   | ) | Commission                         |
|                                      | ) |                                    |
| ILLINOIS HUMAN RIGHTS COMMISSION,    | ) | No. 10 CH 3417                     |
| ILLINOIS DEPARTMENT OF HUMAN         | ) |                                    |
| RIGHTS, and REGENTS PARK APARTMENTS, | ) |                                    |
|                                      | ) |                                    |
| Respondents-Appellees.               | ) |                                    |
|                                      | ) |                                    |

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JUSTICE HYMAN delivered the judgment of the court.  
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Human Rights Commission did not abuse its discretion in finding petitioner failed to present substantial evidence that respondent evicted her from her apartment because of her race.
- ¶ 2 Dorothy Sterling, who is black, filed a charge with the Illinois Department of Human Rights alleging Regents Park Apartments, where she previously resided, discriminated against

her based on race. Sterling's charge alleged that (i) after her tote bag was stolen in the building lobby, Regents Park security staff refused to view videotape of the lobby area to determine who took the bag, while agreeing to view videotape after money was taken from a white tenant's wallet at the lobby front desk; (ii) she was banned from the security desk area while white tenants were not, and (iii) she was evicted from her apartment because of her race. After an investigation, the Department dismissed Sterling's complaint for lack of substantial evidence. Sterling filed a request for review with the Illinois Human Rights Commission, which vacated the dismissal and remanded for additional investigation. After further investigation, the Department again dismissed the complaint for lack of substantial evidence, and the Commission sustained the dismissal. Sterling sought direct administrative review before this court. We affirm. The Commission did not abuse its discretion in finding that Sterling failed to present substantial evidence supporting any allegation that Regents Park discriminated against her based on race.

¶ 3

### Background

¶ 4

From 2004 to 2009, Sterling lived in Regents Park, a high-rise apartment complex in Chicago. Regents Park has two towers and 1031 living units. Half the tenants are black, 30% are white, and 20% are other races.

¶ 5

### Banning from Front Desk

¶ 6

In January 2009, a Regents Park doorman, Brian Phillips, complained to management that Sterling often spent hours at the front desk while he was working. Phillips wrote an incident report documenting his complaint and asking management to tell Sterling to refrain from loitering at the front desk. Two days later, Peter Richter, Regent Park's property manager and Kim Kilibarda, Director of Resident Relations, met with Sterling to discuss the complaint. Sterling admitted spending time at the front desk because she liked talking to Phillips. She

agreed to stop, but Richter continued to receive complaints from security staff and doormen. Richter said he had never received similar complaints about other residents.

¶ 7 Refusal to Renew Lease and Eviction

¶ 8 In April 2009, Richter sent Sterling a note asking her to meet with him about a “very important” issue and her lease renewal. Sterling acknowledged receiving the note but did not attend the meeting. In June 2009, Richter sent Sterling a letter informing her that Regents Park would not renew her lease and enclosing move out paperwork. The record contains a copy of the letter with a handwritten note initialed by Richter, stating that Sterling “continues to bother staff member Brian Phillips by spending lots of time in front desk area while he is working” and her continuing to do so despite agreeing not to “has led to our decision not to renew her lease.”

¶ 9 In July 2009, Richter personally gave Sterling a letter stating her lease would not be renewed and that she was expected to vacate her unit by the end of August. A week later, Sterling sent Richter a written reply thanking him for meeting with her.

¶ 10 The day after Sterling’s lease expired on August 31, 2009, Sterling sent Regents Park rent and utilities checks. Regents Park returned the checks uncashed with a letter stating that because Sterling’s lease had expired, she was a holdover tenant and eviction proceedings would begin. Sterling acknowledged receiving the returned checks. In early October 2009, Sterling was served with a notice that eviction proceedings would be held in Cook County Circuit Court eight days later. Sterling did not appear. The trial court granted Regents Park full possession of the property and allowed the eviction to go forward. In December 2009, the Cook County Sheriff’s Office evicted Sterling, who was out of town.

¶ 11 Theft of Tote Bag

¶ 12 In August 2009, Sterling placed her tote bag behind a chair in the sitting area of the lobby while she helped another resident take bags upstairs. When she returned the tote bag was gone. Sterling reported the theft to building security and asked them to review videotape surveillance of the area, but she claims they refused. Several months later a white resident placed his wallet on the security desk and walked away. His money was taken, and security personnel acceded to that tenant's request to view the tape of the front desk to determine who took his money. Richter said there are video security cameras at the building's main entrance, including the security desk, but no cameras in the lobby's sitting areas. Chicago Police Detective Margaret Brodie investigated the theft, and confirmed that Regents Park did not have any videotape of the area where Sterling's bag was stolen.

¶ 13 **Complaint and Investigation**

¶ 14 On April 27, 2010, Sterling filed a charge with the Department of Housing and Urban Development (HUD), which forwarded it to the Illinois Department of Human Rights. Sterling alleged Regents Park subjected her to discriminatory terms, conditions, privileges, services, and facilities in housing because of her race in violation of section 102(b) of the Illinois Human Rights Act. 775 ILCS 5/3-102(B) (West 2016). The Department split Sterling's allegations into three counts: (i) addressing Sterling's allegation that Regents Park refused her request to view videotape from the lobby sitting area while agreeing to a white tenant's request to view videotape of the lobby desk; (ii) involving Sterling's contention Regents Park banned her from the front desk area while not placing similar restrictions on non-black residents; and (iii) addressing Sterling's allegation she was evicted because of her race.

¶ 15 After an investigation, the Department found that, although there were security cameras in the sitting area of the lobby where Sterling's purse was stolen, that area was not captured on

videotape. The front desk was videotaped, however, and thus, the theft of the white tenant's wallet from the front desk was not comparable to Sterling's situation. As to her being banned from the front desk, the Department found it was uncontroverted that a doorman had complained about Sterling's extensive lingering there and that no other residents had been the subject of an incident report for that type of conduct.

¶ 16 The Department also found Richter had tried, unsuccessfully, to meet with Sterling to discuss her lease renewal. Richter then informed Sterling by letter on several occasions that her lease would not be renewed. The Department reviewed three other lease termination notices. One was a business owned by a non-black woman, whose lease was terminated. The second involved three white male co-tenants who stole items from a model apartment and chose to leave rather than challenge eviction proceedings. The third notice involved a black couple who were late on rent payments and had an unkempt unit. The couple was allowed to stay after agreeing to maintain their apartment and pay their rent on time.

¶ 17 The Department concluded Sterling did not present substantial evidence that Regents Park took the same or similar actions against similarly situated individuals who were in the same protected class and dismissed her charge. Sterling requested review with the Illinois Human Rights Commission and identified several witnesses who she said could corroborate her claims. The Commission vacated the Department's dismissal and remanded for further investigation.

¶ 18 In its subsequent investigation, the Department contacted all but one of the Sterling's witnesses. Nathaniel Bey, a Regents Park doorman, told the investigator he believed there were cameras in the lobby sitting areas because he could see those areas on the monitors at his desk, but he did not know if they were videotaped. He also said Sterling did not spend time in the lobby when he was on duty, but he did not know what happened when he was not at work.

Quinton Owens said he believed Regents Park was biased against Sterling but had no firsthand knowledge of discriminatory conduct. Two other witnesses, Debra Moore and Joann Bradley, also had no firsthand knowledge of the incidents Sterling complained about and said they lived at Regents Park and had never experienced discrimination there.

¶ 19 Detective Badie, who investigated the theft of Sterling's tote bag, said Regents Park did not have any videotape of the area where Sterling alleged the theft occurred.

¶ 20 Richter told the investigator he asked Sterling on multiple occasions not to linger at the front desk. He also said he received a phone call from a tenant who complained that Sterling was constantly present at the front desk and behaved inappropriately there. Richter said Sterling could not have been "banned" from the front desk area, as it was the main entrance to the building, but that she was asked not to hang around the desk for hours at a time.

¶ 21 The Department concluded Sterling's witnesses provided no further support for her claim of discrimination and again recommended dismissal for lack of substantial evidence. Sterling again request review by the Commission. The Commission sustained the Department's decision to dismiss. The Commission found no evidence that Regents Park withheld tapes of the area where her tote bag was taken because the Department's independent investigator determined the area was not under videotape surveillance. Conversely, the white tenant's money was taken in an area under videotape surveillance. Therefore, the circumstances were dissimilar.

¶ 22 The Commission found that Regents Park received several complaints from its security staff about Sterling's loitering at the front desk for long periods of time, and she did not comply with a request to stop. The Commission found no substantial evidence Sterling was banned from the area, nor that Regents Park was motivated by racial animus when it asked her to refrain from loitering.

¶ 23 Finally, the Commission found no evidence of racial animus or any evidence that Regents Park took action against Sterling because she is black. The Commission noted Regents Park worked with two black tenants to avoid evicting them for late payment of rent and failure to maintain their apartment.

¶ 24 Analysis

¶ 25 As a preliminary matter, we address the respondents' motion to reconsider our order permitting Sterling to supplement the record on appeal, which we agreed to take with the case. The respondents ask that we vacate the order because Sterling failed to serve them her motion to supplement the record. They assert they were not aware of the motion until this court granted Sterling's request. Further, respondents assert the documents in the supplemental record are not relevant because they were not given to or considered by the Commission. Specifically, they contend that the Commission only considered the pleadings and supporting documents Sterling and the Department filed in response to her request for review and it is improper for this court to consider other document the Commission did not review in arriving at its decision. We agree.

¶ 26 "When reviewing the decision of an administrative agency, we are limited to reviewing the record which was before the agency and may not consider new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency." *North Avenue Properties, L.L.C. v. Zoning Board of Appeals*, 312 Ill. App. 3d 182, 185 (2000). Thus, we will not consider any documents in the supplemental record that were not before the Commission.

¶ 27 Turning to the merits, Sterling argues the Commission abused its discretion by sustaining the Department's dismissal as she presented substantial evidence of racial discrimination.

¶ 28 Section 2-102(B) of the Human Rights Act provides “It is a civil rights violation for an owner or any other person engaging in a real estate transaction \*\*\* because of unlawful discrimination or familial status, to [a]lter the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith.” 775 ILCS 5/3-102(B) (West 2016). Under the Act, when the Department accepts a discrimination complaint, a Department official investigates the allegations and prepares a written report recommending whether or not there is “substantial evidence” that an act of discrimination occurred. 775 ILCS 5/7A-102(A) to (C) (West 2016). Substantial evidence is evidence that a reasonable person would accept as sufficient to support the complainant's allegations and that “consists of more than a mere scintilla but may be somewhat less than a preponderance.” 775 ILCS 5/7A-102(D)(2) (West 2016).

¶ 29 After investigation, the Department must dismiss claims that lack substantial evidence. 775 ILCS 5/7A-102(D)(3) (West 2016). A standard of reasonableness is used in determining whether substantial evidence exists to support a charge. *Reeise v. Dep’t of Human Rights*, 295 Ill. App. 3d 364, 367 (1998). A petitioner's discrimination charge consisting of mere speculation and conjecture does not constitute substantial evidence. *Folbert v. Dep’t of Human Rights*, 303 Ill. App. 3d 13, 25 (1999).

¶ 30 After a dismissal for lack of substantial evidence, the complainant may file a complaint in the circuit court, or, as Sterling did, request review with the Commission. 775 ILCS 5/7A-102(D)(3) (West 2016); 56 Ill. Admin. Code § 2520.560(b)(1). We review the decision of the Commission, not the Department. *Zaderaka v. Illinois Human Rights Comm’n*, 131 Ill. 2d 172, 180 (1989). We will not disturb the Commission’s decision to sustain the dismissal of a charge unless the decision was arbitrary, capricious, or an abuse of discretion. *Owens v. Department of*



*Human Rights*, 403 Ill. App. 3d 899, 917 (2010). Under this standard, the court may not reweigh the evidence or substitute its judgment for that of the Commission. *Owens*, 403 Ill. App. 3d at 917. Abuse of discretion will be found where no reasonable person could agree with the position of the lower court. *Matthews v. Avalon Petroleum Co.*, 375 Ill. App. 3d 1, 9 (2007).

¶ 31 To establish a *prima facie* case of housing discrimination, the evidence must show (i) petitioner is a member of a protected class, (ii) petitioner is a tenant in good standing, (iii) the landlord altered the terms, conditions, or privileges of their real estate transaction, and (iv) the landlord treated a similarly situated tenant outside petitioner’s protected class more favorably under similar circumstances. *Turner v. Human Rights Comm’n*, 177 Ill. App. 3d 476, 487-88 (1988).

¶ 32 As to all three counts in her charge, Sterling failed to establish the fourth factor, that Regents Park treated non-black tenants more favorably under similar circumstances. First, the Commission found Regents Park did not improperly withhold tapes of the area where her tote bag was taken. Although security guard Bey said he could see that area on his monitor, he did not know whether the area was videotaped. The Commission noted that the Department’s independent investigator found that the area was not videotaped, and Detective Badie, the police officer who investigated the theft, also said the area was not videotaped. Conversely, the front desk, where the white tenant’s money was taken, was under videotape surveillance. Thus, the circumstances were not similar.

¶ 33 Sterling failed to present substantial evidence that Regents Park’s request that she refrain from spending extensive time near the building’s front desk constituted racial bias. First, there was no evidence that, as Sterling contends, she was “banned” from the front desk area. The front desk area was the main entrance to the building, and Sterling failed to show that she was not

allowed in that area at all. Further, contrary to Sterling's assertions, there was evidence she spent an extensive amount of time at the front desk; indeed she acknowledged doing so because she liked talking to security guard Phillips, who asked management to request that she stop. In an affidavit, Bey said Kim Kilibarda once advised Sterling to leave the front desk area and not be there when Kilibarda returned. This is consistent with the assertion that Sterling was asked not to loiter around the front desk but does not show she was banned from the area.

¶ 34 The Commission also considered Bey's statement that a young white girl was standing at the front desk for long periods of time and not asked to leave and concluded that was not sufficient to support a claim of racial discrimination. But there is no additional evidence regarding the girl's presence at the front desk, for instance, whether she was a tenant and whether any security staff or tenants complained about her. Peter Richter said that he had never had similar complaints about a tenant's presence at the front desk. Absent other complaints about non-black tenants who were treated differently in a similar situation, the Commission's finding of no substantial evidence was not an abuse of discretion.

¶ 35 Lastly, the record failed to show substantial evidence that Sterling's eviction was racially motivated. Sterling asserts her frequent presence at the front desk was a contributing factor to her eviction, which Regents Park concedes. But, as noted, Sterling failed to present substantial evidence showing restrictions on her presence at the front desk were racially motivated.

¶ 36 Sterling also contends the Commission failed to consider the treatment of similarly situated white tenants who were evicted after stealing items from a model apartment unit. She suggests the white tenants were treated more favorably because they were asked to leave before being evicted. This assertion is belied by the facts. The Department identified the white tenants in their investigative report, noting that those tenants were not evicted but left voluntarily.

Sterling would presumably not have preferred that option, which could account for their absence from the Commission's order. Sterling otherwise fails to identify non-black tenants who were treated differently than she was.

¶ 37 Sterling also asserts she was evicted without notice. That too is belied by the record. Richter asked to meet with Sterling in April 2009 to discuss her lease renewal, but she did not attend the meeting. In June 2009, two months before her lease expired, Sterling was notified it would not be renewed. In July 2009, Richter personally gave Sterling a letter informing her that her lease would not be renewed and that she was expected to vacate her unit by the end of August. Sterling met with Richter after that, as evidenced by a letter she sent to Richter. And in October 2009, Sterling was served with a notice that eviction proceedings would be held eight days later. Thus, she had ample notice her lease was being terminated.

¶ 38 The Commission's order identified a case of a black couple who were late on rent payments and had an unkempt unit. The couple was allowed to stay after agreeing to maintain their apartment and pay their rent on time. Sterling was similarly asked not to spend extensive time near the front desk. Regents Park management opted not to renew her lease when she did not comply. This suggests Sterling was evicted for her conduct and supports the Commission's finding of no substantial evidence that Regents Park evicted her based on race.

¶ 39 Affirmed.