

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:

James "Robin" Robinson,

Complainant,

and

Bank of America, N.A.,

Respondent.

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) CHARGE NO(S): **2019CP2356**
) EEOC NO(S): **N/A**
) ALS NO(S): **20-0038**
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NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above-named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Entered this August 18, 2023

Tracey Fleming
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)
JAMES "ROBIN" ROBINSON,)
Complainant,) Charge No.: 2019CP0669
and) EEOC No.: N/A
BANK OF AMERICAN, N.A.,) ALS No.: 20-0038C
Respondents.) Judge William J. Borah

RECOMMENDED ORDER AND DECISION

This matter comes to be heard on Respondent's motion for summary decision.

Complainant has filed a written response and Respondent its reply. The parties have referenced various documents. Respondent attached the affidavits of Chanda Fort, Client Service Representative, who was present in the 515 North LaSalle Street branch of Respondent bank during the June 22, 2018, and the November 30, 2018, occurrences cited in the complaint; Rosita Tong Mui Leung, a Relationship Banker, who was also present at the LaSalle branch during both occurrences; as well as Federico Hung, Assistant Vice President, the Financial Center Manager of the LaSalle branch and who was also present during both pled occurrences. Respondent also submitted its bank policies on cashing third party checks, advancement on a credit card, and treatment of transgenders.

On December 17, 2020, the complaint captioned as ALS No. 20-0038, which alleged racial and sexual identity discrimination during a visit at Respondent bank on June 22, 2018, and the complaint captioned as ALS No. 20-0321, which alleged sexual identity discrimination and retaliation, during a visit at Respondent bank on November 30, 2018, were consolidated under the ALS Number 20-0038C, and were heard and decided jointly.

Contentions of the Parties

Complainant, Robin Robinson, alleges that Respondent, a local branch of the Bank of America, located at 515 N. LaSalle Drive in Chicago, Illinois, is a “public accommodation,” within the meaning of Section 5-101(A)(6) of the Illinois Human Rights Act (Act). Complainant, was a “non-relationship customer” when she entered the facilities (e.i., a person who did not have an account open at the bank) and alleges that on June 22, 2018, she was denied “full and equal enjoyment of the facilities, goods, and services,” pursuant to Section 5-102(A) of the Act, when she was delayed 14 minutes from obtaining an advancement of \$500.00 from her Visa credit card, was subjected to the derogatory term “fag” aimed at her by a teller, and escorted out of the bank by a “detective,” where she was questioned, because of her race, Black, and sexual identity as a transgender female.

Secondly, Complainant alleges that on November 30, 2018, when she returned to the same bank branch, Respondent refused to cash a third-party check drawn from a different bank and subjected her to the derogatory term “fag,” by a teller, because of her sexual Identity, contrary to Section 5-102(A) of the Act, and in retaliation for filing charge 2019CP0669 on October 1, 2018, or November 1, 2018,¹ contrary to Section 6-101(A) of the Act.

Respondent contends that its employees are trained, and it is its policy not to cash a third-party check drawn on a different bank by a “non-relationship customer,” because of its liability risk, without a remedy. Respondent also argues that it facilitated Complainant an advance of \$500.00 from her VISA credit card once she produced proper identification, pursuant to its policy. Finally, Respondent denied that any of its employees subjected Complainant to the derogatory term “fag” on either occasion or caused a “detective” or any law enforcement office

¹ It is disconcerting that the signature of Complainant is dated November 1, 2018, while the Notary “Subscribed and sworn” that Complainant’s signature occurred before her on October 1, 2018.

to intervene, remove, and/or question Complainant, and, in fact, it denied such allegation occurred on its facilities.

DISCUSSION

Summary Decision Standard

Under section 8-106.1 of the Act, either party to a complaint may move for summary decision. 775 ILCS 5/8-106.1. A summary decision is analogous to a summary judgment in the circuit courts. Cano v. Village of Dolton, 250 Ill.App.3d 130, 138, 620 N.E.2d 1200, 1206 (1st Dist. 1993).

A motion for summary decision should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. Fitzpatrick v. Human Rights Comm'n, 267 Ill.App.3d 386, 391, 642 N.E.2d 486, 490 (4th Dist. 1994). All pleadings, affidavits, interrogatories, and admissions must be strictly construed against the movant and liberally construed in favor of the non-moving party. Kolakowski v. Voris, 76 Ill.App.3d 453, 456-57, 395 N.E.2d 6, 9 (1st Dist. 1979). "For purposes of summary decision, all questions of fact must be considered in the nonmovant's favor." Carlson and McGrath Motors, Inc., IHRC, ALS No. S-8787, June 2, 1998. Although not required to prove his case as if at a hearing, the non-moving party must provide *some factual basis* for denying the motion. (Emphasis Added) Birck v. City of Quincy, 241 Ill.App.3d 119, 121, 608 N.E.2d 920, 922 (4th Dist. 1993). *Only facts supported by evidence*, and not mere conclusions of law, should be considered. (Emphasis added) Chevrie v. Gruesen, 208 Ill.App.3d 881, 883-84, 567 N.E.2d 629, 630-31 (2d Dist. 1991). If a respondent supplies sworn facts that, if uncontested, warrant judgment in its favor as a matter of law, a complainant may not rest on its/his pleadings to create a genuine issue of material fact. Fitzpatrick, 267 Ill.App.3d 386, 642 N.E.2d 486 (4th Dist. 1994). Where the party's affidavits stand uncontested, the facts contained therein must be accepted as true and, therefore, a party's failure to file counter-affidavits in response is frequently fatal to her case. Rotzoll v. Overhead Door Corp., 289 Ill.App.3d 410, 418, 681

N.E.2d 156, 161 (4th Dist.1997). Inasmuch as summary decision is a drastic means for resolving litigation, the movant's right to a summary decision must be clear and free from doubt. Purtill v. Hess, 111 Ill.2d 229, 489 N.E.2d 867 (1986).

Preliminary Matter

Both parties undermined their own positions by discussing irrelevant cases, confusing the standard for a summary motion, attacking credibility, and inserting portions of the Department's Investigative Report, as well as snippets of the Investigator's opinion, into their arguments. The Department is a separate and distinct state agency from the Commission, with its own standards, purpose, and procedures. Svenkerud and Flexible Steel Lacing Complany, IHRC, ALS No. 8358, August 12, 1996. The investigative report may not be used to support any argument. Joyce Harris v. Harris and Rush – Presbyterian – St. Luke's Medical Center, IHRC, ALS No. 9885, August 18, 1998. The unsworn report is patently hearsay. It is not the competent, admissible evidence required to support a party's position on summary decision. Carruthers v. Christopher & Co., 57 Ill.2d 376, 313 N.E.2d 457 (1974); Loveland v. City of Lewistown, 84 Ill.App.3d 190, 405 N.E.2d 453 (3d Dist. 1980). Consequently, the extraneous topics and tangents of the parties' briefs were not considered.

Lastly, Complainant has not submitted her own affidavit in opposition to the motion; however, the *pro se* response will be considered as an affidavit, because she wrote and signed the document, to the extent that it complies with Supreme Court Rule 191. “[U]nsupported assertions, opinions, and self-serving or conclusionary statements do not comply with S. Ct. Rule 191. MC Baldwin Financial Comp. v. Dimaggio, et al., 364 Ill.App.3d 6, 845 N.E. 2d 22 (1st Dist. 2006). “[A] *pro se* litigant is held to the standard of an attorney.” Mininni and Inter-Track Partners, IHRC, ALS No. 7961, December 10, 1996, quoting First Illinois Bank and Trust v. Galuska, 155 Ill.App.3d 86, 627 N.E.2d 325 (1st Dist. 1993).

“Justice requires that the parties live with litigation decisions they have made, either through their attorney or on a *pro se* basis.” Fitzgerald and Fischer Imaging Corp., IHRC, ALS No. 10142, May 29, 1998.

FINDINGS OF FACT²

The June 22, 2018, Occurrence

On June 22, 2018, Complainant, designated as a “non-relationship customer,” one who does not have an account with Respondent, entered the branch facilities located 515 N. LaSalle to obtain a \$500.00 cash advance from her VISA credit card. There was a delay, but after Complainant cooperated with the bank’s identification policy, she received the requested amount of proceeds.

Affiant Federico Hung (Hung), the Assistant Vice President, and Financial Center’s Manager, described the physical layout of the branch. Hung described the interior as a “small center with three teller windows and three customer relationship desks. My desk is located within 10 feet from the teller windows.” Consequently, the employees are near to each other’s workstations and any customer that entered that branch.

Chanda Fort (Fort), a Client Service Representative for 28 years, averred that she assisted Complainant with her June 22, 2018, transaction, “I obtained and recorded in my own writing (as shown on Attachment 1) identification information from Complainant, including Complainant’s name, Illinois State Identification Card Number, and address in order to process the requested cash advance.” “That, pursuant to BANA policy, I obtained a signature...which I witnessed...and completed [the transaction] at 2:56 p.m. Complainant waited in the financial Center for someone to pick Complainant up and she exited shortly thereafter. I did not interact

² The following facts were derived from uncontested sections of the pleadings, affidavit, and other documentation submitted. The findings did not require, and were not the result of, credibility determinations.

or see Complainant in the financial center ... prior to my assisting Complainant..." "There never was any issue or concern expressed by Complainant..."

Rosita Tong Mui Leung (Mui Leung), Relationship Banker for 10 years, averred, "At no time did I or anyone else at the financial center deny services to Complainant or discriminate against Complainant in any manner whatsoever. I emphatically deny Complainant's allegations as baseless fabrications for reasons known only to Complainant." Mui Leung denied witnessing any "representative [of the bank – teller] engaging in any disrespectful or derogatory language or behavior towards Complainant...or place a call to the police or witness a detective or any law enforcement officer interact with Complainant inside (or outside) the financial center. I have no doubt that the incidents Complainant alleges ...simply did not occur."

Hung, as Assistant Vice President and the LaSalle Financial Center's Manager, explained that his desk was located near the "tellers," because, in part, he was responsible for the wellbeing of the office, employees, customers, and enforcement of the bank's policies. Hung also averred that the bank's services were not denied or delayed, discrimination did not occur, nor did he hear any disrespectful or derogatory language or see adverse behavior towards Complainant. "All BANA tellers are trained on its policies and procedures, which include those policies and procedures focused on serving its transgender customers." The transgender policy was part of Hung's affidavit, as well as referencing the attached policy on cash advance from a credit card. Further, Hung represented that "Complainant did not approach or talk [to me]" and that he did not hear anyone telephone the police or witness a detective or any law enforcement officer interact with Complainant inside or outside the financial center. Under Respondent's policies, a teller is required to alert him if police was contacted.

The November 30, 2018, Occurrence

The second alleged discriminatory event occurred on November 30, 2018, when again, Complainant, a "non-relationship customer," chose to enter Respondent's bank for the purpose of cashing a third-party check, drawn on a different bank. Both Fort and Hung averred that they

interacted with Complainant, first Fort, as a teller, then Hung, as manager. Both employees communicated to Complainant that pursuant to its policy, the bank could not cash the check, because it is a third-party check and Complainant did not have an account with the bank. However, Hung offered to open an account for her, which she declined. Mui Leung witnessed Fort and Hung explain the bank's policy to Complainant. Attached to Hung's affidavit is Respondent's policy titled, "Cash Not-On-Us Checks for a Non-Relationship Client or a Bank Client without an Acceptable Recourse Account." "This policy is enforced across the board as to all non-relationship customers."

Analysis

Public Accommodation – Discrimination Standard

A complainant may prove discrimination through direct evidence or through circumstantial evidence. The Commission has adopted the paradigm enunciated in McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), and clarified in Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). See Smith and Official Airline Guides, IHRC, ALS No. 1681, March 12, 1987.

Under the paradigm, a complainant must first establish a *prima facie case*. Once complainant has established a *prima facie case*, the respondent must articulate a legitimate, non-discriminatory reason for its actions.

Generally, to establish a *prima facie case* of discrimination concerning a public accommodation, Complainant must show that: 1) she is within a protected category; 2) she was denied full enjoyment of the respondent's facilities; and 3) others not within her protected class were given full enjoyment of those facilities. Henderson and Steak N Shake, Inc., IHRC, ALS No. S-9735, September 25, 1998.

Here, Complainant is unable to satisfy elements 2 and 3 of her *prima facie case*. There is no adequate evidence presented by Complainant that she was "denied the full and equal

enjoyment of the facilities, goods and services of a place of public accommodation based on unlawful discrimination" of race or sexual identity.

Unfortunately, Complainant chose to ignore the case's legal issues in her response, and instead, merely attacks Respondent's overall national image and credibility with broad sweeping, unrelated material. She lobs conclusionary aspersions instead of addressing the factual allegations pled and (if able) countering Respondent's affidavits. Consequently, where the party's affidavits stand uncontested, the facts contained therein must be accepted as true. Rotzoll, supra.

Thus, Complainant purpose for entering the branch on June 22, 2018, was fulfilled by the her timely receipt of the \$500.00 advanced from her Visa credit card once she produced proper identification. Also, the policy in effect on November 30, 2018, prohibiting the cashing of third-party check, drawn on a different bank from a person without an account with Respondent, was consistently enforced for the non-discriminatory reason to avoid Respondent's exposure to economic risk involved with such a transaction.

Complainant's pled allegations that during both occasions an employee of the bank used the derogatory term "fag" must also fail. Regretfully, Complainant chose not to address these allegations in her response or counter the affidavits submitted by denying they happened. Each of the affiants have sworn that they never heard that term said by any employee, nor did they use it. In fact, Hung attached to his affidavit Respondent's policy of respect and courtesy that must be given by employees toward transgender customers.

The same fate must also befall on whether law enforcement was contacted, and a detective arrived and questioned Complainant. Every affiant denied this allegation occurred, but Complainant chose not to address the issue counter the sworn statements. Thus, the contents of Respondent's affidavits must be taken as true as a matter of law.

Finally, Complainant failed to demonstrate the third element of her *prima facie* case. As she has not identified any similarly situated persons who were treated more favorably than she

from a different protected group. Therefore, Complainant fails to establish the second and third element of her *prima facie* case.

Because Complainant failed to submit sufficient evidence to create a genuine issue of fact as to her *prima facie* case of race and sexual identity discrimination for both the June 22, 2018 and the November 30, 2018, transactions, Respondent is entitled to summary decision to those causes of action.

Retaliation - Standard

To show a *prima facie* case for retaliation, the following must be established by Complainant: 1) she engaged in protected activity; 2) Respondent committed an adverse action against her; and 3) a causal connection existed between the protected activity and the adverse action. Hoffelt v. Ill. Dep't of Human Rights, 367 Ill. App.3d 628, 867N.E.2d 14 (1st Dist. 2006); Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E. 2d 410,416 (3d Dist. 2000).

Although Complainant has shown that she had engaged in protected activity by the filing a charge with the Department relating to the June 22, 2018, transaction, the date of the filing is in dispute. It was either filed on November 1, 2018, as written by Complainant or October 1, 2018, the date written by the notary. Complainant fails to address the date discrepancy. Thus, Respondent contends that it was unaware that Charge Number 2019CP0669 was filed, and Complainant fails to present any evidence that the employees at the 515 LaSalle branch knew of the charge at the time of the later occurrence. Where the Respondent does not have any knowledge of the opposition to illegal discrimination by the Complainant prior to the adverse action, a nexus does not exist. Erlandson and City of Evanston Police Department, IHRC, ALS No.10373, June 14, 2000.

In any respect, the second element of "adverse action," fails, because the November 30, 2018, refusal by Respondent bank to cash Complainant's third-party check, from a different bank, for a person who had no account with it, was a non-discriminatory bank policy enforced consistently, as explained above.

Because Complainant failed to submit sufficient evidence to create a genuine issue of fact as to her *prima facie* case of retaliation for November 30, 2018, transaction, Respondent is entitled to summary decision to that cause of action.

Thus, a recommended order in Respondent's favor is appropriate in this case.

CONCLUSIONS OF LAW

1. Complainant is an individual claiming to have been aggrieved by a denial of the full and equal enjoyment of the facility and services of a public accommodation based on race and sexual identity discrimination prohibited by Article 5-102(A) of the Act and retaliated against in violation of Section 6A-101(A) of the Act.
2. Respondent is a place of public accommodation as that term is defined under the Act.
3. Complainant has not established direct evidence of race or sexual identity discrimination. Further, Complainant has not presented adequate indirect evidence of race or sexual identify discrimination or retaliation.
4. There is no genuine issue of material fact as to Complainant's claims of race or sexual identity discrimination, or retaliation. Respondent is entitled to a recommended order in its favor as a matter of law.
5. A summary decision in Respondent's favor is appropriate in this case.

RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that the complaint and underlying charge in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:

WILLIAM J. BORAH
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: June 29, 2023

PLEASE NOTE: The parties to this action are advised that the Illinois Human Rights Commission has now changed its procedural regulations to allow for electronic service. *See* 56 Ill. Admin. Code § 5300.30(a). Accordingly, each party to this action is required to have a current (working) email address on file with the Commission at all times. Parties may submit their email addresses to the Commission using the revised “Appearance Form,” which is now available on the Commission’s website. All parties (including counsel) are required to promptly notify the Commission—in writing—of any change to any party’s mailing and/or email address by filing an updated Appearance Form. Where a party’s failure to update contact information results in an electronic order or other correspondence from the Commission being returned as “UNDELIVERABLE,” such electronic order or correspondence remains effective, and a party’s failure to comply with or respond to such an electronic order or correspondence may result in sanctions being imposed (including dismissal or default).