

IN THE MATTER OF THE
REQUEST FOR REVIEW BY:

Petitioner.

Charge No.: 2022CH0561
HUD No.: 05-22-4476-8
ALS No.: 23-0252

² This Order is entered pursuant to a 3-0-0 vote by the Commissioners.

discriminatory terms, conditions, privileges, or services and facilities due to her familial status (Count G) and retaliated against her (Count H) by refusing to fill out a landlord verification form; subjected her to discriminatory terms, conditions, privileges, or services and facilities due to her familial status (Count I) and retaliated against her (Count J) by causing her to lose her job; subjected her to discriminatory terms, conditions, privileges, or services and facilities due to her familial status (Count K) and retaliated against her (Count L) by issuing her a five-day notice; and subjected her to discriminatory terms, conditions, privileges, or services and facilities due to her familial status (Count M) and retaliated against her (Count N) by refusing to accept payment for room charges; in violation of Sections 3-102(B) and 6-101(A) of the Act. On July 24, 2023, the Respondent dismissed Counts A, B, C, D, E, F, G, H, K, L, M, and N for lack of substantial evidence and Counts I and J for lack of jurisdiction. The Petitioner filed a timely Request.

Extended Stay is a hotel in Naperville, Illinois that offers rooms for temporary housing that are booked without a written lease on a day-to-day or month-to-month basis. The Petitioner stated that she and her five children began staying at Extended Stay in Room 119 in August 2019, but after reporting an issue with the lighting in the room in Spring 2020, she and her family were transferred to Room 109. She said that she noticed a large hole in the flooring in Room 109, and, in February 2021, she asked former General Manager Jose Vargas to transfer her family to a new room. The Petitioner stated that Vargas did not reply.

The Petitioner stated that, between February 2021 and April 2021, she asked Vargas for her family to be transferred from Room 109 at least ten times due to the poor conditions of the room. She said that Vargas either did not respond or told her, "I'll get to it." The Petitioner stated that Room 109 had black mold throughout, including inside the air conditioner, which prevented the air conditioner from working properly. She said that the room had a "burnt out" outlet, broken furniture, a rusted bed frame, nails protruding from the bathroom vanity, broken cabinets, and malfunctioning appliances. The Petitioner stated that she submitted room repair requests to the front desk staff regarding these issues.

The Petitioner said that, in March 2021, she brought her children with her to the laundry room and left her children there briefly. She stated that, when she returned to the laundry room, her son told her that Vargas had told them that "you kids did not do nothing but tear shit up anyway." She said that her son told her that Vargas accused the children of sticking forks and spoons inside the coin slots of the washing machines and vending machines. The Petitioner stated that Vargas subsequently told her that she and her family were not allowed to use the washing machines and vending machines because of her children's actions. She said that, also in March 2021, her son told her that, when he brought their room towels to the front desk, he was required to count them. The Petitioner stated that no other family at Extended Stay was required to count their towels when turning them in.

The Petitioner filed two fair housing complaints against Extended Stay with the City of Naperville in 2021. On March 29, 2021, the Petitioner filed a race, sex, and familial status-based fair housing complaint that alleged that Vargas ignored her request to repair a hole in the floor. On April 5, 2021,

the Petitioner filed a race, sex, military status, marital status, and familial status-based fair housing complaint that alleged that, on March 30, 2021, Vargas failed to make maintenance repairs in her room and accused her children of putting objects inside the washing machines and vending machines.

The Petitioner said that, in April 2021, she began looking for another place to live due to Vargas ignoring her maintenance and room transfer requests. She stated that she asked Vargas to complete a landlord verification form for the Glenmuir of Naperville Apartment Homes complex ("Glenmuir"), and he never completed the form despite being contacted by the apartment building's management multiple times. The Petitioner stated that she believed that Vargas did not fill out the form in retaliation for the Petitioner filing fair housing complaints against Extended Stay with the City of Naperville. She said that, because Vargas did not fill out the verification form, she lost \$449.00, which included a non-refundable down payment and an application fee.

The Petitioner said that, also in April 2021, she lost the income that she received for being a caretaker for her disabled children because the Illinois Department of Human Services told her that a hotel room was "not a stable residency" or "not stable housing" for the care of her children.

The Petitioner said that, on October 10, 2021, she received a five-day notice from Vargas that stated that her lease of the hotel premises would be terminated if she did not satisfy her room charges of \$2,866.30. She stated that, later that day, she went to the front desk to pay off the entire balance, but two of her debit cards were declined and would not work even after calling her bank. The Petitioner said that she believed that Vargas locked her debit card out from the hotel's credit card machine and its online payment portal so that she could not pay off her room charges and avoid eviction. She stated that she did not attempt to pay by check because she was told that Vargas did not accept checks, and she did not attempt to pay by credit card because she would find somewhere else to live if Vargas would not accept her money.

The Petitioner stated that, on October 25, 2021, she hired a private company to perform a mold inspection of her room's bathroom and showed the resulting report to Vargas. She stated that Vargas never addressed the mold issues, and that it took two years for the furniture and appliance issues to be fixed, which occurred only after Vargas left Extended Stay in June 2022. She said that, on January 26, 2023, she and her children vacated their hotel room to avoid eviction while owing Extended Stay approximately \$27,000.00 in outstanding charges.

The Petitioner offered Morgan Vandriessche as a comparator because Vandriessche is married with one child, and, during her tenancy at Extended Stay, whenever she reported issues with her room, including needing repairs, the issues were addressed in a timely manner without incident.

Vargas stated that the Petitioner originally resided in Room 119, but at some point, she was transferred to Room 109 because "there were some broken things in her room." He said that, during the Petitioner's stay in Room 109, she complained about mold and mildew in her bathroom, though he

did not remember when this occurred. Vargas denied telling the Petitioner that he would “get to it.” He stated that, sometime in 2021, the Petitioner submitted a work order for her mold and mildew complaint. Vargas said that Extended Stay’s maintenance engineer inspected the Petitioner’s room and found no mold or mildew inside the kitchen area, but the Petitioner would not allow him to inspect her bathroom. He said that the engineer attempted to inspect the Petitioner’s bathroom multiple times, but the Petitioner would not allow him to do so.

Vargas stated that an engineer ultimately determined that mold was present in the Petitioner’s room, but no remediation work could be done without the Petitioner transferring to another room, and she refused to do so. He said that he offered the Petitioner other rooms to which she could transfer during the mold remediation, but the Petitioner declined them because they “did not match what she wanted.” He stated that the Petitioner wanted the new room to be the same size and room layout as her current room as well as near an exit. Vargas said that he found a room that met the Petitioner’s needs, and she agreed to transfer after viewing it but then changed her mind and declined to move. He stated that the Petitioner told him that she was going to hire her own mold inspector to examine her room, but she never followed up with him about it.

Vargas said that, on October 6, 2021, he gave the Petitioner a five-day notice to pay rent or vacate premises due to non-payment of rent. He said that the Petitioner never responded to the notice. Vargas stated that, during the COVID-19 pandemic, Extended Stay could not evict the Petitioner for non-payment because of Illinois’s moratorium on evictions.

Vargas did not recall receiving any complaints or work order requests from the Petitioner regarding nails protruding through her drawers or walls or any other maintenance issues. He denied telling the Petitioner that her “kids did not do nothing but tear shit up anyway” or that she could not use the washing machines or vending machines because of her children. Vargas stated that it was standard procedure for guests to count their towels and linens to avoid any shortages for other guests.

Vargas did not recall the Petitioner filing a fair housing complaint against Extended Stay with the City of Naperville or whether he had received any communications from Glenmuir regarding a landlord verification check. Vargas stated that he did receive a landlord verification form from a prospective landlord which he completed for the Petitioner and of which he informed her.

Vargas said that, regarding payment, a guest could pay their charges with a debit card, a credit card, or cash. He said that the card payment reader would sometimes malfunction, but a technician would be called out to fix the issue.

The Commission determines that further investigation is needed to determine whether substantial evidence exists as to Counts A, E, and F, that substantial evidence does not exist as to Counts B, C, D, G, I, J, K, L, M, and N, and that substantial evidence exists as to Count H. Under the Act, substantial evidence is “evidence which a reasonable mind accepts as sufficient to support a

particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.” 775 ILCS 5/7A-102(D)(2).

Counts A, C, E, G, I, K, M

The Petitioner alleged that she was subjected to discriminatory terms, conditions, privileges, or services and facilities of a real estate transaction due to her familial status. A *prima facie* case of discriminatory terms, conditions, privileges, or services and facilities of a real estate transaction requires that: (1) the petitioner is a member of a protected class; (2) the petitioner was in good standing with the defendant; (3) the defendant subjected the petitioner to discriminatory terms and conditions; and (4) the defendant treated a similarly situated person outside of the petitioner’s protected class more favorably under similar circumstances. *Turner v. Human Rights Comm’n*, 177 Ill. App. 3d 476, 487 (1st Dist. 1988). Prong three requires that the petitioner’s tenancy be affected in some material way by the landlord’s actions. *In re Request for Review by: Denise Harris*, IHRC, ALS No. 19-0047, 2019 ILHUM LEXIS 1368, *4 (Sep. 17, 2019). As the Petitioner raised numerous specific allegations, each will be addressed in turn below.

First, the Petitioner alleged that she complained about mold, mildew, and other issues in her room since November 2020, but Extended Stay did not take any action (Count A). In order to determine whether substantial evidence exists, more information is needed on the Petitioner’s named comparator, Vandriessche. Though the Petitioner stated that Vandriessche was outside of her protected class and all of the room issues that Vandriessche reported were addressed timely and without incident, we do not know what kind of issues Vandriessche reported to Extended Stay, including whether she complained of mold, mildew, malfunctioning appliances, or any other issues similar to the ones that the Petitioner reported. This information is needed in order for the Commission to determine whether Vandriessche is a comparator. See *Champaign-Urbana Pub. Health Dist. v. Ill. Human Rights Comm’n*, 2022 IL App (4th) 200357 ¶ 191 (“The ‘similarly-situated analysis’ calls for a flexible, common-sense examination of all relevant factors...There must be enough common factors...to allow for a meaningful comparison.”). Accordingly, the Commission vacates the Respondent’s dismissal of Count A and remands the count for further investigation on this issue.

The Petitioner next alleged that Extended Stay required her children to count their towels when they turned them in (Count C). The Commission determines that a *prima facie* case has not been established because requiring the Petitioner’s children to count their towels when they returned them did not constitute a discriminatory term or condition as it did not affect the Petitioner’s tenancy in any material way. See *In re Request for Review by: Cloraldo Alarcon*, IHRC, ALS No. 23-0205, 2024 ILHUM LEXIS 63, *10 (Apr. 2, 2024) (the petitioner being asked to cover his mouth and speak quietly in the management office did not constitute a discriminatory term or condition on the basis of race); *In re Request for Review by: Karmela Howell*, IHRC, ALS No. 22-0315, 2023 ILHUM LEXIS 32, *5 (Feb. 28, 2023) (finding that there was no evidence that the petitioner was subjected to a discriminatory term or condition on the basis of her race when the management of her building alleged that she had a gun

and called the police and a locksmith to check on her unit). Accordingly, the Commission sustains the Respondent's dismissal of Count C for lack of substantial evidence.

The Petitioner also alleged that Vargas told her that she could not use the washing machines or vending machines because her children had put spoons in their coin slots (Count E). The Commission cannot determine whether substantial evidence exists because it does not have enough information regarding whether Extended Stay treated a similarly situated person outside of the Petitioner's protected class more favorably under similar circumstances. The investigation report did not indicate that the Respondent investigated whether Extended Stay told other tenants with or without minor children that they could not use the vending machines or laundry machines under similar circumstances. Without any information regarding potential comparators, the Commission cannot determine whether a *prima facie* case has been established. Accordingly, the Commission vacates the Respondent's dismissal of Count E and remands the count for further investigation on this issue.

Next, the Petitioner alleged that Vargas did not complete her landlord verification form (Count G). The Commission determines that a *prima facie* case has not been established because Vargas's failure to complete a landlord verification form did not constitute a discriminatory term or condition that materially affected the Petitioner's tenancy. There is no evidence that it was a term or condition of the Petitioner's tenancy or Vargas's duty to provide landlord verification forms. Further, there is no evidence that Vargas's actions were taken because of the Petitioner's protected class. Accordingly, the Commission sustains the Respondent's dismissal of Count G for lack of substantial evidence.

The Petitioner alleged that, on April 14, 2021, she lost her income from being her children's caretaker because her hotel room was not considered a stable residence (Count I). As an initial matter, the Respondent argued in its Response that the Commission should sustain its dismissal of Count I for lack of jurisdiction because the Petitioner suffered an "adverse employment action," not an "adverse housing action." However, because the Act confers jurisdiction over housing discrimination claims, such as the claims brought by the Petitioner here, the Commission determines that it has jurisdiction over Count I. See *In re Request for Review by: Alexandria Waters*, IHRC, ALS No. 23-0043, 2023 ILHUM LEXIS 102, *9-10 (July 5, 2023) (finding that, because the Act confers jurisdiction over disability discrimination claims, a petitioner's inability to prove an element of her *prima facie* case does not strip the Respondent of jurisdiction over her charge of discrimination) (citing *Samoilovich v. Dep't of Human Rights*, 2011 IL App (1st) 102151-U, ¶ 26 (finding that, in disability discrimination cases where the petitioner did not prove disability, the Respondent had the jurisdiction to review the charge "because 'the term "jurisdiction," while not strictly applicable to an administrative body, may be employed to designate the authority of the administrative body to act.'"))).

In any event, the Petitioner's loss of income or Extended Stay not being considered a stable residence did not constitute a discriminatory term or condition because her tenancy was not affected in any material way nor was it affected by any action taken by Extended Stay. Accordingly, the

Commission sustains the Respondent's dismissal of Count I but does so on the basis of lack of substantial evidence.

Next, the Petitioner alleged that, on October 10, 2021, she was issued a five-day notice for non-payment of room charges (Count K). The Commission determines that a *prima facie* case has not been established because the Petitioner was not subjected to a discriminatory term or condition, as the notice did not materially affect her tenancy. Though the notice stated that the Petitioner could be evicted, Extended Stay allowed the notice to lapse, and all eviction proceedings ceased due to the COVID-19 pandemic. Such a notice, without more, does not constitute an adverse action or discriminatory term or condition. See *In re Request for Review of Theresa Mangruem*, IHRC, ALS No. 16-0011, 2019 ILHUM LEXIS 521, *5-6 (April 11, 2019) (finding that, in the retaliation context, although the petitioner was issued a notice of eviction, the landlord "never enforced the eviction and she continued to live in her apartment," thus "threatening to take [this] action [was] not materially adverse because there [was] no harm"). Moreover, because the Petitioner owed charges in the amount of \$2,866.30, there is evidence that she was not in good standing with Extended Stay. See *id.* Accordingly, the Commission sustains the Respondent's dismissal of Count K for lack of substantial evidence.

Finally, the Petitioner alleged that, on October 10, 2021, Extended Stay would not accept her payment because she was locked out of its credit card machine and online portal (Count M). The Commission determines that a *prima facie* case has not been established because the Petitioner was not subjected to a discriminatory term or condition. Though the Petitioner stated that she could not pay her outstanding charges with her debit card because Vargas had "locked her out" of the payment system, she stated that she did not attempt to pay by other means, such as credit card, which Extended Stay accepted. Additionally, the Petitioner was not evicted and did not face any other adverse action because she did not pay her outstanding charges. Accordingly, the Commission sustains the Respondent's dismissal of Count M for lack of substantial evidence.

Count B

The Petitioner alleged that Extended Stay subjected her to discriminatory terms, conditions, privileges, or services and facilities of a real estate transaction on the basis of her familial status when Vargas harassed her in March 2021 when he said that her "kids did not do nothing but tear shit up anyway." She also alleged that Vargas accused the Petitioner's children of putting spoons and forks into the coin slots of the laundry machines and vending machines.

A *prima facie* case of harassment in the context of a real estate transaction requires that: (1) the petitioner is a member of a protected class; (2) the petitioner was subjected to harassment; (3) such harassment was based on the petitioner's protected class; (4) such harassment made continued tenancy burdensome and significantly less desirable than if the harassment were not occurring; and (5) if vicarious liability is asserted, the evidence must show that the owner knew or should have known about the particular harassment and failed to remediate the situation properly. *In re Request for Review*

by: *Brenda Byrth*, IHRC, ALS No. 20-0149, 2020 ILHUM LEXIS 214, *6 (Aug. 13, 2020). “For harassment to be actionable in a housing situation, it must be so hostile that it alters the terms, conditions, or privileges, of a real estate transaction.” *Id.* at *4.

Here, there is insufficient evidence that the Petitioner was subjected to harassment, and, therefore, prong two of the *prima facie* case has not been established. The allegation is simply that Vargas complained about the actions of the Petitioner’s children, and these mere complaints were not so hostile that they altered the terms, conditions, or privileges of a real estate transaction. Accordingly, the Commission sustains the Respondent’s dismissal of Count B for lack of substantial evidence.

Counts D, F, H, J, L, and N

The Petitioner alleged that Extended Stay subjected her to discriminatory terms, conditions, privileges, or services and facilities of a real estate transaction on the basis of her familial status when it retaliated against her for making complaints against Extended Stay with the City of Naperville on March 29, 2021, and April 5, 2021. A *prima facie* case of retaliation requires that: (1) the petitioner engaged in a protected activity; (2) the petitioner was subjected to an adverse action; and (3) there is evidence of a causal connection between the protected activity and the adverse action. *Welch v. Hoeh*, 314 Ill. App. 3d 1027, 1035 (1st Dist. 2006). Though the case law related to retaliation claims in housing cases is undeveloped, we can look to case law related to retaliation claims in employment cases for guidance. The legal standard for adverse actions in retaliation claims is lower than in discrimination claims based on protected classes. *In re Latanya Jackson and Bd. of Ed. of City of Chicago*, ILHUM, ALS No. 19-0439, 2023 ILHUM LEXIS 114, *21-22 (May 18, 2023). In the employment context, the claim must show that a reasonable employee would have found the challenged action to be materially adverse, which means that it would have dissuaded a reasonable employee from making or supporting a claim of discrimination. *Id.* Thus, for retaliation claims in the housing context, the alleged adverse action must be materially adverse, meaning that it would dissuade a reasonable person from making or supporting a claim of discrimination. Finally, a causal connection may be established by the time period between the protected activity and the adverse action being short enough to create an inference of connectedness. *In re Request for Review by: Esteban Alvarez*, IHRC, ALS No. 22-0057, 2022 ILHUM LEXIS 101, *6 (Aug. 9, 2022). As the Petitioner raised numerous specific allegations, each will be addressed in turn below.

First, the Petitioner alleged that, in March 2021, her children were required to count their towels before turning them in (Count D). A *prima facie* case has not been established because the Petitioner was not subjected to an adverse action, and thus, prong two has not been satisfied. There is insufficient evidence that Extended Stay requiring the Petitioner’s children to count their towels when they turned them was materially adverse, in that it would dissuade a reasonable person from making or supporting a charge of discrimination. Moreover, prong three has not been satisfied related to the Petitioner’s April 5, 2021, complaint because there was no causal connection between the protected activity and the adverse action as the adverse action occurred before the protected activity. See *In re Request for*

*Review by: Valerie Hemmingway, IHRC, ALS No. 17-0619, 2020 ILHUM LEXIS 212, *3 (Aug. 13, 2020)* (requiring that the protected activity come before the adverse action in order to raise the necessary inference of a causal connection). Accordingly, a *prima facie* case has not been established, and the Commission sustains the Respondent's dismissal of Count D for lack of substantial evidence.

Next, the Petitioner alleged that in March 2021, Vargas told her children that they were not allowed to use the washing machines and vending machines because they had put spoons and forks inside of them (Count F). Though it is reasonable to conclude that a person would be dissuaded from making or supporting a claim of discrimination after being told that they could no longer use an essential amenity such as laundry machines, there is not enough evidence to determine whether a *prima facie* case has been established because it is not clear when Vargas stated that the Petitioner and her family were not allowed to use the machines. The Petitioner filed her City of Naperville complaints on March 29, 2021, and April 5, 2021, but the Respondent's investigation materials stated that Vargas said that the Petitioner and her family could not use the machines in March 2021. Because we do not know the exact date of the alleged adverse action, we do not know whether the protected activity of March 29, 2021, occurred before the adverse action in March 2021. Accordingly, the Commission vacates the Respondent's dismissal of Count F and remands the count for further investigation on this issue.

The Petitioner next alleged that Vargas would not complete her landlord verification form in April 2021 (Count H). The Commission determines that a *prima facie* case of retaliation exists. First, the Petitioner engaged in a protected activity when she filed her complaint with the City of Naperville on March 29, 2021. Next, there is sufficient evidence that she was subjected to an adverse action when Vargas did not complete her landlord verification form; because not submitting the landlord verification form resulted in the Petitioner losing money and the opportunity to move into an apartment, a reasonable person could have been dissuaded from making or supporting a charge of discrimination. Finally, a causal connection has been established because the time period between the protected activity (March 29, 2021) and the adverse action (April 2021) was sufficiently short – at most, approximately one month. *See Hoffelt v. Ill. Dep't of Human Rights*, 367 Ill. App. 3d 628, 638 (1st Dist. 2006) (finding that three months between the protected activity and alleged retaliation established causation for a *prima facie* case of retaliation). Accordingly, the Commission vacates the Respondent's dismissal of Count H and remands the count for a finding of substantial evidence.

The Petitioner alleged that on April 14, 2021, the Petitioner lost her income for being a caretaker for her children because Extended Stay was not considered a stable residence (Count J). First, the Respondent argued in its Response that the Commission should sustain its dismissal of Count J for lack of jurisdiction because the Petitioner suffered an "adverse employment action," not an "adverse housing action." As stated in the analysis of Count I, the Commission has jurisdiction over Count J because the Act confers jurisdiction over housing discrimination claims to the Respondent and the Commission. Regarding the Petitioner's claim, no adverse action was taken by Extended Stay against the Petitioner; thus, prong two has not been satisfied; the alleged adverse action was taken by the

Illinois Department of Human Services. Accordingly, the Commission sustains the Respondent's dismissal of Count J for lack of substantial evidence.

Next, the Petitioner alleged that, on October 10, 2021, she was issued a five-day notice for non-payment of room charges (Count L). A *prima facie* case has not been established, as the Petitioner did not suffer an adverse action, and, thus, the second prong has not been satisfied. The Petitioner alleged that she was issued a five-day notice for non-payment that stated that she would be evicted if she did not pay her overdue room charges. However, in the retaliation context, such a notice, without more, does not constitute an adverse action. See *Mangruem*, 2019 ILHUM LEXIS 521, at *5. The Petitioner was not evicted and did not face any other adverse action as a result of this notice. Accordingly, a *prima facie* case has not been established, and the Commission sustains the Respondent's dismissal of Count L for lack of substantial evidence.

Finally, the Petitioner alleged that, on October 10, 2021, Extended Stay would not accept her payment because she was locked out of its credit card machine (Count N). A *prima facie* case has not been established because the Petitioner was not subjected to an adverse action. Though she stated that she could not pay her outstanding charges with her debit card because Vargas had "locked her out" of the payment system, she stated that she did not attempt to pay by other means, such as credit card, which Extended Stay accepted. Additionally, the Petitioner was not evicted and did not face any other adverse action or actual harm because she did not pay her outstanding charges. Accordingly, the Commission sustains the Respondent's dismissal of Count N for lack of substantial evidence.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of Counts A, E, and F is **VACATED** and the counts **REMANDED** for **FURTHER INVESTIGATION** and for further proceedings that are consistent with this Order and the Act.
2. The dismissal of Counts B, C, D, G, I, J, K, L, M, and N is **SUSTAINED** for lack of substantial evidence.
3. The dismissal of Count H is **VACATED** and the count **REMANDED** for a **FINDING OF SUBSTANTIAL EVIDENCE**.

This Order is not yet final and appealable.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 30th day of JULY 2024.

Commissioner Jacqueline Y. Collins

Commissioner Demoya R. Gordon

Commissioner Stephen A. Kouri II