

**COOK COUNTY COMMISSION ON HUMAN RIGHTS**

69 West Washington, Suite 3040  
Chicago, Illinois 60602

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Calvin C. MCCARROLL, Complainant	)	
	)	
v.	)	Case No. 2011E002
	)	
MULLIGAN MANAGEMENT and	)	Entered: January 8, 2014
VILLAGE OF DOLTON, <sup>1</sup> Respondents	)	
	)	

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**ORDER**

Complainant Calvin C. McCarroll (“McCarroll”) worked as a security guard at the Dorchester Senior Center (“The Dorchester”) in Dolton, Illinois, until he was terminated on October 29, 2010. On December 27, 2010, at the age of 72, McCarroll brought this action before the Cook County Commission on Human Rights (“Commission”), alleging that the decision to terminate him was impermissibly based on his age in violation of Section 42-35(b) of the Cook County Code of Ordinances (“County Code”). Having completed its investigation, the Commission now determines that there is not substantial evidence of a violation the Cook County Human Rights Ordinance (“Human Rights Ordinance”) and dismisses McCarroll’s complaint.

**Background**

From approximately March 12, 2008 until October 29, 2010, McCarroll worked as a security officer at the Dorchester. Compl., ¶ I. The Dorchester is a building owned by the Village of Dolton (“the Village”) since the late-80s. Lekavich Aff. ¶ 2. More recently, the Village has housed a 126-unit supportive living facility at the Dorchester. SLF Illinois, “Illinois Supportive Living Program,” online at <http://www.slfillinois.com/operational.html> (last visited Dec. 27, 2013). The Illinois Department of Healthcare and Family Services and the Illinois Department of Public Aid regulate supportive living facilities in Illinois and provide a mix of government assistance to their low-income and elderly residents. Lekavich Aff. ¶ 3. The Village appoints one of its employees as the Dorchester General Manager to assist the Village’s elected officials with oversight of the facility, but also contracts with a private management company to run the Dorchester on a day-to-day basis. See Village of Dolton, Resolution No.

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<sup>1</sup> The named respondents in this matter, as filed, are “Mulligan Management Systems LLC,” “United Corp Agents Inc.,” and “Dorchester Senior Citizens Center.” Because United Corp Agents Inc. is only the registered agent for the management company that operated the Dorchester Senior Center in Dolton, Illinois, during the events giving rise to McCarroll’s claim, the Commission has substituted the single party of “Mulligan Management” in place of the first two named respondents. The Dorchester Senior Center, on the other hand, is a piece of property, not a distinct legal entity that can sue or be sued. The Commission has substituted the owner of that property, the Village of Dolton.

10R-932. At the time of the incidents that form the basis of McCarroll's complaint, Angela Lewis ("Lewis") was the Dorchester General Manager for the Village, and Mulligan Management held the management contract for the facility. Questionnaire Resp. No. 13; Pos. Stmt., p. 2.

To make matters more complicated, the Village has gone through several different management companies at the Dorchester in recent years. See Gregory Tejada, "Dolton village president wants to change Dorchester Senior Center management," *The Times of Northwest Indiana* (May 21, 2013), online at [http://www.nwitimes.com/news/local/illinois/dolton/dolton-village-president-wants-to-change-dorchester-senior-center-management/article\\_7ae46958-3d5a-5331-a821-b1d589111f89.html](http://www.nwitimes.com/news/local/illinois/dolton/dolton-village-president-wants-to-change-dorchester-senior-center-management/article_7ae46958-3d5a-5331-a821-b1d589111f89.html) (last visited January 2, 2014). When one management company loses its contract with the Village, the successor management company often hires its predecessor's employees and continues to manage the property. McCarroll himself was hired by the management company at the Dorchester that preceded Mulligan Management and was then retained by Mulligan Management when it won the contract from the Village in May 2010. See McCarroll Interview (June 14, 2012); Scott Interview (June 29, 2012). Mulligan Management, in turn, lost its contract with the Village to LL Cares in March 2011,<sup>2</sup> but LL Cares kept on a number of Mulligan Management's former employees at the Dorchester. See Lekavich Aff. ¶¶ 7, 8; Lewis & Lekavich Interview (May 23, 2012).

On October 29, 2010, McCarroll received a letter on Dorchester letterhead indicating that "effective immediately, Mulligan Management is terminating your at will employment due to failure to comply with the following procedure training class on May 7, 2010 and June 4, 2010." Investigation Report, Ex. F. McCarroll was born on February 16, 1938, and was 72 years old at the time. McCarroll Interview (June 14, 2012).

McCarroll believes that his age was the determinative factor in his termination. McCarroll alleges that Ken Gray ("Gray"), his supervisor at the Dorchester from Mulligan Management, told him on October 29, 2010, that Gray "was under pressure" from Dorchester General Manager Lewis, "to get rid of [McCarroll]." *Id.* at ¶¶ I, I.A. McCarroll informed Commission staff during an interview that a younger security guard (approximately 35 years old at the time) told McCarroll that Lewis had told him that she wanted younger security guards for the Dorchester. As a result, McCarroll filed this action against both the management company that fired him, *i.e.* Mulligan Management, and the owner of the Dorchester who he believed was directing its actions, *i.e.* the Village.

McCarroll asserts that "[a]t all times relevant to this complaint, I performed my job duties satisfactorily." Compl. ¶ II.A. He supports this assertion with reference to a September 2010 performance evaluation that he characterizes as showing that he was "meeting or exceeding expectations for job performance." *Id.* at ¶ II.D. The Commission's examination of this document largely corroborates McCarroll's recollection.<sup>3</sup> Investigation Report, Ex. B.

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<sup>2</sup> According to records from the Secretary of State, Mulligan Management was involuntarily dissolved shortly thereafter on October 14, 2011.

<sup>3</sup> The performance evaluation shows one exception. Gray evaluated McCarroll as not meeting standards with respect to using time effectively. Investigation Report, Ex. B.

The Commission's investigation, however, finds a relevant deficiency in McCarroll's performance. The Village established a policy for security guards at the Dorchester to enforce regarding visiting healthcare providers. An agenda for the May 7, 2010 Head-Nurse & Security Meeting indicates that the topic was "ID's for entrance to the Dorchester." *Id.* at Ex. D. The agenda states that healthcare providers "will give ID information to security upon signing in" and "security will escort the healthcare provider to Room 124 (Mrs. Morgan)." *Id.* Johnnie Morgan ("Morgan") led the Nursing Department at the Dorchester and Room 124 was the nurses' station. Gray Interview (May 14, 2012). An agenda for the Dorchester Security Department Semi-Monthly Meeting/Training on June 4, 2010, states "all medical personnel to be escorted to Room 124." *Id.* at Ex. E.

Various witnesses had slightly different recollections of the details of the visitors policy, but the basic contours were the same: when an outside healthcare provider wanted to visit a Dorchester resident, security was to ask for identification and have them sign in. Security would then either call or escort the visitor to the nurses' station to determine whether the visitor was authorized to enter. Finally, either security or someone from the nurses' station would escort the visitor to the resident's unit. Gray Interview (May 14, 2012); Lewis & Lekavich Interview (May 23, 2012); McCarroll Interview (June 14, 2012).

The purpose of this policy was to ensure that residents of the supportive living facility did not accidentally give their personal medical information to individuals who were only posing as healthcare providers. Gray Interview (May 14, 2012). McCarroll was aware of this security policy. McCarroll Interview (June 14, 2012). In addition to attending the May 7, 2010 and June 4, 2010 meetings where the policy was discussed, McCarroll told Commission staff that he received a June 4, 2010 written memorandum from Nurse Morgan stating:

PROCEDURES FOR ALL OUTSIDE HOME HEALTHCARE AGENCIES AND/MEDICAL NEEDS AND SUPPLIE CO's. MUST ALL CHECK IN WITH SECURITY. SECURITY MUST THEN CALL APPROPRIATE PERSONEL AND/OR MANAGEMENT, THEN ESCORT THEM TO THEIR DESTINATIONS. THERE WILL BE NO EXCEPTIONS!!!!!!!!!!!!!!!!!!!!

Investigation Report, Ex. C (grammar, spelling and emphasis in original); McCarroll Interview (June 14, 2012).

In an interview with the Commission staff, Gray stated that he had given McCarroll a number of warnings for leaving his workstation at the front desk where healthcare providers had to sign in under this policy. Gray Interview (May 14, 2012). And McCarroll, himself, told the Commission staff that he did not always enforce the visitors policy. McCarroll Interview (June 14, 2012). For example, McCarroll stated that he would not require medical personnel who he recognized to sign in and would not insist on the security procedure when Village officials visiting the Dorchester refused to comply. McCarroll Interview (June 14, 2012).

The Commission's investigation finds that on October 29, 2010, a state inspector named

Myra Gray Scott (“Scott”) visited the Dorchester. She observed an unattended healthcare provider enter a resident’s unit. Lewis & Lekavich Interview (May 23, 2012). Scott knew that security had not telephoned the nurses’ station to authorize this visit because Scott had been standing in the nurses’ station immediately prior. *Id.* Scott followed the provider into the resident’s unit and observed that the resident did not know who the provider was, but was preparing to provide the visitor with personal medical information. *Id.* Scott interceded to prevent this from occurring and asked the visitor to leave the building. *Id.*

Scott then met with Lewis and Lewis’s assistant, Thomas J. Lekavich (“Lekavich”). *Id.* Scott indicated that there had been a serious security breach at the Dorchester and that Lewis and Lekavich had to take care of it or Scott would report the facility as being in violation of state rules for supportive living facilities. *Id.* Lewis and Lekavich told the Commission staff that they called the owner of Mulligan Management to report their conversation with Scott. *Id.*

According to time records, McCarroll was the only security guard working at the Dorchester on October 29, 2010 during the hours when Scott observed the breach of security. Investigation Report, Ex. A. The owner of Mulligan Management instructed Gray to terminate McCarroll, and Gray did so. Gray Interview (May 14, 2012); Lewis & Lekavich Interview (May 23, 2012). In an interview with the Commission staff, Gray denied that he received any instructions with respect to McCarroll’s termination from directly Lewis, any Village employee or anyone other than the owner of Mulligan Management. Gray Interview (May 14, 2012).

### **Discussion**

The Human Rights Ordinance prohibits any employer from “directly or indirectly discriminat[ing] against any individual in hiring, classification, grading, recruitment, discharge, discipline, compensation, selection for training and apprenticeship, or other term, privilege, or condition of employment on the basis of unlawful discrimination.” County Code, § 42-35(b)(1). Discrimination on the basis of an individual’s age is unlawful. *Id.* at § 42-31 (defining “unlawful discrimination”).

The Commission’s precedent has established that both *de jure* and *de facto* employers are covered by the Human Rights Ordinance. See *Munda v. Block Medical Center*, 2003E032 (CCHRC Oct. 9, 2003); *Thompson v. Premier Delivery, Inc.*, 1995E085 (CCHRC Aug. 15, 1997); *Freiberg v. South Cook Broadcasting, Inc.*, 1994E068 (CCHRC May 1, 1995). To the extent that it is at all unclear who was really calling the shots at the Dorchester, it would typically be of no consequence. In the ordinary course, if it could be established that both the company that directly hired, paid and fired a complainant and the company that indirectly controlled the complainant’s employment activities vis-à-vis the first company both unlawfully discriminated against the complainant, then a cause of action under the Human Rights Ordinance might lie against both respondents.

This, however, is not the ordinary course. The Human Rights Ordinance specifically exempts “[t]he government of any municipality in Cook County” when such a government is acting as an employer. County Code, § 42-31 (defining “employer”). As such, even if the Commission’s investigation could substantiate McCarroll’s claim that Lewis had orchestrated his

termination to satisfy some age-based animus (which it cannot), the Village, as the owner of the Dorchester, is exempt from prosecution under the Human Rights Ordinance.

That leaves only Mulligan Management. Once again, however, a prerequisite to a finding of substantial evidence of a violation of the Human Rights Ordinance is a respondent over whom the Commission has jurisdiction. See *Pazand v. Norlynn Management*, 2006E049 (CCHRC May 31, 2013) (dismissing a complaint for lack of jurisdiction where the only named respondent was involuntarily dissolved). Mulligan Management was involuntarily dissolved on October 14, 2011. The Commission's investigation does not show that any other person assumed responsibility for Mulligan Management's assets or liabilities. In other words, regardless of whom one assumes terminated McCarroll, there is no one left to make amends if the Commission were to find that a violation of the Human Rights Ordinance had occurred.

Fortunately, the assumption that either respondent engaged in unlawful discrimination against McCarroll would be unjustified. In order to show substantial evidence to support his claim, McCarroll had to establish a *prima facie* case of discrimination consisting of evidence (1) that he is a member of a protected class under the Human Rights Ordinance, (2) that he suffered an adverse employment action; (3) that he was qualified for the position he held and performing to his employer's satisfaction; and (4) that similarly situated individuals who were not members of the same protected class were treated more favorably.<sup>4</sup> See *Grigsby v. Office of the Cook County Public Defender*, 2010E020 (CCHRC Oct. 28, 2013); *Rush v. Ford Motor Co.*, 1995E013 (CCHRC Sept. 13, 2000). While the Commission's investigation found substantial evidence to support the first two elements of McCarroll's claim, such evidence was fatally lacking with respect to the latter two elements.

McCarroll admits that he was aware of the Dorchester's security policy for visiting healthcare providers and that he occasionally violated this policy designed to prevent the residents of a government-funded supportive living facility from being defrauded. While McCarroll was not aware that the Dorchester received a surprise inspection on October 29, 2010, the Commission's investigation found evidence that a state inspector witnessed a security breach on October 29, 2010, and that McCarroll was the security guard on duty at the time with the responsibility and training to prevent just such a breach by enforcing the visitors policy.

The Commission has no reason to infer that the October 29, 2010 security breach was trumped up to rid the Dorchester of older security guards. To the contrary, the Commission's investigation shows that Mulligan Management had two security guards who were the same age or older than McCarroll working at the Dorchester. Not only did Mulligan Management retain these employees for many months after discharging McCarroll, but LL Cares hired them away from Mulligan Management to continue to work at the Dorchester after Mulligan Management lost its

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<sup>4</sup> Establishing a *prima facie* case of discrimination would raise the rebuttable presumption of a violation of the Human Rights Ordinance. The Commission would hold a hearing on such a claim if during the course of the Commission's investigation the respondent could not articulate a legitimate, non-discriminatory reason for the adverse employment action or the complainant could point to substantial evidence that the respondent's proffered explanation was pretextual.

contract with the Village.<sup>5</sup> Investigation Report, Ex. E.

### Conclusion

For the foregoing reasons, the Commission orders that complaint 2011E002 be **DISMISSED** for **LACK OF SUBSTANTIAL EVIDENCE** of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), any party may file a request for reconsideration with the Commission within 30 days of the date of this order.

January 8, 2014

By delegation:



Ranjit Hakim  
Executive Director of the Cook County  
Commission on Human Rights

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<sup>5</sup> In addition, Mulligan Management took a similarly hardline with younger employees who breached Dorchester policy. In an interview with Commission staff, Gray explained that he sought to discipline a 25-year-old security guard who broke into an office and terminated a 27-year-old security guard for poor attendance. Gray Interview (May 14, 2012). The 25-year-old employee quit instead of appearing for a disciplinary hearing. *Id.*