

COOK COUNTY COMMISSION ON HUMAN RIGHTS
69 West Washington Street, Suite 3040
Chicago, Illinois 60602

Ruben SIFUENTES, Complainant)	
)	
v.)	Case No. 2013E014
)	
J.P. MORGAN CHASE & CO., Respondent)	Entered: January 14, 2016
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)	
)	

ORDER DENYING RECONSIDERATION

Complainant Ruben Sifuentes (“Sifuentes”) brought this action on May 14, 2013 against Respondent J.P. Morgan Chase & Co¹ (“J.P. Morgan”) for age discrimination, age harassment and retaliatory discharge in violation of Sections 42-35 and 42-41 of the Cook County Code of Ordinances (“County Code”). At the end of an extended investigation, the Cook County Commission on Human Rights (“Commission”) dismissed Sifuentes’s complaint on August 13, 2015, for a lack of substantial evidence that any violation of the Cook County Human Rights Ordinance (“Human Rights Ordinance”) occurred.

Sifuentes, through counsel, filed a request for reconsideration on September 11, 2015. This two-page request fails to state with specificity any grounds upon which this Commission should reinstate the complaint. As such, the Commission denies Sifuentes’s request for reconsideration.

BACKGROUND

The facts gathered in the course of the Commission’s investigation of this matter are set out in the Commission’s August 13, 2015 order of dismissal. *Sifuentes v. J.P. Morgan Chase & Co.*, 2013E014, *1-8 (CCHRC Aug. 13, 2015) (“Order”). To summarize:

Sifuentes worked as a financial advisor for J.P. Morgan from August 2006 until J.P. Morgan fired him on December 10, 2012. *Id.* at *1. Sifuentes was 57 years old at the time of his termination. *Id.*

Sifuentes alleged that J.P. Morgan frequently steered customers from him to a younger financial advisor, but during the Commission’s investigation into this charge, he could only provide specific testimony about one such instance during his six-and-a-half year tenure at the bank. *Id.* Regarding that March 16, 2012 incident, J.P. Morgan offered various justifications for

¹ Respondent represents that Sifuentes was actually employed by J.P. Morgan Securities LLC. Rp. Br. at *1. The Commission’s decision in this matter is not dependent on the specific J.P. Morgan entity involved.

sending the particular customers in question to a younger financial advisor. But all parties agreed that, whatever J.P. Morgan's motivation, Sifuentes ultimately received the commission from these clients and was not financially harmed by this action. *Id.*

Sifuentes further alleged that J.P. Morgan subjected him to age harassment in the form of negative comments. *Id.* This time, Sifuentes could only provide the Commission with specific testimony about two sets of negative comments. First, Sifuentes alleged that in February 2012, his manager – Jason Amato (“Amato”) – told Sifuentes that a younger financial advisor was “better than” Sifuentes and that Amato was “giving up on [Sifuentes] because of that.” *Id.* Second, Sifuentes alleged that in a November 2012 conversation with a new manager – Tony Haeussler (“Haeussler”) – Haeussler referred to the younger financial advisor as the “new young blood” and told Sifuentes that his “time has passed.” *Id.* at *6.

Finally, Sifuentes claimed that he was terminated in December 2012 in retaliation for several internal complaints that he made at J.P. Morgan about what he perceived as age discrimination and harassment. *Id.* J.P. Morgan questioned whether these complaints had ever actually been made and produced extensive documentation of performance issues and warnings that Sifuentes received dating back to 2009. *Id.* at *2-7. This documentation indicates that Haeussler received reports that Sifuentes had violated J.P. Morgan's data security policy almost immediately after Haeussler counseled Sifuentes on the importance of adhering to the policy. *Id.* at *7, 13. J.P. Morgan's contemporaneous records explaining the basis for Sifuentes's termination are consistent with this documentation. *Id.* at *7-8.

In analyzing Sifuentes's age discrimination claim, the Commission noted that the sole instance in which Sifuentes provided any specific allegation that he was treated less favorably on the basis of his age was when Amato allegedly directed a pair of customers to a younger financial advisor in March 2012. *See id.* at *9. The Commission dismissed this claim for a lack of any evidence that Sifuentes was harmed by this action because Sifuentes received the commission from the redirected customers anyway. *Id.* (citing *Treanor v. El Rey Music Center*, 2014E0237, *3-4 (CCHRC Nov. 17, 2014)).

In analyzing Sifuentes's age harassment claim, the Commission noted that this claim rested solely on evidence of just two alleged conversations between Sifuentes and Amato in February 2012 and a later conversation between Sifuentes and Haeussler in November 2012. *See Order* at *10. The Commission dismissed this claim because these two conversations were, as a matter of law, insufficiently severe or pervasive to form the basis of a viable age harassment claim. *Id.* (citing *Iverson v. Horwitz*, 1994E021, *7 (CCHRC Feb. 8, 1996)).

Finally, in analyzing Sifuentes's retaliation claim, the Commission found that J.P. Morgan produced sufficient documentary evidence to establish a reasonable basis for Haeussler's belief that Sifuentes had violated an important company policy at the time of Sifuentes's termination. *See Order* at *12. J.P. Morgan produced documentary evidence that they enforced this policy in an age-neutral fashion. *See id.* (reviewing evidence of three employees under the age of 40 who were terminated for failing to safeguard customer information). The evidence that Sifuentes produced, by contrast – predominantly consisting of

his uncorroborated statements – did not call into question the accuracy of the documentary evidence produced by J.P. Morgan and failed to raise an inference of a retaliatory motive for his termination. As such, the Commission dismissed Sifuentes’s retaliation claim for insufficient evidence of a causal link between his internal complaints and his eventual termination. *Id.* at *13.

DISCUSSION

Sifuentes seeks reconsideration of the Commission’s order of dismissal. Pursuant to the Commission’s procedural rules, “[a]ny party requesting review . . . must state with specificity the reason(s) supporting the Request for Reconsideration[.]” CCHR Pro. R. 480.105. Sifuentes has put himself in a position from which that is a tall order. His bare bones filing in support of the pending request for reconsideration is completely devoid of any citations to the Commission’s order or the investigative record.

Instead, Sifuentes cites *Cooper v. Salazar*, 196 F.3d 809 (7th Cir. 1999), for the proposition that an administrative agency cannot base a dismissal order at the end of an investigation on the relative credibility of testimonial evidence without holding a hearing, and complains generally (and again without citation to the Commission’s order or the investigative record) that the Commission sided with unspecified J.P. Morgan witnesses when there were unspecified disputes of fact. Cp. Br. at *2. But putting aside the fact that *Cooper* involved a preliminary injunction against certain investigative procedures at the Illinois Department of Human Rights – not this Commission – Sifuentes fails to direct the Commission’s attention to even a single instance in which the order of dismissal was based on an investigative determination that his testimony was not credible or less credible than that of another witness. To the contrary, at the investigative stage of the process, the Commission presumes that the complainant’s testimony is credible and adopts his or her version of the events when it is in conflict with other testimonial evidence.

For example, here, the Commission’s order of dismissal assumes that the March 2012 decision to steer customers to a younger financial advisor occurred as Sifuentes alleged it did. The Commission dismissed Sifuentes’s age discrimination claim not because the Commission did not believe Sifuentes, but because, as a matter of law, Sifuentes did not have a viable claim without an adverse employment action. Order at *9 (“But true or not, J.P. Morgan’s motivation is less important than the undisputed fact that Sifuentes received the commission on the new account after Gamez discovered that these clients really did want to work with Sifuentes.”). On reconsideration, Sifuentes does not contend that receiving a commission from clients he initially did not serve was in fact a hardship or offer any new facts directing the Commission to some other specific basis for a viable age discrimination claim.

Similarly, the Commission’s order assumes that each conversation about which Sifuentes provided specific testimony occurred just as Sifuentes alleged. *Id.* at *10. The Commission dismissed Sifuentes’s age harassment claim because those conversations – as Sifuentes described them to the Commission – were either not objectively harassing or were insufficiently severe or pervasive. *Id.* Again, in his request for reconsideration, Sifuentes does not direct the Commission to other negative comments or provide additional details about the two

conversations he previously highlighted that would allow the Commission to now find them to be a legally sufficient basis for an age harassment claim.

Finally, the Commission credited Sifuentes's testimony that he made several internal complaints about age discrimination and harassment to Amato and Haeussler just prior to being terminated. *Id.* at *11-12. In response, J.P. Morgan supports its assertion that Haeussler's decision to terminate Sifuentes was based on repeated failures to safeguard customer information and produced all of the underlying documentation that Haeussler would have had access to at the time that he made his decision. *Id.* at *12-13. As the Commission explained in the original order of dismissal, Sifuentes's testimony that he did not actually fail to safeguard customer information in several instances is presumed at this point to be credible. But Sifuentes's credibility argument misses the point. The un rebutted documentation produced by J.P. Morgan establishes that Haeussler's decision to terminate Sifuentes for a non-retaliatory reason was made in good faith. *Id.* at *12 (citing *Porreca v. Anderson*, 2014E011, *30 (CCHRC July 10, 2015) ("In assessing pretext, the critical inquiry is not the accuracy of the employer's assessment of the employee's poor work performance, but whether the employer in good faith believed that the employee had the work performance problems given as the reason for discharge.")). Sifuentes's request for reconsideration presents no new evidence to call into question the authenticity of Haeussler's belief that Sifuentes had repeatedly failed to comply with an important bank policy, a policy that had led to the termination of a number of other J.P. Morgan employees.

Sifuentes's remaining arguments in his request for reconsideration are similarly unpersuasive. One basis for reconsideration by the Commission is "relevant evidence which is newly discovered and [was] not available at the time of the original determination." CCHR Pro. R. 480.105. Sifuentes submitted an unsigned affidavit from a former coworker, Rafael Luna ("Luna"), as an exhibit to his request for reconsideration. *See* Cp. Br. at Exh. 1. But an unsigned affidavit is not evidence.² Moreover, when Sifuentes was asked to identify any evidence that supported his claims against J.P. Morgan during this investigation, he directed the Commission to other former coworkers. *See* Cp. Q. Resp. No. 13 (identifying Eva Braxton and Margarita Lomeli). Sifuentes does not explain in his request for reconsideration why Luna was not previously identified or available to provide testimony to the Commission.

Sifuentes also complains generally that much of the evidence that the Commission relied upon in reaching its decision to dismiss this matter was produced by J.P. Morgan and Sifuentes "has not had the opportunity to comment on it or present his side of the story." Cp. Br. at *2. Of course, the Commission investigator assigned to this matter did ask Sifuentes to present his side of the story in response to the evidence produced by J.P. Morgan, particularly with regards to Sifuentes's documented failure to secure customer information. *See, e.g.,* Cp. Q. Nos. 1-9 (seeking Complainant's comment on issues of fact raised by Respondent). Further, in assessing whether a litigant received appropriate due process, the availability of appeals and requests for reconsideration must be taken into account. *See, e.g., Saucedo v. Dep't. of Labor & Indus.*, 917

² Sifuentes represented that he would supplement his request for reconsideration with a signed version of the affidavit when it became available. Cp. Br. at *2. Luna's unavailability to sign his own affidavit raises questions about who wrote the affidavit, but assuming that the document represents Luna's testimony based on his personal knowledge, Sifuentes has, to date, failed to supplement the record at any time in the last four months with a signed version of the same.

F.2d 1216, 1219 (9th Cir. 1990). The Commission's procedural rules on seeking reconsideration provide parties with the opportunity to fully inspect the Commission's investigation file so that, *inter alia*, they have unfettered opportunity to confront and comment upon the evidence against their unsuccessful claim or defense. See CCHR Pro. R. 440.135(A) ("A party or the party's attorney or representative of record may review documents in the Commission investigation file at any time after the Commission has served notice of an Evidence Determination."). Sifuentes did not avail himself of this opportunity after receiving the Commission's order of dismissal on August 13, 2015, and prior to filing his extremely brief and non-specific request for reconsideration on September 11, 2015. Sifuentes cannot sit on his hands and then complain that he has not been given the chance to put his best foot forward. *Cf. Vasapoli v. Rostoff*, 39 F.3d 27, 36 (1st Cir. 1994) ("Unlike the Emperor Nero, litigants cannot fiddle as Rome burns. A party who sits in silence [and] withholds potentially relevant information . . . does so at his peril.").

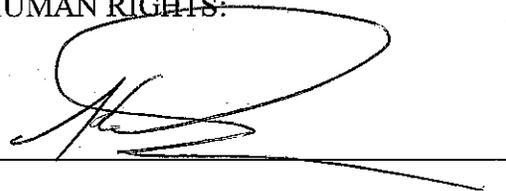
Sifuentes could have advanced his discrimination claims under similar state and federal statutes directly in the Circuit Court of Cook County or the U.S. District Court for the Northern District of Illinois. If he had done so, Sifuentes would have born the sole burden of gathering whatever evidence supported his claim. By availing himself of the Commission's investigation process and pursuing his claims here under the County's antidiscrimination ordinance, he lowered his costs to bring this litigation, but is now bound by the Commission's determination that there is insufficient evidence to support his claim and merit further expenditure of this agency's limited adjudicative resources.

CONCLUSION

For the foregoing reasons, the Commission orders that Complainant's Request for Reconsideration be DENIED.

January 14, 2016

COOK COUNTY COMMISSION ON
HUMAN RIGHTS:



Kenneth A. Gunn,
Chairperson