

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

Ruben SIFUENTES, Complainant)	
)	
v.)	Case No. 2013E014
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J.P. MORGAN CHASE & CO., Respondent)	Entered: August 13, 2015
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ORDER OF DISMISSAL

On May 14, 2013, Complainant Ruben Sifuentes (“Sifuentes”) filed the above-captioned complaint with the Cook County Commission on Human Rights (“Commission”) against his former employer, Respondent J.P. Morgan Chase & Co (“J.P. Morgan”). Sifuentes alleges that J.P. Morgan discriminated against him on the basis of his age and terminated his employment in retaliation for bringing this discrimination to the attention of management, violating both the anti-discrimination and anti-retaliation provisions of the Cook County Human Rights Ordinance (“Human Rights Ordinance”) in the process. *See* Cook County Code of Ordinances (“County Code”), §§ 42-35(a), (b); 42-41(a).

The Commission investigated Sifuentes’s allegations to determine if there is sufficient evidence to support a legally actionable claim for unlawful discrimination or retaliation. For the reasons set out below, the Commission now dismisses Sifuentes’s complaint for a lack of substantial evidence of a violation of the Human Rights Ordinance.

BACKGROUND

Sifuentes worked for J.P. Morgan as a financial advisor from August 2006 until his employment was terminated on December 10, 2012. Compl. ¶ I; Resp. ¶ I. Sifuentes was 57 years old at the time. Compl. ¶ II; Resp. ¶ II.

In his complaint, Sifuentes alleges that during this time he was the victim of ongoing and continued discrimination based on his age. Compl. ¶ II. This discrimination took two forms. First, Sifuentes alleges that in February 2012, his manager at the time, Jason Amato (“Amato”), compared Sifuentes’s performance unfavorably to a younger J.P. Morgan financial advisor named Willie Gamez (“Gamez”). *Id.* at ¶ II.A. Gamez was in his late 20s at the time. *Id.* Sifuentes alleges that Amato told him that Gamez was “better than” Sifuentes and that Amato was “giving up on [Sifuentes] because of that.” *Id.* J.P. Morgan denies that such a conversation between Sifuentes and Amato ever occurred. Resp. ¶ II.A.

Second, Sifuentes alleges that Amato steered customers away from Sifuentes because of his age. Compl. ¶ II.C. Sifuentes alleged that this was a frequent occurrence, but only provided specific testimony as to a single event that occurred on March 16, 2012. Investig. Rep., Exh. S. Sifuentes claims that on this date a couple came into the bank branch where Sifuentes was working and indicated that they wanted to work with him. Compl. ¶ II.C. Sifuentes alleges that Amato and the branch manager (Veronica Jacobo (“Jacobo”)) directed these customers to work with the younger Gamez. *Id.*; Resp. ¶¶ II.A, II.B, II.C.

J.P. Morgan claims that prior to this incident Gamez opened an investment account for one of these two customers. Resp. ¶ II.C. Several days later, Sifuentes opened a joint account for both customers as a couple. *Id.* Because Gamez set up the first account before Sifuentes set up the joint account, Amato believed on March 16, 2012 that the couple should be Gamez’s clients rather than Sifuentes’s. *Id.*

Crucially, when Sifuentes complained about this outcome, Gamez gave Sifuentes the account and the resulting commission. *Id.* Despite being made financially whole for Amato’s initial confusion, Sifuentes continues to complain that Gamez should have been disciplined for working with the couple in the first place and was not. Compl. ¶ II.F.

March 2012 Performance Improvement Plan

On March 19, 2012 – just three days after this incident – J.P. Morgan placed Sifuentes on a performance improvement plan. Investig. Rep., Exh. D (March 19, 2012 Performance Improvement Plan). This plan does not explicitly state that it is a disciplinary warning; rather it is ostensibly designed to help a J.P. Morgan employee be more successful in his or her position. *Id.* Nonetheless, Sifuentes viewed being placed on this plan as disciplinary. Compl. ¶ II.D. And J.P. Morgan did not produce any evidence that employees who are meeting its expectations ever receive performance improvement plans.

Whatever the intent of the plan, both Sifuentes and Amato signed the document, which outlined work expectations for Sifuentes and laid out an accountability plan. Investig. Rep., Exh. D. Specifically, the plan set the expectation that Sifuentes would meet a minimum monthly revenue target of \$20,000 by engaging in a host of sales-related activities from actively approaching customers in the bank branch lobby to leveraging the client relationships of the personal bankers. *Id.* The plan also set a minimum target for client appointments per day and per week. *Id.* Further, the plan required Sifuentes to call Amato prior to placing any transactions and to report various performance indicators on a weekly basis. *Id.*

Sifuentes alleges that J.P. Morgan placed him on this plan in retaliation for his complaints three days prior about what he perceived to be age discrimination when Amato steered customers towards Gamez. Compl. ¶ II.D. J.P. Morgan denied any connection between the two events. Resp. ¶ II.D.

Documentation of Pre-Plan Performance Issues

The Commission’s investigation found evidence of at least two written warnings issued to Sifuentes before he was placed on the performance improvement plan in March 2012:

J.P. Morgan issued its first written warning to Sifuentes on August 19, 2009. Investig. Rep., Exh. A (August 19, 2009 written warning). This warning details an incident in which Sifuentes improperly altered a withdrawal request form by forging the signature and initials of a client. *Id.* According to warning documentation, Sifuentes failed to properly obtain the signature from the client before the client left the country. *Id.*

J.P. Morgan issued a second written warning to Sifuentes on May 18, 2011. Investig. Rep., Exh. B (May 18, 2011 written warning). J.P. Morgan issued this warning after Sifuentes permitted a client to sign a document that was incomplete and identified four trades that Sifuentes had solicited as unsolicited. *Id.*

In addition to the written warnings, the Commission found evidence of at least one verbal reprimand preceding Sifuentes's placement on the performance plan in March 2012. Specifically, on February 1, 2012, Amato documented a conversation with Sifuentes regarding Sifuentes's performance at the Melrose Park branch. Investig. Rep., Exh. C. In these notes, Amato records that Sifuentes's January 2012 revenue was only \$9,860 and there were concerns about his performance in regard to both customer care and the ability to properly safeguard customer information.¹ *Id.*

Post-Plan Performance

Sifuentes maintains in his complaint that he did not have any performance deficiencies. Compl. ¶ I.I.D. But J.P. Morgan produced considerable evidence that Sifuentes was not meeting his employer's expectations, both as set out in the March 2012 performance plan and otherwise.

Client Development and Revenue Issues

For example, an April 10, 2012 email from Amato documents a conversation that Amato had with two J.P. Morgan employees at the Northlake branch. These branch employees expressed their concern to Amato that they were giving leads to Sifuentes that he was failing to follow up on, leading to a desire by branch management to stop referring clients to Sifuentes. Investig. Rep., Exh. F (April 10, 2012 email from J. Amato to A. O'Connell). Amato also recounts in this email that he had addressed coverage, branch involvement, and follow-up with Sifuentes on multiple occasions. *Id.* Amato identifies these as the same performance issues addressed by Sifuentes's performance improvement plan. *Id.* Compare Investig. Rep., Exh. D.

In May 2012, Sifuentes continued to be the topic of multiple emails, whether directly addressed to him or as a topic of discussion between other employees. On May 9, 2012, Amato emailed another J.P. Morgan investment manager to inform her that the business manager at the Northlake branch was concerned with Sifuentes's poor performance and had requested a new financial advisor be assigned to their branch. Investig. Rep., Exh. G (May 9, 2012 email from J. Amato to A. O'Connell). On May 18, 2012, Amato informed Sifuentes that he had failed to send Amato his follow-up call results as agreed upon in the performance improvement plan. Investig.

¹ An additional note added on February 20, 2012 indicates that Sifuentes had only brought in \$6,000 in revenue for the first 20 days of February 2012. Investig. Rep., Exh. C.

Rep., Exh. H (May 18, 2012 email from J. Amato to R. Sifuentes regarding). Amato also said in this email that this was the third time that he has had to request these results. *Id.*

A report printed in mid-May 2012 details Sifuentes's performance for approximately 60 days after he received his performance improvement plan in March 2012. Investig. Rep., Exh. E. This report shows Sifuentes meeting his goal of having 20 client meetings per week only once in a nine-week period. *Id.* Further, Sifuentes missed his \$20,000 revenue production target in March (\$11,970) and was on course to miss it in May (\$4,988 halfway through the month). *Id.* Sifuentes only just managed to hit the target in April (\$20,704), leaving his average production for the post-plan period to date well short of goal. *Id.*

Data Security Issues

J.P. Morgan has extensive instructions and policies setting out its expectation for bank employees regarding the safety of confidential materials and other related workplace practices. Investig. Rep., Exh. Q (Security Control, Information Security Policies, and Key and Combination Controls). This guidance stresses the urgency of keeping client information confidential and secure. *Id.* To illustrate, it is mandatory for J.P. Morgan bank employees to lock or log off of a computer before physically leaving their workstation. *Id.* Further, J.P. Morgan bank employees are required to remove or secure documentation containing confidential client information when not working directly with the documents or when the documents might otherwise be seen by unauthorized individuals. *Id.*

On May 19, 2012, in response to finding Sifuentes's computer unlocked and unattended at the branch she managed, Jacobo sent Sifuentes the following email from his own email account:

I just discussed with you this morning about the importance of leaving your keys out and customer sensitive information. As I was walking by your station you left your computer unlocked. Is there anything I can do to assist you with knowing how important it is to protect our customers information at all times?

Investig. Rep., Exh. I (May 19, 2012 email from V. Jacobo to J. Amato attaching email from R. Sifuentes to R. Sifuentes). Jacobo forwarded this email to Amato and expressed her concern that Sifuentes frequently leaves his desk keys and customer information unattended while away from his workstation. *Id.* Jacobo asked Amato to talk to Sifuentes about this and to reiterate the importance of keeping client information secure. *Id.*

Sifuentes received another written warning on June 6, 2012. Investig. Rep., Exh. K (Respondent's June 6, 2012 Written Warning to Complainant). This warning detailed that Sifuentes was below his \$20,000 average monthly production target and had failed to set up as many client meetings as required under the performance improvement plan. *Id.* See also *id.* at Exh. E. Further, this warning recounts that Sifuentes had been late for client meetings, was not spending enough time at one of the branches and was failing to leverage relationships with the personal bankers by participating in their morning meetings. *Id.* at Exh. K. Finally, this written warning, which Sifuentes signed, states in relevant part:

You are being placed on a written warning for unsatisfactory performance. I have continued to receive negative feedback from the branches that you are responsible for. (Northlake and Melrose Park). The feedback is due in part to the below:

Abiding by the security/privacy policies of the firm. Consistently leaving desk drawers unlocked with sensitive information in them and on them. Also, walking away from the computer and leaving customer information exposed.

Id. See also Investig. Rep., Exh. J (Amato's June 5, 2012 notes documenting complaints about Sifuentes's performance by Northlake branch manager).

The 60-day follow-up to the June 6, 2012 written warning documents that Sifuentes was still failing to meet his revenue target for July and August. Investig. Rep., Exh. L (Amato's August 21, 2012 notes to Sifuentes's personnel file). Amato's notes regarding Sifuentes's overall performance state, in relevant part:

The feedback from the branches has not improved nor have the results. Ruben [Sifuentes] continues to fall in the bottom of all measurable results on our team. Ruben and I had a good discussion about this role and how it is not right for him. Ruben made the decision to start exploring the PB [(private banker)] role. I asked that he explore immediately and find a position by the middle of September. I did inform him that he is not meeting the requirements of his WW [(written warning)] and that if he does not find another opportunity within the firm by Sept. 15th, further action will be taken. Ruben was ok with this and said he would post for PB roles close to his home.

Ruben interviewed with Ellen at the Ravenswood branch. The DM of this branch is Angela D'Alessandro. They were very interested in pursuing him for a PB role, but Ruben decided not to pursue the role.

*Id.*²

During a quarterly inspection at J.P. Morgan on November 10, 2012, Sifuentes was unable to produce a copy of the key that had been issued to him. Cp. Q. Resp. No. 6. Sifuentes asserts that he was eventually able to locate his key later that same day. *Id.* A week later, on or about November 17, 2012, Sifuentes again could not locate the keys to his desk drawers at the

² Sifuentes alleges that he received another written warning in August or September 2012 for failing to meet his monthly production target and was reprimanded in October 2012. Compl. ¶ II.G; Cp. Q. Resp. No. 14. J.P. Morgan denies that Sifuentes was subject to additional discipline between August and October 2012, and the Commission's investigation found no documentation or records of such discipline during the course of its investigation.

Melrose Park branch. Cp. Q. Resp. No. 4. Sifuentes states that he tried to report his missing key to the assistant operations manager but could not locate her. *Id.* Instead of waiting for her, Sifuentes checked his desk drawers to make sure that they were locked and then went out to lunch. *Id.* He looked for the assistant operations manager when he returned from lunch, but she was busy so he came back at the end of the day. *Id.* Sifuentes finally spoke to the assistant operations manager at 6 p.m. *Id.* According to Sifuentes, the assistant operations manager did not want to address the situation while she was finishing her daily job duties and told him to come back the next day. *Id.* Sifuentes testified that he again ensured that his drawers were locked and left for the day. *Id.* Sifuentes did not return to that branch for several days, but when he did, he says that he found his keys in the lost and found box at the branch. *Id.*

Amato obtained another job in the fall of 2012, and on November 21, 2012, Sifuentes met his new manager, Tony Haeussler (“Haeussler”). Compl. ¶ II.H; Resp. ¶ II.H; Cp. Q. Resp. No. 3. Haeussler is only a year and a half younger than Sifuentes. Resp. ¶ II.H. Sifuentes states that he and Haeussler had a brief conversation about the need to secure one’s work station, but that this was not the emphasis of their conversation. Cp. Q. Resp. No. 3. Instead, Sifuentes said that he told Haeussler that he was meeting his production targets and felt that he was being targeted for removal because of his age. *Id.* J.P. Morgan claims that the topic of conversation was actually Haeussler conveying to Sifuentes the continued dissatisfaction of the branches that Sifuentes supported, including most recently Sifuentes’s failure to show up for client meetings on time or at all according to the Northlake branch manager. Resp. ¶ II.I. The Commission’s investigation revealed no contemporaneous documentation of this meeting or the topics covered. Rp. Q. Resp. No. 2.

A second meeting between Haeussler and Sifuentes followed on November 29, 2012. Compl. ¶ II.J. Sifuentes claims that he made it clear during this meeting that there was a direct attempt to get him out of the bank due to his age and that he used the words “age discrimination” during this conversation. Cp. Q. Resp. No. 12. Sifuentes described Haeussler as hostile during this meeting, Compl. ¶ II.J, and claims that Haeussler told him “Your time has passed” and referred to Gamez as “new young blood.” Cp. Q. Resp. No. 12. Again, the Commission’s investigation found no contemporaneous documentation of this meeting, but J.P. Morgan denies Sifuentes’s account. Resp. ¶¶ II.I, II.J.

On December 7, 2012, the branch manager of Melrose Park emailed Haeussler about three recent incidents in which Sifuentes left confidential customer information unsecured:

On 12/01/2012 I found Ruben[Sifuentes]’s computer unlocked and called it to his attention.

On 11/17/2012 My ABM Leandra found Ruben’s Keys hanging on his drawer with him gone. She collected the keys and turned them into my ABM Ops who had the keys for three days before he came looking for them.

On 11/10/[20]12 during a quarterly inspection we asked to see Ruben’s keys [and] he indicated he had lost them. We reissued keys [and] as you can see from the fax this was the second time we

had to reissue keys to him. On 08/16/2012 again during a quarterly inspection we had to reissue keys to him.

Investig. Rep., Exh. M (June 27, 2013 email from M. Esparza to K. Heflin forwarding December 7, 2012 email from M. Esparza to T. Haeussler).

In discussing this evidence with Commission investigators, Sifuentes claims that he had logged out of his computer properly on December 1, 2012, and that the branch manager of Melrose Park was too far away from him to see his screen properly.³ Cp. Q. Resp. Nos. 1.a, 2. Sifuentes denies that he lost his keys on August 16, 2012. Cp. Resp. No. 8. But this assertion is contradicted by J.P. Morgan's Key/Combination Record log. Investig. Rep., Exh. O. Further, Sifuentes admits that he lost his keys, at least temporarily, on November 10, 2012, and, although Sifuentes claims that his drawers were locked at the time, he admits that he was not in possession of his keys for several days on and around November 17, 2012. Cp. Q. Resp. Nos. 4, 6.

Termination

On December 10, 2012, Haeussler terminated Sifuentes's employment with J.P. Morgan. Compl. ¶ II.K. Haeussler's recommendation for termination states:

I am recommending that Ruben Sifuentes be terminated from employment because of failure to follow procedures related to safeguarding customer information.

12/01/2012 Branch Manager, Miriam Esparza, found Ruben's computer unattended without him having logged-out or invoking a secure password protected screen saver. Ruben was counseled the same day.

11/21/12 I met with Ruben to review a number of issues, one of them being securing employee workstation. I reiterated the importance to follow procedures and that immediate improvement was needed.

11/17/2012 Asst Branch Manager, Leandra Escareno, found Ruben's desk keys hanging in his drawer with him gone thereby, failing to secure all work area cabinets and drawers. She collected the keys and turned them into Asst Branch Manager Ops, Yvette Molina, who had the keys for three days before Ruben came looking for them.

³ Sifuentes also claims that he did not always have control over the computer at his assigned workstation. Cp. Q. Resp. No. 1.c. At the time, Sifuentes occupied two workstations in a given work week: on Saturdays, he worked in an office, and, on other days, he worked at a cubicle space. *Id.* Sifuentes alleges that he shared the cubicle space with another loan officer, who often unplugged Sifuentes's computer to use his own desktop. *Id.*

11/10/12 during a quarterly inspection, Branch Management had to reissue keys to Ruben. Ruben had failed to inform management he had lost the keys.

08/16/2012 during a quarterly inspection, Branch Management asked to see Ruben's desk keys. He indicated he had lost them. Management reissued keys and counseled Ruben on the importance of maintaining the secure possession of branch issued keys and the importance of reporting lost keys in a timely manner.

Written Warning delivered 5/31/12 [f]or unsatisfactory performance. During this meeting branch and customer information security was discussed.

Ruben was Low Meets rated for Performance for year 2011

Ruben was issued a Written Warning in May '11 for unsatisfactory performance.

Investig. Rep., Exh. N.

DISCUSSION

Sifuentes alleges that, during the term of his employment at J.P. Morgan, he was the victim of unlawful age discrimination. Sifuentes is pursuing recovery under two theories of liability: First, that J.P. Morgan subjected him to worse terms of employment by steering clients (and by extension commission) away from him and towards younger employees, and, second, that J.P. Morgan subjected him to a hostile work environment on the basis of two ageist comments directed at him by two different supervisors. In addition, Sifuentes alleges that he was terminated in retaliation for complaining about this discriminatory treatment to management.

The Commission's investigation was unable to find substantial evidence to support any of these three claims. Taking Sifuentes's allegations of discrimination at face value, they are legally insufficient to form a basis for recovery under the Human Rights Ordinance. And J.P. Morgan has provided the Commission with un rebutted evidence that Sifuentes was terminated for a pattern of failing to follow procedures related to safeguarding customer information.

I. Unlawful Age Discrimination

The Human Rights Ordinance expressly prohibits employers from "discriminat[ing] against any individual in . . . compensation . . . or other term, privilege, or condition of employment on the basis of unlawful discrimination." See County Code, § 42-35(b)(1). This includes discrimination on the basis of an employee's age. *Id.* at § 42-31 (defining "unlawful discrimination").

In order to advance a claim for unlawful age discrimination under the Human Rights Ordinance, a complainant must have substantial evidence to support a *prima facie* case of discrimination. This *prima facie* case consists of a showing by the complainant that: (1) he is a

member of the protected class; (2) he performed his job satisfactorily; (3) he suffered an adverse employment action; and (4) there is some strongly probative evidence to appropriately raise the inference that the respondent had a discriminatory motive in taking the adverse employment action. *Marino v. Chicago Horticultural Society*, 2012E029, *5-6 (CCHRC Mar. 20, 2015).

The Human Rights Ordinance places employees who are “not less than 40 years” old in a protected class. County Code, § 42-31 (defining “age”). As such, there is no question that Sifuentes can meet the first element of the *prima facie* case. And while the Commission’s investigation found considerable dispute as to whether Sifuentes was meeting his employer’s reasonable performance expectations (more on that below), his unlawful age discrimination claim fails because there is no evidence, substantial or otherwise, that J.P. Morgan took an adverse employment action against Sifuentes on the basis of his age.

Sifuentes bases his age discrimination claim on the allegation that Amato and Jacobo jointly directed two clients to work with Gamez, a substantially younger J.P. Morgan employee, after the couple had requested to work with Sifuentes in March 2012. Compl. ¶¶ II.B, II.C. J.P. Morgan proffers a non-discriminatory reason for doing so: that Gamez had worked with one of the two customers first and so this new account should go to Gamez as well. Resp. ¶ II.C.

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. *Id.* Sifuentes complains, nonetheless, that J.P. Morgan did not punish Gamez for working with the new clients, however briefly before transferring them back to Sifuentes. Compl. ¶ II.D. But the discipline of other employees is not a term or condition of Sifuentes’s employment at J.P. Morgan.

In the absence of any evidence that Sifuentes lost any compensation as a result of the initial misdirection of these new clients to Gamez, there is a lack of substantial evidence as to one of the crucial elements of the *prima facie* case and the claim fails. *See Treanor v. El Rey Music Center*, 2013E027, *3-4 (Nov. 17, 2014) (dismissing unlawful age discrimination claim for a lack of substantial evidence that complainant suffered any adverse employment action).

II. Age Harassment

The Human Rights Ordinance also prevents employers from harassing employees who are members of a protected class through comments and conduct that have “the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.” *See* County Code, § 42-35(e)(2)(c).

A harassment claim can proceed to a hearing when there is substantial evidence that the comments or conduct to which a complainant was subjected were sufficiently “severe or pervasive” as to alter the conditions of his employment and to create a hostile or abusive work environment. *Porreca v. Anderson*, 2014E011, *18 (CCHRC July 10, 2015). *See also Walker v. Cook County Sheriff’s Office*, 2008E017, *15 (CCHRC May 15, 2012), *aff’d, sub nom Sheriff’s Office v. Cook Cnty. Comm’n on Human Rights*, 13 CH 17663 (Ill. Cir. Ct. Feb. 11, 2015) (extending protections against sexual harassment in the Human Rights Ordinance to age harassment). When determining whether a case meets that standard, the Commission considers a

variety of criteria including: “the frequency of the [harassing] conduct; its severity; whether it is physically threatening or humiliating; or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Porreca*, 2014E011 at *18 (internal citations and quotation marks omitted). This test has “both an objective component – would a reasonable person find the conduct sufficient to create a hostile environment – and a subjective component – did this particular person perceive the conduct as creating a hostile environment. Both components must be met.” *Desparte v. Arlington Heights Kirby*, 2002E020, *6 (CCHRC July 17, 2006) (quoting *Gluszek v. Stadium Sports Bar & Grill*, 1993E052, *10 (CCHRC Mar. 16, 1995)).

Sifuentes’s hostile environment harassment claim is based on just two conversations over the course of a nine-month period. First, Sifuentes claims that in February 2012 Amato told him that Gamez was “better than [Sifuentes]” and “he was giving up on [Sifuentes] because of that.” Compl. ¶ II.A. Second, Sifuentes claims that on November 29, 2012 in a meeting with Haeussler. Haeussler made two age-related comments: he told Sifuentes, “Your time has passed,” and referred to Gamez as “new young blood.” Cp. Q. Resp. No. 12.

The Commission will assume for the purpose of rendering this order that Sifuentes genuinely believes that both of these sets of comments were ageist and harassing. However, objectively, the first comment in February 2012 makes no reference whatsoever to age, and so, the Commission cannot reasonably conclude that this comment contributed to creating a hostile employment environment for Sifuentes. *See Porreca*, 2014E011 at *24 (comments and text messages that are not objectively sexual in nature cannot support a sex harassment claim).

This leaves only Haeussler’s alleged November 29, 2012 comments. While these comments, at least as Sifuentes recounts them,⁴ are plausibly related to age, an isolated reference to the relative ages of two employees, standing alone, is neither sufficiently severe nor sufficiently pervasive to form a basis for Sifuentes to recover under an age harassment theory. *See, e.g., Iverson v. Horwitz*, 1994E021, *7 (CCHRC Feb. 8, 1996) (dismissing harassment claim based only on infrequent offensive remarks).

III. Retaliation Claim

The Human Rights Ordinance prohibits retaliation against any person because that person “in good faith has opposed that which the person reasonably believed to be unlawful discrimination.” County Code, § 42-41(a). To establish a claim for unlawful retaliation, the complainant must have substantial evidence that (1) he sought to exercise a right protected by the Human Rights Ordinance; (2) he suffered adverse treatment that is reasonably likely to deter the complainant or others from engaging in protected activity; and (3) there is a causal connection between the protected activity and the adverse treatment. *See Robinson v. CEDA*, 2012E015, *4-5 (CCHRC July 25, 2014); *Washington v. Cook County*, 2005E065, *4 (CCHRC Sept. 26, 2013).

⁴ Haeussler denies making these comments. Resp. ¶¶ II.I, II.J.

A. Protected Activity

Sifuentes alleges that J.P. Morgan terminated his employment after he complained repeatedly to various managers about what Sifuentes perceived to be age discrimination and harassment. Compl. ¶ II. There is substantial evidence that Sifuentes engaged in protected activity by complaining to his managers that he felt discriminated against. Sifuentes attests that he first complained to Amato that he was being discriminated against after Amato and Jacobo erroneously directed a couple to work with Gamez in March 2012. Compl. ¶ II.B. This claim is supported by notes that Amato made following a March 16, 2012 meeting with Sifuentes:

During our conversation, [Sifuentes] mentioned to me that he feels that I am being “bias” [sic] and that there is another “bigger word” that describes what is happening to him.

Investig. Rep., Exh. C.

In addition, Sifuentes claims that when he later met with Haeussler on November 29, 2012, Sifuentes:

Specifically informed Mr. Haeussler in this meeting that Jason [Amato] and Veronica [Jacobo] wrongly believed that Complainant was ready to retire and that one of the reasons they wanted to fire Complainant was because Complainant was of advanced age.

Cp. Q. Resp. No. 12. Although J.P. Morgan contests whether Sifuentes’s alleged statement to Haeussler was true, it does not contend that Sifuentes never said it.

A complainant does not need to be legally correct that the conduct to which he has been subjected is actionable discrimination or harassment in order to have a viable claim for retaliation. *See Washington*, 2005E065 at *4-5. A complainant can proceed before this Commission with a retaliation claim as long as he believes in good faith that he has been the subject of unlawful discrimination or harassment. *Id.* In the absence of evidence that Sifuentes knew that his age discrimination and harassment claims would fail here, the Commission will presume that there is enough evidence for Sifuentes to meet the first element of his retaliation claim.

B. Adverse Treatment

J.P. Morgan terminated Sifuentes’s employment on December 10, 2012. An employee’s discharge easily falls into the category of sufficiently adverse treatment as to form the basis of a viable unlawful retaliation claim.

C. Causal Link

Yet Sifuentes’s retaliation claim fails because the evidence remains insufficient to infer a causal link between Sifuentes’s complaints and his eventual discharge. The Commission applies a “totality of the circumstances” analysis to this inquiry in which temporal proximity is the

primary factor. *Andersen v. CD2000, Inc.*, 2004E022 (CCHRC Nov. 18, 2008). The more time that passes between a complainant's protected act and the adverse employment action, the less likely a causal link. *Id.* Where the alleged retaliation occurs within hours or days, that alone may be sufficient evidence to proceed with a retaliation claim; once more than a year has passed, a retaliation claim is highly unlikely to succeed. *Porreca v. Anderson*, 2014E011, *29 (CCHRC July 10, 2015).

Here, some nine months elapsed between Sifuentes's initial complaint of discrimination to Amato on March 16, 2012 and Sifuentes's eventual termination on December 10, 2012. There were only a few days, however, between Sifuentes's complaint of discrimination to Haeussler in late November 2012 and Sifuentes's termination, so the Commission must examine the evidence in support of J.P. Morgan's proffered explanation for the timing of Sifuentes's discharge.

J.P. Morgan asserts that Sifuentes was terminated on December 10, 2012, not for complaints made days or months earlier, but rather for failing to safeguard client information after repeated warnings. In support of this assertion, J.P. Morgan produced an email that Haeussler received on December 7, 2012, from a branch manager indicating that Sifuentes had left his workstation without logging out or locking the screen of his computer. *See* Investig. Rep., Exh. M. Sifuentes contends that he did secure his workstation on the date in question and asserts that the branch manager was not in a position to be able to see his screen clearly. Cp. Q. Resp. Nos. 1.a, 2.

But the evidence before the Commission would have provided Haeussler with a reasonable basis for believing that Sifuentes had violated an important company policy at the time that Sifuentes was terminated. *See Porreca*, 2014E011 at *30 ("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."). The first documented complaints about Sifuentes's ability to safeguard customer information pre-date Sifuentes's March 16, 2012 complaint to Amato about age discrimination by more than a month. *See* Investig. Rep., Exh. C (February 1, 2012 notes regarding Sifuentes's performance at the Melrose Park branch). Sifuentes cannot reasonably argue that the branch manager was mistaken about his compliance with data security protocols on May 19, 2012, given that J.P. Morgan produced an email that a branch manager sent to Sifuentes from his own email account, taking him to task for failing to logout or lock his screen when he was away from his desk. *Id.* at Exh. I. J.P. Morgan cited "[c]onsistently leaving desk drawers unlocked with sensitive information in them and on them" and "walking away from the computer and leaving customer information exposed" as performance deficiencies in Sifuentes's June 6, 2012 written warning. *Id.* at Exh. K.

Sifuentes denies that he lost his keys on August 16, 2012, but this assertion is contradicted by J.P. Morgan's Key/Combination Record log. *Compare* Cp. Resp. No. 8 with Investig. Rep., Exh. O. Further Sifuentes admits that he lost his keys, at least temporarily, on November 10, 2012, and, although Sifuentes claims that his drawers were locked at the time, he admits that he was not in possession of keys for several days on and around November 17,

2012.⁵ Cp. Q. Resp. Nos. 4, 6. While the parties disagree about the degree to which the topic was emphasized, Sifuentes readily admits that Haeussler had counseled him about data security at their November 21, 2012 meeting – and this was less than three weeks before Haeussler received the report stating that Sifuentes had left customer information vulnerable to compromise on at least four recent occasions despite receiving numerous prior warnings. *See* Cp. Q. Resp. No. 3.

Further, the Commission’s investigation found no evidence that J.P. Morgan enforced its rules regarding the safety of client information selectively – punishing only those who had, for example, complained about discrimination or were older. Three employees other than Sifuentes had also been terminated by J.P. Morgan between January 2011 and January 2013 for failing to safeguard customer information. *See* Rp. Q. Resp. No. 6; Investig. Rep., Exh. P (J.P. Morgan termination documents). All three of these employees were under the age of 40 at the time of their termination and none of them had filed internal or external complaints of discrimination or harassment prior to their termination. Rp. Q. Resp. No. 6.

Nonetheless, Sifuentes attempts to show the required causal link between his opposition to age discrimination and his termination by arguing that a similarly situated J.P. Morgan employee who also lost his keys was not terminated for doing so. According to Sifuentes, Cesar Gonzalez (“Gonzalez”), a personal banker, left his desk drawer open before leaving the Melrose Park branch. Cp. Q. Resp. No. 10. Sifuentes claims that he reported this to a manager of the Melrose Park branch, Leandra Escareno (“Escareno”), and Escareno and Sifuentes worked together to secure the client information that had been left in Gonzalez’s unlocked desk. *Id.* Instead of firing Gonzalez, Sifuentes alleges that Gonzalez was given a transfer to another branch where he was promoted. *Id.* Gonzalez was under the age of 40 at the time and there is no evidence that Gonzalez had complained of discrimination. *Id.*

J.P. Morgan denies that this event even occurred. This claim is supported by J.P. Morgan records, which indicate that Escareno would not have been present at the Melrose Park branch at the time that Sifuentes claims he complained about Gonzalez’s unlocked drawer. Rp. Q. Resp. No. 4. In addition, J.P. Morgan had no documentation or reports showing that Gonzalez’s alleged misconduct actually happened. *See* Rp. Q. Resp. Nos. 5, 8.

Even if Sifuentes’ recollection of the Gonzalez incident is true, however, Sifuentes’ account fails to raise any inference of a retaliatory (or discriminatory) motive for his termination. Where a complainant’s alleged misconduct is substantially worse than a co-worker’s in terms of its seriousness or the number of alleged infractions, the two employees cannot be considered “similarly situated.” *See, e.g., Blackmond v. Cook County Assessors*, 2010E026 (CCHRC Aug. 26, 2014); *Logue v. Starbucks Coffee Co.*, 2011E013 (CCHRC Oct. 18, 2013). *See also Cambron v. Kelvyn Press Inc.*, No. 2011E021 (July 28, 2014) (showing that two employees are similarly situated requires proof that they are directly comparable in all material aspects). Here, Gonzalez’ one undocumented incident is very different from Sifuentes’ multiple, documented

^{5 5} Sifuentes’ assertion that the drawers were locked when he left the branch for several days does not support his case because so long as Sifuentes was not in possession of the keys, he could not ensure that someone who found the lost keys first would not gain access to sensitive customer information.

incidents of the same infraction. Thus, J.P. Morgan's differential treatment of these two employees does not suggest an unlawful "causal link."

CONCLUSION

For the foregoing reasons, the Commission orders that Complaint No. 2013E014 pending before this Commission be **DISMISSED** for **LACK OF SUBSTANTIAL EVIDENCE** of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), either party may file a request for reconsideration with the Commission within 30 days of the date of this order.

August 13, 2015

By delegation:



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