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

Yolanda MARINO, Complainant v. CHICAGO HORTICULTURAL SOCIETY, Respondent	)	Case No. 2012E029 Entered: March 20, 2015

ORDER

On July 27, 2012, Complainant Yolanda Marino ("Marino") filed a complaint against her former employer, Respondent Chicago Horticultural Society ("Respondent"), alleging that she was terminated based on her age and sexual orientation in violation of the Cook County Human Rights Ordinance ("Human Rights Ordinance"). *See* Cook County Code of Ordinances ("County Code"), § 42-35(b)(1).

The Cook County Commission on Human Rights ("Commission") has investigated Marino's complaint, and now dismisses for lack of substantial evidence of a violation of the Human Rights Ordinance. While Marino could direct the Commission to sufficient evidence to establish a *prima facie* case of age discrimination, she failed to rebut Respondent's ample evidence of her job performance problems. Instead, she proposed an alternative motivation for her termination. This alternative motivation, however, is fatally non-discriminatory, and if proven true at a contested hearing, would not violate the Human Rights Ordinance.

BACKGROUND

Marino's Employment Experience

Marino started working as a part-time Human Resources ("HR") Assistant at the Chicago Botanic Garden, operated by Respondent, on February 26, 2007. Resp. Pos. St., pp. 1-2. As the HR Assistant, Marino's responsibilities included benefits administration, personnel files management, recruiting, data entry, employee recognition, and other administrative tasks assigned by the HR Director. *Id.* at Ex. B (HR Assistant Job Description).

During the first four years of Marino's employment, she received generally positive evaluations of her job performance. When hired, Marino's direct supervisor was Jerry Baker ("Baker"), who was then HR Director. *Id.* at pp. 1-2. Baker did Marino's annual performance evaluation in 2008 and 2009 (for her work in 2007 and 2008, respectively). *Id.* at p. 2. Baker's evaluations of Marino were largely favorable, although he did note concerns about her time management skills. *Id.* Baker then was terminated in November 2009, and subsequently there was frequent turnover in the HR Director position. *Id.* at p. 2, Ex. D. Marino was not given a performance evaluation for her work in 2009. *Id.* at Ex. A. In 2011, Thomas Nissly ("Nissly"),

Respondent's Executive Vice President, did an evaluation of Marino's 2010 performance. *Id*. Nissly's evaluation noted many positive aspects of Marino's work, but also remarked that she did not take initiative. *Id*.

In June 2011, Aida Amsel ("Amsel") was hired as HR Director and became Marino's direct supervisor. Compl., ¶ II(A); Resp. Pos. St., p. 2. At the time she was hired, Amsel was 40 years old. Resp. Pos. St., Ex. D. According to Respondent, once Amsel started as HR Director, she uncovered significant deficiencies in the HR Department and sought to rectify them. *Id.* at p. 2. Among the problems Amsel identified for remediation were two of Marino's main duties: (i) processing I-9 verification forms (*i.e.* the federal government forms used to check whether employees are legally authorized to work in the United States) and (ii) ordering new uniforms for some of Respondent's employees. *Id.* at pp. 2-3, Ex. B. As discussed below, Amsel repeatedly informed Marino of these criticisms of Marino's job performance, including in several email exchanges. *Id.* at Ex. A.

First, beginning in June 2011, Amsel made numerous requests to Marino to create an online account and start using the "E-Verify" system for checking I-9 verification forms. *Id.* at p. 3. E-Verify is a free web-based system set up by the federal government to provide employers with fast verification of new hires' employment eligibility. *See* U.S. Citizenship and Immigration Services, "E-Verify Overview," online at: http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/e-verify-presentation.pdf (visited Mar. 11, 2015). Marino told Amsel that, in order to implement the program, it first was necessary to obtain a certification by attending a webinar and passing a test. Resp. Pos. St., at p. 3. When Marino gave Amsel the information on the required webinar, Amsel noticed that all of the dates listed had passed; in fact, the last session of the webinar was taking place that same day. *Id*. Amsel then looked into the process herself, and discovered that it required only an online registration and tutorial, which Amsel then completed herself within an hour. *Id*.

Second, in September 2011, Amsel asked Marino to present new uniform samples to management. *Id.* at p. 2, Ex. A. After that, Amsel checked in on Marino's progress with the project several times. Each time, Marino provided what Amsel viewed as an excuse for not following through with this task. *Id.* at Ex. A. According to Amsel, Marino never ordered the uniforms, forcing Amsel to ask an assistant from Nissly's office to finish the project. *Id.* at p. 2.

Although Amsel had only been Marino's supervisor for six months, on January 27, 2012, Amsel conducted Marino's annual evaluation for Marino's 2011 performance. Compl., ¶ II(E); Resp. Pos. St., Ex. A. Amsel's evaluation was highly critical of Marino's job performance, and described many perceived inefficiencies and difficulties. Resp. Pos. St., Ex. A. It elaborated on the weaknesses noted by prior supervisors – Marino's struggles with time-management and her failure to take initiative. *Id.* And it also specifically described Marino's failure to order uniforms as requested and her inappropriate handling of employee I-9 verification forms. *Id.* at pp. 2-3, Ex. A.[1]

[1] It appears Marino received some prior indication that this written evaluation would be quite negative. As Marino tells the story, sometime in January, 2012, Marino asked Amsel for a meeting to discuss their working relationship. Compl. II(D). And at that meeting, Marino alleges that Amsel "unfairly criticized [her] job performance and belittled [her]." *Id.* Respondents did not mention this additional meeting, but it is unnecessary to clarify.

On February 6, 2012, Amsel and Marino met in person to discuss this evaluation. *Id.* at Ex. A; Compl., ¶ II(E). According to Amsel, at this meeting, Marino lied in an attempt to hide her continuing failure to perform her E-Verify duties; specifically, Marino stated that she had not yet used the online E-Verify system because no new employees had been hired since the system became available on January 1. Resp. Pos. St., p. 3. But in fact, two new employees had been hired in January. Respondent provided copies of the paper I-9 forms for both new employees. Investig. Rep., Ex B. As part of her duties, Marino signed I-9 forms on behalf of the employer. Marino must have been aware of these two new post-January 1 hires because her signature appears on both I-9s. *See id.* Amsel believed that Marino was deliberately lying to her. *Id.* at pp. 3-4. Although Amsel had not planned to do so in advance of the performance review meeting, Amsel fired Marino on the spot for the combination of providing false information and consistently poor performance. *Id.* at pp. 2-4.

Whether Marino deliberately lied or was forgetful cannot be conclusively determined at this stage, but resolution of that point is not necessary to the Commission's decision here. In one interview, Marino admitted to Commission staff that she told Amsel she had not used E-Verify because there were no new employees in January. Marino Interview (Mar. 4, 2015). But in another interview, two days later, Marino said she told Amsel that one employee had started in January 2012, but she had forgotten to enter the form in E-Verify. Marino Interview (Mar. 6, 2015). Under either scenario, Marino failed to perform one of her primary tasks despite repeated reminders and Amsel's assistance. Also, regardless of whether Marino was actually lying, it was reasonable for Amsel to think that she was, given that Marino's job involved processing the new employees.

Marino was 65 years old at the time that Amsel discharged her. Resp. Pos. St. at p. 2. Soon after, on March 1, 2012, Respondent hired Monica Moncada ("Moncada"), then age 41, to replace Marino. *Id.* at Ex. F. Marino is homosexual and, she alleged, her replacement Moncada is heterosexual. Compl., ¶ II, II(H). Respondent asserted that it was not aware of Marino's sexual orientation or Moncada's sexual orientation. Respondent's Response to Questionnaire ("Rp Questionnaire"), No. 7.

Marino's Explanatory Observations Regarding Her Termination

1. Respondent's Disciplinary Policy

Marino claims that Respondent violated its own disciplinary policy when she was terminated without warning, explanation, or any previous oral or written disciplinary history. Compl., ¶ II(F). According to Respondent's written employment policy: "The usual disciplinary procedure involves three steps: verbal warning and counseling, written warning and/or suspension, and then discharge." Marino Investigation File. Respondent's disciplinary procedure also provides this caveat, however: "a staff member may be terminated for a first offense as the [Respondent] specifically reserves the right to determine what discipline will be administered." *Id.*

Assuming this meeting occurred as Marino described, it further weakens any claim that she was discriminated against by not receiving sufficient warnings before termination.

2. Comparison to Other Employee Supervised by Amsel

Marino also claims that she was treated worse than Amsel's other supervisee, Ellen Slattery ("Slattery"), who was younger and heterosexual. Marino Interview (Oct. 30, 2014); Resp. Pos. St., p.2. Specifically, Marino claims that unlike her situation, Amsel did not "harass, unfairly criticize and terminate" Slattery. Compl. ¶II.G. Respondent asserted that it was not aware of Slattery's sexual orientation. Rp Questionnaire, No. 7.

Slattery began working for Respondent in 2001 as an accounting assistant. In 2006, she was promoted to Human Resources Coordinator, a full-time position. Resp. Pos. St., Ex. C. Slattery's duties as HR Coordinator included processing employees through the payroll system, preparing new employee packets and binders, and enrolling employees or making enrollment changes with benefits vendors. *Id*.

Amsel also gave Slattery her performance evaluation for 2011. *Id.* at p. 4, Ex. 5. Amsel's evaluation of Slattery was less detailed, and more positive, than Marino's. It did, however, note areas where improvement was needed, including that Slattery needed to "reduce her manifestations of stress and frustration" when asked to "step outside of her comfort zone." *Id.* at Ex. 5.

According to Amsel, after Marino left, Amsel discovered that Slattery consistently only did the minimal amount of work necessary, and often deferred or declined to perform tasks which she found unpleasant. Amsel then engaged in repeated coaching and counseling in an effort to improve Slattery's job performance. In July 2012, Amsel recommended that Slattery (then age 49) be terminated. However, before the termination could be implemented, Slattery resigned on August 1, 2012. *Id.* at p. 4, Ex. C, D.

3. An alternative reason for Marino's discharge

During her interview with the Commission's investigator, Marino stated that she believed Amsel fired her because Amsel was afraid that Marino would expose Amsel's Spanish language deficiencies to Respondent's management. Marino Interview (Oct. 30, 2014). Marino stated that Amsel was hired in part because of her purported bilingual capabilities in English and Spanish. *Id*. But, Marino alleged that Amsel was not as strong of a Spanish speaker as she had represented during the hiring process. *Id.* Marino said that Amsel wanted Marino gone because Amsel knew Marino was aware of this deficiency and feared exposure, and that is why Amsel fired her. *Id*.

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). Unlawful discrimination is defined to include "discrimination against a person because of the actual or perceived status, practice, or expression of that person's . . . age. . . [or] sexual orientation[.]" *Id.* at § 42-31.

The Ordinance defines "age" as "chronological age of not less than 40 years," and "sexual orientation" as "the status or expression, whether actual or perceived, of heterosexuality, homosexuality, or bisexuality." *Id.* Here, Marino alleged that Respondent terminated her because of her age, then 65 years old, and her homosexuality. Compl., ¶ II(I).

Showing Substantial Evidence of Discrimination in Commission Cases

Except in the rare case of a direct admission, employment discrimination claims in courts and pending before administrative agencies are analyzed using the three-step *McDonnell Douglas* burden-shifting approach. Under this method, a complainant must first establish a *prima facie* case of discrimination by showing that: (1) she is a member of a protected class; (2) she performed her job satisfactorily; (3) she suffered an adverse employment action; and (4) employees who were similarly situated, but not in her protected class, were treated more favorably. *See, e.g., Cambron v. Kelvyn Press Inc.*, 2011E021 (CCHRC July 28, 2014) (citing *McDonnell Douglas v. Green*, 411 U.S. 792 (1973)); *Alvarado v. Holum & Sons, Inc*. 2012E016 (CCHRC Jan. 9, 2014); *Jiminez v. Consumers Insurance Services, Inc*., 2006E039 (CCHRC June 16, 2009).

The second and fourth elements of this well-established test are altered from case to case to fit the particular context. *McDonnell Douglas* itself was a hiring case; the Court there required plaintiff to show that he satisfied the published job requirements, applied but was turned down, and the employer kept on looking for another job candidate. 411 U.S. at 802. And in discharge cases, such as this one, the fourth element can be met where the complainant is replaced by someone who is outside his or her protected class.

Making this showing gives rise to a legal inference that the employer's reason for the adverse employment action may have been discriminatory. *See, e.g., Alvarado* *3 (citing *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 178-79 (1989)). If the complainant establishes a *prima facie* case for discrimination, the burden then shifts to the respondent to articulate a legitimate, non-discriminatory reason for its action. *Id.* If the respondent cannot articulate a non-discriminatory reason for the adverse employment action it took against the complainant, the Commission acts on the inference of discrimination raised by the complainant's *prima facie* case and finds substantial evidence of a violation of the Human Rights Ordinance for the complainant. If, however, the respondent does articulate a non-discriminatory reason for its action, the burden then shifts back to the complainant to present evidence that respondent's claimed non-discriminatory reason is a pretext for discrimination. *Id*. The ultimate burden of showing substantial evidence of an Ordinance violation remains with the complainant. *Id.*

In addition to this familiar *McDonnell Douglas* approach, many courts have added another method by which complainants can prove discrimination claims in the absence of an admission of discriminatory intent by the respondent. This alternative approach is to present a "convincing mosaic" of "direct" circumstantial evidence.[2] Using this approach, the cases outline

[2] Stating that this method uses "direct circumstantial" evidence, and contrasting it with the *McDonnell Douglas* so-called "indirect" evidence approach, is a confusing and unfortunate doctrinal development. In ordinary legal usage, indirect evidence is circumstantial evidence, and stands in opposition to direct evidence (*e.g.*, eyewitness testimony). In discrimination cases, the only true "direct" evidence is a respondent's admission of his discriminatory motive.

three broad types of circumstantial evidence. The first is evidence of "'suspicious timing, ambiguous statements oral or written, behavior toward or comments directed at other employees in the protected group, and other bits and pieces from which an inference of discriminatory intent might be drawn.'" *Silverman v. Bd. of Ed*., 637 F.3d 729, 734 (7th Cir. 2011) (quoting *Troupe v. May Dept. Stores Co*., 20 F.3d 734, 736 (7th Cir. 1994)). This dual approach has been adopted by the Illinois Appellate Court, *see Sola v. Ill. Human Rts. Com'n*, 316 Ill. App. 3d 528, 537-38 (1st Dist. 2000) (expressly adding what it deemed a new test created by the Seventh Circuit in *Troupe*), and used by this Commission, *see, e.g.*, *Cambron v. Kelvyn Press Inc*., 2011E021 (CCHRC July 28, 2014). The second and third types of "circumstantial" evidence described as part of the mosaic test repeat the "similarly situated" and "pretext" concepts used in the *McDonnell Douglas* approach.[3]

Conceiving of these approaches as separate tests and applying them *seriatim* leads to redundant analyses. Worse, doing so obscures their common goal: to determine whether the particular facts raise an inference of discrimination in the absence of direct evidence of the respondent's intent. Regardless of whether a discrimination claim proceeds under the *McDonnell Douglas* test or the so-called "mosaic" test, the complainant needs to (i) show she has standing (*i.e.* is within an Ordinance-protected class and has suffered from an adverse action); (ii) provide *evidence that raises an inference of discrimination*; and (iii) rebut a respondent's articulated legitimate reason for an adverse action. The mosaic test is appealing because of its recognition that a particular case may raise the inference of discrimination, even where the complainant cannot identify a "similarly situated" person who is outside of the protected class at issue. This flexibility is important for litigants pursuing violations of the Human Rights Ordinance because, unlike its federal and state counterparts, Cook County's antidiscrimination law applies to even the smallest of employers.

Thus, rather than analyzing the facts twice by using each approach separately, the Commission has combined the insight of the newer "mosaic" test with the well-established formula of the *McDonnell Douglas* burden-shifting approach to allow complainants to use the full array of available evidence to meet the fourth element of the *prima facie* case. Under the Commission's approach, once a complainant establishes that similarly situated people outside of the complainant's protected class were treated more favorably *or identifies some other strongly probative evidence* to appropriately raise the inference that the respondent had a discriminatory motive, the analysis will continue on to the second and third parts of the familiar burden-shifting test (*i.e.* whether the employer can articulate a non-discriminatory reason for its adverse employment action and whether that proffered explanation is true or pretextual).

Moreover, this confusion of terms seems to serve no purpose; whether using the so-called "direct" or "indirect" method, complainants retain the ultimate burden of proving discrimination.

[3] The second category is "evidence that employees similarly situated to the plaintiff but outside the protected class received systematically better treatment;" and the third category is "evidence that the plaintiff was qualified for the job in question but passed over in favor of (or replaced by) a person who is not a member of the protected class, and that the employer's stated reason for the difference in treatment is a pretext for discrimination." *Silverman v. Bd. of Ed*., 637 F.3d 729, 734 (7th Cir. 2011).

Marino's Prima Facie Case

Marino can easily establish the first and third elements of the *prima facie* case. With respect to the first element, there is substantial evidence that Marino was both within the protected class for age (*i.e.* she was over the age of 40 when she was terminated) and sexual orientation (*i.e.* she represents that she is a homosexual). Similarly, with respect to the third element, being terminated is clearly an adverse employment action.

While more debatable, there is also substantial evidence that Marino fulfils the second element of the *prima facie* case: that she performed her job duties satisfactorily. In support, Marino submitted to the Commission's investigator performance evaluations by her prior supervisors, Jerry Baker and Tom Nissly, who both gave her largely positive feedback on her job performance. While Respondent obviously viewed her work negatively at the time of her termination, Marino alleges that her new supervisor's negative review was actually a part of the unlawful discrimination. *See* Compl. II.C. "[W]hen assessing whether a plaintiff has met her employer's legitimate expectations at the *prima facie* stage of a termination case," the Commission "must examine plaintiff's evidence independent of the nondiscriminatory reason [given] by the defense as its reason for terminating plaintiff." *Cline v. Catholic Diocese*, 206 F. 3d 651, 660-61 (6th Cir. 1999) (cautioning against "improperly conflating the distinct stages of the *McDonnell Douglas* inquiry"). Thus, for the preliminary purpose of showing a *prima facie* case of discrimination, the Commission finds that Marino has put forth substantial evidence of satisfactory job performance and reserves any dispute on this point for a later stage of the analysis.

As to her age discrimination claim, Marino meets the threshold requirement of the fourth element because she was terminated at the age of 65 and replaced by Moncada, a 41-year-old. While it is true that both Marino and Moncada where technically a member of the same protected class, *i.e.* persons 40 years old and older, identifying who is similarly situated for the purpose of an age discrimination case has its own twist: the *prima facie* case is met by comparisons to (or replacement by) persons who are "substantially younger" than complainant, not necessarily those outside the protected class. *O'Connor v. Consolidated Coin Caterers Corp*., 517 U.S. 308 (1996) (under the federal age discrimination statute, replacement of 56-year-old by 40-year-old has probative value, while replacement of 40-year-old by a 39-year-old does not). *See also Balderston v. Fairbanks Morse Engine Div. of Coltec Indus*., 328 F.3d 309, 321 (7th Cir. 2003) (defining "substantially younger" generally as 10 years younger). Here, Respondent replaced Marino with someone who though also within the protected category for older workers, was substantially younger than Marino.[4]

[4] In addition, Marino has alleged that she was treated less favorably than the substantially younger Ellen Slattery (49) because Amsel did not give Slattery an unfairly critical evaluation or terminate her. Whether the comparison with Amsel's treatment of Ellen Slattery supports an inference of discrimination is arguable at best. On the one hand, Slattery and Marino likely were sufficiently similar for comparison purposes, even though they had different job titles. Both worked in Respondent's small Human Resources department; and they had the same supervisors, the HR Director Amsel (and her predecessors). Their job duties, while not overlapping, were reasonably similar. And based on the format of their performance evaluations, submitted by Respondents, it appears that they were judged on similar standards.

Marino has not met the fourth element with respect to her claim of sexual orientation discrimination. She did not provide any evidence that Amsel or any of Respondent's management knew she was homosexual, nor did she show Amsel's or Respondent's knowledge of Slattery's or Moncada's alleged heterosexuality. The Commission's investigation found that Respondent was unaware of the sexual orientations of Marino, Slattery or Moncada. And Marino failed to provide any other evidence that would raise the inference that Respondent's actions towards her were motivated by her or others' sexual orientation.

As a result, Marino's claim for sexual orientation discrimination must fail, but Respondent must articulate a reason for terminating Marino because its decision to replace Marino with a substantially younger employee raises the inference of age discrimination.

Respondent's Legitimate Reasons and Marino's Failure to Prove Pretext

Respondent has satisfied its burden of articulating a legitimate reason for firing Marino that is unrelated to her age. Respondent provided substantial documentary evidence showing some long-term, general weaknesses, and more recent serious problems with completing two of Marino's specific job duties: ordering new employee uniforms and implementing the E-Verify system. Respondent asserted that Marino was fired based on a series of unmet requests from her supervisor, Amsel, which resulted in her work having to be done by others, and culminating in a meeting at which Amsel saw Marino as deliberately falsifying information in an effort to excuse undone work.

Marino did not provide substantial evidence that Respondent's explanation of the reason for her abrupt termination is a pretext for age discrimination. Nothing in Marino's statements "identif[ied] such weaknesses, implausibilities, inconsistencies, or contradictions" in Respondent's asserted justification "that a reasonable person could find [it] unworthy of credence." *See Corporate Bus. Cards, Ltd. v. Ill. Human Rights Comm'n*, 2012 Ill. App. Unpub. LEXIS 2124 (1st Dist. 2012) (citing *Sola v. Illinois Human Rights Comm'n*, 316 Ill. App. 3d 528, 537 (1st Dist. 2000)) (suggesting ways to show "pretext").

Marino never asserted or provided any evidence that she actually did the jobs that Respondent says she failed to do, or that the I-9 employment verification or uniform projects were not her duties to perform. Regarding the alleged lie at the center of her immediate discharge, Marino did not try to show that she was telling the truth (*i.e.* that in fact there were no

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What is not clear is that Slattery was actually treated more favorably than Marino. While Amsel gave Slattery a better performance review for 2011, Marino did not claim or show that Slattery had similar wrangles with Amsel over jobs left undone during that period. And once Amsel focused on Slattery's weaknesses, Amsel sought to terminate Slattery too, just five months later.

Still, it is reasonable for Marino to argue that Slattery received more favorable treatment because Respondent appears to have followed its usual 3-step procedure of progressive discipline before firing Slattery for poor performance. The evidence before the Commission is that Amsel gave Slattery counseling for her poor performance and several weeks to improve her performance before recommending termination. But, given that the Commission's investigation found no evidence that Amsel believed that Slattery lied to Amsel in an effort to excuse Slattery's poor work performance, arguably the two were treated differently because they acted differently.

Fortunately, the Commission does not have to untangle the competing claims with respect to what the treatment of Slattery shows because, for purposes of the *prima facie* case, it is sufficient to show that Marino was replaced by a substantially younger person, Moncada.

new employees hired during the time period at issue in spite of Respondent's documentation to the contrary) or even to explain why her statement to Amsel was an innocent mistake. Marino cannot establish that Amsel's critiques of her work in 2011 were pretextual by simply pointing to her earlier more positive evaluations from other supervisors. Marino's good work in 2007 and 2010 are inadequate to show that any criticism she received for work in 2011 was a pretext for discrimination. Thus, the Commission is left with unrebutted evidence that Marino left projects undone and was viewed by her supervisor as offering false excuses for doing so.

In fact, Marino completely undermines any inference that the Commission could draw that Respondent's decision to terminate her for allegedly poor performance was a pretext for age discrimination because Marino herself offers evidence that Respondent's real motivation for firing her was unrelated to her age. During an interview with an investigator, Marino described her belief that she was fired because Amsel was worried that Marino might expose Amsel's poor Spanish skills to management. According to Marino, Amsel had advertised her bilingual strength during the hiring process, and Amsel knew that Marino could tell she had misrepresented herself. Even if true (and Marino provided no other support for this theory than her say so), it is not the same as demonstrating that Respondent's real reason for terminating her was animus based on Marino's age. If, as here, a complainant shows that her employer's stated reason for firing her is not true, but accomplishes this by proving its "real" reason – and that reason is not unlawful discrimination – then showing "pretext" does not raise any inference of discrimination. *See, e.g., Greene v. Potter*, 557 F.3d 765 (7th Cir. 2009) (sex discrimination plaintiff showed that her employer's stated reason for overtime scheduling practices, to meet business needs, was false, because actually her supervisor manipulated scheduling procedures to favor his friends; thus, the court held, she failed to show unlawful discrimination in which a supervisor would have manipulated the scheduling procedures to favor men or women). Although Marino may be able to provide evidence of a reason for her termination that is not Respondent's stated business reason, she has failed to show substantial evidence to rebut the conclusion that Respondent had a non-discriminatory reason for terminating her.

CONCLUSION

For the foregoing reasons, the Commission orders that Complaint No. 2012029 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.

March 20, 2015

By delegation:

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