STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
IDHR and BRENDA SALGADO-MORALES,	)	
	)	Charge No.: **2018CH0367**
Complainant,	)	HUD No.: **05-17-9197-8**
	)	ALS No.: **19-0410**
and	)	
	)	
ROSS SHRESTHA,	)	
	)	
Respondent.	)	

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision, the Complainant's Exceptions filed thereto. The Complainant has also requested oral argument on the Exceptions; remand to the Administrative Law Section for further discovery; and leave to present additional evidence.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

IT IS HEREBY ORDERED:

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **February 1, 2023**, has become the Order of the Commission.

2. Complainant's request for oral argument is **DENIED.** Complainant's request for remand to the Administrative Law Section for further discovery is **DENIED.** Complainant's request for leave to present additional evidence is **DENIED.**

STATE OF ILLINOIS)
) **Entered this 30th day of May, 2023.**
HUMAN RIGHTS COMMISSION)

Vice-Chair Barbara R. Barreno-Paschall

Commissioner Jacqueline Y. Collins

Commissioner Janice M. Glenn

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF: **IDHR and BRENDA SALGADO-MORALES**, Complainants, v. **ROSS SHRESTHA**, Respondent.	IDHR Charge No.: 2018-CH-0367 HUD No.: 05-17-9197-8 **ALS No.: 19-0410** **Judge Azeema N. Akram**

RECOMMENDED ORDER AND DECISION

Before this administrative court is a motion for summary decision filed by Respondent Ross Shrestha ("Respondent"). Complainant Brenda Salgado-Morales ("Complainant") alleges that Respondent unlawfully discriminated against her on the basis of her disability by refusing to rent an apartment to her when he found out that she had two dogs that were her emotional support animals ("ESAs") and further denied her request for a reasonable accommodation to his "no-pets" policy. The Illinois Department of Human Rights (the "Department") filed a two-count complaint of civil rights violations ("Complaint") on Complainant's behalf before the Illinois Human Rights Commission (the "Commission") on September 11, 2019. Respondent filed an Answer denying the allegations, averring that he never knew of Complainant's disability or that her dogs were ESAs, and further asserting the affirmative defense of fraud and misrepresentation in that she failed to fill out her rental application completely and accurately. Respondent filed a motion for summary decision under 56 Ill. Admin. Code § 5300.735(a). Complainant and the Department jointly filed an opposition brief, and Respondent filed a reply. For the reasons set forth below, I recommend that the Commission grant Respondent's motion for summary decision.

RESPECTIVE CONTENTIONS OF THE PARTIES

In 2016, Respondent owned a condominium unit located at 514 E. Spruce Drive in Palatine, Illinois (the "subject property"). The outgoing tenants of the subject property were scheduled to move out on August 31, 2016. In anticipation of this, Respondent retained the services of Frank Williams ("Williams"), a real estate agent, to find a new tenant to move in no sooner than September 1, 2016. Williams then advertised the subject property on the Multiple Listing Service ("MLS") on August 23, 2016. Ex. C2. The listing stated that "No pets" were allowed. Ex. C2, Ex. C3.[1]

The subject property is part of the Fox Cove Condominium Association ("Condo Association") and Respondent is a member of the Fox Cove Homeowners Association ("HOA") (collectively, the "Associations"). The rules of the Associations provide that "Only one (1) dog is permitted per Unit." There is an exception for "SERVICE EYE DOGS," for which "authorized papers must be submitted to the association." If a unit owner decides to lease their property, they are required to provide the association with several required documents, including a "Dog Registration Form (if applicable)."

Complainant contacted Williams to inquire about the subject property in response to the MLS listing. Subsequently, Complainant submitted a rental application for the subject property. Although she believed that the "MLS listing indicated that pets were allowed up to 25 pounds," she did not include information about her two dogs weighing over 50 pounds (each) on her application because she "truly believed that her Emotional Support Animals did not qualify as pets due to their ESA status." Compl., ¶ 8; Resp., p. 14 .

[1] Unless otherwise indicated, the background facts summarized in this section are either uncontested or admitted by the parties in their respective submissions. Where facts are disputed, citations to documents and other exhibits appearing in the evidentiary record are provided.

Complainant contends that Respondent approved her application, but then changed his mind, refusing to rent the subject property to her "because of her disabilities and her assistance animals" (Count I). Complainant also contends that Respondent denied her request for a reasonable accommodation necessary to afford an equal opportunity to use and enjoy the property (Count II). *See* Compl. Complainant further claims that Respondent's assertion that there is a "no pet policy" is pretext for unlawful disability discrimination. *Id*.[2]

Respondent denies the allegations of unlawful discrimination, asserting that Complainant sabotaged her ability to rent the subject property by withholding the fact that she had two large dogs in her application for rent. *See* Ex. R1. Further, Respondent contends that neither Complainant nor Williams ever informed him that Complainant had a disability or that she was seeking a reasonable accommodation. *Id*. In other words, Respondent asserts that he never denied Complainant's request for an accommodation because she never made one. *Id*.

[2] In its pleadings, the Department uses the term "assistance" animal in the Complaint and "emotional service animal" in its Response to the dispositive motion, while Complainant uniformly uses the term "emotional support" animal. Despite their oppositional use of these terms, the distinctions appear to be important according to the primary federal guidance on this issue in existence at the time of the allegations contained in the Complaint, to which the Department has cited. *See* Resp., p. 19, citing to *HUD Fair Housing and Equal Opportunity Notice* 2013-01, available at: https://www.hud.gov/sites/dfiles/FHEO/documents/19ServiceAnimalNoticeFHEO_508.pdf. (noting that "The Department of Justice's (DOJ) amendments to its regulations for Titles II and III of the ADA limit the definition of 'service animal' under the ADA to include only dogs, and further define 'service animal' to exclude emotional support animals." p. 1). Accordingly, the Associations' policy regarding "SERVICE EYE DOGS" appears to relate only to "service animals," not ESAs.

Since the Complaint was filed, the Illinois General Assembly enacted the Assistance Animal Integrity Act, 310 ILCS 120/1, *et seq*., which became effective on January 1, 2020. Thus, going forward, the State of Illinois has codified much of the federal guidance, thereby eliminating the need to search beyond state law.

FINDINGS OF FACT

After reviewing the evidence submitted in this case and the pleadings before me, I make the following findings of fact:

1. Respondent was the owner of a condominium unit located at 514 E. Spruce Drive in Palatine, Illinois (the "subject property").

2. The tenants of the subject property were scheduled to move out on August 31, 2016. To find a new tenant to begin renting the property on September 1, 2016, Respondent retained the services of Williams, a real estate agent. On August 23, 2016, Williams listed the subject property on MLS, stating that "No pets" were allowed. C's Ex. C2, C3.

3. The subject property is part of the Fox Cove Condominium Association ("Condo Association") and Respondent is a member of the Fox Cove Homeowners Association ("HOA") (collectively, the "Associations").

   a. The rules of the Associations provide that "Only one (1) dog is permitted per Unit." R's Ex. 5, ¶ 3. There is an exception for "SERVICE EYE DOGS," for which "authorized papers must be submitted to the association." *Id*. ¶ 15.

   b. A unit owner who rents their property to a tenant is required to provide the association with several required documents, including a "Dog Registration Form (if applicable)." R's Ex. 6.

4. Complainant contacted Williams to inquire about the subject property in response to the MLS listing. Subsequently, Complainant submitted a rental application for the subject property.

5. On August 29, 2016, Respondent learned from Williams that Complainant had two animals that would move in with her if she rented the subject property. Ex. R9, ¶ 26. Knowing

that the Associations allowed only a "dog[], cat, fish, or domestic bird," Respondent asked for a picture of her animals. *Id*. Upon receipt of the picture, Respondent learned that Complainant "had two very large dogs," "one weighting 55 pounds and one weighing 60 pounds." *Id*. ¶ 14, 19–20, 24.

6. Respondent determined that Complainant's application was incomplete because it did not include a Dog Registration form, which Respondent never gave her because she never mentioned her two dogs. *Id*., ¶¶ 11, 19–20. Respondent had never rented to a tenant with more than one dog, and he was unaware of any residents in the building that had more than one dog in a single unit. *Id*., ¶ 15–16.

7. For the next two months, the subject property went unrented. *Id*., ¶ 27, *see also* Ex. C2 ("Off Mkt: 10/28/2016," "Rented: 11/01/2016").

8. Complainant filed a perfected charge of discrimination with the United States Department of Housing and Urban Development ("HUD") on August 30, 2017. She alleged that Respondent refused to rent the subject property to her on the basis of her disabilities—depression and anxiety—when he learned of her "emotional support dogs" (Count I). Complainant further alleged that Respondent denied her a reasonable accommodation to allow her two dogs to live with her (Count II).

9. Respondent filed a motion for summary decision on November 30, 2020. Complainant and the Department jointly filed an opposition on December 18, 2020, after which Respondent filed his reply on December 29, 2020.

CONCLUSIONS OF LAW

Based on the evidence submitted in this case and the pleadings before me, I make the following conclusions of law:

1. This administrative court has jurisdiction over this matter and over the parties who have appeared in this case.

2. Respondent is a "person" as that term is defined in Section 1-103(L) of the Illinois Human Rights Act, and is therefore subject to its provisions.

3. Complainant failed to introduce evidence creating a genuine issue of material fact as to any of the elements of her *prima facie* case of disability discrimination. Thus, Complainant has failed to meet her corresponding burden to establish that Respondent knew she had a disability and that he denied her application on this basis.

4. Complainant failed to introduce evidence creating a genuine issue of material fact as to any of the elements of her *prima facie* case of the denial of a reasonable accommodation. Thus, Complainant has failed to meet her corresponding burden to establish that Respondent knew she had a disability, that she made a request for a reasonable accommodation in variance to his "no pets" policy, and that Respondent refused to make a reasonable accommodation.

5. Complainant has failed to introduce any direct or circumstantial evidence of disability discrimination and denial of a reasonable accommodation that would be admissible at a public hearing. Consequently, Complainant has not established the existence of a triable issue of fact that might prove (or lead to the inference) that Respondent refused to rent to her because of her disability and denied her request for a reasonable accommodation.

6. Respondent is entitled to judgment as a matter of law.

LEGAL STANDARD: SUMMARY DECISION

Section 8-106.1 of the Illinois Human Rights Act authorizes any party to move for summary decision "as to all or any part of the relief sought." 775 ILCS 5/8-106.1. Summary decision is the "procedural analogue" to a motion for summary judgment filed under the Illinois Code of Civil Procedure. *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 620 N.E.2d 1200 (1st Dist. 1993). As such, summary decision (or summary judgment) is only granted where the pleadings, depositions, admissions, and affidavits on file—when viewed in the light most favorable to the non-moving party—demonstrate that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Adams v. N. Illinois Gas Co.*, 211 Ill. 2d 32, 43 809 N.E.2d 1248 (2004). "Material" facts are those that might affect the outcome of the case under the applicable substantive law. *GreenPoint Mortgage Funding, Inc. v. Hirt*, 2018 IL App (1st) 170921, ¶ 17, 97 N.E.2d 66 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).

Although not required to prove her case as if at a hearing, the non-moving party must provide some factual basis for denying the motion. *Birck v. City of Quincy*, 241 Ill.App.3d 119, 121, 608 N.E.2d 920, 922 (4th Dist. 1993). Only facts supported by evidence, and not mere conclusions of law, should be considered. *Chevrie v. Gruesen*, 208 Ill.App.3d 881, 883-84, 567 N.E.2d 629, 630-31 (2d Dist. 1991). If a respondent supplies sworn facts that, if uncontroverted, warrant judgment in its favor as a matter of law, a complainant may not rest on his pleadings to create a genuine issue of material fact. *Fitzpatrick v. Ill. Human Rights Comm'n*, 267 Ill.App.3d 386, 392, 642 N.E.2d 486, 490 (4th Dist. 1994). Where the party's affidavits stand uncontroverted, the facts contained therein must be accepted as true and, therefore, a party's failure to file counter-

affidavits in response is frequently fatal to her case. *See Rotzoll v. Overhead Door Corp*., 289 Ill.App.3d 410, 418, 681 N.E.2d 156, 161 (4th Dist.1997).

Summary judgment is not granted where material facts are in dispute, or where reasonable persons might draw different inferences from undisputed facts in the record. *Adams*, 211 Ill. 2d at 43. At the same time, a court may not weigh the evidence or assess the credibility of a witness when ruling on a motion for summary judgment. *See Hollenbeck v. City of Tuscola*, 2017 IL App (4th) 160266, ¶ 34 (citing *Coole v. Central Area Recycling*, 384 Ill. App. 3d 390, 396, 893 N.E.2d 303 (2008)). This is because the purpose of summary judgment is not to try a question of fact, but rather to determine if one exists. *See Happel v. Wal-Mart Stores, Inc.*, 199 Ill. 2d 179, 186, 766 N.E.2d 1118 (2002). Because summary judgment is a "drastic" method of resolving litigation, it is generally granted only where the right of the moving party is "clear and free from doubt." *Gilbert v. Sycamore Mun. Hosp.*, 156 Ill. 2d 511, 518, 622 N.E.2d 788 (1993) (citations omitted).

DISCUSSION

Under the Illinois Human Rights Act ("Act"), a complainant can prove discrimination either through direct and/or circumstantial evidence, or through the indirect, burden-shifting approach first announced by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). This administrative court will analyze the facts under both theories of persuasion. Yet for either approach, Complainant is unable to show a genuine issue of material fact that might lead to the conclusion that Respondent treated her unlawfully (or even differently) based on her disability.

I. Evidentiary Rulings

Respondent submitted the following exhibits:

- Exhibit R1: a copy of his Affirmative Defenses filed on October 14, 2019;
- Exhibit R2: Complainant's answers to Respondent's Request to Admit;

- Exhibit R3: the Associations' Policy on "Leasing" units;
- Exhibit R4: Complainant's answers to Respondent's Interrogatories;
- Exhibit R5: the Associations' Policy on "Pets;"
- Exhibit R5: the Associations' "Leasing Checklist for Unit Owners;"
- Exhibit R7: Complainant's Updated Discovery Responses to Respondent's requests;
- Exhibit R8: an audio recording of a conversation between Complainant and Williams;
- Exhibit R9: Respondent's sworn Affidavit dated November 23, 2020;
- Exhibit R10: Complainant's doctor's note on a prescription pad dated April 24, 2013;
- Exhibit R11: Complainant's doctor's note on letterhead dated September 13, 2016;
- Exhibit R12: text messages exchanged between Complainant and Williams between August 15, 2016 and September 1, 2016; and
- Exhibit R13: a copy of the "Eavesdropping" article of the Illinois Criminal Code of 2012.

The Department and Complainant submitted the following exhibits:

- Exhibit C1: the Final Investigative Report of Complainant's underlying charge;
- Exhibit C2: the MLS listing of the subject property prepared by Williams with a list date of August 23, 2016; and
- Exhibit C3: a Zumper listing of the subject property that was printed on November 16, 2017.

"All testimony and other evidence shall be subject to the same rules of evidence as are applicable in courts of record in the State of Illinois." 56 Ill. Admin. Code § 5300.750(b). The parties appear to have taken this provision of the rules not as law, but as a loose suggestion, requiring me to make decide certain evidentiary rulings before analyzing the claims presented.

A. Excluded: Department's Investigative Report

Although Respondent did not raise this issue until his Reply brief, I note at the outset that the Department's "investigati[ve] report is not admissible evidence because it is unsworn and patently hearsay; it is inappropriate for consideration in the context of a motion for summary decision." *Taylor v. Fiordirosa Constr. Co. Inc*., IHRC, ALS No. 10651, 2000 ILHUM LEXIS 65, *6–7 (Jun. 12, 2000). Respondent cites to numerous applicable cases on this well-settled issue. Accordingly, Exhibit C1 is **STRICKEN** from the record.

B. Excluded: Recording of Phone Call

Respondent advances a motion *in limine* within his dispositive motion, challenging four pieces of evidence: (R8) the audio recording of a call between Complainant/Williams, (R9 and R10) Complainant's doctor's notes, and (R12) the text messages between Complainant and Williams. Respondent is the one that introduced those pieces evidence, only to ask for exclusion, as the Department relies on them in its joint response brief.

Respondent requests exclusion of the audio recording of the phone conversation between Complainant and Williams that occurred on August 29, 2016. "Complainant does not oppose Respondent's" request to have it excluded, nor does the Department raise any objection o exclusion. Accordingly, Respondent's request to exclude the recording is **GRANTED** without going into any substantive analysis, and Exhibit R8 is **STRICKEN** from the record.

C. Excluded: Text Messages

Respondent moves to exclude the text messages between Complainant and Williams, arguing that they have not been properly authenticated. Complainant relies on the text messages to show that Respondent, through Williams, "approved" her application, but then rejected it. Resp., p. 13. Complainant also relies on these text messages to show that Williams never mentioned to Complainant that she needed to fill out the additional forms required by the Associations. *Id*. at 14. Complainant further uses the text messages to demonstrate that she "was ready and able to provide all medical documentation necessary to establish that her dogs were qualified emotional support animals." *Id*. at 18.

Respondent acknowledges that text messages "may be authenticated by either direct or circumstantial evidence." Mot. for Summ. Decision, pp. 18–19; quoting *People v. Watkins*, 2015 IL App (3d) 120882, *P37, 25 N.E.3d 1189, 1204. Citing to Illinois Rule of Evidence 901(b)(4),

Respondent acknowledges that circumstantial evidence of authenticity includes factors such as "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." *Id*., p. 19. Respondent cites to *Watkins*, a criminal case in which the court held: "The trial court, serving a limited screening function, must then determine whether the evidence of authentication, viewed in the light most favorable to the proponent, is sufficient for a reasonable juror to conclude that authentication of the particular item of evidence is more probably true than not." *Watkins*, *supra*, ¶ 37 (internal citations omitted).

Complainant objects to the exclusion of the text messages, asserting that she "can testify that the text messages are authentic" as a participant in the conversation. Resp., p. 6. The Department notes that Williams previously provided "testimony" during its investigation into the underlying charge, which "further corroborates several of the text messages in the case." *Id*. at 7. However, Complainant has not submitted a sworn statement testifying to authenticity of the text messages, nor has the Department submitted a certified copy of any transcript of Williams's "testimony." Complainant's failure to properly lay a foundation for the authenticity of the text messages is akin to requesting during trial to authenticate evidence based on a claim that a person, who the proponent has not called to testify under oath, "can testify" accordingly.[3]

The Illinois Rules of Evidence define relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401. Evidence must

[3] The Department appears to generally refer to the statements Complainant and Williams each made in connection with its investigative report as "testimony." For example, the Department states that "Ms. Salgado-Morales testimony on the necessity of her dogs is supported by the testimony of her physician, Dr. Carmen Griza. Dr. Griza testified during the Illinois Department of Human Rights investigation that the dogs relieved her anxiety and PTSD and were necessary in order for her to feel safe in the dwelling. Exhibit C1, Page 7-8." Resp., p. 17 (citations in original). Exhibit C1 is the Department's (excluded) Investigative Report, which was neither made under oath nor sworn by those whose component statements are claimed to be "testimony." In sum, the Department's use of the word "testimony" is a misnomer – these statements are simply unsworn remarks contained in an inadmissible, hearsay document (constituting double hearsay).

be authenticated and identified prior to admission, and this condition is "satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Ill. R. Evid. 901(a). Evidence may be authenticated or identified by testimony of a witness with knowledge that the "matter is what it is claimed to be." Ill. R. Evid. 901(b)(1). "To authenticate a document . . . . The proponent need only prove a rational basis upon which the fact finder may conclude that the document did in fact belong to or was authored by the party alleged." *Watkins*, *supra*, ¶ 36 (internal citations omitted).

The text messages appear to be relevant to the issues of whether Complainant was informed as to the status of her application, and when she first provided information in the rental application process about her disability and that her dogs were ESAs. However, Complainant does not allege that Respondent is vicariously liable for Williams's acts. Accordingly, the texts are not relevant to whether *Respondent* approved and/or rejected Complainant's application, whether *Respondent* knew that she was disabled, whether *Respondent* knew Complainant's dogs were ESAs, and whether any express or implied request for accommodation was made to *Respondent*.

The text messages in question appear to be relevant to the issues of whether Complainant was informed as to the status of her rental application and when she first provided information in the rental application process regarding her disability and her ESAs. However, Complainant does not allege that Respondent is vicariously liable for Williams's acts in this matter. Accordingly, the texts are not relevant to whether *Respondent* approved and/or rejected Complainant's rental application; whether *Respondent* knew that Complainant was disabled; whether *Respondent* knew that Complainant's dogs were ESAs; or whether *Respondent* ever received an express or implied request for accommodation.

In concluding that the authenticity of the text messages cannot be established, I note that such messages do not even pass the minimal "rational basis" test for authentication argued by Complainant. The main red flag is "there isn't even a name or phone number associated with any messages." Mot. for Summ. Decision, p. 19. Typically, the party who took screenshots of the messages includes a phone number shown at the top of the messages for the person with whom they were conversing, then ties that number to the person they purport it to be. Here, Williams's phone number is provided on the MLS listing of the subject property, which could have been linked to the messages in that way (but they are not). At the same time, some of the messages have a date and time stamp next to them, while others do not. "For example page one has a date on the top," "2016-08-15," and a time stamp "next to each message." *Id*. at 17. But, on "pages 13, 14, 19, 20, 21, 22, 23, 24 and 25 of 27 there are no date or time stamps." *Id*. The most recent message on page 7 has a date of "22-08-22," the messages starting on page 8 have a date of "Yesterday," yet the next new date on page 11 is "2016-08-25." The last specific date listed is "2016-08-29" on page 18, with messages running (without timestamps) through page 24. There, below the photo of Complainant's dogs, is a message from her sent "Yesterday," followed by "Today" at the bottom of the page with no further messages on that page. No date is indicated on the remaining pages 25–27 (which are purportedly sent on whatever date the word "Today" is meant to represent), and there are missing time stamps on several pages as identified above.

These inconsistencies, along with a lack of foundation for admissibility (i.e., sworn or verified statement from Complainant and/or Williams), require me to conclude that Exhibit R12 is not an original, authentic copy of the text messages between Complainant and Williams. Accordingly, Respondent's motion to exclude them is **GRANTED**, and Exhibit R12 is **STRICKEN** from the record.

D. Admissible, in Part: Medical Documentation

Respondent moves to exclude Complainant's medical documentation because this evidence was never provided during her rental application process and, therefore, is not relevant to this dispositive motion. The two doctor's notes in question were written by the same physician. The first note—made on a prescription pad—is dated April 24, 2013, and appears to have been directed to a previous landlord, describing Complainant's condition as "severe depression and anxiety," explaining that "she feels attached to her dog," and requesting to "Please allow [Complainant] to keep her pet." Ex. R10. The second note—which appears on medical practice letterhead—is dated September 13, 2016, which is subsequent to the time period of the allegations in the Complaint and does not identify Complainant's disability, describing it only as a "condition" and "debilitating condition" for which "the ESA has helped her tremendously." Ex. R11. Then, her physician explains that "Gunney (brindle boxer) helps her anxiety and gives her reason to live while Laila (fawn boxer) gives her the emotional support of feeling safe after a home invasion was committed in [Complainant's] home back in November 2015." *Id*.

I find that the first note is relevant to whether Complainant had a disability at the time of the allegations made in the Complaint. The second note is not relevant, as it was created after the time period relevant to the allegations. In her response, Complainant asserts that she "suffers from anxiety, depression, and PTSD as the result of a prior home invasion," and that she "has been seeing Dr. Carmen Griza since 2014 for treatment for her condition." Resp., p. 10. I find the first note relevant to show that Complainant had been described by her physician as having anxiety and depression at the time she applied to rent the subject property. Accordingly, Respondent's motion to exclude the medical documentation, it is **GRANTED** in part, and **DENIED** in part. Exhibit

R11 is **STRICKEN** from the record, while Exhibit R10 is admissible and remains relevant to this dispute.

II. Count I – Complainant Fails to Show Direct and/or Circumstantial Evidence of Disability Discrimination

With the evidentiary challenges having been resolved, I turn to the analysis of Count I of the Complaint alleging a violation of Section 3-102.1(A) of the Act, which provides, in pertinent part, that it is a civil rights violation for a person to refuse to "rent or to otherwise make unavailable or deny a dwelling to any" renter because of a disability of the renter, or a disability of a person "intending to reside in that dwelling after it is" sold. 775 ILCS 5/3-102.1(A). To establish a *prima facie* case of disability discrimination in a claim of refusal to rent, a complainant must establish that (1) she was disabled; (2) the respondent knew or should have known that she was disabled; (3) she was ready and able to rent the apartment; and (4) respondent denied her application.

There appears to be no factual dispute that during August–September 2016, Complainant had a disability and was ready and able to rent the subject property. *See* Ex. R10. Rather, the parties' dispute whether Complainant has met her burden of proving elements (2) and (4) above. Respondent argues that he is entitled to judgment in his favor because Complainant provides no admissible evidence establishing that he knew she was disabled and that he denied her application. Even if Complainant met her burden of proof, Respondent has articulated legitimate, non-discriminatory reasons for denying Complainant's application. First, Complainant failed to initially disclose that she had two dogs when she submitted an application to rent the subject property, which was listed with a condition of "no pets." When Respondent became aware that she had two dogs, he did not know that Complainant had a disability or that her dogs were ESAs. Second, Respondent did not deny her application at all, which was incomplete and not supplemented with this information and the additional relevant documentation.

The Department argues that Respondent's motion for summary decision should not be granted as there are several genuine disputes of material fact, such as: (1) whether Complainant's dogs are "emotional service animals;" (2) whether Complainant's application was approved before Respondent learned that she "was disabled and learned that she needed emotional support animals;" (3) whether Williams knew Complainant was disabled; (4) whether Respondent knew Complainant was disabled; and (5) the reason that Complainant's application was denied (if at all). While described in greater detail below, the Department is ultimately incorrect as: (1) Respondent does not deny that Complainant's dogs *are* ESAs (only that he *knew* that they were ESAs); (2) Complainant submitted no admissible evidence to create a factual issue regarding approval of her application; (3) Complainant does not present any theory of liability under which this contention is relevant; (4) Complainant submitted no admissible evidence to create a factual issue regarding Respondent's knowledge of her disability; and (5) Complainant submitted no admissible evidence to create a factual issue regarding the denial of her application.[4]

A. Did Respondent Know Complainant Was Disabled?

Complainant maintains that "Williams told Respondent that she had two emotional support animals." Resp., p. 3. She further alleges that "Williams told her that Respondent was familiar with emotional support animals and a landlord's obligations as his wife was a doctor." *Id*. Complainant also alleges that "Respondent knew about the emotional support animals and requested photographs of them." *Id*. In support of these assertions, Complainant points to the

[4] The Department announces that "The parties dispute what was on the MLS listing for the apartment that [Complainant] viewed. [Complainant] alleges that she viewed an MLS listing for the apartment that indicated that dogs were allowed in the unit," referencing Exhibits C1 and C3. However, C1 is the Investigative Report, which was stricken. Exhibit C3 is a Zumper listing of the subject property, not a MLS listing; regardless, it states clearly in the description: "No pets." The Department also acknowledges that "Respondent alleges that the MLS listing for the apartment indicated that it had a no dogs Policy," referencing Exhibit C2. That exhibit is the MLS listing, which also states clearly in the remarks: "No pets." Based on the evidence in the record provided by the Department to support Complainant's argument, it is unclear to me how there is a dispute of fact here.

excluded Investigative Report, which cannot be considered in an evidentiary proceeding. Thus, these unsupported statements will be disregarded.

Respondent maintains that he did not know Complainant was disabled. Mot. for Summ. Decision, p. 24. In support of this assertion, Respondent presents his own sworn affidavit in which he states under oath that the Associations "create[] and enforce[] all rules and regulations regarding the" subject property, and thus he "[has] no control over what rules or regulations" they "place[] on the rental unit or building." Ex. R9, ¶¶ 8–9. Respondent submits those rules and regulations ("policies") in Exhibits R3, R5, and R6. "All Owner/Residents must register their pets with the Management Company." Ex. R5, ¶ 5. If that pet is a dog, "Only one (1) dog is permitted per Unit," although the "rules do not apply to SERVICE EYE DOGS" when "authorized papers" are "submitted to the association." Ex. R5, ¶¶ 3, 15. Only the Associations, not a unit owner, "can waive its own rule that each until only have one dog." Ex. R5, ¶¶ 13, 14. An owner who is renting their unit, such as Respondent, must provide the Management Company with certain documents, including the "Dog Registration Form (if applicable)." Ex. R6. Here, Respondent chose to list the subject property with the condition of "No pets." Ex. C2.

In his affidavit, Respondent states that Complainant "never communicated to me that she was disabled or suffered from any disability while trying to rent" the subject property. Ex. R9, ¶ 2. He also states that "Williams never communicated to me that [Complainant] was disabled while trying to rent my property which is the subject of" this case. *Id*., ¶ 3. Respondent states that "during the time frame of trying to rent the rental unit which is the subject of this case," Complainant "never provided a doctors [sic] note showing" either "her need for two emotional support animals" or "diagnosing her as having a disability or being disabled." *Id*., ¶¶ 21, 22.

When Respondent first learned of Complaint "having animals on August 29, 2016, [he] did not know they were dogs, only that she had two animals," which is why he "requested a picture to see what type of animals they were" as the Associations allow only a "dog[], cat, fish, or domestic bird." Ex. R9, ¶ 26; Ex. R5, ¶ 2. Respondent maintains that Complainant "never filled out an accurate and complete lease application because she did not "identif[y] there is a dog" and "fill[] out a Dog Registration Form." Ex. R9, ¶¶ 19–20. She "never mentioned or informed" Respondent that "she had dogs when she filled out her rental application and therefor was never given a Dog Registration Form to fill out." Ex. R9, ¶ 11. He also maintains that the subject property "went unrented for two months and she had plenty of time to provide documents from her doctor regarding her disability and need for" ESAs for submission to the Associations "for their approval if they determined it a reasonable accommodation." Ex. R5, ¶ 27; see also Ex. C2 (printed on November 6, 2017, showing that the subject property went off market on "10/28/2016").

"If the party supplies sworn facts which warrant judgment in its favor as a matter of law, the opponent, in this case [the complainant], may not rest on her pleadings to create a genuine issue of fact." *Fitzpatrick*, *supra*, citing *Carruthers v. B.C. Christopher & Co*., 57 Ill. 2d 376, 380, 313 N.E.2d 457, 459 (1974). "These principles apply to summary judgment actions before the Commission." *Id*., citing *Cano*, *supra*. Though the uncontroverted affidavit is likely dispositive here, Respondent further refers to Complainant's responses to his discovery requests, which appear to be improperly sworn and will not be considered.[5]

[5] Exhibits 2 and 4 are simply signed by Complainant's attorney. In Exhibit R7, Complainant's statement of certification makes no mention of being made under penalties provided by law (i.e., perjury). Section 1-109 of the Illinois Code of Civil Procedure provides that documents that are "required or permitted to be verified, or made, sworn to or verified under oath, such requirement or permission is hereby defined to include a certification of such pleading, affidavit or other document under penalty of perjury." A properly certified document "may be used in the same manner and with the same force and effect as though subscribed and sworn to under oath, and there is no further requirement that the pleading, affidavit, or other document be sworn before an authorized person." 735 ILCS 5/1-109. This rule applies to discovery in Commission cases by way of 56 Ill. Admin. Code § 5300.720(e).

Complainant claims that Respondent should have had "actual or constructive knowledge of her disability" because she informed Williams, and through Williams, her statements were "passed on to Respondent." Resp., p. 16. Yet, there is no evidence to support this claim, either directly (i.e., by any direct communication between the parties) or indirectly (i.e., by identifying similarly-situated prospective tenants with two dogs whose rental applications were not rejected by Respondent). Further, Complainant does not allege that Respondent should be held vicariously liable for any of Williams's purported statements. Therefore, I find that Respondent did not have actual or constructive knowledge of Complainant's disability.[6]

B. Did Respondent Refuse to Rent to Complainant?

Complainant maintains that there is a dispute of fact as to whether Respondent rejected her application to rent the apartment. However, this claim is not based on evidence in the record, forcing Complainant to rely only on her pleadings. Respondent's sworn statement is that the subject property "went unrented for two months and [Complainant] had plenty of time to provide documents from her doctor regarding her disability and need for an emotional support animal(s), and ask for a reasonable accommodation and submit the same to the [Associations] for their approval if they determined it a reasonable accommodation." Ex. R9, ¶ 27.

The Associations' leasing policy clearly requires owners to "obtain a completed lease application from prospective tenants" to submit to the Associations "no less than ten days prior to occupancy of the unit." Ex. R3, p. 2. One of the required documents necessary to lease a unit is

[6] Failure of Complainant and the Department to establish agency between Williams and Respondent in this case should not be construed to mean that landlords can avoid their obligations under the Act simply by hiring a third-party to communicate with prospective or existing tenants. Rather, this Complainant and the Department in this case waived this argument by not advancing it. "[A]gency may be established and its nature and extent shown by circumstantial evidence, and reference may be had to the situation of parties and property, acts of parties, and other circumstances germane to the question. If the evidence shows one acting for another under circumstances implying knowledge of the acts on the part of the supposed principal, a prima facie case of agency is established. *Elmore v. Blume*, 31 Ill. App. 3d 643, 647, 334 N.E.2d 431, 434 (3rd Dist. 1975), citing *Mitchell v. McEwen Associates, Inc*., 360 Ill. 278, 196 N.E. 186 (1935).

a "Dog Registration Form (if applicable)." Ex. R 6. Although there is an exception for "service eye dogs," "authorized papers must be submitted to the association." Ex. R5, p. 2. There is no dispute that Complainant did not submit a Dog Registration Form with her application, nor did she proffer authorized papers for her dogs, whether ESAs or not. Thus, the evidence shows that Respondent did not reject her application, but rather, it was incomplete.

Complainant's contention that Williams told her that her application was accepted and then rejected does not change this finding. First, it is based on unsworn statements that are stricken from the record. Second, Complainant did not plead or otherwise advance a theory of liability that would hold Respondent responsible for the statements or actions of Williams. Third, assuming Williams's statements are true, Complainant still cannot establish that her application was accepted and rejected due to her disability. Rather, the facts show that because Complainant's application was found to be incomplete, any prior approval was based on inaccurate information, rendering that approval null and void upon the revelation of new information (that she has two dogs). Ultimately, this contention is unsupported by the record and should be disregarded.

Therefore, I find that Respondent did not refuse to rent to Complainant, whose application was inaccurate and incomplete. By neglecting to offer admissible evidence in opposition to Respondent's arguments—which are supported by the record—Complainant has failed to assert viable *prima facie* case of disability discrimination. Accordingly, Respondent is entitled to summary judgment on this cause of action (Count I).

III. Count II – Complainant Fails to Show Denial of a Reasonable Accommodation

Count II alleges a violation of Section 3-102.1(C)(2), which makes it "a civil rights violation . . . to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and

enjoy a dwelling." 775 ILCS 5/3-102.1(C)(2). To establish a *prima facie* case for failure to accommodate in a housing action, the complainant must show (1) she suffers from a disability; (2) the respondent knows of the disability or reasonably should be expected to know of it; (3) an accommodation may be necessary to give the complainant an equal opportunity to use and enjoy the dwelling; and (4) the respondent refused to make a reasonable accommodation. *Stevens v. Hollywood Towers and Condo. Ass'n*, 836 F. Supp. 2d 800, 808 (N.D. Ill. 2011).[7]

In the analysis of Count I, element (1) was affirmatively established, and element (2) was not. Notwithstanding Complainant's failure to establish that Respondent had actual or constructive knowledge of her disability, elements (3) and (4) will still be analyzed.

A. Did Complainant Show that an Accommodation Was Necessary to Give Her an Equal Opportunity to Use and Enjoy the Subject Property?

Complainant argues that she requires the use of her ESAs "in order to secure equal enjoyment of the apartment as in their absence she would experience heightened anxiety attacks and suicidal thoughts." Resp., p. 17. Complainant relies exclusively on inadmissible evidence to support this claim. Yet even if she had attempted to rely on the note from her physician that was

[7] Both parties cite to the *Stevens* case, as it is one of the few housing cases that addresses the standard for refusing to make an accommodation to a no-pet policy for an ESA. This case was filed in federal court, with multiple claims under the Fair Housing Act (and its Amendments), as well as the Illinois Human Rights Act. However, *Stevens* is distinguishable from the instant case for several reasons. First, the plaintiff requesting the accommodation already owned and resided in her condominium, which was in a building that had a no-pet policy. Second, when she was prescribed an ESA, she subsequently made a clear accommodation request to the building manager when she emailed him to notify him of it. Third, the building manager responded to the request asking for "(1) proof of the service animal's training; (2) a letter explaining how the animal's specialized training would help [plaintiff] deal with her condition; (3) a letter specifying the doctor's qualifications for prescribing the animal; and (4) a letter prescribing the use of the animal." *Id*., p. 805. Finally, after the building manager received these documents and approved the accommodation request with certain restrictions (i.e., that the ESA could only be in common areas of the building while in a dog carrier), the issues giving rise to the lawsuit began. When the plaintiff received her ESA, it became impracticable to crate the dog in the common areas and she made a new accommodation request for unrestricted access. This request was denied, and plaintiff sold her condo at a loss, alleging constructive eviction. *Id*., 807. In sum, *Stevens* differs from the instant case primarily because there was no dispute there over whether the building manager received and denied an accommodation request.

in existence at the time, her claim would still fail. In the physician's note, Complainant's doctor describes Complainant's condition as "severe depression and anxiety," explaining that "she feels attached to her dog," and "her depression is getting worse since she cannot take her dog in her new apartment. Please allow [Complainant] to keep her pet." Ex. R10. This note does not appear to state a diagnosis, but does identify conditions that may fall under the definition of disability under the Act (*i.e.*, "a determinable physical or mental characteristic of a person"). However, the note does not directly explain how "her dog" would allow her an equal opportunity to use and enjoy her (previous) apartment. More importantly, it does not identify her dog, in the singular, as anything other than a "dog" and "pet," and certainly not an "emotional support animal." Finally, the note does not explain how Complainant "keep[ing] her pet" is a reasonable accommodation.

Without acknowledging these deficiencies, Complainant correctly references caselaw that would support her argument that mentioning her ESAs may be enough to put the receiver of those statements "on notice that she was disabled and requesting an accommodation." Resp., p. 16. An "individual or her representative seeking an accommodation need not 'speak any magic words before she is subject to the statute's protections.'" *Hunter v. WPD Management, LLC*, 476 F. Supp. 3d 731, 736 (N.D. Ill. 2020) (internal brackets omitted), quoting *Schmidt v. Safeway Inc*., 864 F. Supp. 991, 997 (D. Or. 1994). However, Complainant provides no evidence that Respondent was the receiver of any such statements that would put him on notice of either her disabilities or her need for an accommodation related to her disabilities.

B. Did Respondent Refuse to Make a Reasonable Accommodation?

The record supports a finding that Respondent was never made aware of Complainant's need for an accommodation. His sworn statements are that "during the time frame of trying to rent the rental unit which is the subject of this case," Complainant "never provided a doctors [sic] note

showing" either "her need for two emotional support animals" or "diagnosing her as having a disability or being disabled." Ex. R9, ¶¶ 21, 22. Nor did he have constructive notice, as he initially had no knowledge of her dogs, and when he became aware "that she had two animals" he "requested a picture" to ensure they were animals allowed by the Associations' pet policy. Id., ¶ 25. Even after that, he "was never made aware she had two emotional support dogs only that she had two very large dogs." *Id*., ¶ 24.

The only guidance in existence at the time as to the "obligations of housing providers" "with respect to animals that provide assistance to individuals with disabilities" was the *HUD Fair Housing and Equal Opportunity Notice* 2013-01 ("FHEO-2013-01"). Cited by Complainant, this notice requires housing providers to "evaluate a request for a reasonable accommodation to possess an assistance animal" (either a service dog or ESA) "in a dwelling using the general principles applicable to all reasonable accommodation requests." FHEO-2013-01, pp. 2 – 3. After receiving such a request, the housing provider must consider the following:

> (1) Does the person seeking to use and live with the animal have a disability — i.e., a physical or mental impairment that substantially limits one or more major life activities?
>
> (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

Id., p. 4. "If the answer to question (1) **or** (2) is 'no,' then the FHAct and Section 504 do not require a modification to a provider's 'no pets' policy, and the reasonable accommodation request may be denied." *Id*. (emphasis in original). "Where the answers to questions (1) **and** (2) are 'yes,' the FHAct and Section 504 require the housing provider to modify or provide an exception to a "no pets" rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so

would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services." *Id*. (emphasis in original).

"Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal." *Id*. However, this guidance is inapplicable here because Respondent did not receive any accommodation request either expressly, or impliedly, as Respondent learning that Complainant had two dogs is not enough to put him on notice that she was requesting an accommodation for a disability. Without more, it is simply a disclosure of information shared after Complainant submitted a rental application on which that information was initially withheld.

While not explicitly stated in the FHEO guidance, as with reasonable accommodation requests in employment brought under the Act, a complainant must show that the respondent has a duty to accommodate her. See *Anderson-Martin v. Healthcare Alt. Sys., Inc.*, IHRC, ALS No. 14-0426 (May 9, 2019), citing *Owens v. Ill. Dep't of Human Rights*, 356 Ill. App. 3d 46, 53, 826 N.E.2d 539, 545-46 (1st Dist. 2005). Here, the duty to accommodate attaches when the complainant requests an accommodation, and the accommodation may be necessary to give the complainant an equal opportunity to use and enjoy the dwelling. *See id*.

Complainant argues, without supporting evidence, that "Respondent denied her application and her request for an exception to Respondent's alleged no pets policy without informing her of these policies or allowing her an opportunity to complete them." Although the record shows that the MLS listing clearly stated "No pets," even if Complainant "believed that the apartment allowed dogs based on the MLS advertisement," the Associations clearly permitted only "one (1) dog." This rule is not Respondent's but that of the Associations, who make an exception for "seeing eye

dogs" when in receipt of "authorized papers." Yet, Complainant stops short of alleging that Respondent is vicariously liable for any acts of the Associations, arguing that "Respondent can not pass blame to the . . . Association[s] for his own failure to properly consider" Complainant's accommodation request. Resp., p. 18. However, Complainant never explains how Respondent could modify his own or the Associations' rules, especially when she never asked him to modify them.

Complainant asks this court to deny summary judgment so that her credibility can be assessed as to whether she "truly believed that her Emotional Support Animals did not qualify as pets due to their ESA status." However, a credibility determination is unnecessary because whether Complainant truly believed that her ESAs were not pets has no bearing on her failure to request a reasonable accommodation. First, Complainant knew her ESAs were "animals" and "dogs," even as described by her treating physician. In the application process, regardless of whether she was asked if she had "pets," she knew she had ESAs that might not comply with any policies of Respondent and/or the Associations (e.g., one dog per unit, type of animal, or "[b]reed, size, and weight limitations"), and it was incumbent on *her* to ask them for a modification thereof to trigger protections and commence the reasonable accommodations process. FHEO-2013-01, p. 4. But Complainant never communicated with Respondent (or the Associations) by any means at all.

Second, if Complainant could be absolved of any responsibility for failing to disclose her ESAs by believing that they were not pets, this would render the reasonable accommodations process a nullity because no reasonable accommodation would need to be made (resulting in no duty to accommodate attaching to the housing provider). This would lead to anyone with a non-apparent disability, or none at all, needing only to "believe" they have ESAs, which the housing

provider would be forced to accept without the opportunity to make a determination of whether the ESAs qualify as an accommodation for a disability. Yet, that is not what is required of housing providers, who must engage in the above-referenced inquiry to help them determine "whether a person has a disability-related need for an assistance animal involves an individualized assessment." *Id*., p. 6. Complainant cannot circumvent her responsibility to disclose information that would trigger legal protections while simultaneously claiming that Respondent violated those protections of which he had no notice.[8]

Moreover, though I need not analyze it here, Complainant argues that her requested accommodation of having "two dogs instead of one" is "reasonable" because the Associations' policy "allowed one dog per unit," and made an exception for "service eye dogs." Resp., pp. 19–20. This again undermines her argument that she failed to disclose her two dogs as ESAs in her rental application because she believed they were "not pets," as no determination could be made as to reasonableness without such a request. The record shows that no discussion as to the reasonableness of allowing Complainant to have two dogs ever occurred between her and Respondent because she never disclosed them as ESAs. Therefore, Complainant has failed to establish that Respondent had a duty to accommodate her, because she cannot demonstrate that she requested an accommodation and that Respondent had a duty to accommodate her.[9]

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[8] As an analogue, a person who has an apparent mobility-related disability, but no parking placard, cannot unilaterally decide they are qualified to park in an accessible parking spot based on their honest belief that they would qualify for one anyway. As here, the belief is irrelevant to whether the *provider* of the placard (*i.e*., the Secretary of State) has determined that the individual qualifies for a placard.

[9] As referenced in footnote 3, the Illinois General Assembly enacted the Assistance Animal Integrity Act ("AAIA") four years after Complainant applied to rent the subject property. The AAIA codifies much of the FHEO's guidance regarding a housing provider's responsibility when receiving a request for an exception to a prohibition or restriction regarding animals. Further, it clearly states that "nothing in this Act prohibits a housing provider from verifying the authenticity of the documentation submitted under" the provisions thereof, indicating that an intent to ensure that legitimate requests are approved, while providing authority to deny illegitimate requests. 310 ILCS 120/10(h). Therefore, while not applicable in the instant case with respect to when the duty to accommodate attaches, the Act indicates that the public policy adopted

C. Is Respondent's Articulated Reason Pretextual?

Although I find that Complainant failed to offer admissible evidence creating a genuine issue of fact that would preclude Respondent's request for judgment as a matter of law, I will discuss Respondent's articulated reasoning for his actions as if the burden had shifted to him for the purpose of analyzing pretext.

Respondent states that he "did not discriminate against Complainant Brenda Salgado-Morales regarding her alleged disability as I was never made aware she was disabled," and that he "did not discriminate against Complainant Brenda Salgado-Morales regarding her two emotional support dogs as I was never made aware" because to his knowledge, he only found out "that she had two very large dogs." Ex. R9, ¶¶ 23–24, 26. Further, he states that it was his responsibility to "obtain a completed lease application from prospective tenants and provide it to the" Associations, and that his definition of a "completed lease application is one that is completely and accurately filled out, which in the instance of a person with a dog, one which identifies there is a dog and then one which has a filled out Dog Registration Form." *Id*., ¶ 18–19. However, Complainant "never mentioned or informed" Williams or Respondent "she had dogs when she filled out her rental application and therefore was never given a Dog Registration Form to fill out." *Id*., ¶ 11. Ultimately, Respondent did not refuse to rent to Complainant as the subject property "went unrented for two months," which gave her "plenty of time to provide documents," and even if he had, it was because she "never filled out an accurate and complete lease application" when she withheld information necessary for him to submit to the Associations.

Respondent's sworn statements are supported by the record, and he ultimately meets his burden of production, giving rise to a rebuttable presumption of no discrimination. To rebut this,

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by the Illinois General Assembly after Complainant attempted to rent from Respondent would have contravened the outcome Complainant seeks in this matter.

the burden shifts back to Complainant to establish that his "explanation is unworthy of belief or that it was based on a discriminatory motive." *Turner v. Human Rights Comm'n*, 177 Ill. App. 3d 476, 487–488, 532 N.E.2d 392, 398 (1st Dist. (1988).

With respect to Count I, Complainant argues that Respondent's reasoning should not be believed because "Respondent denied her application and her request for an exception to Respondent's alleged no pets policy without informing her of these policies or allowing her an opportunity to complete them." Resp., p. 18. This contention is without credence. First, the MLS listing stated "No pets," thus Respondent could have reasonably believed that an applicant with animals would not apply unless they had some legally-protected need for their animals. Second, Complainant's contention is undermined by her own argument that her initial failure to disclose her ESAs was based on her belief that "her dogs are not pets and are emotional service animals." How can she expect Respondent to inform her policies applicable to what he does not know (i.e., that she has ESAs, not pets) while arguing that she was justified in withholding relevant information (that she has ESAs, which are not pets)? Complainant's prior experience in obtaining a doctor's note requesting a previous housing provider to "Please allow her to keep her pet" (not her ESA) further undermines this argument. Accordingly, Respondent could not have reasonably believed that the two dogs Complainant eventually disclosed were associated with a disability, as any such disability or need for ESAs was not readily apparent. *Contra* FHEO-2013-01, p. 6.

D. Conclusion

Complainant has therefore failed to introduce evidence that raises a genuine issue of fact on any element of her *prima facie* case for disability discrimination or for denial of a reasonable accommodation. Viewing the evidence in the light most favorable to Complainant (the non-moving party), I find that under the burden-shifting framework summarized above, no genuine

issue of material fact exists in this matter, and Respondent is entitled to judgment as a matter of law.

RECOMMENDATION

For the reasons discussed above, Respondent's motion for summary decision is GRANTED, and I recommend that the Illinois Human Rights Commission affirm this Recommended Order and Decision pursuant to 56 Ill. Admin. Code § 5300.910.

HUMAN RIGHTS COMMISSION

BY:_____

AZEEMA N. AKRAM
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: **February 1, 2023**

IDHR Charge No.: 2007-CF-0035
HUD No.: 05-17-9197-8
ALS Case No.: 19-0410
Case Name: *IDHR & Brenda Salgado-Morales v. Ross Shrestha*