

STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. EMsh05050306  
EEOC NO. 24FA500307

TONYA N. SAYLOR,  
Complainant,

vs.

FILE DATED

FEB 23 2007

Indiana State Civil Rights Commission

EAGLE FINANCIAL  
SERVICES, INC. d/b/a  
PLATINUM MORTGAGE; and  
WILLIAMS FINANCIAL  
GROUP, INC.;

Respondents.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

On January 30, 2007, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision").

No objections have been filed to the ICRC's adoption of the proposed decision.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

**INDIANA CIVIL RIGHTS COMMISSION**

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

Dated: 23 February 2007

To be served by first class mail on the following parties and attorneys of record:

Tonya N. Saylor  
1199 Hospital Road Lot 42  
Franklin, IN 46131

Eagle Financial Services, Inc. d/b/a Platinum Mortgage  
c/o Joe Cansdale, President  
1150 South State Road 135  
Greenwood, IN 46142

Williams Financial Group, Inc.  
c/o Joe Cansdale, President  
1150 South State Road 135  
Greenwood, IN 46142

to be personally served on the following attorney of record:

Frederick S. Bremer, Esq.; Staff Attorney  
Indiana Civil Rights Commission  
Attorney for Complainants Tonya N. Saylor  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

and to be served by electronic mail on the following parties:

Eagle Financial Services, Inc. d/b/a Platinum Mortgage  
c/o Joe Cansdale, President  
[jcansdale@williamsfinancialgroup.net](mailto:jcansdale@williamsfinancialgroup.net)

Williams Financial Group, Inc.  
c/o Joe Cansdale, President  
[jcansdale@williamsfinancialgroup.net](mailto:jcansdale@williamsfinancialgroup.net)

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FILE DATED

JAN 30 2007

Indiana State Civil Rights Commission.

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

A Hearing On Damages was held before the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") on November 29, 2006. Complainant, Tonya N. Saylor ("Saylor"), was present. Frederick S. Bremer, Esq. Staff Attorney at the ICRC, appeared in the public interest on behalf of Saylor. Respondents – Eagle Financial Services, Inc. d/b/a Platinum Mortgage ("Eagle") and Williams Financial Group, Inc. ("Williams") (collectively "Respondents") - did not appear, by counsel or otherwise.

Saylor waived her opening statement and testified on her own behalf. During the presentation of Saylor's case, Complainant's Exhibit 1 ("CX\_\_"), and CX2 were admitted into evidence without objection. Saylor waived closing argument. The ALJ ordered that Saylor file what she suggested that the ALJ enter as proposed findings of fact, conclusions of law, and order on or before December 29, 2006. The cause was taken under advisement.

On December 29, 2006, Saylor filed her Tender of [Proposed] Findings Of Fact, Conclusions Of Law, And Order As Proposed By Complainant.

Having carefully considered the foregoing and being duly advised in the premises, the ALJ proposes that the ICRC enter the following findings of fact, conclusions of law, and order.

## **FINDINGS OF FACT**

1. Saylor has been, at all material times, an adult woman residing in the state of Indiana.
2. Each of Respondents is an Indiana corporation. There is no evidence that Eagle or Williams, at any material time, employed less than 6 persons for wages or salary within the state, or even that either claimed that the ICRC lacked jurisdiction because either entity employed less than 6 persons for wages or salary in the state of Indiana.
3. On June 2, 2006, the ALJ issued his Notice Of Initial Pre-Hearing Conference ("NIPHC"), scheduling such a Conference for July 10, 2006 by conference telephone call. The NIPHC was served on Eagle through its President, Joseph W. Cansdale ("Cansdale") by first class mail at an address that had previously proven sufficient and by electronic mail at an address that had been provided by Cansdale. The NIPHC advised the parties that "[a] party who fails to attend or participate in a Pre-Hearing Conference ... may be held in default ....
4. At the appointed time, the ALJ contacted for Saylor and attempted to reach Cansdale. The ALJ was advised that Cansdale was unavailable due to a family emergency. The ALJ left a message for Cansdale to contact the ALJ when he could. Cansdale did not call back.
5. Another NIPHC was issued on August 11, 2006, scheduling another Initial Pre-Hearing Conference for September 11, 2006. Again, the NIPHC advised that a party who failed to attend or participate may be held in default. The NIPHC was again served on Eagle through by first class mail and electronic mail.
6. Another NIPHC was issued on September 14, 2006, scheduling another Initial Pre-Hearing Conference for September 28, 2006. Again, the NIPHC advised that a party who

failed to attend or participate may be held in default. The NIPHC was again served on Eagle through by first class mail and electronic mail.

7. At the appointed time, the ALJ contacted for Saylor and attempted to reach Cansdale. Cansdale's telephone continued to ring and never shifted to voice mail or an answering machine.

8. Cansdale has not contacted the ALJ or Staff Attorney Bremer to inquire about the September 28 Conference.

9. On September 29, 2006, the ALJ issued an order granting Saylor's motion that her complaint to add Williams as a respondent on the basis of successor liability, finding that "Saylor had shown sufficient grounds, which are un rebutted, for adding Williams".

ORDER ON PENDING MOTIONS (September 29, 2006).

10. ON October 5, 2006, the ALJ issued his NOTICE OF PROPOSED DEFAULT ORDER ("NPDO"), notifying Respondents, among other things, that (1) the ALJ proposed to enter an Order By Default against Respondents (NPDO, ¶1); (2) Eagle and/or Williams could file a written motion requesting that the proposed default order not be imposed, stating the grounds, within 7 days after service of the NPDO. (NPDO, ¶2). The NPDO was served on Respondents by mail and upon Cansdale by electronic mail.

11. Neither Eagle nor Williams filed a written motion requesting that the default order not be imposed in response to the NPDO.

12. On November 3, 2006, the ALJ issued his ORDER BY DEFAULT AND NOTICE OF HEARING ON DAMAGES.

13. The Hearing on Damages was held without the participation of Eagle or Williams.

14. On October 18, 2004, Saylor was terminated from her employment at Eagle by Cansdale because she had refused to engage in sexually intimate behavior as he had requested on October 13, 2004.

15. Originally, Eagle scheduled Saylor to be paid \$8.00 per hour for 40 hours of work per week. Saylor was scheduled to receive a raise to \$10.00 per hour on the date of her termination.

16. Saylor sought other employment after her discharge from Eagle, eventually securing a job in mid-June of 2005 with Telesrvices Direct of Greenwood, Indiana.

At this job, Saylor earned \$8.00 per hour for a 38 hour week until she quit on August 18, 2005 in order to go on a maternity leave.

17. Saylor's unlawful discharge by Eagle caused her to lose a total of \$21,244.00, gross. Calculations are shown below:

10/18/04 to 06/10/05 – 34 weeks x 40 hours/week x \$10/hour	=	\$13,600.00
06/11/05 to /8/18/05 - 9.8 weeks x 38 hours/week x \$2/hour	=	7,448.00
06/10/05 to 08/18/05 – 9.8 weeks x 2 hours x \$10/hour	=	<u>196.00</u>
TOTAL		\$21,244.00

18. Saylor also lost the use of the income she would have earned from Eagle.

19. Interest is the way to compensate someone for the loss of use of money to which the person was entitled. Calculated at simple interest at the rate of 8%, compounded annually, Saylor is entitled to interest, up to the date of the Hearing On Damages, in the amount of \$2,490.17, calculated as follows:

2004	\$21,244.00 x .08 x 10/52	\$ 326.83
2005	\$21,873.83 x .08	1,725.67
2006	\$23,599.50 x .08 x 47.6/52	<u>1,728.21</u>
TOTAL		\$3,780.71

20. Saylor lost a total of \$25,024.71, gross, as a result of being discharged by Eagle because of sex.

23. Saylor does not seek employment with Eagle or Williams.

22. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

## **CONCLUSIONS OF LAW**

1. The ICRC has jurisdiction over the subject matter and the parties.
2. Saylor, Eagle and Williams are each a "person" as that term is defined in section 3(a) of the Indiana Civil Rights Law, IC 22-9-1 *et. seq.* ("the ICRL"). IC 22-9-1-3(a).
3. Eagle is an "employer" as that term is defined in the ICRL. IC 22-9-1-3(h).

4. The ICRC's Rule 6.1 provides, in material part, that "[w]hen a party has failed to plead or otherwise defend as provided by these rules, after proper notice, and that fact is made to appear by affidavit or otherwise, the party may be defaulted". 910 IAC 1-6-1.

5. Default is appropriate under 910 IAC 1-6-1.

6. The effects of an order by default include that the allegations of the complaint are deemed admitted.

7. The ICRL defines what is an unlawful discriminatory practice at section 3(l), which provides, in material part, as follows:

"Discriminatory practice" means:

(1) the exclusion of a person from equal opportunities because of ... sex ...;

Every discriminatory practice relating to ... employment ... shall be considered unlawful unless it is specifically exempted by this chapter.

IC 22-9-1-3(l).

8. Discharging an employee for refusal to engage in sexually intimate behavior with an executive is a discriminatory practice based upon sex under the ICRL. Because there is no applicable exemption for such a practice, it was unlawful. IC 22-9-1-3(l).

9. If the ICRC finds that a person has committed an unlawful discriminatory practice, it shall issue an order requiring the person to cease and desist from that practice and to take further affirmative action as will effectuate the purposes of the ICRL, which may include restoring complainant's losses and requiring respondent to file proof of compliance. IC 22-9-1-6(k)(A).

10. Saylor has proven that she sustained lost earnings that were the proximate result of the proven unlawful discriminatory practice.

11. The loss of the use of wages is a part of the loss that a discriminatee incurs when the wages are lost. Thus, the awarding of interest to compensate for the loss of the ability of the victim to use the wages wrongfully denied is within the authority of the ICRC.

12. Interest should be awarded at an annual rate of 8% compounded annually. This is the rate provided for in IC 24-4.6-1-103, a statute that is appropriate to consult in the absence of a more specifically applicable statute. *Indiana Insurance Company v. Sentry Insurance Company* 437 N.E.2d 1381 (Ind. App. 1982).

13. The burden of proof on the issue of mitigation of damages is on the wrongdoer. *Colonial Discount Corp. v. Berkhardt* 435 N.E.2d 65 (Ind. App. 1982).

14. Administrative review of this proposed decision may be obtained by parties who are not in default by the filing of a writing specifying with reasonable particularity each basis for each objection within 15 days of after service of this proposed decision. IC 4-21.5-3-29(d).

15. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such

## ORDER

1. Respondents shall cease and desist from terminating employees because of race.
2. Respondents shall deliver to the ICRC one or more cashier's checks payable to Saylor, in the amount of \$25,024.71. Of this amount, \$21,244.00 shall be subject to deductions required by law and/or agreement.
3. The management and any supervisory personnel of Respondents shall attend a professionally developed seminar approved by the ICRC's Director addressing the recognition, elimination, and treatment of unlawful sexual harassment. Respondents shall obtain the Director's approval no later than 180 days after the effective date of this Order and all appropriate personnel shall have attended the seminar no later than 300 days after the effective date of this order. Proof of attendance shall be filed with the ICRC.
4. Eagle shall post and maintain, on bulletin boards normally used to disseminate employee information, a bold print statement of policy on non-discrimination. Such statement shall include the following:

It is the policy of Eagle Financial Services, Inc. d/b/a Platinum Mortgage ("Eagle") to provide equal employment opportunity to all individuals regardless of race, religion, color, sex, disability, national origin or ancestry. This equal employment opportunity refers to all applicable company practices, including employee recruiting, hiring, transferring, training, promoting, disciplining, terminating, and all other conditions or privileges of employment.

The selection of persons for positions at Eagle is to be based on the qualifications and abilities required in the job.



Further, it is the policy of Eagle to expand and increase efforts of the company to promote the realization of equal employment opportunity through a positive and continuing program.

5. Williams shall post and maintain, on bulletin boards normally used to disseminate employee information, a bold print statement of policy on non-discrimination. Such statement shall include the following:

It is the policy of Williams Financial Group, Inc. ("Williams") to provide equal employment opportunity to all individuals regardless of race, religion, color, sex, disability, national origin or ancestry. This equal employment opportunity refers to all applicable company practices, including employee recruiting, hiring, transferring, training, promoting, disciplining, terminating, and all other conditions or privileges of employment.

The selection of persons for positions at Williams is to be based on the qualifications and abilities required in the job.

6. Eagle shall notify, in writing, all supervisory personnel and departmental managers of the policy set out in paragraph 4 of this Order. This Notice shall make it clear to the supervisory personnel and departmental managers that any deviation from these policies and procedures will be cause for disciplinary action, up to and including possible discharge.

7. Williams shall notify, in writing, all supervisory personnel and departmental managers of the policy set out in paragraph 5 of this Order. This Notice shall make it clear to the supervisory personnel and departmental managers that any deviation from these policies and procedures will be cause for disciplinary action, up to and including possible discharge.

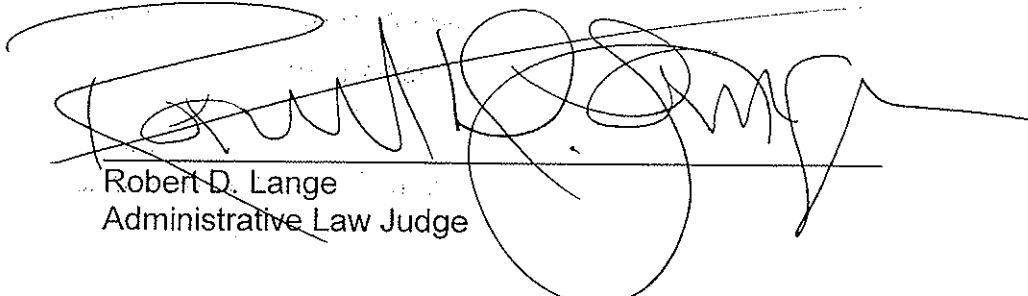
8. Eagle shall report, in writing, to the ICRC, when the undertakings outlined in paragraph numbers 3, 4 and 6 of this Order have been accomplished. The report will describe the manner in which the undertakings were carried out, and include copies of the documents required by this Order. This report shall be submitted not later than August 7, 2007.

9. Williams shall report, in writing, to the ICRC, when the undertakings outlined in paragraph numbers 3, 5 and 7 of this Order have been accomplished. The report will

describe the manner in which the undertakings were carried out, and include copies of the documents required by this Order. This report shall be submitted not later than August 7, 2007.

10. This Order shall take effect immediately after it is approved and signed by a majority of the members of ICRC, unless it is modified by ICRC pursuant to IC 4-21.5-3-31(a), stayed by ICRC under 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated: 30 January 2007



Robert D. Lange  
Administrative Law Judge

To be served by first class mail this 30<sup>th</sup> day of January, 2007 on the following parties:

Tonya N. Saylor  
1199 Hospital Road Lot 42  
Franklin, IN 46131

Eagle Financial Services, Inc. d/b/a Platinum Mortgage  
c/o Joe Cansdale, President  
1150 South State Road 135  
Greenwood, IN 46142

Williams Financial Group, Inc.  
c/o Joe Cansdale, President  
1150 South State Road 135  
Greenwood, IN 46142

to be personally served this 30<sup>th</sup> day of January, 2007 on the following:

Frederick S. Bremer, Esq.; Staff Attorney  
Indiana Civil Rights Commission  
Attorney for Complainant Tonya N. Saylor  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

Indiana Civil Rights Commission  
C/o The Honorable Gregory Kellam Scott, Esq.; Director  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

to be served by electronic mail this 30<sup>th</sup> day of January, 2007 on the following parties:

Eagle Financial Services, Inc. d/b/a Platinum Mortgage  
c/o Joe Cansdale, President  
[jcansdale@williamsfinancialgroup.net](mailto:jcansdale@williamsfinancialgroup.net)

Williams Financial Group, Inc.  
c/o Joe Cansdale, President  
[jcansdale@williamsfinancialgroup.net](mailto:jcansdale@williamsfinancialgroup.net)