

STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. HOha04070326  
HUD NO. 05-04-0917-8

B. STEVE HANCHER,  
Complainant,

vs.

QUAIL RUN ASSOCIATES  
LIMITED PARTNERSHIP,  
Respondent.

FILE DATED

DEC 14 2007

Indiana State Civil Rights Commission

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

A Hearing was held before Robert D. Lange, the Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") on July 13, 2005. Complainant, B. Steve Hancher ("Hancher") – was present and was represented by counsel, Robin Clay, Esq., Staff Attorney with the ICRC. Respondent, Quail Run Associates Limited Partnership ("Quail Run"), was represented by counsel, J. Grant Tucker, Esq. of the Columbus firm of JONES PATTERSON & TUCKER. Also present on behalf of Quail Run were James Shrock ("Shrock"), Director of Operations at Mike Herald Management ("MHM"), the company managing Quail Run, and David Doty ("Doty"), Regional Operations Manager at MHM.

After opening statements were made, Hancher testified on his own behalf, and also called Linda Hancher ("Linda"), Shrock, and Doty. During the presentation of Hancher's case, Complainant's Exhibit 1 ("CX\_"), CX2, CX3, CX5, Respondent's Exhibit A ("RX\_"), CX6 were admitted into evidence without objection, and CX4 was offered into evidence but not admitted. After Hancher rested his case, Quail Run elected not to present any further evidence. Oral closing arguments were made and the cause was under advisement. The ALJ ordered the parties to submit what they suggested that he enter as proposed findings of fact, conclusions of law, and order on or before August 15, 2005.

On August 12, 2005, Quail Run filed Respondent's [Suggested] Proposed Findings Of Fact, Judgment. On August 15, 2005, Hancher filed Complainant's [Suggested] Proposed Findings Of Fact, Conclusions Of Law, And Order.

On August 16, 2006, the ALJ entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision"). On September 5, 2006, Quail Run filed its Request For Administrative Review. On October 18, 2006, Complainant, B. Steve Hancher ("Hancher"), filed Complainant's Reply To Respondent's Request For Administrative Review.

Commissioner Barry Baynard presided over oral argument on Quail Run's Objections on November 17, 2006. Commissioners Steven A. Ramos and Charles D. Gidney were also present. Commissioners absent were Alpha Blackburn (the Chairperson), David C. Carter (the Vice-Chairperson), Tehiji G. Crenshaw, and John E. Garcia. . Quail Run was represented by counsel, J. Grant Tucker, Esq. of the Columbus firm of JONES PATTERSON & TUCKER, P.C. Hancher was represented by counsel, Michael C. Healy, Esq., ICRC Staff Counsel. Arguments of counsel were heard and the cause was taken under advisement. Copies of the transcript of that argument were distributed to absent Commissioners. On December 15, 2006, the ICRC issued its Findings Of Fact, Conclusions Of Law, And Order. Quail Run appealed, and on October 2, 2007, the Indiana Court Of Appeals issued its Memorandum Decision – Not For Publication.

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

## **FINDINGS OF FACT**

1. The issues to be resolved are: (1) whether Hancher was denied equal opportunity because of disability because the rental office was inaccessible; and (2) if so, what relief should be awarded. FIRST PRE-HEARING ORDER #9 (February 3, 2005).

2. Hancher is an adult male who has resided, at all material times, in the state of Indiana.
3. Quail Run is an apartment complex consisting of approximately 256 residential units located in Columbus, Indiana and managed by MHM.
4. Quail Run accepts inquiries and is open to the general public for applications. It advertises in the Republic, the major newspaper in the Columbus area, and has a web site. It also advertises in the Apartment Guide and accepts applications from walk-in inquirers. In order to view the complex and a sample apartment, a potential tenant would normally go to the rental office.
5. Hancher first entered into a lease agreement with Quail Run in 2001. This lease was annually renewed, and the last agreement was from November 2003 until November 2004.
6. Hancher has a degenerative disk disease and has 5 ruptured disks. He also has a bone that presses on his spinal cord.
7. When Hancher first moved into Quail Run, he was using a cane to assist him with walking.
8. During his tenancy, Hancher's condition began to get progressively worse and began to severely affect his ability to walk. On or about April 26, 2004, Hancher began using a wheelchair full-time, and continued to do so until the end of his tenancy and beyond.
9. Hancher's physical condition prevented him from working. As of the date of the Hearing, he had been receiving financial assistance from the Veterans Administration for over 4 years and from the Social Security Administration for more than a year. He has been determined to be permanently disabled.
10. Hancher's physical condition, after April 26 of 2004, also impaired his ability to perform normal daily tasks. He could not walk extended distances, was unable to load and unload groceries from the car, vacuum, could not stand over the sink to do dishes, and was unable to do laundry.
11. After Hancher began using the wheelchair on a full-time basis, he could not get himself in and out of the bathtub without assistance and there were times when he

collapsed after trying to walk. The tasks necessary to living were performed by, or with the assistance of, Linda, Hancher's ex-wife.

12. In late April of 2004, Hancher went into the rental office and informed the leasing representative, Joey, that his mobility had become more impaired and that he would need an accommodation. He requested that the complex make reasonable modifications to the interior of his apartment unit, including widening the bathroom doors. Hancher also asked that the complex modify the entry of his unit because the step leading up to his unit caused him to have to maneuver his wheelchair into the grass and up a slight incline. This maneuvering jarred Hancher, causing him a lot of pain.

13. On the same day, Hancher asked for modifications to his apartment and its entry, he also informed Joey that the entryway to the rental office was inaccessible. Hancher explained that Linda had to pull him up the steps in his wheelchair. Hancher gave Joey 5 or 6 working days to give him an answer as to whether Quail Run would make the requested modifications.

14. Hancher went to the rental office at least 5 times while in his wheelchair, either to discuss the modifications or to pay his rent. Hancher was accustomed to handling his business in person and hand delivering his rent payments. It took around 10 or 15 minutes for Linda to get Hancher up the steps in his wheelchair, and each trip caused the same sort of jarring pain that occurred while getting into his apartment.

15. Eventually, Joey advised Hancher that MHM would not make the requested modifications. There is no evidence that any suggestion was made, by Joey or anyone else acting on behalf of Quail Run, that office personnel would come to Hancher's apartment to do business with Hancher.

16. Hancher went to an attorney for assistance. His attorney contacted Quail Run's manager by letter dated May 11, 2005, portions of which are set out below:

...  
I helped Steve obtain disability benefits and am familiar with his physical impairments. Although he was not wheelchair bound at the beginning of his lease term, he has since become so. It is now impossible for him to continue living in the apartment because (1) there is no ramp to make the apartment wheelchair accessible ; (2) the bathroom is not wheelchair accessible; and (3) the kitchen counters are at a height which makes them impossible to use from a wheelchair.

It is my understanding that Steve has asked that his lease be terminated immediately, and that you have refused. My purpose in writing is to make that request formally and in writing, as an alternative to filing suit immediately.

...  
If you are willing and able to provide an alternate dwelling or render Steve's apartment, bathroom and counter tops accessible within the next two weeks, that would solve the problem. It is my understanding that you may be unwilling or unable to do this. That leaves early termination as the only option.

Steve and I have both spoken with the Director of the Human Rights Commission. She is prepared to begin action through the Commission and to assist Steve in proceeding through HUD. I intent (*sic*) to go ahead and file suit in Bartholomew Circuit Court, seeking immediate termination of the lease and all other remedies to which Steve may be entitled, including fees. Before doing so, I wanted to explore the possibility of reaching a harmonious resolution without litigation.

If you are willing to consider a reasonable accommodation for this handicapped individual, please contact me within seven days from the date of this letter. If I fail to hear from you, I will have no alternative but to file suit.

CX5.

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17. Quail Run responded by a letter from its attorney dated May 18, 2004, the body of which reads as follows:

I have been forwarded a copy of your May 11, 2004, letter to Quail Run which seeks early termination of Steve Hancher's lease.

Quail Run is willing to accept your proposed resolution that they permit Mr. Hancher to terminate his lease early.

I would assume that he has paid for the month of May, and thus would suggest a termination date of May 31<sup>st</sup>.

Please advise if that is acceptable. Thank you very much.

RXA.

18. There is no evidence of a settlement agreement or a release that expresses what claims were resolved in any more detail than the foregoing correspondence.

19. Hancher moved on or before May 31, 2004 and has paid no more rent to Quail Run since. Quail Run has taken no action seeking to recover rent that might have been due from Hancher since May 31, 2004. Quail Run returned Hancher's security deposit, minus a small deduction for minor damage to the apartment.

20. The letter from counsel for Hancher represents an offer to forego all litigation if Quail Run agreed to either early termination of Hancher's lease or to make accommodations.

21. Quail Run agreed to the early termination of Hancher's lease.

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. Hancher and Quail Run are each a "person" as that term in section 3(a) of the Indiana Civil Rights Law, IC 22-9-1-1, *et. seq.* ("the ICRL").

3. The ICRL defines "public accommodation" as "...any establishment that caters or offers its services or facilities or goods to the general public". IC 22-9-1-3(m).

4. Quail Run's rental offices offers its services to the general public and, as a result, those offices are a public accommodation.

5. "Accord and satisfaction" is an affirmative defense and the party asserting the defense bears the burden of proof. *Fifth Third Bank of Southeastern Indian v. Bentonville Farm Supply, Inc.*, 629 N.E.2d 1246 (Ind. Ct. App. 1994).

6. Quail Run has met its burden of proving that there was an accord and satisfaction precluding litigation not only of Hancher's claims with respect to the inaccessibility of his apartment but also with respect to his claims about inaccessibility of the rental office.

9. When, as here, accord and satisfaction have been proven, dismissal of the complaint is the appropriate result.

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

## ORDER

1. The Proposed Decision is **VACATED**.
2. Hancher's complaint is **DISMISSED**, with prejudice.

### INDIANA CIVIL RIGHTS COMMISSION

\_\_\_\_\_  
Alpha Blackburn, Chairperson

  
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David C. Carter, Vice-Chairperson

  
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Barry Baynard, Commissioner

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John E. Garcia, Commissioner

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Charles D. Gidney, Commissioner

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Steven A. Ramos, Commissioner

Dated: 14 December 2007

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

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