

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 15 2006

Indiana State Civil Rights Commission

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On August 16, 2006, 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"). On September 5, 2006, Respondent, Quail Run Associates Limited Partnership ("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 Gidney was also present. Commissioners absent were Alpha Blackburn (the Chairperson), David C. Carter (the Vice-Chairperson), Tehiji 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 have been distributed to absent Commissioners.


Having carefully considered the foregoing and being duly advised in the premises, the ICRC finds and rules as follows.

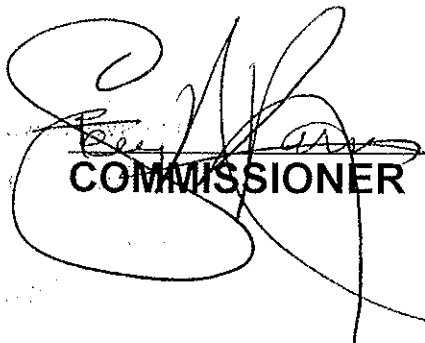
1. Chambers has not met the burden of an objecting party to demonstrate an error that affected the result.
2. Respondents have not met the burden of an objecting party to demonstrate an error that affected the result.

IT IS, THEREFORE, ORDERED

1. Quail Run's Request For Administrative Review is **OVERRULED**.
2. The ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the second proposed decision, a copy of which is attached hereto and incorporated by reference

INDIANA CIVIL RIGHTS COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

Dated: 15 December 2006

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

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Columbus, IN 47202

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JONES PATTERSON & TUCKER, P.C.
BY: J. Grant Tucker, Esq.
Attorneys for Respondent Quail Run Associates Limited Partnership
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and to be personally served on the following attorney of record:

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QUAIL RUN ASSOCIATES
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Indiana State Civil Rights Commission

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

A Hearing was held before the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") on July 13, 2005. Complainant, Roxanne 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.

Having carefully considered the evidence and the arguments of counsel, and being duly advised in the premises, the ALJ proposes that ICRC enter 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.

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 31st.

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. For this reason, it can only be determined that Hancher and Quail Run agreed to early termination as a resolution of Hancher's claims about his apartment, because that is all that the correspondence mentions.

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. Quail Run excluded Hancher from equal opportunity for access to public accommodations because of disability by failing to make reasonable accommodation for Hancher's inability to access the rental office without unreasonable inconvenience and pain. It has been suggested that Quail Run's office personnel would have gone to see Hancher to eliminate his need for access to the rental office, but there is no evidence that this idea was ever communicated to Hancher. For that reason, even if this would have been a reasonable accommodation, it was not offered by Quail Run while Hancher was a resident.

21. Hancher's share of the rent at his new apartment was \$190 higher per month than his share of the rent at Quail Run. (In both cases, Hancher's rent was subsidized by housing assistance payments.)

22. Hancher's higher rent was the direct result of a resolution that he did not merely accept, but actually proposed, of his claim with respect to the accessibility of his

apartment. That additional rent is not an appropriate element of the losses caused by the inaccessibility of the rental office.

23. Hancher experienced physical and emotional distress as a result of Quail Run's failure to make reasonable accommodations for his disability with regard to Hancher's inability to access the rental office on his own and without unreasonable inconvenience and avoidable pain.

24. There is no evidence that Hancher had any reason to access Quail Run's rental office while using a wheelchair except for approximately 6 occasions between April 26, 2004 and May 31, 2004.

25. 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. The ICRL makes it a discriminatory practice to exclude a person from equal opportunities because of, among other things, disability. IC 22-9-1-3(l). Every discriminatory practice relating to, among other things, public accommodations is unlawful unless specifically exempted by the ICRL. *Id.* Because there is no such applicable exemption, Quail Run's failure to timely make efforts to accommodate Hancher's insofar as that disability prevented Hancher from accessing Quail Run's rental office on his own, without unreasonable inconvenience, and without experiencing pain that could be avoided, that failure was unlawful.

6. "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).

7. As a contact, accord and satisfaction requires a meeting of the minds or evidence that the parties intended to agree to an accord and satisfaction. *Mominee v. King*, 629 N.E.2d 1280 (Ind. Ct. App. 1994), *Bentonville Farm Supply, supra*.

8. Because neither of the parties' attorneys addressed the inaccessibility of the rental office while considering early termination, Quail Run has not met its burden of proving that that agreement is an accord and satisfaction with respect to the claim about inaccessibility of the rental office.

9. Section 6(k) of the ICRL governs the ICRC's authority upon the finding of an unlawful discriminatory practice and provides that, among its powers and duties, the ICRC

... shall state its findings of fact after a hearing and, if the commission finds the person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring the person to take further affirmative action as will effectuate the purposes of his chapter, including but not limited to the power:

(A) to restore complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice

IC 22-9-1-6(k).

10. Monetary relief, including actual damages, is appropriate under section 6(k) of the ICRL.

11. "Actual damages" includes compensation for emotional distress. *Indiana Civil Rights Commission v. Alder*, 714 N.E.2d 632 (Ind. 1999). \$5,000.00 is an appropriate amount in this case.

12. Administrative review of this proposed decision may be obtained by any interested and affected person who is 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.

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

ORDER

1. Quail Run shall cease and desist from excluding persons using wheelchairs from equal opportunity by maintaining an inaccessible rental office.
2. Quail Run shall modify or move its rental office so that individuals in wheelchairs can have access to the services of the rental office, on their own and without unreasonable inconvenience or pain, and shall do so within 180 days after the effective date of this Order.
3. Quail Run shall post an equal opportunity statement in its rental offices.
4. Quail Run shall deliver to Hancher a check, payable to Hancher, in the amount of \$5,000.00, within 30 days of the effective date of this Order.
5. Quail Run shall deliver a copy of the foregoing check within 30 days of the effective date of this Order.
6. This Order shall take effect immediately after it is approved and signed by a majority of the members of the ICRC, unless it is modified by the ICRC pursuant to IC 4-21.5-3-31(a), stayed by the ICRC under 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.
7. This Order shall remain in effect for 3 years after its effective date.

Dated: 16 August 2006


Robert D. Lange
Administrative Law Judge

To be served this 16th day of August, 2006 by first class mail on the following parties and attorneys of record:

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and to be personally served this 16th day of August, 2006 on the following:

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