

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

FILE DATED

JAN 27 2006

Indiana State Civil Rights Commission

JOE STEWART,
Complainant,

vs.

DOCKET NO. HOr04040186
HUD NO. 05-04-0631-8

**GERHARD ODENTHAL
REALTY,**
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On December 12, 2005, 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: 27 January 2006

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

Joe Stewart
1646 South Trumbull Avenue
Chicago, IL 60623

Gerhard Odenthal Realty
c/o Gerhard Odenthal
808 East Talmer Avenue
North Judson, IN 46366

HACKMAN HULETT & CRACRAFT, LLP
BY: Vicki L. Anderson, Esq.; David J. Bodle, Esq.; and Joseph M. Hendel, Esq.
Attorneys for Respondent Gerhard Odenthal Realty
One Indiana Square, Suite 2400
Indianapolis, IN 46204-2030

HOEPPNER WAGNER & EVANS, LLP
BY: Larry G. Evans, Esq.
1000 East 80th Place Suite 6065
Merrillville, IN 46410-5679

and to be personally served on the following attorney of record:

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

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

FILE DATED

DEC 12 2005

Indiana State Civil Rights Commission

JOE STEWART,
Complainant,

vs.

DOCKET NO. HOra04040186
HUD NO. 05-04-0631-8

GERHARD ODENTHAL
REALTY,
Respondent.

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

On December 1, 2005, Complainant, Joe Stewart ("Stewart"), filed his Notice Of Pending Litigation On The Election Of Respondent ("NOTICE"), a Notice to which Respondent, Gerald Odenthal Realty ("GOR"), has not responded.

Having carefully considered the foregoing and being duly advised in the premises the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") proposes that the ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Stewart filed this complaint on April 6, 2004, alleging that GOR discriminated against him because of race and because he had filed a previous complaint with the ICRC in violation of the Indiana Fair Housing Act, IC 22-9.5 ("the IFHA"). HOUSING DISCRIMINATION COMPLAINT (April 6, 2004).

2. GOR denied Stewart's claims of unlawful discrimination. NOTICE OF FINDING (November 3, 2005).
3. GOR filed an election to have this matter heard in court and Stewart has filed a civil action in Starke Circuit Court. NOTICE.
4. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. Under the IFHA, a complainant, a respondent, or an aggrieved person may elect to have the claims asserted in a reasonable cause finding decided in a civil action. IC 22-9.5-6-12(a).
2. Such an election must be made within 20 days after receipt by the electing party of the reasonable cause finding. IC 22-9.5-6-12(b).
3. The election in the NOTICE was apparently filed in a timely manner.
4. Housing Rule 7.9(a) of the ICRC provides, in material part, as follows:
If the ... respondent ... makes a timely election to have the claims asserted in the charge asserted in a civil action under IC 22-9.5-6-12, the administrative law judge shall dismiss the proceeding.
910 IAC 2-7-9(a).
5. This complaint must be dismissed under 910 IAC 2-7-9(a).
6. Administrative review of this proposed decision may be obtained by the filing of a writing specifying with reasonable particularity each basis for each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).
7. Any Finding Of Fact that should have been deemed a Conclusion Of Law is hereby adopted as such.

ORDER

1. Stewart's complaint is **DISMISSED**, with prejudice.
2. The Initial Pre-Hearing Conference that had been scheduled for December 13, 2005 is **VACATED**.

Dated: 12 December 2005



Robert D. Lange
Administrative Law Judge

To be served by first class mail this 12th day of December, 2005 on the following parties and attorneys of record:

Joe Stewart
1646 South Trumbull Avenue
Chicago, IL 60623

Gerhard Odenthal Realty
c/o Gerhard Odenthal
808 East Talmer Avenue
North Judson, IN 46366

HACKMAN HULETT & CRACRAFT, LLP
BY: Vicki L. Anderson, Esq.; David J. Bodle, Esq.; and Joseph M. Hendel, Esq.
Attorneys for Respondent Gerhard Odenthal Realty
One Indiana Square, Suite 2400
Indianapolis, IN 46204-2030

and to be personally served this 12th day of December, 2005 on the following:

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

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

and to be served by FACSIMILE TRANSMISSION this 12th day of December, 2005 on
the following attorneys of record:

HACKMAN HULETT & CRACRAFT, LLP
BY: Vicki L. Anderson, Esq.; David J. Bodle, Esq.; and Joseph M. Hendel, Esq.
Attorneys for Respondent Gerhard Odenthal Realty
317/636-3288