



FILED:
February 11,
2022

STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Gregory L. Wilson, Sr. in his Official Capacity as Executive Director of the Indiana Civil Rights Commission and Latonia Alexander, Complainants, V. LaCabreah Apartment, Respondent.	Administrative Cause No.: ICRC-2201-000119 Underlying Agency Action No.: HOha21030092 05-21-2216-8
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Subject to the Ultimate Authority of the Indiana Civil Rights Commission

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Pursuant to IC 4-21.5 this Recommended Order is not final and shall be presented to the ultimate authority for issuance of a final order.

JURISDICTION

The Commission of the Indiana Civil Rights Commission ("ICRC") has subject matter jurisdiction over housing and real estate discrimination complaints based on disability that are filed under Indiana Fair Housing Act ("IFHA") and the Indiana Civil Rights Law ("ICRL"). IND. CODE § 22-9-1-2; IND. CODE § 22-9-1-6; IND. CODE § 22-9.5-4-1; IND. CODE § 22-9.5-5. When a finding of cause is made under the ICRL and IFHA, pursuant to the Commission's June 19, 2020 Finding of Necessity, the Office of Administrative Law Proceedings ("OALP") shall appoint an Administrative Law Judge ("ALJ") to preside over the matter and to conduct a hearing. IND. CODE § 22-9-1-6; IND. CODE § 4-15-10.5-12; IND. CODE § 4-15-10.5-13.

ISSUE

Is the Parties' Notice of Election and Agreement ("Notice") successful in moving this matter out of the administrative forum?

FINDINGS OF FACT

1. On January 24, 2022, the ICRC, after conducting a neutral investigation, made a reasonable cause and probable cause finding on Latonia Alexander's March 15, 2021 complaint that alleged Respondents violated the Indiana Fair Housing Act ("IFHA") and the Indiana Civil Rights Law ("ICRL") by discriminating against her in the protected area of housing and real estate on the basis of disability.
2. Respondent received the Notice of Finding and Issuance of Charge on January 28, 2022.

3. The Notice was filed by Respondent's Attorney of Record on February 10, 2022 by the Parties.
4. The Notice was served on: Director Wilson, ICRC Staff Attorney Bremer, Complainant Alexander, the ICRC Docket Clerk, and OALP.
5. By the date the Notice was filed, a hearing had not yet begun in this matter.
6. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

Election under the Indiana Fair Housing Act

1. "A complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in a finding of reasonable cause decided in a civil action. . ." IND. CODE § 22-9.5-6-12. According to the Notice of Finding and Issuance of Charge, "reasonable cause" was found; therefore, an opportunity to elect out of the administrative forum existed under the IFHA with respect to the "reasonable cause" claim.
2. "The notice of the election must be filed with the docket clerk of the ICRC and serviced on the director, the respondent, and the aggrieved persons on whose behalf the complaint was filed." 910 IAC 2-6-6(h)(2). The Notice was appropriately served.
3. If a complete and timely election is made, then "...the administrative law judge shall dismiss the administrative proceeding." 910 IAC 2-7-9(a).
4. An election by a Respondent must be made under the IFHA within "...twenty (20) days after the date of receipt by the electing person..." IND. CODE § 22-9.5-6-12(b). The Notice was timely filed.
5. Accordingly, Respondent's IFHA Notice is effective such that the ICRC shall dismiss the IFHA claim pending in the administrative forum.

Election under the Indiana Civil Rights Law

6. Indiana Code 22-9-1-16 allows parties to "...elect to have the claims that are the basis for a finding of probable cause decided in a civil action..." IND. CODE § 22-9-1-16(a). According to the Notice of Finding and Issuance of Charge, "probable cause" was found; therefore, an opportunity to elect out of the administrative forum existed under the ICRL with respect to the "probable cause" claim.
7. In order to make such an election, "...both the respondent and the complainant must agree in writing to have the claims decided in a court of law." IND. CODE § 22-9-1-16(a); 910 IAC 1-3-6. The Parties are in agreement as to the election.
8. The election must be made on the form provided to the Parties by the ICRC and must be served on all Parties. IND. CODE § 22-9-1-16(a); 910 IAC 1-5-1(b). The Notice was made on ICRC's form and was served on all Parties.

9. An election is considered untimely if the election is made after a hearing on the merits of the complaint has begun. IND. CODE § 22-9-1-16(b). The Notice was timely filed.
10. "If all parties have filed a timely election to proceed in circuit or superior court, the commission shall dismiss the case, without prejudice. Such dismissal shall be sufficient to exhaust all administrative remedies in the case." 910 IAC 1-3-6.
11. Accordingly, the Notice is effective such that the ICRC shall dismiss the ICRL claim pending in the administrative forum.
12. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such, and this Order's Statement of Jurisdiction is incorporated into these Conclusions of Law.

DECISION

1. The Notice is GRANTED.
2. The Complaint of Discrimination under the ICRL is DISMISSED, without prejudice. 910 IAC 1-3-6.
3. The Complaint of Discrimination under the IFHA is DISMISSED, with prejudice. 910 IAC 2-7-9(a).
4. All previously scheduled deadlines and events are VACATED.

This order becomes the final order disposing of the proceedings immediately upon affirmation under Indiana Code 4-21.5-3-29. IND. CODE § 4-21.5-3-27(a).

SO ORDERED: February 11, 2022



Hon. Caroline A. Stephens Ryker, Administrative Law Judge
Indiana Office of Administrative Law Proceedings
100 North Senate Ave., Room N802
Indianapolis, IN 46204
(317) 234-6689

Distribution List:

The following distribution list includes the names and mailing addresses of all known Parties and other persons to whom notice is being given. IND. CODE § 4-21.5-3-18. A Party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed. IND. CODE § 4-21.5-3-18(d)(8).

Gregory L. Wilson, Sr.*: 100 N. Senate Ave., Room N300, Indianapolis, IN 46204

Frederick Bremer*: 100 N. Senate Ave., Room N300, Indianapolis, IN 46204; (317) 232-2600

Latonia Alexander: 8540 Coralberry Lane, Indianapolis, IN 46239

LaCabreah Apartments*: 7120 LaCabreah Dr., Brownsburg, IN 462112

J. F. Beatty*: 9100 Keystone Crossing, Suite 870, Indianapolis, IN 46240

Chair Slash of the Indiana Civil Rights Commission – ultimate authority and served at docketclerk@icrc.in.gov

**served in care of appearing attorney through ALP system at the email address on file with the Indiana Roll of Attorneys – all other service by mail.*

APPEAL RIGHTS AND ULTIMATE AUTHORITY REVIEW

You are hereby notified of your right to administrative review. If the parties to this action wish to have the ultimate authority administratively review this Recommended Order, the party requesting review must not be in default and must file written objections that:

- 1) Identify the basis of the objection with reasonable particularity; and,
- 2) Are filed with the Docket Clerk of the Indiana Civil Rights Commission on or before the 15th day after the date this Recommended Order was served. Filings can be made by mail or in person at 100 North Senate Ave., Room N300, Indianapolis, IN 46204, by email at docketclerk@icrc.in.gov, or by fax at (317) 232-6580.

A Party shall serve copies of any filed item on all Parties. Questions can be directed to (317) 232-2600.

ULTIMATE AUTHORITY

The below information is for the Ultimate Authority's use only. This Order is not a Final Order until completed. Circle, check, or fill in the blanks below.

Timely objections were/were not filed to the above Recommended Order. Timely briefs on objections (if any) were/were not filed. An oral argument on objections (if any) was/was not held.

On May 20, 2022, the Indiana Civil Rights Commission decided, by the majority vote of 6 out of the 6 Commissioners present to:

1. Affirm the above Recommended Order
2. Remand the above Recommended Order as further detailed in ICRC Attachment A.
3. Modify the above Recommended Order as detailed in ICRC Attachment A.

SO ORDERED this 20th day of May, 2021.

Chair Adrienne L. Stash: X Adrienne L. Stash

Unless the ICRC remanded this matter to the ALJ, then **THIS IS A FINAL ORDER**. A Party to a dispute filed under IC 22-9 and/or IC 22-9.5 may, not more than thirty (30) days after the date of receipt of the Commission's final appealable order, appeal to the court of appeals under the same terms, conditions, and standards that govern appeals in ordinary civil actions. IC 22-9-8-1; IC 22-9.5-11-1.