



FILED:
February 27,
2023

**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, Complainant, V. FIKE INVESTMENTS, LLC, JIM FIKE and KIM FIKE, Respondents.	Administrative Cause No.: ICRC-1021-002109 Underlying Agency Action No.: HOra15070510 HOrt15090649
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Subject to the Ultimate Authority of the Indiana Civil Rights Commission

AMENDED NOTICE OF RECONVENED HEARING

On July 16, 2015, John Chubb ("Aggrieved Party") filed a complaint with the Indiana Civil Rights Commission ("ICRC") against Fike Investments, LLC, Jim Fike and Kim Fike ("Respondent(s)") (collectively referred to herein as "the Parties") alleging housing discrimination on the basis of disability in violation of the Indiana Fair Housing Act, Ind. Code 22-9.5 ("the IFHA") and the Indiana Civil Rights Law, Ind. Code 22-9 ("ICRL"). Accordingly, the ICRC has jurisdiction over the Parties and the subject matter of the complaint.

On October 17, 2016, the ICRC issued its Notice of Finding with respect to the above-referenced case, in which the ICRC made a finding of reasonable and probable cause. Upon notice of the finding and pursuant to ICRC's June 19, 2020 Finding of Necessity, the Office of Administrative Law Proceedings ("OALP") assigned an Administrative Law Judge ("ALJ") to preside over the matter. IND. CODE § 22-9.5-6-14; IND. CODE § 22-9-1-6; IND. CODE § 22-9-1-18. The Parties did not elect, pursuant to Indiana Code 22-9.5-6-12 or Indiana Code IC 22-9-1-16, to have the claims that are the basis for the cause finding decided in a civil action.

When cause has been found and no election of forum has been made, an Administrative Law Judge ("ALJ") from OALP shall conduct a public hearing. IND. CODE § 22-9-1-6; IND. CODE § 22-9.5-6-14. On November 5, 2021, OALP assigned successor ALJ Beth Butsch to preside over this matter. IND. CODE § 22-9-1-6; IND. CODE § 4-15-10.5-12; IND. CODE § 4-15-10.5-13. Accordingly, ALJ Butsch with agreement of the parties, hereby sets the time and place of the hearing in this matter and provides reasonable written notice of the hearing to all Parties. IND. CODE § 4-21.5-3-20; 910 IAC 2-7-8.

This Notice of Hearing, is being given by the ALJ to the following:

John Chubb, Aggrieved Party, 382 Waverly Drive, South Bend, IN 46617
Jchubb123@yahoo.com

Jim and Kim Fike & Fike Investments, LLC, c/o Joseph Amaral, Esq.
MAY, OBERFEL & LORBER, 4100 Edison Lakes Parkway, Suite 100
Mishawaka, IN 46545
jamaral@maylorber.com

Gregory L. Wilson, Sr.
c/o Harlan Vondersaar, Staff Counsel, Counsel for Complainant
State of Indiana, Civil Rights Commission
Indiana Government Center North, 100 N. Senate Ave. Room N300
Indianapolis, IN 46204-2208
HVondersaar@icrc.in.gov

IND. CODE § 4-21.5-3-20. ICRC Staff Attorney Vondersaar was designated to present the case in support of the Complaint; Attorney Vondersaar can be reached at 317-233-4812 The ALJ's mailing address – and a telephone number through which information concerning hearing schedules and procedures may be obtained – is at the bottom of this Notice.

Nature of the Hearing

The hearing is open to the public by telephone. 910 IAC 1-11-1. The ALJ will conduct the hearing in an informal manner in accordance with the Indiana Administrative Orders and Procedures Act and without recourse to the technical, common-law rules of evidence applicable to civil actions in the courts. 910 IAC 1-11-1; IND. CODE § 4-21.5-3-25. All Parties may appear in person or by counsel, and as appropriate, Parties will be allowed to present and respond to evidence and argument, to present and cross examine witnesses, and to submit rebuttal evidence. 910 IAC 1-11-1; IND. CODE § 4-21.5-3-25. The ALJ may admit hearsay evidence, which if not objected to, may form the basis for an order. IND. CODE § 4-21.5-3-26.

All pre-trial discovery is complete due to the previously scheduled discovery deadline and hearing date. The parties have submitted copies of final proposed exhibits to the Office Administrative Law Proceedings and exchanged discovery with each other. **The parties have stipulated to the admission of Complainant's Exhibit D (lease agreement).**

Issues Remaining for determination at the Hearing.

To the extent known by the ALJ, the matters asserted by the Parties include the following:

1. The ICRC regarding the aggrieved person, John Chubb, alleges Respondents: (1) refused to modify Chubb's lease to allow him to have an in-home caregiver; (2) refused to waive the pet deposit and monthly pet fee following Chubb's notification that his dog was a support animal; (3) subjected Chubb to less favorable terms, conditions, and/or privileges of rental; (4) subjected Chubb to discriminatory statements on account of his disability; and (5) retaliated against Chubb by initiating eviction proceedings against him. On March 26, 2021, ALJ Sandra L. Jensen issued an Order partially granting Complainant's Motion for Summary Judgment as to Respondent's liability on some of the claims listed above. Subsequently, on May 9, 2022, ALJ Beth Butsch issued an Order granting Complainant's Motion for Summary Judgment as to Respondent's liability on the remaining claims. Chub was awarded \$1,311,17 for moving expenses related to the retaliatory eviction. The only remaining issues in this matter are the extent to which Chubb has suffered additional damages because of Respondents' discrimination for attorney fees and emotional distress and whether an award of statutory penalties and non-monetary relief is proper.
2. Complainant's request for damages and affirmative relief based on the determined violations as set forth above, including the extent to which Chubb has suffered significant emotional distress because of Respondent's discrimination and has incurred legal fees defending Respondents' retaliatory eviction. Complainant seeks an award of such compensable damages in Chubb's favor, as well as the appropriate statutory penalties and non-monetary relief which require a hearing in this matter.
3. Respondents' defenses, which include: the assertion that ALJ Jensen's Order on Summary Judgment of March 26, 2021, and ALJ Butsch's Order on Summary Judgment of May 9, 2022, contain numerous legal and factual errors which will be appealed. Respondents deny that they engaged in any discriminatory activity toward Chubb and deny all liability for any damages. Respondents deny proximate cause as to Chubb's psychological problems and emotional distress and Respondents' behavior. Respondents Jim Fike and Kim Fike deny liability in their individual capacities and assert there is no basis for the imposition of statutory penalties.

The hearing in this matter is being held for the purpose of determining whether a violation of the Indiana Fair Housing Act and Indiana Civil Rights Law occurred as alleged.

Date, Time, and Place of Hearing

By agreement of the parties the hearing was scheduled to be held on the MS Teams platform and was to commence at 9:00 a.m. on February 23, 2023. The hearing did not convene until approximately 9:50 a.m., due to technological issues experienced by Appellant. When Appellant was able to join the meeting, he was visible, but the parties and the court reporter were unable to adequately hear and record all his testimony due to a faulty internet connection or other technological issues. Appellant was unable to call the telephone number

available to the public to join the MS Team meeting so that his testimony would be audible via telephone, because he did not have a working telephone on the date of the hearing.

By agreement of the parties and the ALJ the hearing was rescheduled to be held via Zoom on April 5, 2023 with counsel, the parties and their witnesses appearing from the law office of Joseph Amaral in Mishawaka, Indiana and the ALJ appearing from her remote location. The hearing is open to the public by telephone by calling 833-928-4608 and entering passcode 508 798 4156#. 910 IAC 1-11-1. The hearing will begin at 9:00 a.m. EDT and conclude at 4:30 p.m. EDT.

The Parties should be prepared to utilize the time as seemly and should take what steps available when planning such details as witness order to provide for an efficient one-day hearing if possible. Additionally, the Parties must inform the ALJ as soon as possible if additional days will be required.

It is the policy of the Commission to maintain an objective and neutral forum equally accessible to all participants in the proceeding before the Commission. Accordingly, the hearing will be held at: virtually by use of the MS Teams platform, at the request of the parties, with public access by telephone.

Default

A Party who fails to attend or participate in the hearing or another stage of the proceeding may be held in default or have a proceeding dismissed. IND. CODE § 4-21.5-3-20.

Continuance

Be advised that the ALJ may grant a continuance for good cause shown, but if a continuance is granted, costs incurred on account of the continuance may be assessed against the Party moving for the continuance at the discretion of the ALJ. 910 IAC 1-11-1(h).

Accommodation

Any Party or witness requiring disability-related accommodation or foreign language interpretation in order to participate in the hearing should contact the ALJ's office **immediately**.

Resolution of the Matter

If the Parties have reached a settlement, then the Parties may file a motion requesting that the ALJ adjust the case management schedule or dismiss the matter. Generally, Parties can review 910 IAC 1-2-6, the ICRC Commission's June 19, 2020 Order: Automatic Adoption and

Approval of Certain Non-Final Decisions¹, Indiana Code 22-9-1-6(o), and Indiana Code 22-9.5-6-5 for more information on resolving a case through settlement.

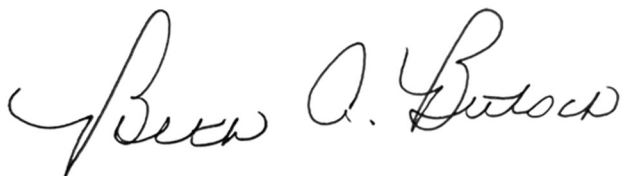
Filing

The assigned Administrative Law Judge's service information is below. The filing of a document in proceedings before the assigned Administrative Law Judge can be completed by mail, personal service, or electronic mail to:

Office of Administrative Law Proceedings
ALJ Beth Butsch
100 North Senate Ave., Roo N802
Indianapolis, IN 46204
Email: OALP@Oalp.in.gov

Please include the name of the assigned Administrative Law Judge in your filing. A Party shall serve copies of any filed item on all appearing attorneys and Parties. IND. CODE § 4-21.5-3-17(c); 910 IAC 1-5-1. Questions concerning scheduling or other procedures can be directed to (317) 234-6689 or oalp@oalp.in.gov. However, ex parte communications, which are discussions with an ALJ regarding an issue in an open case without notice and opportunity for all Parties to participate, are forbidden by law.

SO ORDERED: February 27, 2023



Hon. Beth Butsch, 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.

¹ Available here: <https://www.in.gov/icrc/files/Indiana%20Civil%20Rights%20Commission%20Order-Automatic%20Adoption%20and%20Approval%20of...pdf>

John Chubb
382 Waverly Drive
South Bend, IN 46617
jchubb123@yahoo.com

Jim and Kim Fike and Fike Investments, LLC
c/o Joseph L. Amaral, Esq.
MAY, OBERFELL & LORBER
4100 Edison Lakes Parkway, Suite 100
Mishawaka, IN. 46545
jamaral@maylorber.com

Gregory L. Wilson, Sr.
c/o Harlan Vondersaar, Staff Counsel
Counsel for Complainant
State of Indiana, Civil Rights Commission
Indiana Government Center North
100 North Senate Avenue, Room N300
Indianapolis, IN. 46204-2208
Telephone: (317) 232-6580
HVondersaar@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.*