ICRC No. EMra10110533

[redacted],
Complainant,

v.

ROMAN MARBLENE COMPANY INC.,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following Notice of Finding with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred. 910 IAC 1-3-2(b)

On March 24, 2010, [redacted] ("Complainant") filed a complaint with the Commission against Roman Marblene Company, Inc. ("Respondent") alleging race discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. §2000e, et seq.) and the Indiana Civil Rights Law (IC 22-9, et seq.). Complainant is an employee and Respondent is an employer as those terms are defined by the Civil Rights Law. IC 22-9-1-3(h) and (i) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have submitted evidence. Based on the final investigative report and a full review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was harassed and subject to different terms of employment due to his race. In order to prevail, Complainant must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting Respondent's legitimate business expectations; and (4) similarly-situated workers of a different race were treated more favorably.

Complainant is a member of a protected class by virtue of his race and it is undisputed that he suffered an adverse employment action when Respondent put him off work without pay indefinitely on January 22, 2010, and terminated him on October 13, 2010. The remaining facts at issue are whether Complainant was meeting Respondent's legitimate business expectations or, if not, whether similarly-situated employees of a different race received more favorable treatment.

Witness testimony indicates that when Complainant returned to work after suffering an injury to his left hand and arm, he returned to his regular job duties and performed his regular tasks without problems until the day he wrote a letter to Respondent's owners in which he demanded to be paid for time he had missed when he went to see his physician. Complainant's letter to Respondent's owners charged them with racial bias. He submitted the letter on January 19, 2010, and it was just two days later, on January 21, that Respondent informed him he would not be able to work until he submitted a doctor's release that his arm was completely healed. That Respondent did not intend to ever return Complainant to work is shown by the fact that Respondent did not reinstate him when he submitted medical releases to return to work on September 14, 2010, and again on October 12, 2010. Respondent's answer to the two medical releases was to send him a letter dated October 13, 2010, in which one of Respondent's owners (Triantos) warned Complainant not to enter or remain on Respondent's premises or the police would be called.

Complainant was the only African-American who worked for Respondent. Although Respondent would not allow Complainant to return to work unless he was able to perform at "100%", witness testimony indicates that Respondent has allowed several Caucasian employees to remain on the job even though they continue to have health problems that interfere with their work performance. In addition, Complainant appears to have been the only person ever issued a written warning for failure to submit a written request for

time off from work even though witnesses indicated that several Caucasians have been allowed to call off work as Complainant did without experiencing any disciplinary problems.

Based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice occurred. A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged in the above-referenced case. IC 22-9-1-18, 910 IAC 1-3-5 The parties may elect to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election, or the Indiana Civil Rights Commission will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

July 22, 2011
Date

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Joshua Brewster, Esq.
Deputy Director
Indiana Civil Rights Commission