

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. HOfs05110577
HUD NO. 05-06-0140-8

JAMIE ZILE, and BETSY ZILE;

Complainants,

vs.

CARMEL APARTMENTS; LUCAS
FAMILY INVESTMENTS, L.P.; and
DONALD A. LUCAS;

Respondents.

FILE DATED

JUL 27 2007

Indiana State Civil Rights Commission

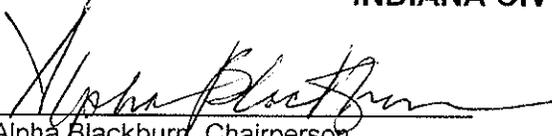
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On June 21, 2007, 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").

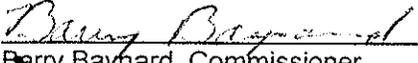
No objections have been filed to the ICRC's adoption of the proposed decision.

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.

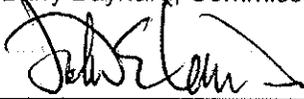
INDIANA CIVIL RIGHTS COMMISSION

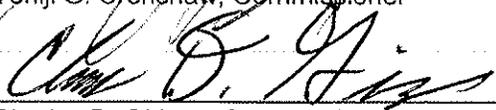

Alpha Blackburn, Chairperson


David C. Carter, Vice-Chairperson


Barry Baynard, Commissioner


Tehiji G. Crenshaw, Commissioner


John E. Garcia, Commissioner


Charles D. Gidney, Commissioner

Steven Ramos, Commissioner

Dated: 27 July 2007

To be served by first class mail on the following parties:

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Carmel, IN 46032

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CIVIL RIGHTS COMMISSION

DOCKET NO. HOfs05110577
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JAMIE ZILE, and BETSY ZILE;
Complainants,

vs.

CARMEL HILLS APARTMENTS;
LUCAS FAMILY INVESTMENTS, L.P.;
and DONALD A. LUCAS;

Respondents.

FILE DATED

JUN 21 2007

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 March 1, 2007. Complainants, Jamie Zile ("Jamie") and Betsy Zile ("Betsy") (collectively "the Ziles" or "Complainants"), were present and were represented by counsel, Michael C. Healy, Esq., Staff Counsel with the ICRC. Respondents - Carmel Hills Apartments ("the complex" or "Carmel Hills"), Lucas Family Investments, L.P. ("LFI"), and Donald A. Lucas ("Lucas") (collectively "Respondents") - were represented by Lucas, President of LFI.

The parties agreed to waive opening statements. Complainants called Hollie Boyd, Betsy, Jamie, and Betsy again. During the presentation of the Ziles' case, Complainants' Exhibit 1 ("CX_"), CX2, CX3, CX4, CX5, CX6, Respondents' Exhibit A ("RX_"), RXB, RXC, and RXD were admitted into evidence without objection. After Complainants rested their case, Lucas testified on behalf of Respondents and the Ziles elected not to present any evidence in rebuttal. The parties waived oral closing arguments. The ALJ took the cause under advisement and ordered the parties to file

what they suggested that the ALJ enter as proposed findings of fact, conclusions of law, and order on or before March 30, 2007 and that briefs could be filed by the same date.

On March 30, 2007, Respondents filed their [Suggested Proposed] Findings of Fact, Conclusions of Law and Order. Also on March 30, 2007, the Ziles filed Complainants' [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 the ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The issues to be resolved in this case are (a) whether the Ziles were denied equal opportunity because of familial status and/or because of sex, and, (b) if so, what relief should be awarded. MODIFIED FOURTH PRE-HEARING ORDER ¶2 (February 22, 2007).
2. The Ziles are an adult married couple who have resided, at all material times, in the state of Indiana. STIPULATIONS OF FACT ¶1 (STIP. _”).
3. The complex is an apartment complex located in Carmel, Indiana. STIP. 2. LFI is the owner and operator of the complex and Lucas is the President of LFI.
4. The Ziles resided at the complex from July of 2003 until November of 2004, when they moved to Deer Chase Apartments in Noblesville as a result of cheaper rent. When that lease was about to expire in 2005, the Ziles were paying monthly rent of \$515.00 at Deer Chase, Jamie was working for Telemon Corporation in Carmel and the price of gasoline had risen to the extent that the Ziles considered proximity to employment to be as important an economic factor as rent. This location was within walking distance from the complex, but was a 30 minute drive from Noblesville. As a result, the Ziles checked the price of a 2 bedroom apartment at the complex, finding it to be \$540.00 per month.

5. After determining the rent, Betsy contacted the complex by telephone to inquire about the availability of a 2 bedroom apartment. She spoke to the office manager, whose first name was "Sherri". Betsy and Sherri knew each other from the Ziles' prior occupancy at the complex. Betsy told Sherri that she, Jamie and their 2 children, their son Micah, then 2 or 3, and their daughter Katherine, then approximately 1, sought such an apartment.
6. Sherri responded that she was sorry but that they had a policy precluding (a) minors and adults from sharing a bedroom and (b) children of different sexes from sharing a bedroom.
7. Betsy reported this information to Jamie when he returned from work that evening. Jamie contacted Lucas in an attempt to clarify the conversation. Lucas restated the policy and offered to rent the Ziles a three bedroom unit. Jamie indicated that they needed a two bedroom unit and this contact ended.
8. The denial by Respondents of the Ziles' attempt to rent a two bedroom unit was based solely on their policy that (a) children of the same gender shall not share the same bedroom and (b) a parent shall not share the same bedroom with a child of a different gender. STIP. 6.
9. The denial by Respondents of the Ziles' attempt to rent a two bedroom unit was unavoidably related to the fact that the Ziles were a family with two children, or their familial status, and to the fact that the Ziles were a family with children of different genders, or sex. As a result, the denial occurred both because of familial status and because of sex.
10. Having lived in the complex before, the Ziles had shopped for apartments in the area in the not too distant past. They had previously determined that the maintenance of the Stonegate complex, the only apartment complex in the Carmel area that has been shown to be available for a lower monthly rate than that offered by Carmel Hills, was of a lower quality than they desired and that they did not wish to rent there. Although this decision making process may be imperfect, it is not unreasonable for a young couple with young children who doubtlessly are busy. Eventually, the Ziles chose to rent a two bedroom unit at Camel Knolls at the rate of \$650.00 month with a 6 month lease.

11. The Ziles have shown a difference in gasoline expenses between the apartment they rented at Carmel Knoll and Deer Chase of \$114.25 for each of the additional 2 months it ultimately took them to move. CX 4. The proper comparison, though, is rent + gasoline at Deer Chase (\$1030.00 rent + \$312.00 for 2 months) versus rent + gasoline at Carmel Hills (\$1,080.00 + \$93.50 for 2 months). Thus, the Ziles lost a total of \$168.50 during the 2 months it took them to arrange for, and move into, a residence in Carmel.
12. In November of 2005, the Ziles moved into a two bedroom unit at Carmel Knoll Apartments. The monthly rent for this unit was \$650.00, \$110.00 higher than the monthly rent at the complex.
13. The Ziles' explanation for not renting at Stonegate is credible and their decision not to rent there does not mean that they failed to take reasonable steps to minimize their losses.
14. The Ziles lost \$660.00 in additional rent expenses as a result of being denied the type of apartment they sought at the complex. This is \$110.00 times 6 months.
15. After the Ziles' lease at Carmel Knoll expired, their residential expenses were less than those expenses would have been at the complex and their out of pocket losses ceased.
16. There can be little doubt that the Ziles experienced emotional distress as a result of being denied the opportunity to rent a building because of the makeup of their family. On the other hand, it is conceded that this event occurred at a time with two very young children in the home, a time that would have been stressful under the best of circumstances.
17. 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. Jamie, Betsy, the complex. LFI, and Lucas are each a "person" as that term is defined in the Indiana Fair Housing Act, IC 22-9.5 ("the IFHA"). IC 22-9.5-2-11.

3. The Ziles are a "family" as that term is used in IC 22-9.5-2-9.

4. The IFHA includes the following provision:

A person may not refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of ...sex, familial status

IC 22-9.5-5-1(b).

5. Respondents committed a discriminatory housing practice based upon sex and familial status when they made a two bedroom apartment unavailable to the Ziles because the Ziles had one male and one female child.

6. The IFHA provides that, if the ICRC " ... determines ... that a respondent has engaged in ... a discriminatory housing practice, the commission may order the appropriate relief, including actual damages, ... and other injunctive or equitable relief." IC 22-9.5-6-15(a).

7. The Ziles have demonstrated \$828.50 in out-of-pocket expenses resulting from the discriminatory housing practice.¹

8. Emotional distress is also a proper element of "actual damages". *Indiana Civil Rights Commission v. Alder*, 714 N.E.2d 632 (Ind. 1999). Eight Thousand Dollars (\$8,000.00) is an appropriate amount to award in the circumstances of this case.²

9. The ICRL defines an unlawful discriminatory practice as follows:

(l) "Discriminatory practice" means:

...
(1) the exclusion of a person from equal opportunities because of ... sex

Every discriminatory practice relating to... the acquisition or sale of real estate ... shall be considered unlawful unless it is specifically exempted by this chapter.

IC 22-9-1-3(l)(1).

¹ The Ziles do not seek interest.

² The Ziles do not seek the assessment of a civil penalty under IC 22-9.5-6-15(b). There is no reason, on this record, to believe that assessing civil penalties against any or all of the respondents would increase the deterrent effect of the Order.

10. Respondents committed a discriminatory practice when they precluded the Ziles from renting a two bedroom apartment because they had one male child and one female child. Because there is no specific exemption for that practice, it was unlawful.

11. 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 this 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)(A).

12. While Respondents have violated the Ziles' rights under both the ICRL and the IFHA, they can recover only once for the same sequence of events. The relief awarded herein would be the same under either the IFHA or the ICRL.

13. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis of each objection within 15 days after service of this proposed decision.

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

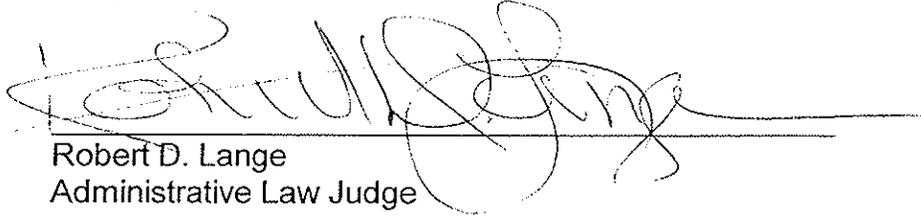
ORDER

1. Respondents shall cease and desist from excluding persons from equal opportunities for rental of apartments because of sex and/or familial status.
2. Respondents shall deliver to the Ziles one or more checks made payable to the Ziles totaling \$8,828.50 no later than 30 days after the effective date of this Order.
3. Respondents shall post a fair housing equal opportunity poster in its offices.

4. Respondents shall be jointly and severally liable for all obligations imposed by this Order.

4. This Order shall take effect when 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 pursuant to IC 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated: 21 June 2007



Robert D. Lange
Administrative Law Judge

To be served by first class mail this 21st day of June, 2007 on the following parties:

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Indianapolis, IN 46241

Donald A. Lucas
2410 Executive Drive
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and to be personally served this 21st day of June, 2007 on the following:

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Indiana Civil Rights Commission
c/o The Honorable Gregory Kellam Scott, Esq.; Director
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