

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. HOfs08080522
HUD NO. 05-08-1750-8

NATIONAL FAIR HOUSING
ALLIANCE;

Complainant,

v.

KOSTAS POULIKIDAS,

Respondent.

FILE DATED

APR 23 2010

Indiana State Civil Rights Commission

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

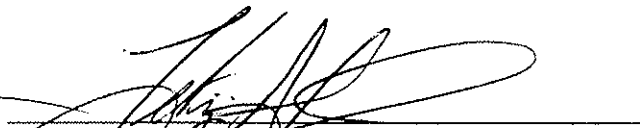
On March 23, 2010, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision").

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: 23 April 2010

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

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**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 August 6, 2009. Complainant, National Fair Housing Alliance ("NFHA"), was represented by counsel, Frederick S. Bremer, Esq., Staff Attorney. Also present on behalf of NFHA was Anne Houghtaling ("Houghtaling"), Director of Investigations And Enforcement. Respondent, Kostas Poulakidas ("Poulakidas"), an attorney, appeared and represented himself. Complainant's Exhibit 8 ("CX_") was admitted without objection and then opening statements were made.

NFHA called Poulakidas and Houghtaling to testify on its behalf. During the presentation of NFHA's case, CX6 and CX10 were admitted into evidence without objection; CX5, CX4, and CX9 were admitted into evidence over objection; and CX7 was offered into evidence but withdrawn,

After NFHA rested its case, Poulakidas elected not to present any additional evidence at that time, but was allowed to file an exhibit within one week of his fees and costs. NFHA elected to present its arguments in written form and Poulakidas made a closing argument. 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 October 6, 2009 and that briefs could be filed by the same date.

On October 6, 2009, Poulakidas filed his Exhibit and the same was admitted without objection. ORDER (August 25, 2009). On October 6, 2009, Poulakidas filed his [Suggested] Proposed Findings Of Fact, Conclusions Of Law And Order. On October 6, 2009, NFHA filed its Tender Of [Suggested Proposed] Findings Of Fact, Conclusions Of Law And Order As Proposed By Complainant and Complainant's Post-Trial (*sic*) Brief.

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 are (1) whether Poulakidas published advertising that violated the Indiana Fair Housing Act, IC 22-9.5 ("the IFHA") and (2) if so, what relief should be awarded. See FIRST PRE-HEARING ORDER ¶8 (March 17, 2009).
2. NFHA is a not for profit organization whose mission is to eradicate housing discrimination in the United States through education, public policy, and enforcement.
3. Poulakidas and his wife own a condominium located at 2230 North Pennsylvania Street in Indianapolis ("the condo"). The condo is in a complex with 25 or more other condominiums.
4. In 2007, Poulakidas and his wife decided to rent the condo after they bought a house.
5. On or about October 15, 2007, Poulakidas published an advertisement on the Craigslist internet site ("the ad") that read, omitting an email address and telephone number at the end, as follows:

Two level condo for rent in Fallcreek 2Bdrm/2Bth \$1300 total (5 minutes from downtown, IUPUI, Methodist and Wishard Hospitals). 1500 sq. ft. with 2 bedrooms, each with its own full bath and walkin closet and each big enough for an office; cathedral ceiling living room; second floor includes a loft and bedroom. Stainless steel appliances (with washer and dryer). One car garage with extra parking spot, plus street parking. Great patio deck. Enclosed yard. Very secure. Water/sewage/snow removal/condo fee included. **Perfect for professionals, professional students, couples.** Pets welcome. ...
CX8 (emphasis supplied).

6. It may be that, read literally, the ad does not express a preference for, or a limitation to, the types of persons or families that it mentions; however, the ordinary person reading the ad would conclude that the landlord prefers the types of persons mentioned. Indeed, two single mothers called and one of them asked whether a single mother with children could rent the condo.

7. The ad clearly is likely to have had a deterrent effect on some individuals or on some individuals with minor children.

8. The ad was "up" for 5 or 6 weeks. After the first time the condo was leased, another version of the ad was placed on Craigslist. The emphasized portion of the ad was removed after Poulakidas was notified of this complaint.

9. NFHA has a fixed staff and fixed resources that it can use in achieving its mission to eradicate housing discrimination in the nation. Time and money used in this case is a loss of time and money that could have been devoted to other efforts to ameliorate housing discrimination.

10. NFHA learned of the ad while conducting a nationwide internet search, using interns, for ads featuring suspect terminology, including the word "couples". This search yielded close to 8,000 ads that were at least potentially unlawfully discriminatory.

11. After those ads were located, senior staff at NFHA reviewed each ad to determine whether that ad violated federal, state, or local laws prohibiting housing discrimination.

12. In this case, it was determined that the ad was a violation and various efforts were required to identify Poulakidas as the landlord.

13. Having identified Poulakidas as the landlord, NFHA filed the complaint.

Thereafter, NFHA participated as required in the investigation, the attempted conciliation, and the administrative adjudication of this case.

14. NFHA's staff time, fringe benefits, and indirect overhead costs involved in getting this case to the point of the Hearing totaled \$2,648.17.

15. Houghtaling's expenses to attend the Hearing consisted of a round-trip plane ticket costing \$179.20, a \$184.44 hotel bill and 2 taxi cab rides totaling \$80.00, for a total of \$443.64.

16. Houghtaling expended 6 hours to confer with Staff Counsel and attend the Hearing. At her hourly rate of \$44.25, this totals \$265.50.

17. The expenses of NFHA, in time and money, attributable to this case, based upon the best evidence that is available, total \$3,633.62 and are a realistic measure of the damage to NFHA's mission caused by the ad.

18. NFHA does not seek attorney fees or the imposition of a civil penalty.

19. 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. NFHA and Poulakidas are each a "person" as that term is defined in the IFHA. IC 22-9.5-2-11.
3. The IFHA provides, in material part, that
"[a] person may not make, print, publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the ... rental of any dwelling that indicates any preference, limitation, or discrimination based on ... familial status..., or an intention to make such a preference, limitation, or discrimination.
IC 22-9.5-5-3.
4. That section of the IFHA is identical to a section of the federal Fair Housing Act, 42

U.S.C. § 3601(c). Therefore, cases construing the federal law are instructive in a determination of whether a violation of the IFHA occurred. *Zeller Elevator Company v. Slygh*, 796 N.E.2d 1198 (Ind. App. 2003), *Indiana Civil Rights Commission v. Culver Educational Foundation*, (Ind. 1989).

6. Under the federal statute, the test for whether a particular statement indicates a preference or limitation is not the motivation of the person placing the ad but whether the statement would indicate a preference or limitation to an ordinary listener or reader. *Tyus v. Urban Search Management*, 102 F.3d 256 (7th Cir. 1996); *Jancik v. Department of Housing & Urban Development*, 44 F.3d 553 (7th Cir. 1995), *Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898 (2nd Cir. 1993), *HOME v. The Cincinnati Enquirer*, 943 F.2d 644 (6th Cir. 1991), *Fenwick-Schafer v. Sterling Homes Corp.*, 774 F. Supp. 361 (D. Md. 1991), *Ragin v. The New York Times Co.*, 923 F.2d 995 (2nd Cir. 1991), *Spann v. Colonial Village, Inc.*, 899 F.2d 24 (D.C. Cir. 1990).

7. NFHA has proven by a preponderance of the evidence that the ad would, to the ordinary reader, indicate a preference or a limitation for tenants who are not either an individual or an individual with custody of minor children.

8. The ad was a violation of IC 22-9.5-5-3.

9. 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).

10. The actual damages incurred by NFHA are fairly measured by the expenses incurred by it in getting this case adjudicated.

11. The burden of proof on the issue of mitigation of damages is on the wrongdoer. *Colonial Discount Corp. v. Berkhardt*, 435 N.E.2d 65 (Ind. App. 1982).

12. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis for each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).

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

ORDER

1. Poulakidas shall cease and desist from posting or circulating any advertisements or other notices indicating a preference for couples to rent his property.
2. Poulakidas shall deliver to the ICRC a check payable to NFHA in the amount of \$3,633.62.
4. This Order shall take effect immediately after 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 under IC 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated: 23 March 2010



Robert D. Lange
Administrative Law Judge

To be served by first class mail this 23rd day of March, 2010 on the following parties:

National Fair Housing Alliance
1101 Vermont Avenue, NW, Suite 710
Washington, DC 20005

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Indiana Civil Rights Commission
c/o Tony A. Kirkland, Executive Director
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