

**STATE OF INDIANA
INDIANA CIVIL RIGHTS COMMISSION**

GREGORY L. WILSON, SR., in his official
capacity as EXECUTIVE DIRECTOR of the
INDIANA CIVIL RIGHTS COMMISSION,
Complainant,

vs.

DOUGLAS FURBEE,
Respondent.

ICRC NO.: HOha17121436

HUD No.: 05-18-0273-8

DATE FILED

MAY 25 2018

OFFICE OF THE
ADMINISTRATIVE JUDGE

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On April 30, 2018, Douglas Furbee as owner of Furbee Properties LLC (“Respondent”) by counsel Eric C Welch and Craig E. Beougher filed with the Indiana Civil Rights Commission (“Commission”) a Notice of Election of Forum Pursuant to IC § 22-9.5-6-12 (“Election”).

Having carefully considered the foregoing and being duly advised in the premises, the presiding Administrative Law Judge (“ALJ”) for the Indiana Civil Rights Commission (“ICRC”), Hon. John F. Burkhardt, HEREBY issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Shelley Linder (“Aggrieved Party”) filed the subject Complaint of Discrimination on December 28, 2017, naming the Respondent and alleging unlawful discrimination based on disability.

2. On April 10, 2018, the ICRC’s Director issued – and on April 13, 2018, served – a Notice of Finding and Issuance of Charge, finding “reasonable cause” to believe a discriminatory practice occurred.

3. On April 30, 2018, approximately seventeen (17) days after the date service was certified, Respondent filed the Election, serving it upon Aggrieved Party and the ICRC Docket Clerk within the Office of Hearings and Appeals.

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

CONCLUSIONS OF LAW

1. Article 2 of Title 910 of the Indiana Administrative Code “provides the ICRC’s interpretation of the coverage and application of IC 22-9.5...” and contains rules applying to “election of a civil action” pursuant to Ind. Code § 22-9.5-6-12, particularly at 910 Ind. Admin. Code 2-6-6.
2. “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 in this matter, “reasonable cause” was found; therefore, an opportunity to elect out of the administrative forum existed.
3. “[T]he notification of the election must be served on the docket clerk in the ICRC, the respondent, and the aggrieved party on whose behalf the complaint was filed.” 910 IAC 2-7-4(e)(1) (emphasis added). This service requirement reflects the federal regime with which the Indiana Fair Housing Act is “substantially equivalent” according to Ind. Code § 22-9.5-1-1(3); “in promulgating 24 CFR § 180.410(b), the Secretary who – by statute must be provided timely notice of the election – designated the Docket Clerk to receive the statutory notice of election.” *The Sec’y, United States Dep’t of Hous. & Urban Dev., on Behalf of Harold & Dolores Callander, Charging Party, & Harold & Dolores Callander, Complainant-Intervenors*, HUDALJ 11-M-070-FH-30, at *3 (Jan. 27, 2012).
4. “If the complainant, the respondent, or the aggrieved person on whose behalf a complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under IC 22-9.5-6-12, the administrative law judge shall dismiss the administrative proceeding.” 910 Ind. Admin. Code 2-7-9(a).
5. Respondent’s Election was timely filed and effective such that the Administrative Law Judge shall dismiss the administrative proceeding.
6. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

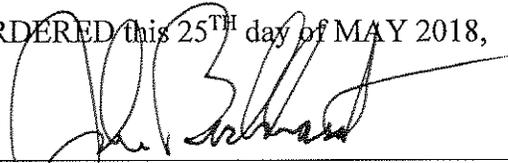
1. The administrative proceedings on ICRC NO. 17121436 are **DISMISSED**, with prejudice. 910 IAC 2-7-9(a).
2. This order becomes the final order disposing of the proceedings immediately upon affirmation under IC 4-21.5-3-29. IC 4-21.5-3-27(a)

Administrative review of these Findings of Fact, Conclusions of Law, and Order may be obtained by parties not in default by the filing of a writing identifying with reasonable particularity each basis of each objection within fifteen (15) days after service of this decision. IC 4-21.5-3-29(d). Subject to IC 4-21.5-3-1, the filing of a document in proceedings before the ICRC can be completed by mail, personal service, fax, or electronic mail to:

Docket Clerk
c/o Indiana Civil Rights Commission
100 North Senate Avenue, N300
Indianapolis, IN 46204
Fax: 317-232-6580 Email: aneromosele@icrc.in.gov

A party shall serve copies of any filed item on all parties. IC 4-21.5-3-17(c).

SO ORDERED this 25TH day of MAY 2018,



Hon. John F. Burkhardt
Administrative Law Judge
Indiana Civil Rights Commission
100 North Senate Avenue, Room N300
Indianapolis, IN 46204-2255
Anehita Eromosele, Admin Asst.
317/234-6358

Certificate of Service

Served this 25 day of May by United States Mail on the following:

Shelley Linder
5401 W. Keller Rd., Apt. 10
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Martin R. Shields
Martin Shields Law
212 South Main St.
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Furbee Properties II, LLC
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PO Box 340
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Eric C. Welch
Craig E. Beougher
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and personally served on the following:

Caroline A. Stephens Ryker, Esq.; ICRC Staff Attorney
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Gregory L. Wilson, Executive Director
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Anehit Eromosele, ICRC Docket Clerk