

**STATE OF INDIANA
INDIANA CIVIL RIGHTS COMMISSION**

ROBERT BROWNSON,
Complainant,

vs.

FINZEL'S MASTERTECH,
Respondent.

ICRC NO.: EMha18070434

EEOC No.: 24F-2018-01889

DATE FILED

DEC 23 2019

ICRC
COMMISSION

FINAL ORDER

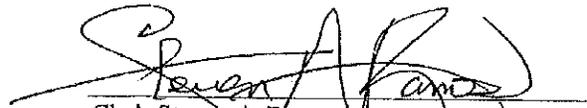
On October 11, 2019, Hon. Caroline A. Stephens Ryker, the Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") issued her Initial Findings of Fact, Conclusions of Law, and Order ("Order"). The Parties had opportunity to object to the Order, and neither Party objected to the Order. IC 4-21.5-3-29. After due consideration of the complete record in this matter, the Commission adopts the following and HEREBY Orders:

THE COMMISSION HEREBY ORDERS:

1. The findings of fact and conclusions of law as stated in the Order, a copy of which is attached hereto, are incorporated herein by reference. IC 4-21.5-3-28(g)(2).
2. The Order is AFFIRMED under IC 4-21.5-3-29 and hereby becomes the Final Order disposing of the proceedings. IC 4-21.5-3-27(a).

Either party to a dispute filed under IC 22-9 may, not more than thirty (30) days after the date of receipt of the Commission's final appealable order, appeal to the court of appeals under the same terms, conditions, and standards that govern appeals in ordinary civil actions. IC 22-9-8-1.

ORDERED by the Commission majority vote of
___ 5 ___ Commissioners on December 20, 2020


Chair Steven A. Ramos
Indiana Civil Rights Commission
100 North Senate Avenue, Room N300
Indianapolis, IN 46204-2255

Certificate of Service

Served this 23rd day of December in 2019 by United States Mail on the following:

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OCT 11 2019

OFFICE OF THE
ADMINISTRATIVE JUDGE

INITIAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On September 26, 2019, Respondent, by counsel, filed a Notice of Election under I.C. 22-9.5-6-12, the Indiana Fair Housing Act ("IFHA"). On October 3, 2019, Respondent and Complainant, by their respective counsels, filed a Notice of Election pursuant to the Indiana Civil Rights Law ("ICRL"). Having carefully considered the foregoing and being duly advised in the premises, the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") hereby issues the following findings of fact, conclusions of law, and order:

Findings of Fact

1. Complainant filed a Complaint of Discrimination with the ICRC on July 30, 2018, naming Respondent and alleging unlawful employment discrimination on the basis of disability.
2. On August 19, 2019, the ICRC issued – and on August 20, 2019 served – a Notice of Finding, in which the ICRC found “probable cause” to believe a discriminatory practice occurred in violation of the ICRL, IC 22-9, et. seq.
3. On September 26, 2019, Respondent filed a Notice of Election under the IFHA. Complainant has not alleged and the ICRC did not find a violation of the IFHA.
4. On October 3, 2019, Complainant and Respondent jointly filed a Notice of Election under the ICRL.
5. The October 3, 2019 Notice of Election was made on the form provided to the Parties by the ICRC. It was served on all Parties, the Docket Clerk, and the ICRC Staff Attorney.
6. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

Conclusions of Law

1. Indiana Code 22-9-1-16 allows Parties to "...elect to have the claims that are the basis for a finding of probable cause decided in a civil action..." IND. CODE § 22-9-1-16(a). According to the Notice of Finding, "probable cause" was found; therefore, an opportunity to elect out of the administrative forum exists under the ICRL with respect to the "probable cause" claim.

2. Although the September 26, 2019 Notice of Election claims to elect out of the administrative forum under Indiana Code 22-9.5-6-12, the IFHA does not apply to claims of employment discrimination made under the ICRL. *Compare* IND. CODE § 22-9.5-1-1 *with* IND. CODE § 22-9-1-2; *Compare* IND. CODE § 22-9.5-6-12 and IND. CODE § 22-9.5-6-13 *with* IND. CODE § 22-9-1-16 and IND. CODE § 22-9-1-17.

3. In order to make an election with respect to a finding of probable cause under the ICRL, "...both the respondent and the complainant must agree in writing to have the claims decided in a court of law" prior to the beginning of a Hearing on the merits. IND. CODE § 22-9-1-16; 910 IAC 1-3-6.

4. The election must be made on the form provided to the Parties by the ICRC and must be served on all Parties. IND. CODE § 22-9-1-16(a); 910 IAC 1-5-1(b).

5. "If all parties have filed a timely election to proceed in circuit or superior court, the commission shall dismiss the case, without prejudice. Such dismissal shall be sufficient to exhaust all administrative remedies in the case." 910 IAC 1-3-6.

6. On October 3, 2019, Respondent and Complainant jointly filed an election under the ICRL using the ICRC's form, which was served on all required Parties. Accordingly, the October 3, 2019 Notice of Election is effective, and the "probable cause" claim has been removed to the State Court forum.

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

Having carefully considered all of the foregoing and being duly advised in the premises, the undersigned ALJ **HEREBY FINDS AND ORDERS AS FOLLOWS:**

1. Respondent's September 26, 2019 Notice of Election is **DENIED**.
2. The Parties' October 3, 2019 Notice of Election is **GRANTED**. Complainant's July 30, 2018 complaint is dismissed, without prejudice.
3. All scheduled deadlines and events in the administrative forum are hereby **VACATED**.

Before this Initial Findings of Fact, Conclusions of Law, and Order can become a final order in this proceeding pursuant to Indiana Code 4-21.5-3-29, administrative review may be obtained by parties not in default by the filing of a writing that identifies with reasonable particularity the basis for each objection **within fifteen (15) days after the service of this Initial Findings of Fact, Conclusions of Law, and Order.** IND. CODE § 4-21.5-3-29(d). Subject to Indiana Code 4-21.5-3-1, the filing of a document in proceedings before the Commission can be completed by mail, personal service, fax, or electronic mail to:

Docket Clerk
C/o the Indiana Civil Rights Commission
100 North Senate Avenue, Room N300
Indianapolis, IN 46204
Fax: (317) 232-6580
Email: anermosele@icrc.in.gov

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

Default

A Party who fails to attend or participate in a prehearing conference, Hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed. IND. CODE § 4-21.5-3-18(d)(8).

Resolution of the Matter

The Parties must notify the Presiding Officer of settlement. If a joint motion to dismiss or request for withdrawal is made after the case has been set for Hearing, the written consent of a majority of the Commissioners shall be obtained. 910 IAC 1-2-6. Notification of a settlement will not result in the closure of the complaint or staying of deadlines unless accompanied by a written motion for dismissal, withdrawal, or staying of deadlines.

Filing

Subject to IND. CODE § 4-21.5-3-1, the filing of a document in proceedings before the ICRC's Administrative Law Judge can be completed by mail, personal service, fax, or electronic mail to:

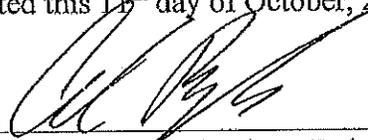
Docket Clerk
c/o Indiana Civil Rights Commission
100 North Senate Avenue, N300
Indianapolis, IN 46204
Fax: 317-232-6580
Email: anermosele@icrc.in.gov

A party shall serve copies of any filed item on all Parties. IND. CODE § 4-21.5-3-17(c).

Contact Information

The name, official title, and mailing address of the Presiding Officer and a telephone number through which information concerning schedules and procedures may be obtained, is included below. **However, all *ex parte* contacts –direct or indirect communications regarding any issue in the pending proceeding without notice and opportunity for all Parties to participate in the communication – are forbidden by law.** Repeat: a Party shall serve copies of any filed item on **all Parties. IND. CODE § 4-21.5-3-17(c).** The attached Certificate of Service 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(d)(1).

Dated this 11th day of October, 2019



Hon. Caroline A. Stephens Ryker
Administrative Law Judge
Indiana Civil Rights Commission
100 North Senate Avenue, Room N300
Indianapolis, IN 46204-2255
Anehitia Eromosele, Docket Clerk
317/234-6358

Certificate of Service

Served this ___ 11th ___ day of _October_ in ___ 2019 ___ by United States Mail on the following:

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