

JAN 28 2014

STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION

INDIANA STATE  
CIVIL RIGHTS COMMISSION

S'NC'R'TY DOZIER,

Complainant,

vs.

R. BROWN AND ASSOCIATES, LLC CORP.,

Respondent.

) Docket No.: EMse12051206

) EEOC No.: 24F-2012-00580

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On January 10, 2014, Noell F. Allen Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") entered her 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 this 24<sup>th</sup> day of January, 2014

To be served by Certified Mail on the following parties:

S'nc'r'ty Dozier  
9002 Middleground Road, Lot #23, Apt. D  
Savannah, GA 31406

R. Brown and Associates, LLC  
P.O. Box 1002  
Crawfordsville, IN 47933

And to be personally served on the following attorney of record:

Frederick S. Bremer, Esq., Staff Attorney  
Indiana Civil Rights Commission  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

JAN 10 2014

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S'NC'R'TY DOZIER,

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Docket No.: EMse12051206

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

This cause came on to be heard November 4, 2013 by the undersigned Administrative Law Judge ("ALJ") appointed by the Indiana Civil Rights Commission ("ICRC") with respect to the damages sustained by S'nc'r'ty Dozier ("Complainant") following the entry on July 7, 2011 of an order by default in this case against Respondent, R. Brown and Associates, LLC Corp. The Complainant, as well as Frederick S. Bremer, ICRC Staff counsel, and the undersigned participated in the hearing by way of a conference call during which every participant could hear all other participants. No one appeared for the Respondent. In reliance on the evidence introduced at the said hearing in conjunction with the matters, evidentiary and otherwise, concluded by the default order, the undersigned Administrative Law Judge appointed by the Indiana Civil Rights Commission to hear this matter, recommends that the Commission enter the following findings of fact, conclusions of law and order.

**FINDINGS OF FACT**

1. Complainant has been, at all material times, an adult woman residing in the State of Indiana.
2. On July 9, 2013, the ALJ issued a Notice of Initial Pre-Hearing Conference to be held on July 25, 2013 at 10:00 A.M. Eastern Time. The ALJ rescheduled the Initial Pre-Hearing Conference for August 9, 2013 after Mr. Brown informed the ALJ he was on medical leave. (Order Rescheduling Initial Pre-Hearing Conference, July 31, 2013)

3. No one appeared on the Respondent's behalf at the Initial Pre-Hearing Conference on August 9, 2013.

4. The ALJ scheduled a Pre-Hearing Conference for August 23, 2013. While Respondent appeared by principal, Ron Brown, the Respondent did not have legal representation present as required.

5. Another prehearing conference was scheduled before the ALJ on September 23, 2013. Mr. Brown did not have legal counsel present to represent the Respondent's interest. Mr. Brown advised the ALJ the Respondent would have counsel by October 3, 2013.

6. As of October 9, 2013, the Respondent has not informed the ALJ of its legal representation.

7. On October 9, 2013, the ALJ entered and served her Notice of Proposed Default Order ("NPDO"). The NPDO advised R Brown and Associates that it could file a written motion requesting that the proposed default order not be imposed and stating the grounds upon which it relied within seven (7) days after service of the NPDO, NPDO, ¶4. The NPDO also advised that if no such motion was filed, the ALJ MUST enter the proposed default order under IC 4-21.5-3-24(c). NPDO, ¶5.

8. R Brown and Associates did not file a written motion requesting that the proposed default order not be imposed.

9. The ALJ entered an Order of Default pursuant to IC 4-21.5-3-24(a)(2) and 910 IAC 1-6-1.

10. Respondent hired Complainant on July 21, 2011 as a part-time Human Resource Director. The Complainant earned \$13.46 per hour. A little over four months later, On December 1, 2011, Complainant began a full-time position with the Respondent working an average of 35 hours per week.

- a. The week of December 1, 2011, the Complainant worked 29 hours.
- b. The week of December 8, 2011, the Complainant worked 54 hours.
- c. The week of December 15, 2011, the Complainant worked 41 hours.
- d. From December 22 to December 25, 2011, the Complainant worked 16 hours.
- e. The Complainant did not work December 26, 2011 through January 6, 2012.
- f. The week of January 9, 2012, the Complainant worked 29 hours.
- g. The week of January 16, 2012, the Complainant worked 56 hours.

- h. The week of January 23, 2012, the Complainant worked 41 hours.
- i. The week of January 30, 2012, the Complainant worked 17 hours.

11. Respondent unlawfully discharged the Complainant on January 31, 2012 on the basis of sex, a fact which has been concluded by operation of the default of the Respondents on the allegations of the Complainant's complaint.

12. Following Respondent's termination of Complainant's employment on January 31, 2012, Complainant has been continuously unemployed up to July 29, 2013. The Complainant was unemployed for 77 weeks. The Complainant's loss wages up to this point totaled \$36,274.70.

- a. At \$13.46 per hour, 35 hours per week for 77 weeks ( $\$13.46 \times 35 \times 77$ ) equals \$36,274.70.

13. On July 29, 2013, Complainant secured employment at Sheyenne Care Center in Valley City, North Dakota. Complainant earned \$11.77 per hour for 32 hours per week. As of November 1, 2013, the Complainant earned a total of \$3,153.67 from Sheyenne Care Center.

14. If Complainant had continued to work for the Respondent, she would have earned \$42.07 more per week than with her current employer. ( $\$13.46 - 11.77 = 1.69 + (13.46 \times 3 \text{ hours}) = \$42.07$ ). From July 29, 2013 until present, the Complainant's loss wages equals \$1,051.75 ( $\$42.07 \times 25 \text{ weeks}$ ).

15. The Complainant's total loss wages from the date of termination to present is \$37,326.45.

- a.  $\$1,051.75 + \$36,274.70 = \$37,326.45$ .

16. Complainant has requested an award of wages from the weeks she worked in January 2013 but was not compensated from Respondent. However, the ICRC does not have jurisdiction to adjudicate such claims. Under Ind. Code §22-2-9, the Commission of Labor has jurisdiction over such claims.

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

### CONCLUSIONS OF LAW

1. The Indiana Civil Rights Commission has jurisdiction to entertain and adjudicate the Complainant's complaint in this cause.

2. Complainant and Respondent are each a "person" as that term is defined in section 3(a) of the Indiana Civil Rights Law, IC 22-9-1-1 *et. seq.* ("the ICRL"). IC 22-9-1-3(a).

3. Respondent is an "employer". IC 22-9-1-3(h),(i).

4. IC 22-9-1-6 provides, in material part as follows:

Sec. 6. The commission shall have the following powers and duties:

(k)(1) To state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, to 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, however, this specific provision when supplied to orders pertaining in employment shall include only wages, salary, or commissions;

5. By operation of law and as more thoroughly appears in the Order by Default in this case, the Respondent engaged in an unlawful discriminatory practice, to-wit: the termination of the Complainant's employment on the basis of sex.

6. Complainant has proven out of pocket losses that were the proximate result of the proven unlawful discriminatory practice.

7. The Complainant is entitled to have judgment of the Respondent in the amount of the wages she lost as a consequence of her unlawful termination that totals \$37,326.45 calculated on the basis of the foregoing evidentiary findings of fact.

8. Administrative review of this proposed decision may be obtained by parties who are not in default by the filing of a writing specifying with reasonable particularity each basis for each objection within fifteen (15) days of after service of this proposed decision. IC 4-21.5-3-29(d).

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

### **ORDER**

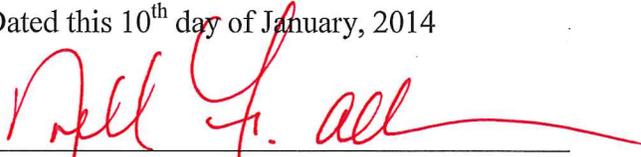
Based upon the foregoing findings of fact and conclusions of law, it is hereby ordered that:

1. The Complainant have judgment of Respondent, R. Brown And Associates, LLC in the sum of thirty-seven thousand, three hundred twenty-six dollars and forty-five cents (\$37,326.45), and that the Respondent deliver to the Complainant a check made payable to the Indiana Civil Rights Commission for the amount of this judgment less all lawful payroll withholding taxes applicable thereto.

2. That the Respondent cease and desist from all discriminatory practices in employment made unlawful by the Indiana Civil Rights Law and Title VII of the Civil Rights Act of 1964 as amended.

3. This Order shall take effect immediately after it is approved and signed by a majority of the members of ICRC, unless it is modified by ICRC pursuant to IC 4-21.5-3-31(a), stayed by ICRC under 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated this 10<sup>th</sup> day of January, 2014

  
\_\_\_\_\_  
Hon. Noell F. Allen  
Administrative Law Judge  
Indiana Civil Rights Commission

To be served by Certified Mail on the following parties:

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