

**STATE OF INDIANA
CIVIL RIGHTS COMMISSION**

JOSE GARCIA,

Complainant,

vs.

THE GARDEN TABLE,

Respondent.

) ICRC No. EMno17051098

) EEOC No. 24F-2017-01582

DATE FILED

DEC 23 2019

ICRC
COMMISSION

FINAL ORDER

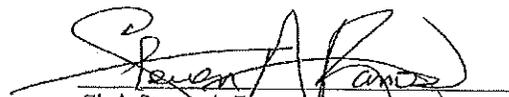
On October 11, 2019, Hon. Caroline A. Stephens Ryker, the Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") issued her Initial Findings of Fact, Conclusions of Law, and Order ("Order"). The Parties had opportunity to object to the Order, and neither Party objected to the 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, 2019 by United States Mail on the following:

Jose Garcia
3355 North Post Road
Indianapolis, IN 46226
(Also served by publication on December 26, 2019)

Garden Table, LLC
Attn: Jessie Harden & Greg Harden
4906 Guilford Avenue
Indianapolis, IN 46205-1138

The Garden Table
342 Mass Avenue #100
Indianapolis, IN 46204

and personally served on the following attorney of record:

Frederick S. Bremer, Esq.; ICRC Staff Attorney
Indiana Civil Rights Commission
Indiana Government Center North
100 North Senate Avenue, Room N300
Indianapolis, IN 46204-2255
Telephone: (317)232-2634
Fax: (317)232-6580
fbremer@icrc.in.gov



5. Former ALJ Burkhardt set a deadline of January 12, 2018 for an ICRC Staff Attorney to file a notice of intent concerning ICRC's representation of Complainant; an appearance for an ICRC Staff Attorney was not filed until January 24, 2019.
6. On November 15, 2019, the undersigned ALJ entered a Proposed Default Order in which she proposed to dismiss this matter on the following grounds:
 - a. Complainant failed to contact the ICRC after receiving notice of a cause finding;
 - b. Complainant failed to contact the assigned ICRC Staff Attorney;
 - c. Complainant failed to provide current and updated contact information to the Commission; and
 - d. Complainant failed to prosecute and pursue his claim before the Commission for more than one (1) year.
7. The Proposed Default Order was served by publication to Complainant on November 18, 2019.
8. In the Proposed Default Order, Complainant was notified of his opportunity to file a written motion under IAOPA. He was additionally advised that if a written motion was filed, the ALJ could either enter or refuse to enter a default order and that if no written motion was filed, the ALJ would enter a default order.
9. Complainant did not file any such motion.
10. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

CONCLUSIONS OF LAW

1. The ICRC has jurisdiction over Complainant's employment discrimination complaint and over the Parties, who are an employer and an employee. IC 22-9-1-2; IC 22-9-1-3(h); IC 22-9-1-3(i).
2. In accordance with the Indiana Administrative Code, "[e]ach [C]omplainant has the duty to diligently prosecute his or her case before the [C]ommission..." 910 IAC 1-16-1.
Specifically, Complainants must:
 - a. "...promptly notify the [C]ommission of any change in address or telephone number...;"
 - b. "...claim any and all certified or registered mail from the [C]ommission...;" and

- c. "...respond, in a timely manner, to any and all requests by members of the [C]ommission's staff that are reasonably necessary to the conduct of an investigation by the [C]ommission." *Id.*
3. If a Complainant fails to meet his or her obligations, then the Complainant's complaint may be dismissed. 910 IAC 1-16-1.
 4. Under IAOPA, a complaint may be dismissed when a Complainant has failed to "...take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action..." IC 4-21.5-3-24(a).
 5. On November 15, 2019, the undersigned ALJ concluded that Complainant failed to meet his obligations under the Indiana Administrative Code for over one (1) year, and accordingly, she issued a Proposed Default Order, which was served on Complainant by publication on November 18, 2019.
 6. Any written motion opposing the entry of the Proposed Default Order was due November 25, 2019, and Complainant did not file any such written motion by the deadline.
 7. Accordingly, the ALJ is required to enter this default order, and this matter is dismissed. IC 4-21.5-3-24(c); 910 IAC 1-16-1.
 8. Dismissal of this matter is appropriate under 910 IAC 1-16-1.
 9. Dismissal of this matter is appropriate under IC 4-21.5-3-24(a)(4).
 10. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

11. Complainant's May 23, 2017 complaint is DISMISSED, with prejudice.
12. This order becomes a final order disposing of the proceedings immediately upon affirmation under Indiana Code 4-21.5-3-29. IC 4-21.5-3-27(a).

Administrative Review

This Order is not final until confirmed by the Commission. IC 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 Order. IC 4-21.5-3-29(d). Subject to Indiana Code 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 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. IC 4-21.5-3-17(c).

Dated this 2nd day of December, 2019



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

Certificate of Service

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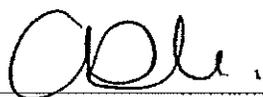
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Docket Clerk
Anehit Eromosele