

**STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION**

VICTORIA HARRIS,  
Complainant,

vs.

LIFETIME PROPERTIES, INC.,  
Respondent.

ICRC No.: EMra16021034

DATE FILED

**MAR 15 2019**

ICRC  
COMMISSION

**FINAL ORDER**

On February 8, 2019, Hon. Caroline A. Stephens Ryker, 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; neither party objected. With no objection or intent to review on record, the Commission shall affirm the Order. IC 4-21.5-3-29. After consideration of the record in this matter and the Order,

**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 March 15, 2019



Adrienne Slash, Chair

Indiana Civil Rights Commission

Certificate of Service

Served by Certified Mail on the Following on this 15 day of March:

Victoria Harris  
2106 Costello Dr.  
Anderson, IN 46011

Lifetime Properties, Inc.  
1815 North Meridian Street #301  
Indianapolis, IN 46202  
(also served by publication, to be published on February 12, 2019)

and personally served on the following:

Fred S. Bremer, Esq.; Staff Counsel  
Indiana Civil Rights Commission  
Indiana Government Center North  
100 North Senate Avenue, Room N300  
Indianapolis, IN 46204-2255  
[fbremer@icrc.in.gov](mailto:fbremer@icrc.in.gov)

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Docket Clerk

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Complainant,

vs.

LIFETIME PROPERTIES, INC.,  
Respondent.

ICRC No.: EMra16021034

DATE FILED  
FEB 08 2019  
OFFICE OF THE  
ADMINISTRATIVE JUDGE

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

On December 18, 2018, the undersigned Administrative Law Judge (ALJ) for the Indiana Civil Rights Commission conducted a hearing on damages. The Complainant, Victoria Harris, was present in person along with Attorney Frederick S. Bremer, ICRC Staff Counsel appearing in the public interest on behalf of Complainant. Attorney Mario Garcia appeared personally for the limited purpose of withdrawing his appearance on behalf of Respondent. Respondent Lifetime Properties, Inc. did not appear in person or by counsel.

Having carefully considered the foregoing and being duly advised in the premises, the ALJ finds in favor of the Complainant and proposes that the Commission enter the following as findings of fact, conclusions of law, and order.

**FINDINGS OF FACT**

1. Complainant is an African American woman who resided and worked in Indiana at all times relevant to her complaint. (Complaint, Harris v. Lifetime Properties, Inc., ICRC No.: EMra16021034).
2. Respondent is a property management company based in Indiana. *Id.*
3. Prior to February 26, 2016, Complainant was Respondent's employee. *Id.*
4. On February 26, 2016, Respondent terminated Complainant's employment, and Complainant alleges that she was terminated because of her race. *Id.*

5. At the time that Complainant ceased working for Respondent, Complainant was making \$18.00 an hour and working 40.00 hours a week. Accordingly, her monthly income was approximately \$2,880.00. (Transcript of Record at 15, Harris v. Lifetime Properties, Inc., EMra16021034).
6. Between February 26, 2016 and the date of the hearing, Complainant held four different jobs:
  - a. Employee at Anderson Housing Authority where she made \$5,040.00<sup>1</sup>;
  - b. Employee at Harvey where she made \$4,480.00<sup>2</sup>;
  - c. Employee at Express Staffing where she made \$25,355.23<sup>3</sup>; and
  - d. Self-employed cosmetologist where she made \$8,500.00<sup>4</sup>.

*Id.* at 18-22.
7. At the time of the Hearing, Complainant was employed at Anderson Housing Authority in a position in which she started in October, making around \$2,000.00 monthly. *Id.* at 18.
8. As stated in her February 26, 2016 complaint, Complainant is seeking all available remedies under the Indiana Civil Rights Law, IC 22-9. (Complaint, Harris v. Lifetime Properties, Inc., ICRC No.: EMra16021034).
9. Respondent is currently defaulted due to the following:
  - a. On November 14, 2018, the undersigned ALJ properly served the parties with a Notice of Hearing, scheduling a hearing on December 18, 2018 at 11:30 AM at the Indiana Civil Rights Commission's office.
  - b. On December 18, 2018, Harris and Attorney Bremer were present for the hearing.
  - c. Respondent's attorney of record was present and moved to withdrawal his appearance, which was granted.
  - d. Accordingly, Respondent was not present in-person or by counsel.
  - e. Complainant, by Attorney Bremer, moved for default to be entered based on Respondent's failure to appear for the hearing. 910 IAC 1-5-1(f).

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<sup>1</sup> Complainant worked for Anderson Housing Authority from October of 2018 to the date of the hearing.

<sup>2</sup> Complainant worked for Harvey in 2018.

<sup>3</sup> Complainant testified that she worked for Express Staffing three times, during which she made varying amounts of income. The above number is the total of all of her income: \$4,858.00 + \$4,480.00 + \$15,120.00 + \$897.23 = \$25,355.23. Complainant worked for Express in 2018, 2017, and 2016.

<sup>4</sup> Complainant was self-employed in 2016.

- f. In the Notice of Hearing, all parties were informed that failure to attend the hearing could result in default.
  - g. On December 18, 2018, the undersigned ALJ entered a Notice of Proposed Default Order that stated that a Default Order would be entered if Respondent did not file a written motion explaining why Default should not be entered within seven days of service of the Notice of Proposed Default. Specifically, ALJ Stephens Ryker advised that “[i]f no such written motion is filed, ALJ Stephens Ryker MUST enter the proposed default order.” The Notice of Proposed Default Order was sent to Respondent’s last known address.
  - h. Respondent did not provide any written motion. However, the mailed Notice was returned to the ICRC on December 28, 2018.
  - i. On January 12, 2019, the ALJ served the Notice of Proposed Default in the Indianapolis Star, again advising that the ALJ must enter a Default Order if no response was filed within seven (7) days and that the ALJ may enter the Default Order if a response is timely filed.
  - j. Again, Respondent did not provide any written motion.
10. Default is appropriate under IC 4-21.5-3-24(a)(3).
11. Default is appropriate under 910 IAC 1-6-1.
12. The facts alleged in Complainant’s Complaint of discrimination, in the Indiana Civil Rights Commission’s Notice of Finding, and in Complainant’s sworn testimony at the Hearing are deemed admitted, and no additional evidence is to be considered on the issue of liability. Accordingly, Complainant was subjected to disparate treatment on the basis of race when her employment was terminated for a pretextual reason after she was subjected to racial statements during her employment. (Complaint, Harris v. Lifetime Properties, Inc., ICRC No.: EMra16021034).
13. Any Conclusions of Law which should be deemed a Finding of Fact is hereby adopted as such.

### CONCLUSIONS OF LAW

1. The Indiana Civil Rights Commission has jurisdiction over “sufficiently complete” complaints of discrimination in employment on the basis of race. IC 22-9-1-2; IC 22-9-1-6(d); IC 22-9-1-3(o); IC 22-9-1-3(p).
2. Complainant and Respondents are persons subject to the Indiana Civil Rights Law because Complainant is an employee and Respondent is an employer. IC 22-9-1-3(a),(h), and (i).
3. Discriminatory practices includes practices that exclude “...a person from equal opportunities because of race...” IC 22-9-1-3(l). Importantly, “[e]very discriminatory practice relating to ... employment... shall be considered unlawful unless it is specifically exempted by this chapter.” *Id.*
4. If after a hearing the Commission determines that an employer has committed an unlawful discriminatory practice, the Commission shall order the employer to “cease and desist from the unlawful discriminatory practice” and to take “affirmative action as will effectuate the purposes of [IC 22-9-1]” and may order the employer to “... to restore complainant's losses incurred as a result of discriminatory treatment, as the commission may deem necessary to assure justice...” In employment cases, restoration of losses is limited to “...wages, salary, or commissions...” The Commission may also order the employer to post a “...notice setting forth the public policy of Indiana concerning civil rights and respondent's compliance with ...” it, to provide “...proof of compliance... at periodic intervals,” and if relevant, “...to show cause to [a] licensing agency why the [Respondent's] license should not be revoked or suspended.” IC 22-9-1-6(j).
5. By operation of law, Respondent unlawfully discriminated against Complainant when it terminated Complainant's employment based on her race. IC 4-21.5-3-24.
6. Complainant requested that an eviction be expunged from her record, but the Indiana Civil Rights Commission does not have jurisdiction over eviction proceedings in state court. *Fishers Adolescent Catholic Enrichment Soc'y, Inc. v. Elizabeth Bridgewater ex rel. Bridgewater*, 23 N.E.3d 1, 3 (Ind. 2015) (“The Legislature may delegate authority to an administrative agency through a valid statute that sets out a reasonable standard to guide that discretion, but the agency exercises such authority subject to the confines of its enabling

statute.”); IC 22-9-6; (Transcript of Record at 23-24, *Harris v. Lifetime Properties, Inc.*, EMra16021034).

7. Complainant has proven that she lost wages as a proximate result of Respondent’s unlawful discrimination.
8. Complainant is entitled to wages that were lost as a direct result of Respondent’s unlawful discrimination, with deductions made for any earnings Complainant made during the relevant time frame. *Knox Cty. Ass’n for Retarded Citizens, Inc. v. Davis*, 100 N.E.3d 291, 309 (Ind. Ct. App.), *aff’d on reh’g*, 107 N.E.3d 1111 (Ind. Ct. App. 2018). Complainant’s wages are calculated to the date of the hearing. *Filter Specialists, Inc. v. Brooks*, 906 N.E.2d 835, 850 (Ind. 2009).
9. Complainant’s lost wages resulting from Respondent’s unlawful discrimination, to which she is entitled, are \$62,464.77<sup>5</sup>, as calculated below:
  - a. 146 weeks and 5 days occurred between the date that Complainant was terminated (February 26, 2016) and the date of the Hearing (December 18, 2018).
  - b. At \$18.00 an hour and working 40 hours a week, Complainant’s gross weekly pay while working for Respondent was \$720.00.
  - c. Complainant’s lost wages are \$105,840.00, which is a result of multiplying her weekly gross pay (\$720.00) by the number of weeks for which she has lost wages (147).<sup>6</sup>
  - d. Between February 26, 2016 and December 18, 2018, Complainant made \$43,375.23 from other employment: \$5,040.00 + \$4,480.00 + \$25,355.23 + \$8,500.00. Accordingly, her final lost wages are \$62,464.77<sup>7</sup>, which was obtained by subtracting \$43,375.23 from \$105,840.00.

<sup>5</sup> All final values are rounded to the second decimal place.

<sup>6</sup> Complainant testified that her total lost wages are \$115,920.00, which was calculated based on a three year time period. However, not quite three years have passed since Complainant’s employment was terminated. (Transcript of Record at 18 and 24, *Harris v. Lifetime Properties, Inc.*, EMra16021034). The weekly total used is 147, which represents the complete 146 weeks and one additional business week, which is 5 days.

<sup>7</sup> Complainant testified that her total losses, after subtracting her wages earned from other employment, were \$72,544.77. *Id.* at 22-23. Complainant arrived at this amount by subtracting her earned wages from her lost wages, calculated over three years: \$115,920.00-\$43,373.23=\$72,544.77. The difference between the amount reflected in this order and the amount to which Complainant testified is reflective of the difference in using three years as opposed to 147 weeks.

$$\$115,920.00 - 105,840.00 = \$10,080.00$$

$$\$72,544.77 - \$62,464.77 = \$10,080.00$$

10. Under the Indiana Civil Rights Law, the ICRC can award pre-judgment interest to compensate Complainant for the “loss of the use of the money.” *Wilson v. AM Gen. Corp.*, 979 F. Supp. 800, 802 (N.D. Ind. 1997); *Knox Cty. Ass'n for Retarded Citizens, Inc. v. Davis*, 100 N.E.3d 291, 311 (Ind. Ct. App.), *aff'd on reh'g*, 107 N.E.3d 1111 (Ind. Ct. App. 2018). Prejudgment interest is calculated from the date of the dismissal to the date of the issuance of this order. *Id.* at 312. The Indiana Court of Appeals has considered pre-judgment interest to be calculated in line with post-judgment interest under 28 U.S.C.A. § 1961, which includes the averaging of the 1-year constant maturity Treasury yield's interest as published by the Board of Governors of the Federal Reserve System over the week before the issuance of this order. *Id.*

- a. The week of January 28, 2019 through February 1, 2019, the interest rates for a 1-year constant maturity Treasury yield's interest as published by the Board of Governors of the Federal Reserve System were: 2.60, 2.60, 2.57, 2.55, and 2.56. To obtain the average, the combined total (12.88) is divided by 5, resulting in a total of: 2.576<sup>8</sup>
- b. Prejudgment interest is calculated using the following formula that calculates the damages daily and compounds the interest yearly: damage awarded X [one + (interest as a decimal/number of times interest is compounded within one year)] to the power of (the number of times interest is compounded within one year X the number of years) = total damages. For the present case, the calculations are shown below:

- i.  $\$62,464.77 \times [1 + (0.02576/1)]^{(1 \times 2.95)} = \$67,331.79$

- ii. Total Prejudgment Interest is \$4,867.02<sup>9</sup>.

11. Administrative review of this initial 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 after service of this initial decision. IC 4-21.5-3-29(d).

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<sup>8</sup> Interests obtained from <https://www.federalreserve.gov/releases/h15/>.

<sup>9</sup> The prejudgment interest is calculated by subtracting the damages award (\$62,464.77) from the final amount computed with interest (\$67,331.79)

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

### ORDER

1. Respondent shall cease and desist from terminating its qualified employees based on race.
2. Respondent shall deliver to the Indiana Civil Rights Commission's Director of Alternative Dispute Resolution and Compliance, as escrow agent, a check made payable to Victoria Harris for the amount of her lost wages and pre-judgment interest: sixty-seven thousand three hundred thirty-one dollars and seventy-nine cents (\$67,331.79). The Indiana Civil Rights Commission is located at 100 North Senate Avenue, Room N300, Indianapolis, IN 46204, and the office can be contacted at (317) 232-2600. The Indiana Civil Rights Commission shall deliver the check to Victoria Harris within ten (10) business days of its receipt.
3. If Respondent is currently operating, Respondent shall take the following steps:
  - a. Within 30 days of the issuance of a final order, draft, implement, and distribute to each employee a non-discrimination and equal employment opportunity policy;
  - b. Within 30 days of the issuance of a final order, maintain and post statements of a non-discrimination and equal employment opportunity policy in a public area within Respondent's business location;
  - c. Within 180 days of the issuance of a final order, each of Respondent's managers and any employee named in the Indiana Civil Rights Commission's Notice of Finding shall attend and successfully complete an employment discrimination training that has been previously approved by the Indiana Civil Rights Commission's Executive Direction.
4. Within thirty-five (35) days of the issuance of a final order, Respondent shall report to the Indiana Civil Rights Commission's Director of Alternative Dispute Resolution and Compliance the completion of paragraphs 3(a) and 3(b).
5. Within ninety (90) days of the issuance of a final order, Respondent shall submit a proposed training that will satisfy paragraph 3(c) to the Indiana Civil Rights Commission's Director of Alternative Dispute Resolution and Compliance for the Executive Director's review.
6. In the event that Respondent is not operating at the time that a final order is issued and Respondent recommences operations within the next two (2) years, Respondent shall take all

actions required in paragraphs 3, 4, and 5, with deadlines commencing from the date that Respondent recommences operation.

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

SO ORDERED this 8th day of February, 2019



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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

Served by Certified Mail on the Following on this 8 day of February :

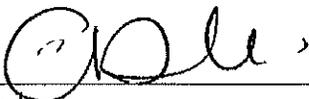
Victoria Harris  
2106 Costello Dr.  
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Docket Clerk