

**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.

BETTY JO WILKENING,

Respondent.

) Docket No.: HOfs17010013

) HUD No.: 05-17-8477-8

DATE FILED

**APR 24 2019**

ICRC  
COMMISSION

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

On August 11, 2017, Respondent Mishawaka Housing Authority, by counsel, filed with the Indiana Civil Rights Commission (“Commission”) a “Notice of Election of Forum” pursuant to the Indiana Fair Housing Act (“IFHA”), Ind. Code § 22-9.5-6-12. Having carefully considered the foregoing and being duly advised in the premises, Commission of the Indiana Civil Rights Commission HEREBY issues the following final findings of fact, conclusions of law, and order:

**FINDINGS OF FACT**

1. Darrin Bowman (“Aggrieved Party”) filed a Complaint of Discrimination with the ICRC on January 18, 2017, naming the Respondent and alleging unlawful discrimination based on disability.
2. On July 21, 2017, the ICRC issued – and on the same day served – a Notice of Finding and Issuance of Charge, finding “reasonable cause” to believe a discriminatory practice occurred.
3. On August 10, 2017, approximately twenty (20) days after the date service was certified, Respondent filed the IFHA Election, serving it upon the Office of Hearings and Appeals and the assigned Staff Attorney. Although the aggrieved party was not served, Respondent represented that service was completed via fax to the named parties on the certificate of service in consultation with the ICRC Staff Attorney. Complainant and the aggrieved party have not alleged that service was deficient or opposed Respondent’s Notice of Election of Forum. Furthermore, the case was filed in state court, has been litigated, and currently has dates set for a Jury Trial.

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. 910 IAC 2-1-1; 910 IAC 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, “reasonable cause” was found; therefore, an opportunity to elect out of the administrative forum existed.

3. “The notice of the election must be filed with the docket clerk of the ICRC and serviced on the director, the respondent, and the aggrieved persons on whose behalf the complaint was filed.” 910 IAC 2-6-6(h)(2).

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 IAC 2-7-9(a).

5. An election must be made under the IFHA within “twenty (20) days after the date of receipt by the electing person...” Ind. Code § 22-9.5-6-12(b).

6. Service was effective as indicated by Complainant’s and the aggrieved person’s acceptance of the Notice of Election of Forum by fax on the named parties and by the continued litigation conducted in state court.

7. Respondent’s IFHA Election was timely filed and effective such that the Commission shall dismiss the administrative proceeding.

### ORDER

1. The administrative proceedings on ICRC NO. HOha17111370 are **DISMISSED**. 910 IAC 2-7-9(a).

2. This order is a final order issued by the Commission of the ICRC disposing of the proceedings immediately. Ind. Code § 4-21.5-3-28.

Either party to a dispute filed under IC 22-9 or IC 22-9.5 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.

Ind. Code § 22-9-8-1; Ind. Code § 22-9.5-11-1.

ORDERED by the Commission by majority vote of

4 Commissioners on the 22<sup>nd</sup> day of April, 2019, and

signed this 22 day of April, 2019



Indiana Civil Rights Commission Chair,  
Commissioner Slash

Certificate of Service

Served this 24 day of April by United States Mail on the following:

Darrin Bowman  
10001 West 113<sup>th</sup> Avenue  
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Betty Jo Wilkening  
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and to be personally served on the following attorney of record:

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Anehitia Eromosele, ICRC Docket Clerk