

**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.

SHEFFIELD WOODS APARTMENTS LLC.
Respondent.

ICRC NO.: HOha18040235

HUD No.:05-18-2205-8

DATE FILED

APR 23 2019

ICRC
COMMISSION

FINAL ORDER

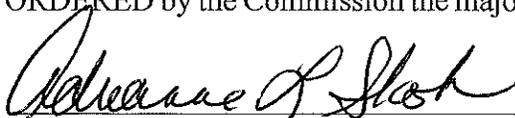
On March 28, 2019, Hon. Caroline A. Stephens Ryker, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") issued her Initial Findings of Fact, Conclusions of Law, and Order ("Order"). The parties had opportunity to object to the Order; neither party objected. With no objection or intent to review on record, the Commission shall affirm the Order. IC 4-21.5-3-29(e). 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 the majority vote of 5 Commissioners on April 22nd, 2019

 , Adrienne Slash, Chair

Certificate of Service

Served this 23 day of April by United States Mail on the following:

Michele Martin
3736 Hoovingham Drive #F
Indianapolis, IN 46226

Sheffield Woods Apartments LLC
3775 Allerton Place
Indianapolis, IN 46226

Cynthia Ball
Amy Sexton
Landman & Beatty
9100 Keystone Crossing, Suite 870
P O Box 40960
Indianapolis, IN 46240
cball@landmanbeatty.com
asexton@landmanbeatty.com

Kanette Dinkins
10267 John Jay Drive, Box 221
Indianapolis, IN 46235

Sheffield Woods, L.P.
150 West Market Street, Suite 800
Indianapolis, IN 46204

Moynahan Williams, Inc.
509 National Avenue
Indianapolis, IN 46227

and personally served on the following attorney of record:

Michael C. Healy, Esq.; Staff Counsel
Indiana Civil Rights Commission
Indiana Government Center North
100 North Senate Avenue, Room N300
Indianapolis, IN 46204-2255
Telephone: (317)232-2632
Fax: (317)232-6580
mhealy@icrc.in.gov

Greg Wilson, Executive Director
Indiana Civil Rights Commission
Indiana Government Center North
100 North Senate Avenue, Room N300
Indianapolis, IN 46204-2255

A handwritten signature in black ink, appearing to read "Anehitia Eromosele", written over a horizontal line.

Docket Clerk,
Anehitia Eromosele

**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.

SHEFFIELD WOODS APARTMENTS LLC.
Respondent.

ICRC NO.: HOha18040235

HUD No.:05-18-2205-8

DATE FILED

APR 02 2019

OFFICE OF THE
ADMINISTRATIVE JUDGE

INITIAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On March 20, 2019, Respondent Sheffield Woods Apartments, LLC, by counsel, filed with the Indiana Civil Rights Commission (“Commission”) a “Notice of Election” pursuant to the Indiana Fair Housing Act (“IFHA”), Ind. Code § 22-9.5-6-12, (“IFHA Election”). An additional “Notice of Election” pursuant to the Indiana Civil Rights Law (“ICRL”), Ind. Code § 22-9-1-16, (“ICRL Election”) has not been filed. Having carefully considered the foregoing and being duly advised in the premises, the undersigned Administrative Law Judge (“ALJ”) of the Indiana Civil Rights Commission (“ICRC”) HEREBY issues the following initial findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Michele Martin (“Aggrieved Party”) filed a Complaint of Discrimination with the ICRC on April 27, 2018, naming Respondent and alleging unlawful discrimination in housing based on disability.
2. On March 8, 2019, the ICRC issued – and on the same day served – a Notice of Finding and Issuance of Charge, finding “reasonable cause” and “probable cause” to believe a discriminatory practice occurred in violation of both the Indiana Civil Rights Law (“ICLR”) and the Indiana Fair Housing Act (“IFHA”).
3. On March 20, 2019, approximately twelve (12) days after the date the Notice of Election and Charge was signed, Respondent filed its Notice of Election under the IFHA, serving it upon

the Aggrieved Party, the Complainant's Attorney, the Office of Hearings and Appeals, and the Docket Clerk.

4. To date, no election has been filed under the Indiana Civil Rights Law.

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

CONCLUSIONS OF LAW

Election under the Indiana Fair Housing Act

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 under the IFHA with respect to the "reasonable cause" claim.

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). If the electing person is the ICRC Director, then an election under the IFHA must be made within "twenty (20) days after the date the finding of reasonable cause was issued." *Id.*

6. Complainant's IFHA Election was timely filed. Although the Director was not formally named on the certificate of service, the ICRC Staff Attorney and the Office of Hearings and Appeals were served, and Complainant has not alleged that service was ineffective.

7. Respondent's Notice of Election under the IFHA is effective such that the Commission shall dismiss the administrative proceeding.

Election under the Indiana Civil Rights Law

8. 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 and Issuance of Charge, "probable cause" was found; therefore, an opportunity to elect out of the administrative forum existed under the ICRL with respect to the "probable cause" claim.

9. In order to make such an election, "...both the respondent and the complainant must agree in writing to have the claims decided in a court of law." Ind. Code § 22-9-1-16(a); 910 IAC 1-3-6.

10. The election must be made on the form provided to the parties by the Indiana Civil Rights Commission and must be served on all parties. Ind. Code § 22-9-1-16(a); 910 IAC 1-5-1(b).

11. However, an election is considered untimely if the election is made after a hearing on the merits of the complaint has begun. Ind. Code § 22-9-1-16(b).

12. "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.

13. Indiana Courts have not addressed whether an election under the IFHL with respect to a "reasonable cause" claim is sufficient to move a "probable cause" claim under the ICRL to a State Court without the Parties jointly filing a second election that meets the requirements for electing under the ICRL. However, at least two Indiana Courts have refused to hear ICRL cases for lack of jurisdiction when an ICRL election failed to meet the ICRL's election requirements. *Fort Wayne Metro. Human Relations Comm'n v. Marathon Gas Station*, 926 N.E.2d 1085, 1089 (Ind. Ct. App. 2010); *Lewis v. Mem'l Hosp. of S. Bend, Inc.*, No. 3:14-CV-01584-PPS, 2014 WL 5488496, at *2 (N.D. Ind. Oct. 29, 2014).

14. A proper election is required to grant a State Court jurisdiction over a claim under the ICRL. Ind. Code § 22-9-1-16(a). Importantly, the lack of subject matter jurisdiction of a court cannot be waived by the parties, and a court may raise, and reviewing courts have the "duty" to raise, subject matter jurisdiction *sua sponte* when it is not raised by the parties. *Town Council of New Harmony v. Parker*, 726 N.E.2d 1217, 1223 (Ind.), *amended on reh'g in part*, 737 N.E.2d 719 (Ind. 2000) ("Where lack of subject matter jurisdiction in the original tribunal is apparent

from the record, it is the duty of the reviewing court to raise and determine the issue *sua sponte*.”)

15. While the public policy of judicial efficiency along with deference to the most practical construction of the relationship between the ICRL and IFHA reasonably could suggest that an election under the IFHA would, much like a federal claim when supplemental jurisdiction applies, carry with it any related claims under the ICRL, no Indiana Court has issued a decision on this issue of law.¹ *Fackler v. Powell*, 839 N.E.2d 165, 167 (Ind. 2005)(discussing judicial efficiency in the context of continuing jurisdiction of a Dissolution Court over the interpretation of a settlement agreement); *State, Civil Rights Comm'n v. Cty. Line Park, Inc.*, 738 N.E.2d 1044, 1048 (Ind. 2000)(“The legislature is presumed to have intended the language used in the statute to be applied logically and not to bring about an unjust or absurd result.”); *see generally*, 28 USC § 1367.

16. Respondent and Complainant have not jointly filed an election under the ICRL, and accordingly, the “probable cause” claim remains in the administrative forum.

17. Administrative review of this initial decision may be obtained by filing objections with the Commission that state with reasonable particularity each basis for each objection within 15 days after service of this initial decision. Ind. Code § 4-21.5-3-29(d). Filings can be made with the Docket Clerk of the Indiana Civil Rights Commission by email, fax, or by mail at the following:

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

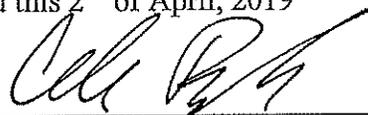
18. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

¹ The Indiana Administrative Code states that an election pertains to the “...claims asserted in the charge...,” which could include claims under the ICRL; however, the Indiana Administrative Code does not resolve the apparent procedural differences in the statutes, including the differences between filing elections and conducting jury trials. 910 IAC 2-7-9(a); Ind. Code § 22-9-1-17(c).

ORDER

1. The administrative proceedings on ICRC No. HOha18040235 brought under the Indiana Fair Housing Act are **DISMISSED**, with prejudice. 910 IAC 2-7-9(a).
2. The administrative proceedings on ICRC No. HOha18040235 brought under the Indiana Civil Rights Law are **STAYED** pending the resolution of the relevant State Court's jurisdiction over the "probable cause" claim, including whether Complainant intends to assert the "probable cause" claim in his State Court complaint.² Accordingly, the Initial Prehearing Conference on April 12, 2019 at 1 PM is **VACATED**.
3. Complainant shall provide a copy of the State Court complaint to the Docket Clerk by **April 24, 2019**.
4. The Parties must file written updates with the Docket Clerk concerning any 1) briefing or oral arguments with respect to jurisdiction and 2) orders on jurisdiction issued by the relevant State Court.

Dated this 2nd of April, 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

² Nothing in this order should be construed to prevent the Parties from seeking resolution of jurisdiction over the claims brought under the Indiana Civil Rights Law from a State Court. Additionally, this order does not prevent the Parties from executing a proper election under the Indiana Civil Right Law.

Certificate of Service

Served this 2 day of Apri by United States Mail on the following:

Michele Martin
3736 Hoovingham Drive #F
Indianapolis, IN 46226

Sheffield Woods Apartments LLC
3775 Allerton Place
Indianapolis, IN 46226

Cynthia Ball
Amy Sexton
Landman & Beatty
9100 Keystone Crossing, Suite 870
P O Box 40960
Indianapolis, IN 46240
cball@landmanbeatty.com
asexton@landmanbeatty.com

and personally served on the following attorney of record:

Michael C. Healy, Esq.; Staff Counsel
Indiana Civil Rights Commission
Indiana Government Center North
100 North Senate Avenue, Room N300
Indianapolis, IN 46204-2255
Telephone: (317)232-2632
Fax: (317)232-6580
mhealy@icrc.in.gov

Greg Wilson, Executive Director
Indiana Civil Rights Commission
Indiana Government Center North
100 North Senate Avenue, Room N300
Indianapolis, IN 46204-2255



Anehit Bromosele, ICRC Docket Clerk