

**STATE OF INDIANA  
CIVIL RIGHTS COMMISSION**

**DOCKET NO. EMre07020077**

**CLAYTON D. ROSIE,**  
Complainant,  
v.

**EQUIMAX LENDING, INC.;**  
Respondent.

**FILE DATED**

**AUG 28 2009**

Indiana State Civil Rights Commission

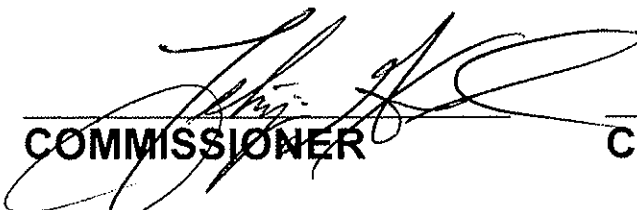
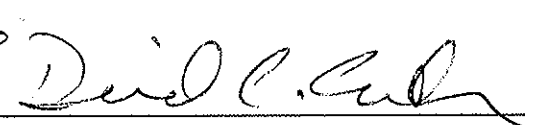

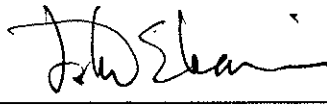
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
ORDER**

On August 6, 2009, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his 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: 28 August 2009

To be served by first class mail on the following parties:

Clayton D. Rosie  
8011 Meadows Court  
Fort Wayne, IN 46805

Equimax Lending, Inc.  
c/o Operations Manager  
11130 Coldwater Road, Suite 103  
Fort Wayne, IN 46845

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

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

**STATE OF INDIANA  
CIVIL RIGHTS COMMISSION**

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**CLAYTON D. ROSIE,**  
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**FILE DATED**

**AUG 06 2009**

**EQUIMAX LENDING, INC.;**  
Respondent.

Indiana State Civil Rights Commission

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

A Hearing On Damages was held on July 16, 2009 by conference telephone call before the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"). Complainant, Clayton D. Rosie ("Rosie"), participated and was represented by counsel, Frederick S. Bremer, ICRC Staff Counsel. Respondent - Equimax Lending, Inc. ("Equimax") - did not participate by counsel or otherwise, nor did anyone purporting to represent Equimax in any capacity attempt to take part in the Hearing.

Rosie waived his opening statement and testified on his own behalf. Rosie waived closing argument.. The ALJ ordered that Rosie file what he suggested that the ALJ enter as proposed findings of fact, conclusions of law, and order on or before July 31, 2009 and the case was taken under advisement.

On July 31, 2009 Rosie filed his Tender Of [Suggested Proposed] Findings Of Fact, Conclusions Of Law And Order.

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

## FINDINGS OF FACT

1. Rosie is an adult Jehovah's Witness who has resided, at all material times, in the state of Indiana.
2. Equimax was, at all material times, an Indiana business that employed 6 or more persons for wages or salary within the state.
3. Rosie's complaint alleges that, on December 20, 2005, Equimax, by Rosie's supervisor, Yen Nguyen ("Nguyen"), terminated Rosie's employment because of Rosie's religion, Nguyen stating at the time that the adverse employment action was taken because Rosie was not a team player in that Rosie had failed to attend an office Christmas party, an activity that was known by Nguyen to be contrary to Rosie's religious convictions as a Jehovah's Witness. See CHARGE OF DISCRIMINATION (May 8, 2006) ("COMPLAINT").
4. On May 7, 2009, the ALJ issued his Order Rescheduling Final Pre-Hearing Conference ("ORFPHC") notifying Equimax of a June 1, 2009 pre-hearing conference in this case to be held at 9:30 A.M. in Room 6 of the Conference Center at the Indiana Government Center South. The ORFPHC expressly provided that "[a] party who fails to attend ... a Pre-Hearing Conference may be held in default ...".
5. The ORFPHC was served twice on Equimax by certified mail, with one such mailing carried out by the office of the Secretary of State of Indiana in the capacity as agent for Indiana corporations such as Equimax. The ORFPHC, in both cases, was unclaimed.
6. Equimax did not appear at the June 1 Pre-Hearing Conference. FIFTH PRE-HEARING ORDER (June 1, 2009).
7. On June 1, 2009, Rosie applied for default.
8. On June 3, 2009, the ALJ entered and served his NOTICE OF PROPOSED DEFAULT ORDER ("NPDO"). The NPDO notified Equimax, among other things, that (1) the ALJ proposed to enter an Order By Default against Equimax (NPDO, ¶1); (2) Equimax could file a written motion requesting that the

proposed default order not be imposed and stating the grounds upon which it relied within 7 days after service of the NPDO (NPDO, ¶ 2); and (3) if no such motion is filed, the ALJ **MUST** enter the proposed default order (NPDO, ¶3).

9. Equimax did not file a written motion requesting that the proposed default order not be imposed.

10. On June 16, 2009, the ALJ entered his ORDER BY DEFAULT AND NOTICE OF HEARING ON DAMAGES, defaulting Equimax on Rosie's application and finding that the facts alleged in Rosie's complaint were deemed admitted and established.

11. As alleged in the COMPLAINT, which must be accepted as true, Equimax terminated Rosie's employment because of Rosie's religion.

12. At the time of his termination, Rosie was serving as a marketing director and was paid an annual salary of \$30,000.00, gross. He also received a monthly "bonus" of \$200.00, gross, in lieu of health insurance and could also earn some commissions, which Rosie calculated would have as totalled \$4,626.00, gross in the period ending when he obtained a higher paying position.

13. Rosie was either unemployed or employed at a lesser rate of pay than he would have earned at Equimax until May 15, 2007 when all lost wages cease because Rosie was earning more than he would have earned at Equimax.

14. Between his termination and May 15, 2007, a 17 month period of time, Rosie would have earned a total of \$50,526.00, gross in basic salary had he not been terminated because of religion by Equimax. Calculations are shown below:

Salary \$2,500.00/ month x 17 months	\$42,500.00
Bonus \$200.00/month x 17 months	3,400.00
Commissions	<u>4,626.00</u>
TOTAL	\$50,526.00

15. During that same 17 month period, Rosie received a total of \$11,795.04 in wages, salary or commissions. Calculations are shown below:

Incidental income from Equimax	\$ 383.65
Insurance renewals	1,928.39
Odd jobs	1,263.00
National Serv All 02/15/07 – 05//30/07	<u>8,220.00</u>
TOTAL	\$11,795.04

16. Rosie lost a total of \$38,730.96, gross, as a result of being terminated by Equimax because of religion. This is the difference between what he would have earned at Equimax (FINDING 14) and what he did earn until such time as he obtained a higher paying position (FINDING 15).
17. Rosie also received unemployment compensation totaling \$8,905.00.
18. There is no evidence that, at any time between his termination from Equimax and the time he obtained a better paying job, Rosie rejected a job that he was offered or failed to seek a job that he could have obtained.
19. Rosie does not seek interest.
20. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

## **CONCLUSIONS OF LAW**

1. The ICRC has jurisdiction over the subject matter and the parties.
2. Rosie and Equimax are each a "person" as that term is defined in section 3(a) of the Indiana Civil Rights Law ("the ICRL"). IC 22-9-1-3(a).
3. Equimax is an "employer" as that term is defined in section 3(h) of the ICRL. IC 22-9-1-3(h).
4. The ICRC's Rule 6.1(1) provides, in material part, that "[w]hen a party has failed to plead or otherwise defend as provided by this article ... such party is in default." 910 IAC 1-6-1(1).
5. Default is appropriate under 910 IAC 1-6-1(1).
6. A party may be defaulted under the Administrative Orders and Procedures Act for failure to "attend or participate in a prehearing conference." IC 4-21.5-3-24(a)(2).
7. Default is appropriate under IC 4-21.5-3-24(a)(2)..
8. The effects of an order by default include that the allegations of the complaint are deemed admitted.

15. Administrative review of this proposed decision may be obtained by the filing of a writing specifying with reasonable particularity each basis for each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).

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

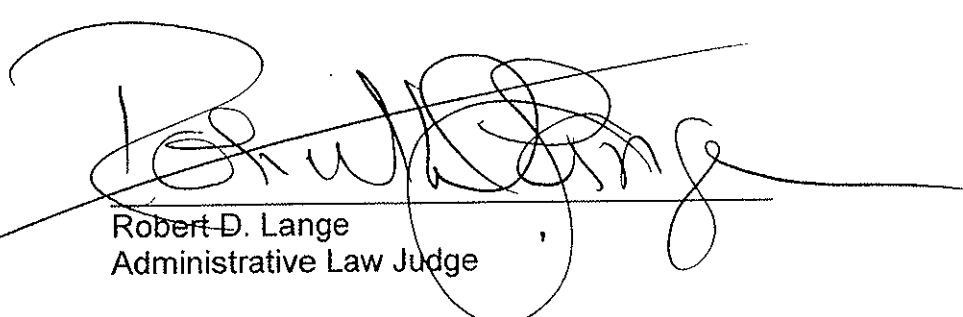
## ORDER

1. Equimax shall cease and desist from terminating employees because of religion.

2. Equimax shall deliver to the ICRC one or more cashier's checks payable to Rosie, in amounts totaling \$38,730.96 minus deductions required by law and/or agreement.

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

Dated: 06 August 2009



Robert D. Lange  
Administrative Law Judge

To be served by first class mail this 6<sup>th</sup> day of August, 2009 on the following parties:

Clayton D. Rosie  
8011 Meadows Court  
Fort Wayne, IN 46805

Equimax Lending, Inc.  
c/o Operations Manager  
11130 Coldwater Road, Suite 103  
Fort Wayne, IN 46845

and to be personally served this 6<sup>th</sup> day of August, 2009 on the following:

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

Indiana Civil Rights Commission  
c/o Tony A. Kirkland, Executive Director  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255